

1 State of Arkansas
2 88th General Assembly
3 Regular Session, 2011
4

As Engrossed: H3/15/11

A Bill

HOUSE BILL 2055

5 By: Representative Patterson
6

For An Act To Be Entitled

8 AN ACT TO REVISE THE DIGITAL PRODUCT AND MOTION
9 PICTURE INDUSTRY DEVELOPMENT ACT OF 2009; AND FOR
10 OTHER PURPOSES.
11

Subtitle

14 TO REVISE THE DIGITAL PRODUCT AND MOTION
15 PICTURE INDUSTRY DEVELOPMENT ACT OF 2009.
16
17

18 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
19

20 *SECTION 1. Arkansas Code § 15-4-2003 is amended to read as follows:*

21 *15-4-2003. Definitions.*

22 *As used in this subchapter:*

23 *(1)(A) "Below-the-line employees" means employees involved with*
24 *the production of a motion picture production, including without limitation:*

25 *(i) Casting assistants;*

26 *(ii) Costume design;*

27 *(iii) Gaffers;*

28 *(iv) Grips;*

29 *(v) Location managers;*

30 *(vi) Production assistants;*

31 *(vii) Set construction staff; ~~and~~*

32 *(viii) Set design staff; and*

33 *(ix) Arkansas residents subject to Arkansas income*
34 *tax.*

35 *(B) "Below-the-line employees" does not include ~~actors,~~*
36 *~~directors, producers, and writers;~~*



1 (2)(A) *“Film and digital product” means video images or other*
2 *visual media entertainment content.*

3 (B) *“Film and digital product” includes without*
4 *limitation:*

5 (i) *Motion pictures;*

6 (ii) *Documentaries;*

7 (iii) *Long-form programs, specials, miniseries,*
8 *series, music videos, and television programming;*

9 (iv) *Interactive television;*

10 (v) *Interactive games;*

11 (vi) *Video games;*

12 (vii) *Commercials;*

13 (viii) *Digital media created primarily for*
14 *distribution or exhibition to the general public; and*

15 (ix) *A trailer, pilot, video teaser, or demo created*
16 *primarily to stimulate the sale, marketing, promotion, or exploitation of*
17 *future investment in either a product or a qualified production through any*
18 *means and media in a digital media format, film, or videotape if the program*
19 *meets all the underlying criteria of a qualified production;*

20 (3) *“Film ~~office~~ Office” means the division of the Arkansas*
21 *Economic Development ~~Council~~ Commission charged with the responsibility of*
22 *promoting and assisting the digital content industry in Arkansas;*

23 ~~(4) “Financial institution” means any bank or savings and loan~~
24 ~~association in the state that carries Federal Deposit Insurance Corporation~~
25 ~~insurance;~~

26 ~~(5)~~(4)(A) *“Highly compensated individual” means an individual*
27 *who directly or indirectly receives compensation in excess of five hundred*
28 *thousand dollars (\$500,000) for personal services with respect to a single*
29 *production.*

30 (B) *An individual receives compensation indirectly when a*
31 *production company pays a personal service company or an employee-leasing*
32 *company that pays the individual;*

33 ~~(6)~~(5)(A) *“Postproduction” means a final stage in the production*
34 *of digital content occurring after the action has been filmed or videotaped*
35 *and involves editing and the addition of soundtracks.*

36 (B) *“Postproduction” includes without limitation editing,*

1 music, soundtracks, special effects, and credits;

2 ~~(7)(6)~~ “Postproduction costs” means all expenditures ~~incurred in~~
3 ~~the state in~~ associated with the postproduction phase of a state-certified
4 production;

5 ~~(8)(7)(A)~~ “Production” means the process of producing a type of
6 entertainment content and includes film and digital product.

7 (B) “Production” shall not include:

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

10 (ii) A production containing any material or
11 performance that is obscene;

12 (iii) A production deemed an infomercial; or

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

15 ~~(9)(8)~~ “Production company” means a corporation, partnership,
16 limited liability company, or other business entity engaged in the business
17 of producing qualified productions and qualified by the Secretary of State to
18 engage in business in the state;

19 ~~(10)(9)(A)~~ “Qualified production costs” means costs ~~incurred in~~
20 ~~Arkansas in~~ associated with the development, preproduction, production, or
21 postproduction of a qualified production.

22 (B) “Qualified production costs” includes costs ~~incurred~~
23 ~~concerning~~ associated with original music compositions produced by an
24 Arkansas resident to be used as incidental music, the score, or the
25 soundtrack in film or video games.

26 (C) “Qualified production costs” includes the cost to
27 option or purchase intellectual property, including without limitation books,
28 scripts, music, or trademarks relating to the development or purchase of a
29 script, screenplay, or format if:

30 (i) The intellectual property was produced primarily
31 in Arkansas or the creator of the intellectual property is a resident of
32 Arkansas;

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

35 (iii) The production expenses or costs for the
36 optioning or purchase are less than twenty-five percent (25%) of the

1 production expenses or costs incurred in Arkansas. The expenses or costs
2 include all expenditures associated with the optioning or purchase of
3 intellectual property, including option money, agent fees, and attorney's
4 fees relating to the transaction but do not include deferrals, deferments,
5 royalties, profit participation, or recourse or nonrecourse loans that the
6 eligible production company may negotiate in order to obtain the rights to
7 the intellectual property.

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

9 (i) The optioning or purchase of intellectual
10 property that does not comply with the provisions of subdivision ~~(8)~~(7)(A) of
11 this section;

12 (ii) Media buys, promotional events, or gifts or
13 public relations associated with the promotion or marketing of any qualified
14 production;

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

19 (iv) Amounts paid to persons or businesses as a
20 result of their participation in profits from the exploitation of the
21 qualified production; ~~and~~

22 ~~(v) Salaries for highly compensated individuals;~~

23 ~~(11)~~(10) "Resident" means natural persons and includes, for the
24 purpose of determining eligibility for the rebate incentive provided by this
25 subchapter, a person domiciled in Arkansas and any other person who maintains
26 a permanent residence within the state and spends in the aggregate at least
27 six (6) months of the taxable year within the state; and

28 ~~(12)~~(11) "State-certified production" means a qualified
29 production produced by an eligible production company that is:

30 (A) In compliance with established regulations to this
31 subchapter;

32 (B) Authorized by the ~~commission~~ Film Office to conduct
33 business in this state; and

34 (C) Approved by the ~~commission~~ Film Office as qualifying
35 for a production rebate under this section.

36

1 SECTION 2. Arkansas Code § 15-4-2005 is amended to read as follows:
2 15-4-2005. Production rebate.

3 (a)(1) A production company, upon approval of the application by the
4 Arkansas Economic Development Commission, shall be eligible for a rebate of
5 ~~fifteen~~ twenty percent ~~(15%)~~ (20%), with no cap per production, on all
6 qualified production costs in connection with the production of a state-
7 certified film project.

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

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

15 SECTION 3. Arkansas Code § 15-4-2006 is amended to read as follows:
16 15-4-2006. Postproduction rebate.

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

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

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

29 SECTION 4. Arkansas Code § 15-4-2007 is amended to read as follows:
30 15-4-2007. Application for rebate.

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

34 (2) The application and estimate of expenditures shall be filed
35 with the Arkansas Economic Development Commission and be approved as eligible
36 for the rebate provided by this subchapter before the commencement of

1 production in Arkansas.

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

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

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

9 (i) Effective date of the agreement;

10 (ii) Term of the agreement, which shall be
11 calculated from the date the agreement is signed by the production company
12 and the ~~Revenue Division of the Department of Finance and Administration~~
13 Executive Director of the Arkansas Economic Development Commission;

14 (iii) Incentive for which the production company may
15 qualify;

16 (iv) Investment threshold requirements necessary to
17 qualify for eligibility;

18 (v) Production company's responsibilities for
19 certifying eligibility requirements; and

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

22 (c) At the time the production company registers and provides the
23 estimate of expenditures to the commission, the production company also shall
24 designate a member or representative to work with the commission and the
25 division on the reporting of expenditures and other information necessary to
26 qualify for the rebate.

27 (d) No later than ~~ninety (90) days~~ one (1) year after the last
28 production expenses or costs are incurred in the production of a qualified
29 production, the production company shall:

30 (1) Apply to the commission for a production rebate certificate;
31 and

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

34 ~~(e)(1) To be eligible for the rebate incentive provided for by this~~
35 ~~subchapter, payments for production and postproduction expenses shall be made~~
36 ~~from a checking account from an Arkansas financial institution.~~

1 ~~(2)(1)~~ Direct cash payments by a production company to Arkansas
2 vendors, businesses, or citizens hired as cast or crew that are accompanied
3 by receipts shall be allowed if the sum of the cash payments does not exceed
4 forty percent (40%) of the total verifiable expenditures.

5 ~~(3)(2)~~ Per diem expenditures by the cast or crew for lodging
6 when accompanied by receipts shall be eligible expenditures.

7 (3) Fringe contributions, including health, pension, and welfare
8 contributions, stipends, and living allowances paid for work being performed
9 in this state shall be eligible expenditures.

10 (f) Expenditure reports also shall include information as required by
11 the division to ensure compliance with this subchapter.

12 (g) Payments for salaries or wages shall be eligible for the rebate if
13 they are reported to the ~~division~~ commission and are subject to state income
14 taxes.

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

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

21 ~~(i) The salary for an employee whose salary is equal to or greater~~
22 ~~than five hundred thousand dollars (\$500,000) shall be excluded from~~
23 ~~eligibility for either rebate~~ The employment rebate shall include the first
24 five hundred thousand dollars (\$500,000) of a highly compensated individual's
25 salary.

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

29 ~~(k) If a production company hires a payroll service company to handle~~
30 ~~the payroll of a production, the payroll payments shall be allowed as~~
31 ~~eligible expenditures provided:~~

32 ~~(1) Payments made by the production company to the payroll~~
33 ~~service company are paid through an Arkansas financial institution account;~~
34 ~~and~~

35 ~~(2) All eligible income payments to employees and independent~~
36 ~~contractors done through the payroll service are subject to Arkansas state~~

1 ~~income taxes.~~

2 ~~(l)(k)(1)~~ (1) The final expenditure report and all qualified production
3 costs shall be subject to an audit by an outside certified public accountant
4 licensed in the state.

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

7 ~~(m)(1)(1)~~ (1) If the ~~commission~~ Film Office determines that the company is
8 eligible for a rebate certificate, the ~~commission~~ Film Office shall enter on
9 the certificate the amount of production expenses or costs that has been
10 established to the satisfaction of the commission and the amount of the
11 company's rebate.

12 ~~(2) The commission shall provide a copy of the certificate to~~
13 ~~the Director of the Department of Finance and Administration.~~

14
15 SECTION 5. Arkansas Code § 15-4-2008 is amended to read as follows:
16 15-4-2008. Disbursement of rebate incentive.

17 (a) ~~The Revenue Division of the Department of Finance and~~
18 ~~Administration~~ Film Office shall upon receipt of an application for a rebate:

19 (1) Calculate the total expenditures of the relevant production
20 company for which there are documented receipts for funds expended in the
21 state; and

22 (2) Calculate the incentive benefit to which the applicant is
23 entitled ~~to; and~~

24 ~~(3) Provide certification to the Director of the Department of~~
25 ~~Finance and Administration specifying the amount to be remitted to the~~
26 ~~production company within ninety (90) days after the final expenditure report~~
27 ~~has been submitted.~~

28 (b) The ~~director~~ Film Office, within ten (10) working days after the
29 receipt of the certification from the ~~division~~ commission, shall remit the
30 ~~fifteen percent~~ rebate to:

31 (1) The production company; or

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

34 (A) National Film Preservation Foundation;

35 (B) Motion Picture Retirement Fund; or

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

1 (c)(1) *There is no per-production cap on the rebate, and the amount of*
2 *the rebate shall be limited only by the amount of moneys in the Digital*
3 *Product and Motion Picture Office Fund.*

4 (2) *The rebate shall be awarded on a first-come, first-served*
5 *basis.*

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/s/Patterson