

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

Act 816 of the Regular Session

1 State of Arkansas

As Engrossed: H3/12/09 S3/25/09

2 87th General Assembly

A Bill

3 Regular Session, 2009

HOUSE BILL 1939

4
5 By: Representatives Saunders, Webb, Barnett, M. Burris, Lowery, Reep, J. Rogers, *Breedlove, J. Brown,*
6 *Carroll, Cole, Cooper, L. Cowling, R. Green, M. Martin, Moore, Nickels, Ragland, J. Roebuck*

7 By: Senators Broadway, Salmon, T. Smith, *Faris, Whitaker*

8
9
10 **For An Act To Be Entitled**

11 AN ACT TO REPEAL THE SUNSETTED MOTION PICTURE
12 INCENTIVE ACT OF 1997; TO ESTABLISH THE DIGITAL
13 PRODUCT AND MOTION PICTURE INDUSTRY DEVELOPMENT
14 ACT OF 2009; AND FOR OTHER PURPOSES.

15
16 **Subtitle**

17 TO REPEAL THE SUNSETTED MOTION PICTURE
18 INCENTIVE ACT OF 1997 AND TO ESTABLISH
19 THE DIGITAL PRODUCT AND MOTION PICTURE
20 INDUSTRY DEVELOPMENT ACT OF 2009.

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

24
25 SECTION 1. Arkansas Code §§ 15-4-2001 – 15-4-2012 are amended to read
26 as follows:

27 ~~15-4-2001. Short title.~~

28 ~~This subchapter may be referred to and cited as the "Motion Picture~~
29 ~~Incentive Act of 1997".~~

30
31 ~~15-4-2002. Legislative determination.~~

32 ~~It is found and determined that:~~

33 ~~(1) Arkansas' natural beauty and diverse topography provides a~~
34 ~~variety of excellent settings from which the motion picture industry might~~
35 ~~choose a location for filming a motion picture or television program;~~



1 ~~(2) Several successful motion pictures have been filmed in~~
2 ~~Arkansas due to the unique qualities of the state in terms of natural~~
3 ~~settings, availability of labor, materials, climate, and hospitality of its~~
4 ~~people;~~

5 ~~(3) The motion picture industry brings with it a much needed~~
6 ~~infusion of capital into areas of the state which may be economically~~
7 ~~depressed;~~

8 ~~(4) The multiplier effect of the infusion of capital resulting~~
9 ~~from the filming of a motion picture or television program serves to~~
10 ~~stimulate economic activity beyond that immediately apparent on the film set;~~

11 ~~(5) Due to the distance of Arkansas from the film industry~~
12 ~~center on the West Coast and due to the period of economic depression, it is~~
13 ~~necessary to provide financial incentives to the film industry in order that~~
14 ~~Arkansas might compete with other states for filming locations; and~~

15 ~~(6) Since a significant portion of the cost of a motion picture~~
16 ~~production will not be eligible for a tax incentive because portions of the~~
17 ~~production are carried out in another state, this subchapter may also serve~~
18 ~~as an inducement for the motion picture industry to locate operations within~~
19 ~~the State of Arkansas in order to take advantage of the tax incentive~~
20 ~~afforded by this subchapter.~~

21
22 ~~15-4-2003. Definitions.~~

23 ~~As used in this subchapter:~~

24 ~~(1) "Financial institution" means any bank or savings and loan~~
25 ~~in the state which carries Federal Deposit Insurance Corporation or Federal~~
26 ~~Savings and Loan Insurance Corporation insurance;~~

27 ~~(2) "Motion picture office" means the division of the Arkansas~~
28 ~~Economic Development Commission charged with the responsibility of promoting~~
29 ~~and assisting the motion picture industry in Arkansas;~~

30 ~~(3) "Motion picture production company" means a company engaged~~
31 ~~in the business of producing motion pictures intended for a theatrical~~
32 ~~release or for television viewing;~~

33 ~~(4) "Resident" means natural persons and includes, for the~~
34 ~~purpose of determining eligibility for the tax incentive provided by this~~
35 ~~subchapter, any person domiciled in the State of Arkansas and any other~~
36 ~~person who maintains a permanent place of abode within the state and spends~~

1 in the aggregate more than six (6) months of the taxable year within the
2 state; and

3 (5) ~~“Revenue Division” means the Revenue Division of the~~
4 ~~Department of Finance and Administration.~~

5
6 ~~15-4-2004. Requirement for registration.~~

7 Each motion picture production company which plans to film any scenes
8 within the borders of the State of Arkansas shall register with the motion
9 picture office prior to the commencement of filming.

10
11 ~~15-4-2005. Tax incentive.~~

12 (a) ~~A qualifying production company, upon making application therefor~~
13 ~~and meeting other requirements prescribed in this subchapter, shall be~~
14 ~~entitled to a tax refund of one hundred percent (100%) of the tax imposed by~~
15 ~~§ 26-52-301 et seq. and the Arkansas Compensating Tax Act of 1949, § 26-53-~~
16 ~~101 et seq., and paid on the purchase of property and services in Arkansas in~~
17 ~~connection with the filming or production projects, or both, within Arkansas.~~

18 (b) ~~To qualify, a production company must:~~

19 (1) ~~Spend five hundred thousand dollars (\$500,000) within a six-~~
20 ~~month period in connection with the filming or production, or both, of one~~
21 ~~(1) feature film, telefilm, music video, documentary, episodic television~~
22 ~~show, or commercial advertising project; or~~

23 (2) ~~Spend in excess of one million dollars (\$1,000,000) within a~~
24 ~~twelve-month period in connection with the filming or production, or both, of~~
25 ~~one (1) or more feature films, telefilms, music videos, documentaries,~~
26 ~~episodic television shows, or commercial advertising projects.~~

27
28 ~~15-4-2006. Application for tax incentive.~~

29 (a)(1) ~~Any motion picture production company which desires to take~~
30 ~~advantage of the tax incentive program provided for in this subchapter shall~~
31 ~~submit an application, along with a letter of support from the local~~
32 ~~government or governments in the affected area, and provide an estimate of~~
33 ~~total expenditures to be made in Arkansas in connection with the filming or~~
34 ~~production, or both, of the motion picture.~~

35 (2) ~~The application and estimate of expenditures shall be filed~~
36 ~~with the motion picture office and approved as eligible for the tax incentive~~

1 provided by this subchapter prior to the commencement of filming in Arkansas.

2 (b) ~~At the time the motion picture production company registers and~~
3 ~~provides the estimate of expenditures to the motion picture office, it shall~~
4 ~~also designate a member or representative of the motion picture production~~
5 ~~company to work with the Arkansas Economic Development Commission's Motion~~
6 ~~Picture Development Office and the Revenue Division of the Department of~~
7 ~~Finance and Administration on the reporting of expenditures and other~~
8 ~~information necessary to take advantage of the tax incentive afforded by this~~
9 ~~subchapter.~~

10 (c)(1)(A) ~~Within two (2) weeks after principal photography begins, the~~
11 ~~motion picture production company shall begin filing weekly expenditure~~
12 ~~reports.~~

13 (B) ~~Failure to file weekly expenditure reports may result~~
14 ~~in a delay in the disbursement of the tax incentive benefit as provided in §~~
15 ~~15-4-2007.~~

16 (2) ~~The weekly expenditure report shall be filed in accordance~~
17 ~~with, but not limited to, the following provisions:~~

18 (A) ~~In order to be eligible for the tax incentive provided~~
19 ~~for by this subchapter, payments shall be made from a checking account from~~
20 ~~any Arkansas financial institution;~~

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

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

28 (D) ~~Expenditure reports shall include, but are not limited~~
29 ~~to:~~

30 (i) ~~Check identification number;~~

31 (ii) ~~Date of payment;~~

32 (iii) ~~Name of payee;~~

33 (iv) ~~Address of payee;~~

34 (v) ~~Amount paid;~~

35 (vi) ~~Name of financial institution; and~~

36 (vii) ~~Other such information as may be deemed~~

1 ~~necessary by the division to ensure compliance with this subchapter;~~

2 ~~(E) Payments for salaries or wages are limited to Arkansas~~
3 ~~residents who filed an Arkansas income tax return in the previous tax year;~~

4 ~~(F) Payments for penalties or fines, payments to nonprofit~~
5 ~~organizations, and payments to federal and state entities that do not pay~~
6 ~~state taxes are to be excluded;~~

7 ~~(G) When a motion picture production company hires a~~
8 ~~payroll service company to handle the payroll of a production, the payroll~~
9 ~~payments otherwise allowable shall be allowed as eligible expenditures,~~
10 ~~provided:~~

11 ~~(i) Payments made by the motion picture production~~
12 ~~company to the payroll service company are paid through an Arkansas financial~~
13 ~~institution account; and~~

14 ~~(ii) If the payroll checks issued by the payroll~~
15 ~~service company are drawn on a bank or other entity which is outside the~~
16 ~~State of Arkansas, the out-of-state bank or other entity guarantees payment~~
17 ~~of the checks at an Arkansas financial institution;~~

18 ~~(H) When a motion picture production company hires a food~~
19 ~~eatering service company which is outside the State of Arkansas, payments~~
20 ~~otherwise allowable which are made by the out-of-state food catering service~~
21 ~~to food businesses located in Arkansas shall be allowed as eligible~~
22 ~~expenditures, provided:~~

23 ~~(i) Actual receipts or copies of invoices from such~~
24 ~~food businesses located in Arkansas are filed with the weekly expenditure~~
25 ~~reports; and~~

26 ~~(ii) Payments made by the motion picture production~~
27 ~~company to the out-of-state food catering service company are paid through an~~
28 ~~Arkansas financial institution account; and~~

29 ~~(I) Preproduction and postproduction expenses, which~~
30 ~~otherwise qualify, may be made from a checking account from a financial~~
31 ~~institution located out of Arkansas.~~

32 ~~(d) The twelve-month period and six-month period during which~~
33 ~~expenditures may qualify for the tax incentive provided by this subchapter~~
34 ~~begin on the date of the earliest expenditure reported.~~

35 ~~(e)(1) Upon completion of filming or production, or both, in Arkansas,~~
36 ~~the motion picture production company shall file an application for the tax~~

1 ~~incentive afforded by this subchapter.~~

2 ~~(2) The application shall include a final expenditure report~~
3 ~~giving a total amount of expenditures which were made in the state in~~
4 ~~connection with the filming or production, or both, of a motion picture and~~
5 ~~which comply with the provisions of this subchapter.~~

6 ~~(3) The motion picture production company shall provide~~
7 ~~documentation for expenditures in accordance with regulations promulgated by~~
8 ~~the division.~~

9
10 ~~15-4-2007. Disbursement of tax incentive.~~

11 ~~(a) Upon receipt of an application for a tax refund and supporting~~
12 ~~documentation pursuant to this subchapter, the Revenue Division of the~~
13 ~~Department of Finance and Administration shall confirm the eligibility of the~~
14 ~~applicant based on total expenditures and the amount of sales and use tax~~
15 ~~paid by the applicant for which a refund is due.~~

16 ~~(b) The applicant shall provide, with the application for refund:~~

17 ~~(1) A schedule of purchases accompanied by invoices which show~~
18 ~~the property or service purchased;~~

19 ~~(2) The name and location of the vendor; and~~

20 ~~(3) The amount of sales or use tax paid.~~

21 ~~(c) The division shall calculate the tax refund to which the applicant~~
22 ~~is entitled and shall certify the tax refund to the Chief Fiscal Officer of~~
23 ~~the State.~~

24 ~~(d) Upon receipt of all necessary documentation to support the~~
25 ~~applicant's claim for refund, the division shall certify to the Chief Fiscal~~
26 ~~Officer of the State the amount to be remitted to the motion picture~~
27 ~~production company within sixty (60) days of the final expenditure report.~~

28 ~~(e) The Chief Fiscal Officer of the State shall remit the tax refund~~
29 ~~to the motion picture production company following receipt of the~~
30 ~~certification of the amount thereof from the division. The benefit shall be~~
31 ~~paid from any available funds appropriated for miscellaneous tax refunds by~~
32 ~~the General Assembly.~~

33
34 ~~15-4-2008. Penalties.~~

35 ~~(a) Any motion picture production company failing to comply with § 15-~~
36 ~~4-2004 may be enjoined from engaging in the business of producing motion~~

1 ~~pictures in the State of Arkansas by any court of competent jurisdiction~~
2 ~~until the requirements of § 15-4-2004 are met.~~

3 ~~(b) Any motion picture production company failing to comply with all~~
4 ~~provisions of this subchapter may be denied any future application for~~
5 ~~participation in this incentive program.~~

6
7 ~~15-4-2009. Disclaimer.~~

8 ~~The State of Arkansas reserves the right to refuse the use of Arkansas'~~
9 ~~name in the credits of any motion picture filmed or produced, or both, in the~~
10 ~~state.~~

11
12 ~~15-4-2010. Audit.~~

13 ~~The Revenue Division of the Department of Finance and Administration~~
14 ~~may require that reported expenditures and the application for a tax~~
15 ~~incentive from the motion picture production company be subjected to an audit~~
16 ~~by division auditors to verify expenditures.~~

17
18 ~~15-4-2011. Sunset.~~

19 ~~The opportunity for a tax incentive provided by § 15-4-2005 shall~~
20 ~~expire on June 30, 2007.~~

21
22 ~~15-4-2012. Rules and regulations.~~

23 ~~The Revenue Division of the Department of Finance and Administration~~
24 ~~and the Arkansas Economic Development Commission shall promulgate appropriate~~
25 ~~rules and regulations to carry out the intent and purposes of this subchapter~~
26 ~~and to prevent abuse.~~

27
28 15-4-2001. Short title.

29 This subchapter may be referred to and cited as the "Digital Product
30 and Motion Picture Industry Development Act of 2009".

31
32 15-4-2002. Legislative intent.

33 (a) It is the intent of the General Assembly to assist in cultivating
34 the film industry by:

35 (1) Providing the citizens of Arkansas with the education,
36 training, and financial tools to succeed in today's global economy. The

1 economic landscape of the state and the nation has moved from a
2 manufacturing-based economy to one based on knowledge and technology; and to
3 cultivate the state's economy based upon knowledge and technology, by further
4 developing the film and digital content industry in Arkansas;

5 (2) Providing the financial incentives needed to foster the
6 long-term development of the digital medium and traditional film industry in
7 Arkansas;

8 (3) Recognizing that similar incentives in surrounding states
9 have been a catalyst for unprecedented economic growth within those states
10 and that to create an effective mechanism for the sustained growth of the
11 film industry in Arkansas will require the passage of legislation that
12 establishes a film production incentive program that is not only competitive
13 but also uniquely attractive to specific types of projects, production
14 companies, and infrastructure creation;

15 (4) Recognizing a successfully cultivated film industry will
16 create a sector of high technology in Arkansas, a much needed infusion of
17 capital into areas of the state which may be economically depressed, and
18 offer to Arkansans skilled labor employment opportunities that require
19 knowledge and pay well;

20 (5) Recognizing that the temporary revenue loss to seed the
21 initial growth will be offset by the film and digital content industry's
22 total value added to the Arkansas economy and directly offset through the
23 state and local taxes collected on economic activity generated by the
24 industry;

25 (6) Allowing Arkansas to become competitive with surrounding
26 states that offer financial incentives to the film and digital content
27 production industry;

28 (7) Creating a vibrant film and digital content industry in
29 Arkansas that will be essential to retain highly educated and creative
30 individuals in Arkansas who want to pursue a career in this field;

31 (8) Recognizing that the state is uniquely qualified to attract
32 digital form product providers to live, work, and play within its borders due
33 to the state's natural settings, availability of labor, materials, climate
34 and the hospitality of its people; and

35 (9) Recognizing that the Motion Picture Incentive Act of 1983,
36 previously codified at this subchapter, which was one of the first incentives

1 offered to the motion picture industry and allowed the state and motion
2 picture industry to develop a strong partnership, resulted in a significant
3 increase in the number of movies filmed in Arkansas.

4
5 15-4-2003. Definitions.

6 As used in this subchapter:

7 (1)(A) "Below-the-line employees" means employees involved with
8 the production of a motion picture production including without limitation:

9 (i) Casting assistants;

10 (ii) Costume design;

11 (iii) Gaffers;

12 (iv) Grips;

13 (v) Location managers;

14 (vi) Production assistants;

15 (vii) Set construction staff; and

16 (viii) Set design staff.

17 (B) "Below-the-line employees" does not include actors,
18 directors, producers, and writers;

19 (2)(A) "Film and digital product" means video images or other
20 visual media entertainment content.

21 (B) "Film and digital product" includes without
22 limitation:

23 (i) Motion pictures;

24 (ii) Documentaries;

25 (iii) Long-form programs, specials, mini-series,
26 series, music videos, and television programming;

27 (iv) Interactive television;

28 (v) Interactive games;

29 (vi) Videogames;

30 (vii) Commercials;

31 (viii) Digital media created primarily for
32 distribution or exhibition to the general public; and

33 (ix) A trailer, pilot, video teaser, or demo created
34 primarily to stimulate the sale, marketing, promotion, or exploitation of
35 future investment in either a product or a qualified production through any
36 means and media in a digital media format, film, or videotape, provided the

1 program meets all the underlying criteria of a qualified production;

2 (3) "Film office" means the division of the Arkansas Economic
3 Development Commission charged with the responsibility of promoting and
4 assisting the digital content industry in Arkansas;

5 (4) "Financial institution" means any bank or savings and loan
6 in the state which carries Federal Deposit Insurance Corporation insurance;

7 (5)(A) "Highly compensated individual" means an individual who
8 directly or indirectly receives compensation in excess of five hundred
9 thousand dollars (\$500,000) for personal services with respect to a single
10 production.

11 (B) An individual receives compensation indirectly when a
12 production company pays a personal service company or an employee-leasing
13 company that pays the individual;

14 (6)(A) "Postproduction" means a final stage in the production of
15 digital content occurring after the action has been filmed or videotaped and
16 involves editing and the addition of soundtracks.

17 (B) "Postproduction" includes without limitation editing,
18 music, soundtracks, special effects, and credits;

19 (7) "PostProduction costs" mean all expenditures incurred in the
20 state in the post-production phase of a state-certified production;

21 (8)(A) "Production" means the process of producing a type of
22 entertainment content and includes film and digital product.

23 (B) "Production" shall not include:

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

26 (ii) A production containing any material or
27 performance that is obscene;

28 (iii) A production deemed an infomercial; or

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

31 (9) "Production company" means a corporation, partnership,
32 limited liability company, or other business entity engaged in the business
33 of producing qualified productions and qualified by the Secretary of the
34 State to engage in business in the state;

35 (10)(A) "Qualified production costs" means costs incurred in
36 Arkansas in the development, preproduction, production, or postproduction of

1 a qualified production.

2 (B) "Qualified production costs" includes costs incurred
3 concerning original music compositions produced by an Arkansas resident to be
4 used as incidental music, the score, or the soundtrack in film or video
5 games.

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

10 (i) The intellectual property was produced primarily
11 in Arkansas or the creator of the intellectual property is a resident of
12 Arkansas;

13 (ii) At least seventy-five percent (75%) of the
14 subsequent film or digital content is produced in Arkansas; and

15 (iii) The production expenses or costs for the
16 optioning or purchase are less than twenty-five percent (25%) of the
17 production expenses or costs incurred in Arkansas. The expenses or costs
18 includes all expenditures associated with the optioning or purchase of
19 intellectual property, including option money, agent fees, and attorney fees
20 relating to the transaction, but does not include deferrals, deferments,
21 royalties, profit participation, or recourse or non-recourse loans which the
22 eligible production company may negotiate in order to obtain the rights to
23 the intellectual property;

24 (D) "Qualified production costs" does not include:

25 (i) The optioning or purchase of intellectual
26 property that does not comply with the provisions of subdivision (8)(A) of
27 this section;

28 (ii) Media buys, promotional events, or gifts or
29 public relations associated with the promotion or marketing of any qualified
30 production;

31 (iii) Deferred, leveraged, or profit participation
32 costs relating to any and all personnel associated with any and all aspects
33 of the production, including, but not limited to, producer fees, director
34 fees, talent fees, and writer fees;

35 (iv) Amounts paid to persons or businesses as a
36 result of their participation in profits from the exploitation of the

1 qualified production; and

2 (v) Salaries for highly compensated individuals;

3 (11) "Resident" means natural persons and includes for the
4 purpose of determining eligibility for the rebate incentive provided by this
5 subchapter, a person domiciled in Arkansas and any other person who maintains
6 a permanent residence within the state and spends in the aggregate at least
7 six (6) months of the taxable year within the state; and

8 (12) "State-certified production" means a qualified production
9 produced by an eligible production company that is:

10 (A) In compliance with established regulations to this
11 subchapter;

12 (B) Authorized by the commission to conduct business in
13 this state; and

14 (C) Approved by the commission as qualifying for a
15 production rebate under this section.

16
17 15-4-2004. Requirement for registration.

18 (a) A production company which plans to operate within the borders of
19 Arkansas shall register with the film office of the Arkansas Economic
20 Development Commission before beginning operations.

21 (b)(1) Upon registration and signing a financial incentive agreement,
22 the production company shall include the name of Arkansas in the credits.

23 (2) The Director of the Arkansas Economic Development Commission
24 may waive this requirement if he or she determines that the state should not
25 be acknowledged.

26
27 15-4-2005. Production rebate.

28 (a)(1) A production company, upon approval of the application by the
29 Arkansas Economic Development Commission, shall be eligible for a rebate of
30 fifteen percent (15%), with no cap per production, on all qualified
31 production costs in connection with the production of a state-certified film
32 project.

33 (2) An additional rebate of ten percent (10%) will be granted
34 for the payroll of below-the-line employees who are full-time residents of
35 Arkansas.

36 (b) To qualify for this rebate, a production company shall spend at

1 least fifty thousand dollars (\$50,000) within a six-month period in
2 connection with the production of one (1) project.

3
4 15-4-2006. Post-production rebate.

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 of fifteen percent (15%), with no cap per production,
8 on all qualified production costs in connection with the post-production of a
9 state-certified film project.

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

13 (b) To qualify for this rebate, a production company must; spend at
14 least fifty thousand dollars (\$50,000) within a six (6) month period in
15 connection with the production of one (1) project.

16
17 15-4-2007. Application for rebate.

18 (a)(1) To qualify for the rebates provided under this subchapter, the
19 production company shall submit an application and provide an estimate of
20 total expenditures to be made in Arkansas in connection with the production.

21 (2) The application and estimate of expenditures shall be filed
22 with the Arkansas Economic Development Commission and be approved as eligible
23 for the rebate provided by this subchapter before the commencement of
24 production in Arkansas.

25 (b)(1) After each production company submits an application, the
26 commission will sign a financial incentive agreement with each eligible
27 production company that qualifies under this subchapter and is approved by
28 the commission.

29 (2)(A) The financial incentive agreement shall define the
30 benefits to be received and the start and end date of the project.

31 (B) The financial incentive agreement shall include the:

32 (i) Effective date of the agreement;

33 (ii) Term of the agreement, which shall be
34 calculated from the date the agreement is signed by the production company
35 and the Revenue Division of the Department of Finance and Administration;

36 (iii) Incentive for which the production company may

1 qualify;

2 (iv) Investment threshold requirements necessary to
3 qualify for eligibility;

4 (v) Production company's responsibilities for
5 certifying eligibility requirements; and

6 (vi) Production company's responsibilities for
7 failure to meet or maintain eligibility requirements.

8 (c) At the time the production company registers and provides the
9 estimate of expenditures to the commission, the production company also shall
10 designate a member or representative to work with the commission and the
11 Revenue Division on the reporting of expenditures and other information
12 necessary to qualify for the rebate.

13 (d) No later than ninety (90) days after the last production expenses
14 or costs are incurred in the production of a qualified production, the
15 production company shall:

16 (1) Apply to the commission for a production rebate certificate;
17 and

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

20 (e)(1) To be eligible for the rebate incentive provided for by this
21 subchapter, payments for production and post-production expenses shall be
22 made from a checking account from an Arkansas financial institution.

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

27 (3) Per diem expenditures by the cast or crew for lodging when
28 accompanied by receipts shall be eligible expenditures.

29 (f) Expenditure reports also shall include information as required by
30 the Revenue Division to ensure compliance with this subchapter.

31 (g) Payments for salaries or wages shall be eligible for the rebate if
32 they are reported to the Revenue Division and are subject to state income
33 taxes.

34 (h)(1) The employment rebate also entitles a state-certified
35 production for an additional rebate for employing full-time residents of
36 Arkansas.

1 (2) The employment rebate authorizes an additional credit of ten
2 percent (10%) for the aggregate payroll of salaries and wages to Arkansas
3 residents who are below-the-line employees of the state-certified production.

4 (i) The salary for an employee whose salary is equal to or greater
5 than five hundred thousand dollars (\$500,000) shall be excluded from
6 eligibility for either rebate.

7 (j) Payments for penalties or fines, payments to nonprofit
8 organizations, and payments to federal and state entities that do not pay
9 state taxes are not eligible.

10 (k) If a production company hires a payroll service company to handle
11 the payroll of a production, the payroll payments shall be allowed as
12 eligible expenditures provided:

13 (1) Payments made by the production company to the payroll
14 service company are paid through an Arkansas financial institution account;
15 and

16 (2) All eligible income payments to employees and independent
17 contractors done through the payroll service are subject to Arkansas state
18 income taxes.

19 (1)(1) The final expenditure report and all qualified production costs
20 shall be subject to an audit by an outside certified public accountant
21 licensed in the state.

22 (2) The eligible production company shall be responsible for
23 paying all fees associated with the audit and final certification.

24 (m)(1) If the commission determines that the company is eligible for a
25 rebate certificate, the commission shall enter on the certificate the amount
26 of production expenses or costs that has been established to the satisfaction
27 of the commission and the amount of the company's rebate.

28 (2) The commission shall provide a copy of the certificate to
29 the Director of the Department of Finance and Administration.

30
31 15-4-2008. Disbursement of rebate incentive.

32 (a) The Revenue Division of the Department of Finance and
33 Administration shall upon receipt of an application for a rebate:

34 (1) Calculate the total expenditures of the relevant production
35 company for which there are documented receipts for funds expended in the
36 state;

1 (2) Calculate the incentive benefit the applicant is entitled
2 to; and

3 (3) Provide certification to the Director of the Department of
4 Finance and Administration specifying the amount to be remitted to the
5 production company within ninety (90) days after the final expenditure report
6 has been submitted.

7 (b) The director, within ten (10) working days after the receipt of
8 the certification from the Revenue Division, shall remit the fifteen percent
9 (15%) rebate to:

10 (1) The production company; or

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

13 (A) National Film Preservation Foundation;

14 (B) Motion Picture Retirement Fund; or

15 (C) Digital Product and Motion Picture Office Fund.

16 (c)(1) There is no per production cap on the rebate and the amount of
17 the rebate shall only be limited by the amount of moneys in the Digital
18 Product and Motion Picture Office Fund.

19 (2) The rebate shall be awarded on a first-come, first-served
20 basis.

21
22 15-4-2009. Penalties.

23 (a) A production company that intends to apply for the rebate and does
24 not register as required by § 15-4-2004 may be enjoined from engaging in
25 production activities in the state by any court of competent jurisdiction
26 until the production company has registered.

27 (b) A production company that intends to apply for the rebate
28 incentives and fails to comply with this subchapter may be denied future
29 participation in this incentive program and shall be subject to penalty in
30 accordance with applicable state or federal law.

31
32 15-4-2010. Rules.

33 The Arkansas Economic Development Commission shall promulgate
34 appropriate rules to carry out the intent and purposes of this subchapter and
35 to prevent abuse.

36

1 15-4-2011. Sunset.

2 The opportunity for a rebate provided by this subchapter shall expire
3 on June 30, 2019.

4
5 SECTION 2. Arkansas Code Title 19, Chapter 6, Subchapter 8 is amended
6 to add an additional section to read as follows:

7 19-6-811. Digital Product and Motion Picture Office Fund.

8 (a) There is created on the books of the Treasurer of State, the
9 Auditor of State, and the Chief Fiscal Officer of the State a special revenue
10 fund to be known as the Digital Product and Motion Picture Office Fund.

11 (b) The Digital Product and Motion Picture Office Fund shall consist
12 of revenues as authorized by law.

13 (c) The Digital Product and Motion Picture Office Fund shall be used
14 for providing additional funds for duties and functions of the Motion Picture
15 Office of the Arkansas Economic Development Commission.

16 (d)(1) The Digital Product and Motion Picture Office Fund shall be
17 administered in accordance with rules promulgated by the Department of
18 Finance and Administration.

19 (2) The department shall consult with the Motion Picture Office
20 of the Arkansas Economic Development Commission.

21
22 SECTION 3. Arkansas Code § 26-4-211 is repealed.

23 ~~26-4-211. Motion Picture Office Fund.~~

24 ~~(a)(1) From and after February 25, 1983, there shall be established a~~
25 ~~Motion Picture Office Fund for the sole purpose of providing funds for all~~
26 ~~duties and functions of the Motion Picture Office.~~

27 ~~(2) The fund shall be created and perpetuated by the Revenue~~
28 ~~Division transferring funds and appropriations to it from the miscellaneous~~
29 ~~tax refund appropriation and the Miscellaneous Revolving Fund, which is~~
30 ~~reimbursed from the State Apportionment Fund in the amounts equal to one half~~
31 ~~of one percent ($\frac{1}{2}$ of 1%) of the total amount of documented expenditures by~~
32 ~~motion picture production companies as provided for in § 26-4-208.~~

33 ~~(b)(1) The office shall not expend moneys from the fund in excess of~~
34 ~~two (2) times the amount authorized by the General Assembly's biennial~~
35 ~~appropriation for the office.~~

36 ~~(2)(A) In the event that the assets accruing to the fund exceed~~

1 ~~the amount appropriated from general revenues for the office, the excess~~
2 ~~shall be expended from the proceeds of the one half of one percent (½ of 1%)~~
3 ~~transfer in lieu of general revenues.~~

4 ~~(B) The Chief Fiscal Officer of the State is authorized to~~
5 ~~transfer appropriation from the general revenues appropriation available to~~
6 ~~the Motion Picture Office to the Motion Picture Office Fund, in the amount of~~
7 ~~such excess.~~

8 ~~(c) The fund shall be administered in accordance with rules and~~
9 ~~regulations promulgated by the Revenue Division, following consultation with~~
10 ~~the office.~~

11
12 SECTION 4. EMERGENCY CLAUSE. It is found and determined by the
13 General Assembly of the State of Arkansas the incentives afforded by this Act
14 to the digital content industry can serve to stimulate the economy of the
15 area in which production and postproduction is performed; and that the
16 incentives have a multiplier effect, in terms of economic development, in the
17 locality of the production and statewide; and that tax revenues generated by
18 the activities of digital content production and postproduction more than
19 offset the revenue lost through the incentives provided by this act.
20 Therefore, an emergency is declared to exist and this act being necessary for
21 the preservation of the public peace, health, and safety shall become
22 effective on:

23 (1) The date of its approval by the Governor;

24 (2) If the bill is neither approved nor vetoed by the Governor,
25 the expiration of the period of time during which the Governor may veto the
26 bill; or

27 (3) If the bill is vetoed by the Governor and the veto is
28 overridden, the date the last house overrides the veto.

29
30 /s/ Saunders

31
32 **APPROVED: 4/3/2009**