

1 State of Arkansas  
2 90th General Assembly  
3 Regular Session, 2015  
4

As Engrossed: S3/18/15

# A Bill

SENATE BILL 854

5 By: Senators D. Sanders, J. Woods  
6

## For An Act To Be Entitled

8 AN ACT TO AMEND THE LAWS PERTAINING TO INCENTIVES FOR  
9 THE DIGITAL PRODUCT AND MOTION PICTURE INDUSTRIES; TO  
10 AMEND THE DIGITAL PRODUCT AND MOTION PICTURE INDUSTRY  
11 DEVELOPMENT ACT OF 2009; TO DECLARE AN EMERGENCY; AND  
12 FOR OTHER PURPOSES.  
13  
14

## Subtitle

15 TO AMEND THE DIGITAL PRODUCT AND MOTION  
16 PICTURE INDUSTRY DEVELOPMENT ACT OF 2009;  
17 AND TO DECLARE AN EMERGENCY.  
18  
19  
20

21 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:  
22

23 SECTION 1. Arkansas Code § 15-4-2003(1), concerning the definitions  
24 used under the Digital Product and Motion Picture Industry Development Act of  
25 2009, is amended to read as follows:

26 (1) "Application for ~~rebate~~ income tax credit" means the  
27 document required by the Film Office to begin the process for obtaining a  
28 ~~rebate~~ an income tax credit under this subchapter;  
29

30 SECTION 2. Arkansas Code § 15-4-2003(9)(B), concerning the definitions  
31 used under the Digital Product and Motion Picture Industry Development Act of  
32 2009, is amended to read as follows:

33 (B) "Production" shall not include:

34 (i) An ongoing program created primarily as news,  
35 weather, or financial market reports;

36 (ii) A production containing any material or



1 performance that is obscene;

2 (iii) A production deemed an infomercial; ~~or~~

3 (iv) Sexually explicit productions as defined in 18  
4 U.S.C. § 2257, as it existed on January 1, 2009; or

5 (v) A television series that portrays unscripted,  
6 actual events for purposes of entertainment rather than information;

7  
8 SECTION 3. Arkansas Code § 15-4-2003(11)(C), concerning the  
9 definitions used under the Digital Product and Motion Picture Industry  
10 Development Act of 2009, is amended to read as follows:

11 (C) "Qualified production costs" includes the cost to  
12 option or purchase intellectual property, including without limitation books,  
13 scripts, music, or trademarks relating to the development or purchase of a  
14 script, screenplay, or format if:

15 (i) The intellectual property was produced primarily  
16 in Arkansas or the creator of the intellectual property is a resident of  
17 Arkansas;

18 (ii) ~~At least seventy-five percent (75%) of the~~  
19 ~~subsequent film or digital content is produced in~~ fifty percent (50%) of the  
20 workforce, including without limitation extras and day players, are residents  
21 of Arkansas; and

22 (iii)(a) The production expenses or costs for the  
23 optioning or purchase are less than twenty-five percent (25%) of the  
24 production expenses or costs incurred in Arkansas.

25 (b) The expenses or costs under this  
26 subdivision (11)(C)(iii) include all expenditures associated with the  
27 optioning or purchase of intellectual property, including option money, agent  
28 fees, and attorney's fees relating to the transaction, but do not include  
29 deferrals, deferments, royalties, profit participation, or recourse or  
30 nonrecourse loans that the eligible production company may negotiate in order  
31 to obtain the rights to the intellectual property.

32  
33 SECTION 4. Arkansas Code § 15-4-2003, concerning the definitions used  
34 under the Digital Product and Motion Picture Industry Development Act of  
35 2009, is amended to add an additional subdivision to read as follows:

36 (14) "United States Armed Forces" means:

- 1                   (A) The United States Army;  
 2                   (B) The United States Marine Corps;  
 3                   (C) The United States Navy;  
 4                   (D) The United States Air Force;  
 5                   (E) The United States Coast Guard;  
 6                   (F) The National Guard of any state;  
 7                   (G) The reserve components of any of the armed forces  
 8 listed in this subdivision (14); and  
 9                   (H) Any other branch of the military and naval forces or  
 10 auxiliaries of any state or the United States.

11  
 12           SECTION 5. Arkansas Code §§ 15-4-2005 and 15-4-2006 are amended to  
 13 read as follows:

14           15-4-2005. Production ~~rebate~~ income tax credit.

15           (a)(1) A production company, upon approval of the application by the  
 16 Arkansas Economic Development Commission, shall be eligible for ~~a rebate~~ an  
 17 income tax credit of ~~twenty percent (20%)~~ twenty-five percent (25%), with no  
 18 cap per production, on all qualified production costs in connection with the  
 19 production of a state-certified film project.

20           (2) An additional ~~rebate~~ income tax credit of ten percent (10%)  
 21 shall be granted for the payroll of below-the-line employees who are full-  
 22 time residents of Arkansas.

23           (3) In addition to the income tax credits available under  
 24 subdivisions (a)(1) and (2) of this section, an income tax credit of five  
 25 percent (5%) shall be granted for the payroll of a below-the-line employee  
 26 who is:

27                   (A) An honorably discharged veteran of the United States  
 28 Armed Forces; and

29                   (B) Subject to the Income Tax Act of 1929, § 26-51-101 et  
 30 seq.

31           (b) To qualify for ~~this rebate~~ an income tax credit under this  
 32 section, a production company shall spend at least two hundred thousand  
 33 dollars (\$200,000) within a six-month period in connection with the  
 34 production of one (1) project.

35           (c) A production ~~rebate~~ income tax credit under this section shall not  
 36 be processed until the production company has met in full all obligations to

1 each Arkansas institution and vendor owed for products or services in the  
2 state.

3  
4 15-4-2006. ~~Postproduction rebate~~ income tax credit.

5 (a)(1) A qualifying production company, upon approval of the  
6 application by the Arkansas Economic Development Commission, shall be  
7 eligible for ~~a rebate~~ an income tax credit of twenty percent (20%) twenty-  
8 five percent (25%), with no cap per production, on all qualified production  
9 costs in connection with the postproduction of a state-certified film  
10 project.

11 (2) An additional ~~rebate~~ income tax credit of ten percent (10%)  
12 shall be granted for the payroll of below-the-line employees who are full-  
13 time residents of Arkansas.

14 (3) In addition to the income tax credits available under  
15 subdivisions (a)(1) and (2) of this section, an income tax credit of five  
16 percent (5%) shall be granted for the payroll of a below-the-line employee  
17 who is:

18 (A) An honorably discharged veteran of the United States  
19 Armed Forces; and

20 (B) Subject to the Income Tax Act of 1929, § 26-51-101 et  
21 seq.

22 (b) To qualify for ~~this rebate~~ an income tax credit under this  
23 section, a production company ~~must~~ shall spend at least fifty thousand  
24 dollars (\$50,000) within a six-month period in connection with the production  
25 of one (1) project.

26 (c) A postproduction ~~rebate~~ income tax credit under this section shall  
27 not be processed until the production company has met in full all obligations  
28 to each Arkansas institution and vendor owed for products or services in the  
29 state.

30  
31 SECTION 6. Arkansas Code § 15-4-2007(a), concerning the application  
32 for an income tax credit under the Digital Product and Motion Picture  
33 Industry Development Act of 2009, is amended to read as follows:

34 (a)(1) To qualify for the ~~rebates~~ income tax credits provided under  
35 this subchapter, a production company shall submit an application and provide  
36 an estimate of total expenditures to be made in Arkansas in connection with

1 the production.

2 (2) The application and estimate of expenditures shall be filed  
3 with the Arkansas Economic Development Commission and be approved as eligible  
4 for the ~~rebate~~ income tax credit provided by this subchapter before the  
5 commencement of production in Arkansas.

6  
7 SECTION 7. Arkansas Code § 15-4-2007(c) and (d), concerning the  
8 application for an income tax credit under the Digital Product and Motion  
9 Picture Industry Development Act of 2009, are amended to read as follows:

10 (c) At the time the production company registers and provides the  
11 estimate of expenditures to the commission, the production company also shall  
12 designate a member or representative to work with the commission and the Film  
13 Office on the reporting of expenditures and other information necessary to  
14 qualify for ~~the rebate~~ an income tax credit under this subchapter.

15 (d) No later than one hundred eighty (180) days after the last  
16 production expenses or costs are incurred in the production of a qualified  
17 production, the production company shall:

18 (1) Apply to the commission for a production ~~rebate~~ income tax  
19 credit certificate; and

20 (2) Provide a final expenditure report that includes the amount  
21 of the company's production expenses or costs.

22  
23 SECTION 8. Arkansas Code § 15-4-2007(g)-(i), concerning the  
24 application for an income tax credit under the Digital Product and Motion  
25 Picture Industry Development Act of 2009, are amended to read as follows:

26 (g) Payments for salaries or wages shall be eligible for ~~the rebate~~ an  
27 income tax credit if they are reported to the division and are subject to  
28 state income taxes.

29 (h)(1) The employment ~~rebate~~ income tax credit also entitles a state-  
30 certified production for an additional ~~rebate~~ income tax credit for employing  
31 full-time residents of Arkansas.

32 (2) The employment ~~rebate~~ income tax credit authorizes an  
33 additional income tax credit of ten percent (10%) for the aggregate payroll  
34 of salaries and wages to Arkansas residents who are below-the-line employees  
35 of the state-certified production.

36 (3) In addition to the employment income tax credits described

1 in subdivisions (h)(1) and (2) of this section, an employment income tax  
2 credit authorizes an income tax credit of five percent (5%) for the payroll  
3 of a below-the-line employee who is:

4 (A) An honorably discharged veteran of the United States  
5 Armed Forces; and

6 (B) Subject to the Income Tax Act of 1929, § 26-51-101 et  
7 seq.

8 (i) The employment ~~rebate~~ income tax credit shall include the first  
9 five hundred thousand dollars (\$500,000) of a highly compensated individual's  
10 salary.

11  
12 SECTION 9. Arkansas Code § 15-4-2007(1), concerning the application  
13 for an income tax credit under the Digital Product and Motion Picture  
14 Industry Development Act of 2009, is amended to read as follows:

15 (1)(1)(A) Within two (2) weeks after principal photography begins, the  
16 production company shall begin filing weekly expenditure reports.

17 (B) Failure to file weekly expenditure reports may result  
18 in a delay in the ~~disbursement~~ certification of the ~~rebate~~ income tax credit  
19 provided in §§ 15-4-2005 and 15-4-2006.

20 (2) The weekly expenditure report shall be filed in accordance  
21 with but shall not be limited to the following:

22 (A) Direct cash payments by the production company to  
23 Arkansas vendors, businesses, or citizens hired as cast or crew that are  
24 accompanied by receipts shall be allowed if the sum of those cash payments  
25 does not exceed forty percent (40%) of the total verifiable expenditures;

26 (B) Per diem expenditures by cast or crew, or both, for  
27 lodging, when accompanied by receipts, shall be eligible expenditures; and

28 (C) Expenditure reports shall include without limitation:

29 (i) Check identification number;

30 (ii) Date of payment;

31 (iii) Name of payee;

32 (iv) Address of payee;

33 (v) Amount paid; and

34 (vi) Other information the division deems necessary  
35 to ensure compliance with this subsection.

36

1           SECTION 10. Arkansas Code § 15-4-2007(n), concerning the application  
2 for an income tax credit under the Digital Product and Motion Picture  
3 Industry Development Act of 2009, is amended to read as follows:

4           (n)(1) Upon completion of filming or production, or both, in Arkansas,  
5 the production company shall file an application for the ~~rebate~~ income tax  
6 credit allowed under this subchapter.

7           (2) The application for ~~rebate~~ income tax credit shall include a  
8 proof of performance expenditure list that provides the total amount of  
9 expenditures that were made in the state in connection with the filming or  
10 production, or both, of a film and digital product that complies with this  
11 subchapter.

12           (3) The production company shall provide documentation for  
13 expenditures in accordance with rules promulgated by the Film Office.

14  
15           SECTION 11. Arkansas Code §§ 15-4-2008 and 15-4-2009 are amended to  
16 read as follows:

17           15-4-2008. ~~Disbursement of rebate~~ Certificate of income tax credit  
18 incentive.

19           (a) The Revenue Division of the Department of Finance and  
20 Administration shall upon receipt of an application for ~~a rebate~~ an income  
21 tax credit under this subchapter, including a proof of performance  
22 expenditure report from the Film Office:

23           (1) Calculate the total expenditures of the relevant production  
24 company for which there are documented receipts for funds expended in the  
25 state;

26           (2) Calculate the incentive benefit to which the applicant is  
27 entitled; and

28           (3) Provide certification to the Director of the Department of  
29 Finance and Administration specifying the amount ~~to be remitted to~~ of the  
30 income tax credit to which the production company is entitled within one  
31 hundred twenty (120) days after the final expenditure report has been  
32 submitted.

33           (b) The director, within ten (10) working days after the receipt of  
34 the certification from the division, shall ~~remit the rebate~~ issue a  
35 certificate stating the amount of the income tax credit to+

36           ~~(1) The~~ the production company; ~~or~~

1 ~~(2) At the option of the production company, the full amount or~~  
2 ~~a specified amount noted by the production company to the:~~

3 ~~(A) National Film Preservation Foundation;~~

4 ~~(B) Motion Picture Retirement Fund; or~~

5 ~~(C) Digital Product and Motion Picture Office Fund.~~

6 (c)(1) There is no per-production cap on the rebate income tax credits  
7 under this subchapter, and the amount of the rebate shall be limited only by  
8 the amount of moneys in the Digital Product and Motion Picture Office Fund.

9 (2) The rebate income tax credit shall be awarded on a first-  
10 come, first-served basis.

11 ~~(3) Rebates to be awarded from the Digital Product and Motion~~  
12 ~~Picture Office Fund may be payable from any source of funds allocated for the~~  
13 ~~rebates.~~

14 (d) The total cumulative amount of income tax credits under this  
15 subchapter available to all production companies under this subchapter in any  
16 calendar year shall not exceed ten million dollars (\$10,000,000).

17  
18 15-4-2009. Penalties.

19 (a) A production company that intends to apply for ~~the rebate an~~  
20 income tax credit under this subchapter and does not register as required by  
21 § 15-4-2004 may be enjoined from engaging in production activities in the  
22 state by any court of competent jurisdiction until the production company has  
23 registered.

24 (b) A production company that intends to apply for the ~~rebate income~~  
25 tax credit incentives and fails to comply with this subchapter may be denied  
26 future participation in this incentive program and shall be subject to  
27 penalty in accordance with applicable state or federal law.

28  
29 SECTION 12. Arkansas Code § 15-4-2011 is amended to read as follows:  
30 15-4-2011. Sunset.

31 The opportunity for ~~a rebate provided by an income tax credit under~~  
32 this subchapter shall expire on June 30, 2019.

33  
34 SECTION 13. Arkansas Code Title 15, Chapter 4, Subchapter 20, is  
35 amended to add an additional section to read as follows:

36 15-4-2012. Use of an income tax credit.

1 (a) A production company that is entitled to an income tax credit  
2 under this subchapter may claim the income tax credit against any state  
3 income tax liability that may be imposed on the production company for the  
4 tax year in which the income tax credit was earned.

5 (b)(1) A production company earning income tax credits under this  
6 subchapter may sell its income tax credits only one (1) time, in whole or in  
7 part, the balance of which shall be used by the production company within the  
8 time frame allowed under this subchapter.

9 (2) However, an income tax credit sold under this subsection  
10 shall be sold for at least eighty-five percent (85%) of the initial value of  
11 the income tax credit.

12 (3) A transferee from a production company is entitled to the  
13 income tax credit described in this section only to the extent the income tax  
14 credit is still available to and has not previously been used by the  
15 production company.

16 (4) A transferee of income tax credits who seeks to qualify for  
17 the income tax credit provided in this subchapter shall obtain and attach to  
18 the income tax return for the year the income tax credit is claimed a  
19 certified statement from the production company stating:

20 (A) The name and address of the production company and all  
21 transferees;

22 (B) The tax identification number of all persons entitled  
23 to any portion of the original income tax credit;

24 (C) The amount paid by the transferee for the income tax  
25 credit; and

26 (D) The original amount of the income tax credit earned by  
27 the production company.

28 (c)(1) If a production company is a pass-through entity for tax  
29 purposes, such as a limited liability company or a partnership, then the  
30 owner of the pass-through entity is entitled to any income tax credit  
31 provided under this subchapter.

32 (2) If a pass-through entity entitled to an income tax credit  
33 under subdivision (c)(1) of this section is owned by two (2) or more persons,  
34 then the income tax credit may be allocated among the pass-through entity  
35 owners in the method selected by the owners as described in the governing  
36 documents of the pass-through entity or by other written agreement among the

