

INTERIM STUDY PROPOSAL 2015-095

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

*As Engrossed: S3/18/15*

**A Bill**

SENATE BILL 854

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

7 Filed with: Senate Committee on Agriculture, Forestry, and Economic Development  
8 pursuant to A.C.A. §10-3-217.

9 **For An Act To Be Entitled**

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

15  
16  
17 **Subtitle**

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

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

24  
25 *SECTION 1. Arkansas Code § 15-4-2003(1), concerning the definitions*  
26 *used under the Digital Product and Motion Picture Industry Development Act of*  
27 *2009, is amended to read as follows:*

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

31  
32 *SECTION 2. Arkansas Code § 15-4-2003(9)(B), concerning the definitions*  
33 *used under the Digital Product and Motion Picture Industry Development Act of*  
34 *2009, is amended to read as follows:*

35 (B) *“Production” shall not include:*

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

3                   (ii) A production containing any material or  
4 performance that is obscene;

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

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

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

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

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

18                   (i) The intellectual property was produced primarily  
19 in Arkansas or the creator of the intellectual property is a resident of  
20 Arkansas;

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

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

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

1           SECTION 4. Arkansas Code § 15-4-2003, concerning the definitions used  
2 under the Digital Product and Motion Picture Industry Development Act of  
3 2009, is amended to add an additional subdivision to read as follows:

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

5                   (A) The United States Army;

6                   (B) The United States Marine Corps;

7                   (C) The United States Navy;

8                   (D) The United States Air Force;

9                   (E) The United States Coast Guard;

10                  (F) The National Guard of any state;

11                  (G) The reserve components of any of the armed forces  
12 listed in this subdivision (14); and

13                  (H) Any other branch of the military and naval forces or  
14 auxiliaries of any state or the United States.

15  
16           SECTION 5. Arkansas Code §§ 15-4-2005 and 15-4-2006 are amended to  
17 read as follows:

18           15-4-2005. Production ~~rebate~~ income tax credit.

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

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

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

31                   (A) An honorably discharged veteran of the United States  
32 Armed Forces; and

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

35           (b) To qualify for ~~this rebate~~ an income tax credit under this  
36 section, a production company shall spend at least two hundred thousand

1 dollars (\$200,000) within a six-month period in connection with the  
2 production of one (1) project.

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

7  
8 15-4-2006. Postproduction ~~rebate~~ income tax credit.

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

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

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

22 (A) An honorably discharged veteran of the United States  
23 Armed Forces; and

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

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

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

34

1           SECTION 6. Arkansas Code § 15-4-2007(a), 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           (a)(1) To qualify for the ~~rebates~~ income tax credits provided under  
5 this subchapter, a production company shall submit an application and provide  
6 an estimate of total expenditures to be made in Arkansas in connection with  
7 the production.

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

12  
13           SECTION 7. Arkansas Code § 15-4-2007(c) and (d), concerning the  
14 application for an income tax credit under the Digital Product and Motion  
15 Picture Industry Development Act of 2009, are amended to read as follows:

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

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

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

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

28  
29           SECTION 8. Arkansas Code § 15-4-2007(g)-(i), concerning the  
30 application for an income tax credit under the Digital Product and Motion  
31 Picture Industry Development Act of 2009, are amended to read as follows:

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

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

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

8 (3) In addition to the employment income tax credits described  
9 in subdivisions (h)(1) and (2) of this section, an employment income tax  
10 credit authorizes an income tax credit of five percent (5%) for the payroll  
11 of a below-the-line employee who is:

12 (A) An honorably discharged veteran of the United States  
13 Armed Forces; and

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

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

19  
20 SECTION 9. Arkansas Code § 15-4-2007(1), concerning the application  
21 for an income tax credit under the Digital Product and Motion Picture  
22 Industry Development Act of 2009, is amended to read as follows:

23 (1)(1)(A) Within two (2) weeks after principal photography begins, the  
24 production company shall begin filing weekly expenditure reports.

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

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

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

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

36 (C) Expenditure reports shall include without limitation:

- 1 (i) Check identification number;
- 2 (ii) Date of payment;
- 3 (iii) Name of payee;
- 4 (iv) Address of payee;
- 5 (v) Amount paid; and
- 6 (vi) Other information the division deems necessary
- 7 to ensure compliance with this subsection.

8

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

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

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

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

22

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

25 15-4-2008. ~~Disbursement of rebate~~ Certificate of income tax credit  
26 incentive.

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

31 (1) Calculate the total expenditures of the relevant production  
32 company for which there are documented receipts for funds expended in the  
33 state;

34 (2) Calculate the incentive benefit to which the applicant is  
35 entitled; and

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

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

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

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

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

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

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

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

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

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

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

26  
27           15-4-2009. Penalties.

28           (a) A production company that intends to apply for ~~the rebate~~ an  
29 income tax credit under this subchapter and does not register as required by  
30 § 15-4-2004 may be enjoined from engaging in production activities in the  
31 state by any court of competent jurisdiction until the production company has  
32 registered.

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



1  
2       SECTION 12. Arkansas Code § 15-4-2011 is amended to read as follows:  
3       15-4-2011. Sunset.

4       The opportunity for ~~a rebate provided by~~ an income tax credit under  
5 this subchapter shall expire on June 30, 2019.  
6

7       SECTION 13. Arkansas Code Title 15, Chapter 4, Subchapter 20, is  
8 amended to add an additional section to read as follows:  
9       15-4-2012. Use of an income tax credit.

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

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

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

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

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

29               (A) The name and address of the production company and all  
30 transferees;

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

33               (C) The amount paid by the transferee for the income tax  
34 credit; and

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

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

5           (2) If a pass-through entity entitled to an income tax credit  
6 under subdivision (c)(1) of this section is owned by two (2) or more persons,  
7 then the income tax credit may be allocated among the pass-through entity  
8 owners in the method selected by the owners as described in the governing  
9 documents of the pass-through entity or by other written agreement among the  
10 owners.

11  
12           SECTION 14. EMERGENCY CLAUSE. It is found and determined by the  
13 General Assembly of the State of Arkansas that Arkansas is uniquely qualified  
14 to attract digital product and motion picture projects due to the state's  
15 natural beauty, availability of labor and materials, moderate climate, and  
16 hospitality; that Arkansas has a unique and immediate opportunity to enhance  
17 investment and employment in the digital product and motion picture industry;  
18 that as competition among states and nations to recruit digital products and  
19 motion picture projects intensifies, it is imperative that Arkansas have  
20 investment incentives to remain competitive in attracting such investment and  
21 employment to grow the state's economy; that because similar incentives in  
22 surrounding states have been a catalyst for substantial economic growth  
23 within those states, it is necessary to establish an effective mechanism to  
24 sustain growth of the digital product and motion picture industry in Arkansas  
25 by creating an income tax credit program that attracts specific types of  
26 projects, production companies, and infrastructure; that a successfully  
27 cultivated film industry will create a sector of high technology in Arkansas,  
28 provide a much-needed infusion of capital into areas of the state that may be  
29 economically depressed, and offer skilled labor employment opportunities to  
30 Arkansans; and that this act is immediately necessary because without these  
31 income tax credit incentives, significant investment and employment  
32 opportunities will bypass Arkansas and accrue to other states. Therefore, an  
33 emergency is declared to exist, and this act being immediately necessary for  
34 the preservation of the public peace, health, and safety shall become  
35 effective on:

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

