

1 State of Arkansas
2 89th General Assembly
3 Regular Session, 2013
4

As Engrossed: H3/11/13

A Bill

HOUSE BILL 1633

5 By: Representative J. Edwards
6 By: Senator D. Sanders
7

For An Act To Be Entitled

9 AN ACT TO AMEND THE DIGITAL PRODUCT AND MOTION
10 PICTURE INDUSTRY DEVELOPMENT ACT OF 2009; TO INCREASE
11 THE REBATE AMOUNTS AVAILABLE UNDER THE DIGITAL
12 PRODUCT AND MOTION PICTURE INDUSTRY DEVELOPMENT ACT
13 OF 2009; TO ADDRESS THE EXPENDITURES THAT ARE
14 ELIGIBLE FOR A REBATE; TO INCREASE THE AMOUNT
15 NECESSARY TO BE ELIGIBLE FOR A REBATE; AND FOR OTHER
16 PURPOSES.

Subtitle

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19
20 TO AMEND THE DIGITAL PRODUCT AND MOTION
21 PICTURE INDUSTRY DEVELOPMENT ACT OF 2009.
22
23

24 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
25

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

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

- 31 (i) Casting assistants;
- 32 (ii) Costume design;
- 33 (iii) Gaffers;
- 34 (iv) Grips;
- 35 (v) Location managers;
- 36 (vi) Production assistants;



- 1 (vii) Set construction staff; and
2 (viii) Set design staff.

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

5
6 SECTION 2. Arkansas Code § 15-4-2003(3), concerning the definitions to
7 be used under the Digital Product and Motion Picture Industry Development Act
8 of 2009, is amended to read as follows:

9 (3) "Film ~~office~~ Office" means the division of the Arkansas
10 Economic Development ~~Council~~ Commission charged with the responsibility of
11 promoting and assisting the digital content industry in Arkansas in order
12 to enhance Arkansas as a land of opportunity for digital and motion picture
13 filmmaking;

14
15 SECTION 3. Arkansas Code § 15-4-2003(7), concerning the definitions to
16 be used under the Digital Product and Motion Picture Industry Development Act
17 of 2009, is amended to read as follows:

18 (7) "Postproduction costs" means all expenditures ~~incurred in~~
19 ~~the state in~~ associated with the postproduction phase of a state-certified
20 production within the state;

21
22 SECTION 4. Arkansas Code § 15-4-2003(10), concerning the definitions
23 to be used under the Digital Product and Motion Picture Industry Development
24 Act of 2009, is amended to read as follows:

25 (10)(A) "Qualified production costs" means costs ~~incurred in~~
26 ~~Arkansas in~~ associated with the development, preproduction, production, or
27 postproduction of a qualified production within the state.

28 (B) "Qualified production costs" includes costs ~~incurred~~
29 ~~concerning~~ associated with original music compositions produced by an
30 Arkansas resident to be used as incidental music, the score, or the
31 soundtrack in film or video games.

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

36 (i) The intellectual property was produced primarily

1 in Arkansas or the creator of the intellectual property is a resident of
2 Arkansas;

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

5 (iii) The production expenses or costs for the
6 optioning or purchase are less than twenty-five percent (25%) of the
7 production expenses or costs incurred in Arkansas. The expenses or costs
8 include all expenditures associated with the optioning or purchase of
9 intellectual property, including option money, agent fees, and attorney's
10 fees relating to the transaction but do not include deferrals, deferments,
11 royalties, profit participation, or recourse or nonrecourse loans that the
12 eligible production company may negotiate in order to obtain the rights to
13 the intellectual property.

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

15 (i) The optioning or purchase of intellectual
16 property that does not comply with the provisions of subdivision (8)(A) of
17 this section;

18 (ii) Media buys, promotional events, or gifts or
19 public relations associated with the promotion or marketing of any qualified
20 production;

21 (iii) Deferred, leveraged, or profit participation
22 costs relating to any and all personnel associated with any and all aspects
23 of the production, including, ~~but not limited to,~~ without limitation producer
24 fees, director fees, talent fees, and writer fees; and

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

28 ~~(v) Salaries for highly compensated individuals;~~
29

30 SECTION 5. Arkansas Code § 15-4-2003(12), concerning the definitions
31 to be used under the Digital Product and Motion Picture Industry Development
32 Act of 2009, is amended to read as follows:

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

35 (A) In compliance with established ~~regulations~~ rules to
36 this subchapter;

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

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

5
6 SECTION 6. Arkansas Code § 15-4-2003, concerning the definitions to be
7 used under the Digital Product and Motion Picture Industry Development Act of
8 2009, is amended to add an additional subdivision to read as follows:

9 (13) "Application for rebate" means the document required by the
10 Film Office to begin the process for obtaining a rebate under this
11 subchapter.

12
13 SECTION 7. Arkansas Code §§ 15-4-2005 – 15-4-2008 are amended to read
14 as follows:

15 15-4-2005. Production rebate.

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

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

24 (b) To qualify for this rebate, a production company shall spend at
25 least ~~fifty thousand dollars (\$50,000)~~ two hundred thousand dollars
26 (\$200,000) within a six-month period in connection with the production of one
27 (1) project.

28 (c) A production rebate shall not be processed until the production
29 company has met in full all obligations to each Arkansas institution and
30 vendor owed for products or services in the state.

31
32 15-4-2006. Postproduction rebate.

33 (a)(1) A qualifying production company, upon approval of the
34 application by the Arkansas Economic Development Commission, shall be
35 eligible for a rebate of ~~fifteen percent (15%)~~ twenty percent (20%), with no
36 cap per production, on all qualified production costs in connection with the

1 postproduction of a state-certified film project.

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

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

8 (c) A postproduction rebate shall not be processed until the
9 production company has met in full all obligations to each Arkansas
10 institution and vendor owed for products or services in the state.

11

12 15-4-2007. Application for rebate.

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

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

20 (b)(1) After each production company submits an application, the
21 commission ~~will~~ shall sign a financial incentive agreement with each eligible
22 production company that qualifies under this subchapter and is approved by
23 the commission.

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

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

27 (i) Effective date of the agreement;

28 (ii) Term of the agreement, which shall be
29 calculated from the date the agreement is signed by the production company
30 and the ~~Revenue Division of the Department of Finance and Administration~~
31 Director of the Arkansas Economic Development Commission;

32 (iii) Incentive for which the production company may
33 qualify;

34 (iv) Investment threshold requirements necessary to
35 qualify for eligibility;

36 (v) Production company's responsibilities for

1 certifying eligibility requirements; and

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

4 (c) At the time the production company registers and provides the
5 estimate of expenditures to the commission, the production company also shall
6 designate a member or representative to work with the commission and the
7 ~~division~~ Film Office on the reporting of expenditures and other information
8 necessary to qualify for the rebate.

9 (d) No later than ~~ninety (90)~~ one hundred eighty (180) days after the
10 last production expenses or costs are incurred in the production of a
11 qualified production, the production company shall:

12 (1) Apply to the commission for a production rebate certificate;
13 and

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

16 (e)(1) ~~To be eligible for the rebate incentive provided for by this~~
17 ~~subchapter, payments for production and postproduction expenses shall be made~~
18 Production companies are encouraged to make payments for production and post-
19 production expenses from a checking account from an Arkansas financial
20 institution.

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

25 (3) The following are eligible expenditures:

26 ~~(3) (A)~~ (A) Per diem expenditures by the cast or crew for
27 lodging when accompanied by receipts shall be eligible expenditures; and

28 (B) Fringe contributions being paid for work performed in
29 this state, including:

30 (i) Health benefits;

31 (ii) Pension contributions;

32 (iii) Welfare contributions;

33 (iv) Stipends; and

34 (v) Living allowances.

35 (f) Expenditure reports also shall include information as required by
36 the ~~division~~ Revenue Division of the Department of Finance and Administration

1 to ensure compliance with this subchapter.

2 (g) Payments for salaries or wages shall be eligible for the rebate if
3 they are reported to the division and are subject to state income taxes.

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

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

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

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

18 (k) If a production company hires a payroll service company to handle
19 the payroll of a production, the payroll payments otherwise allowable shall
20 be allowed as eligible expenditures ~~provided:~~

21 ~~(1) Payments made by the production company to the payroll~~
22 ~~service company are paid through an Arkansas financial institution account;~~
23 ~~and~~

24 ~~(2) All if all eligible income payments to employees and~~
25 ~~independent contractors done through the payroll service are subject to~~
26 ~~Arkansas state income taxes.~~

27 ~~(1)(1) The final expenditure report and all qualified production costs~~
28 ~~shall be subject to an audit by an outside certified public accountant~~
29 ~~licensed in the state.~~

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

32 ~~(m)(1) If the commission determines that the company is eligible for a~~
33 ~~rebate certificate, the commission shall enter on the certificate the amount~~
34 ~~of production expenses or costs that has been established to the satisfaction~~
35 ~~of the commission and the amount of the company's rebate.~~

36 ~~(2) The commission shall provide a copy of the certificate to~~

1 ~~the Director of the Department of Finance and Administration.~~

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

4 (B) Failure to file weekly expenditure reports may result
5 in a delay in the disbursement of the rebate provided in §§ 15-4-2005 and 15-
6 4-2006.

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

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

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

15 (C) Expenditure reports shall include without limitation:

16 (i) Check identification number;

17 (ii) Date of payment;

18 (iii) Name of payee;

19 (iv) Address of payee;

20 (v) Amount paid; and

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

23 (m) When a production company hires a food catering service company
24 that is located outside the state, payments otherwise allowable that are made
25 by the out-of-state food catering service to food businesses located in
26 Arkansas shall be allowed as eligible expenditures.

27 (n)(1) Upon completion of filming or production, or both, in Arkansas,
28 the production company shall file an application for the rebate allowed under
29 this subchapter.

30 (2) The application for rebate shall include a proof of
31 performance expenditure list that provides the total amount of expenditures
32 that were made in the state in connection with the filming or production, or
33 both, of a film and digital product that complies with this subchapter.

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

36

1 15-4-2008. Disbursement of rebate incentive.

2 (a) The Revenue Division of the Department of Finance and
3 Administration shall upon receipt of an application for a rebate, including a
4 proof of performance expenditure report from the Film Office:

5 (1) Calculate the total expenditures of the relevant production
6 company for which there are documented receipts for funds expended in the
7 state;

8 (2) Calculate the incentive benefit to which the applicant is
9 entitled ~~to~~; and

10 (3) Provide certification to the Director of the Department of
11 Finance and Administration specifying the amount to be remitted to the
12 production company within ~~ninety (90) days~~ one hundred twenty (120) days
13 after the final expenditure report has been submitted.

14 (b) The director, within ten (10) working days after the receipt of
15 the certification from the division, shall remit the ~~fifteen-percent~~ rebate
16 to:

17 (1) The production company; or

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

20 (A) National Film Preservation Foundation;

21 (B) Motion Picture Retirement Fund; or

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

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

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

28 (3) Rebates to be awarded from the Digital Product and Motion
29 Picture Office Fund may be payable from any source of funds allocated for the
30 rebates.

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32 /s/J. Edwards
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