

1 INTERIM STUDY PROPOSAL 2015-095

2 State of Arkansas

As Engrossed: S3/18/15

3 90th General Assembly

A Bill

4 Regular Session, 2015

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.

For An Act To Be Entitled

9
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.

Subtitle

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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.
35

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;

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

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

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/s/D. Sanders

10 Referred by the Arkansas Senate

11 Prepared by: VJF

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