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4

As Engrossed: H3/30/21

A Bill

HOUSE BILL 1743

5 By: Representative C. Fite
6 By: Senator J. Dismang
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 CONVERT
11 THE REBATES UNDER THE DIGITAL PRODUCT AND MOTION
12 PICTURE INDUSTRY DEVELOPMENT ACT OF 2009 TO TAX
13 CREDITS; TO EXTEND THE SUNSET DATE FOR THE DIGITAL
14 PRODUCT AND MOTION PICTURE INDUSTRY DEVELOPMENT ACT
15 OF 2009; AND FOR OTHER PURPOSES.

Subtitle

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

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

25 SECTION 1. Arkansas Code § 15-4-2003 is amended to read as follows:
26 15-4-2003. Definitions.

27 As used in this subchapter:

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

31 (2)(A) "Below-the-line employees" means employees involved with
32 the production of a motion picture production, including without limitation:

- 33 (i) Casting assistants;
- 34 (ii) Costume design;
- 35 (iii) Gaffers;
- 36 (iv) Grips;



- 1 (v) Location managers;
2 (vi) Production assistants;
3 (vii) Set construction staff; and
4 (viii) Set design staff.

5 (B) "Below-the-line employees" does not include directors
6 and producers;

7 (3) "Economically distressed county" means a county designated
8 by the Arkansas Economic Development Commission as economically disadvantaged
9 for the purpose of this subchapter;

10 ~~(3)(A)~~(4)(A) "Film and digital product" means video images or
11 other visual media entertainment content.

12 (B) "Film and digital product" includes without
13 limitation:

- 14 (i) Motion pictures;
15 (ii) Documentaries;
16 (iii) Long-form programs, specials, miniseries,
17 series, music videos, and television programming;
18 (iv) Interactive television;
19 (v) Interactive games;
20 (vi) Video games;
21 (vii) Commercials;
22 (viii) Digital media created primarily for
23 distribution or exhibition to the general public; and
24 (ix) A trailer, pilot, video teaser, or demo created
25 primarily to stimulate the sale, marketing, promotion, or exploitation of
26 future investment in either a product or a qualified production through any
27 means and media in a digital media format, film, or videotape if the program
28 meets all the underlying criteria of a qualified production;

29 ~~(4)(5)~~ "Film Office" means the division of the Arkansas Economic
30 Development Commission charged with the responsibility of promoting and
31 assisting the digital content industry in Arkansas in order to enhance
32 Arkansas as a land of opportunity for digital and motion picture filmmaking;

33 ~~(5)(6)~~ "Financial institution" means any bank or savings and
34 loan association in the state that carries Federal Deposit Insurance
35 Corporation insurance;

36 ~~(6)(A)~~(7)(A) "Highly compensated individual" means an individual

1 who directly or indirectly receives compensation in excess of five hundred
2 thousand dollars (\$500,000) for personal services with respect to a single
3 production.

4 (B) An individual receives compensation indirectly when a
5 production company pays a personal service company or an employee-leasing
6 company that pays the individual;

7 ~~(7)(A)~~(8)(A) “Postproduction” means a final stage in the
8 production of digital content occurring after the action has been filmed or
9 videotaped and involves editing and the addition of soundtracks.

10 (B) “Postproduction” includes without limitation editing,
11 music, soundtracks, special effects, and credits;

12 ~~(8)(9)~~ “Postproduction costs” means all expenditures associated
13 with the postproduction phase of a state-certified production within the
14 state;

15 ~~(9)(A)~~(10)(A) “Production” means the process of producing a type
16 of entertainment content and includes film and digital product.

17 (B) “Production” shall not include:

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

20 (ii) A production containing any material or
21 performance that is obscene;

22 (iii) A production deemed an infomercial; or

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

25 ~~(10)(11)~~ “Production company” means a corporation, partnership,
26 limited liability company, or other business entity engaged in the business
27 of producing qualified productions and qualified by the Secretary of State to
28 engage in business in the state;

29 ~~(11)(A)~~(12)(A) “Qualified production costs” means costs
30 associated with the development, preproduction, production, or postproduction
31 of a qualified production within the state.

32 (B) “Qualified production costs” includes costs associated
33 with original music compositions produced by an Arkansas resident to be used
34 as incidental music, the score, or the soundtrack in film or video games.

35 (C) “Qualified production costs” includes the cost to
36 option or purchase intellectual property, including without limitation books,

1 scripts, music, or trademarks relating to the development or purchase of a
2 script, screenplay, or format if:

3 (i) The intellectual property was produced primarily
4 in Arkansas or the creator of the intellectual property is a resident of
5 Arkansas;

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

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

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

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

21 (ii) Media buys, promotional events, or gifts or
22 public relations associated with the promotion or marketing of any qualified
23 production;

24 (iii) Deferred, leveraged, or profit participation
25 costs relating to any and all personnel associated with any and all aspects
26 of the production, including without limitation producer fees, director fees,
27 talent fees, and writer fees; and

28 (iv) Amounts paid to persons or businesses as a
29 result of their participation in profits from the exploitation of the
30 qualified production;

31 ~~(12)~~(13) "Resident" means natural persons and includes, for the
32 purpose of determining eligibility for the ~~rebate-incentive~~ tax credits
33 provided by this subchapter, a person domiciled in Arkansas and any other
34 person who maintains a permanent residence within the state and spends in the
35 aggregate at least six (6) months of the taxable year within the state; ~~and~~

36 ~~(13)~~(14) "State-certified production" means a qualified

1 production produced by an eligible production company that is:

2 (A) In compliance with established rules to this
3 subchapter;

4 (B) Authorized by the Film Office to conduct business in
5 this state; and

6 (C) Approved by the Director of the Arkansas Economic
7 Development Commission as qualifying for a discretionary production ~~rebate~~
8 tax credit under this subchapter-;

9 (15) "Veteran" means an individual who:

10 (A) Was honorably discharged from a tour of active duty,
11 other than active duty for training only, with the United States Armed
12 Forces; or

13 (B) Has served honorably in the National Guard or reserve
14 forces of the United States Armed Forces for at least six (6) years,
15 regardless of whether the individual has been discharged; and

16 (16) "Veteran-owned small business" means a business:

17 (A) With profits of less than one million dollars
18 (\$1,000,000);

19 (B) In which at least one (1) veteran owns more than fifty
20 percent (50%) of the business; and

21 (C) That has its principal place of business or its
22 headquarters in Arkansas.

23
24 SECTION 2. Arkansas Code § 15-4-2005 is amended to read as follows:

25 15-4-2005. Production ~~rebate~~ tax credit.

26 (a)(1) The Director of the Arkansas Economic Development Commission
27 may offer to a production company that has submitted an approved application
28 under § 15-4-2007 a ~~rebate~~ tax credit of ~~up to~~ twenty percent (20%) on all
29 qualified production costs in connection with the production of a state-
30 certified film project.

31 (2) If the director approves a project for a ~~rebate~~ tax credit
32 under this section, an additional ~~rebate~~ tax credit of ten percent (10%)
33 shall be granted for the payroll of below-the-line employees who are full-
34 time residents of Arkansas.

35 (b) To qualify for this ~~rebate~~ tax credit, a production company shall
36 spend at least two hundred thousand dollars (\$200,000) within a six-month

1 period in connection with the production of one (1) project.

2 (c) A state-certified production shall be granted an additional tax
 3 credit of ten percent (10%) for:

4 (1) The payroll of below-the-line employees who are:

5 (A) Full-time residents of Arkansas; or

6 (B) Veterans;

7 (2) Expenditures disbursed:

8 (A) To a veteran-owned small business in connection with
 9 the state-certified production; or

10 (B) In an economically distressed county; or

11 (3) Participation in the Arkansas uplift promotion under § 15-4-
 12 2013.

13 (d) A production ~~rebate tax credit~~ shall not be processed until the
 14 production company has met in full all obligations to each Arkansas
 15 institution and vendor owed for products or services in the state.

16 (e) The maximum total tax credits that shall be claimed for an
 17 expenditure under this section is thirty percent (30%) of the expenditure.

18
 19 SECTION 3. Arkansas Code § 15-4-2006 is amended to read as follows:
 20 15-4-2006. Postproduction ~~rebate tax credit~~.

21 (a)(1) The Director of the Arkansas Economic Development Commission
 22 may offer a tax credit of twenty percent (20%) to a qualifying production
 23 company that has submitted an approved application under § 15-4-2007 for a
 24 tax credit ~~a rebate of up to twenty percent (20%)~~ on all qualified production
 25 costs in connection with the postproduction of ~~a~~ an approved state-certified
 26 film project.

27 (2) The tax credit under subdivision (a)(1) of this section is
 28 transferrable.

29 (3) ~~If the director approves a project~~ A state-certified
 30 production for a rebate under this section, shall be granted an additional
 31 ~~rebate tax credit~~ tax credit of ten percent (10%) ~~shall be granted~~ for:

32 (A) ~~the~~ The payroll of below-the-line employees who are:

33 (i) ~~full-time~~ Full-time residents of Arkansas; ~~or~~

34 (ii) Veterans; or

35 (B) Expenditures disbursed:

36 (i) To a veteran-owned small business in connection

1 with the state-certified production; or

2 (ii) In an economically distressed county.

3 (b) To qualify for this ~~rebate~~ tax credit, a production company ~~must~~
4 shall spend at least fifty thousand dollars (\$50,000) within a ~~six-month~~
5 period of one (1) year in connection with the production of one (1) project
6 or multiple projects that collectively total at least fifty thousand dollars
7 (\$50,000).

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

11 (d) The maximum total tax credits that may be claimed for a qualified
12 expenditure under this section is thirty percent (30%) of the qualified
13 expenditure.

14
15 SECTION 4. Arkansas Code § 15-4-2007(a)-(d), concerning an application
16 for a rebate under the Digital Product and Motion Picture Industry
17 Development Act of 2009, are amended to read as follows:

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

22 (2) The application and estimate of expenditures required under
23 subdivision (a)(1) of this section shall be filed with the Arkansas Economic
24 Development Commission and approved by the Director of the Arkansas Economic
25 Development Commission as eligible for the ~~rebate~~ tax credit provided by this
26 subchapter before the commencement of production in Arkansas.

27 (b)(1) If an application for a ~~rebate~~ tax credit is approved under
28 subsection (a) of this section, the production company and the director shall
29 sign a financial incentive agreement.

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

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

33 (i) Effective date of the financial incentive
34 agreement;

35 (ii) Term of the financial incentive agreement,
36 which shall be calculated from the date the agreement is signed by the

- 1 production company and the director;
- 2 (iii) Incentive for which the production company may
- 3 qualify;
- 4 (iv) Investment threshold requirements necessary to
- 5 qualify for eligibility;
- 6 (v) Production company's responsibilities for
- 7 certifying eligibility requirements; and
- 8 (vi) Production company's responsibilities for
- 9 failure to meet or maintain eligibility requirements.

10 (c) At the time the production company registers and provides the

11 estimate of expenditures to the commission, the production company also shall

12 designate a member or representative to work with the commission and the Film

13 Office on the reporting of expenditures and other information necessary to

14 qualify for the ~~rebates~~ tax credits.

15 (d) No later than one hundred eighty (180) days after the last

16 production expenses or costs are incurred in the production of a qualified

17 production, the production company shall:

18 (1) Apply to the commission for a production ~~rebate~~ tax-credit

19 certificate; and

20 (2) Provide a final expenditure report that includes the amount

21 of the production company's production expenses or costs.

22

23 SECTION 5. Arkansas Code § 15-4-2007(g)-(i), concerning an application

24 for a tax credit under the Digital Product and Motion Picture Industry

25 Development Act of 2009, are amended to read as follows:

26 (g) Payments for salaries or wages shall be eligible for the ~~rebate~~

27 tax credit if they are reported to the division and are subject to state

28 income taxes.

29 (h)(1) If approved by the director, the employment ~~rebate~~ tax credit

30 under subsection (g) of this section also entitles a state-certified

31 production to an additional ~~rebate~~ tax credit for employing full-time

32 residents of Arkansas.

33 (2) The employment ~~rebate~~ tax credit under subsection (g) of

34 this section authorizes an additional credit of ten percent (10%) for the

35 aggregate payroll of salaries and wages to Arkansas residents who are below-

36 the-line employees of the state-certified production.

1 (3) The veteran hire tax credit under §§ 15-4-2005 and 15-4-2006
2 also entitles a state-certified production to receive an additional tax
3 credit for employing veterans.

4 (i) If approved by the director, the ~~employment-rebate~~ tax credits
5 under subsections (g) and (h) of this section may include the first five
6 hundred thousand dollars (\$500,000) of a highly compensated individual's
7 salary.

8
9 SECTION 6. Arkansas Code § 15-4-2007(1)(1)(B), concerning weekly
10 reports a production company is required to file under the Digital Product
11 and Motion Picture Industry Development Act of 2009, is amended to read as
12 follows:

13 (B) Failure to file weekly expenditure reports may result
14 in a delay in the disbursement of the ~~rebates~~ tax credits provided in §§ 15-
15 4-2005 and 15-4-2006.

16
17 SECTION 7. Arkansas Code § 15-4-2007(n), concerning an application for
18 a rebate under the Digital Product and Motion Picture Industry Development
19 Act of 2009, is amended to read as follows:

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

23 (2) The application for ~~rebate~~ a tax credit shall include a
24 proof of performance expenditure list that provides the total amount of
25 expenditures that were made in the state in connection with the filming or
26 production, or both, of a film and digital product that complies with this
27 subchapter.

28 (3) When filing the application under subdivision (n)(1) of this
29 section, The the production company shall ~~provide documentation for~~
30 ~~expenditures in accordance with rules promulgated by the commission~~ provide a
31 final expenditure report that includes the amount of the production company's
32 production expenses or costs.

33
34 SECTION 8. Arkansas Code § 15-4-2008 is amended to read as follows:
35 15-4-2008. Disbursement of ~~rebate-incentive~~ tax credit.

36 (a) The Revenue Division of the Department of Finance and

1 Administration shall upon receipt of an application for a ~~rebate~~ tax credit,
2 including a proof of performance expenditure report from the Film Office:

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

6 (2) Calculate the incentive benefit to which the applicant is
7 entitled, subject to any conditions of the approved financial incentive
8 agreement; and

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

13 (b) The secretary, within ten (10) working days after the receipt of
14 the certification from the division, shall remit the ~~rebate~~ tax credit to:

15 (1) The production company; or

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

18 (A) National Film Preservation Foundation;

19 (B) Motion Picture Retirement Fund; or

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

21 (c)(1) The amount of the ~~rebate~~ tax credit is limited to the amount
22 specified in the approved financial incentive agreement.

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

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

28
29 SECTION 9. Arkansas Code § 15-4-2009 is amended to read as follows:

30 15-4-2009. Penalties.

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

35 (b) A production company that intends to apply for the ~~rebate~~ tax
36 credit incentives and fails to comply with this subchapter may be denied

1 future participation in this incentive program and shall be subject to
2 penalty in accordance with applicable state or federal law.

3
4 SECTION 10. Arkansas Code § 15-4-2011 is amended to read as follows:
5 15-4-2011. Sunset.

6 The opportunity ~~for a rebate~~ to claim a tax credit provided by this
7 subchapter ~~shall expire~~ expires on June 30, ~~2029~~ 2032.

8
9 SECTION 11. Arkansas Code Title 15, Chapter 4, Subchapter 20, is
10 amended to add additional sections to read as follows:

11
12 15-4-2012. Tax credit.

13 (a)(1) The amount of the tax credits under this subchapter that may be
14 claimed by a taxpayer in a tax year is transferrable and shall not exceed the
15 amount of income tax due by the taxpayer.

16 (2) Any unused income tax credit under this subchapter may be
17 carried forward for five (5) consecutive tax years following the tax year in
18 which the tax credit was earned.

19 (b)(1) A tax credit provided for in this subchapter shall not be
20 allowed, claimed, assigned, sold, transferred, or used in any manner by a
21 production company until final certification is issued from the Department of
22 Finance and Administration.

23 (2) If a production company receives final certification from
24 the department, the tax credit shall be considered earned in the tax year in
25 which the final certification was issued.

26 (c) Each year a production company claims or transfers a tax credit
27 under this subchapter, the production company shall attach a schedule to the
28 production company's Arkansas income tax return stating:

29 (1) The amount of tax credit claimed for the tax year;

30 (2) Any tax credit previously taken by the production company
31 against Arkansas income tax liabilities or the production company's quarterly
32 or monthly income-tax payments;

33 (3) The amount of tax credit carried over from prior years;

34 (4) The amount of tax credit used by the production company in
35 the current tax year; and

36 (5) The amount of tax credit to be carried over to subsequent

1 tax years.

2
3 15-4-2013. Arkansas uplift promotion.

4 (a) To qualify for a tax credit under § 15-4-2005 or § 15-4-2006 for
5 participating in the Arkansas uplift promotion, the state-certified
6 production company shall:

7 (1) Follow the designations of the Secretary of Department of
8 Parks, Heritage, and Tourism for the placement and type of graphic, or other
9 form of media, to promote Arkansas; or

10 (2) Offer alternative marketing opportunities to be evaluated by
11 the Department of Parks, Heritage, and Tourism to ensure that the alternative
12 marketing opportunities offer promotional value to the State of Arkansas that
13 is equal to or greater than if the production company followed the
14 designations under subdivision (a)(1) of this section.

15 (b) The secretary shall provide electronic certification to a state-
16 certified production company and to the Department of Finance and
17 Administration stating that requirements under subsection (a) of this section
18 have been met.

19 (c) The additional tax credit allowed under § 15-4-2005 or § 15-4-2006
20 for participating in the Arkansas uplift promotion shall not be issued until
21 the Film Office certifies that the state-certified production has been
22 commercially distributed in multiple markets within five (5) years of the
23 date that the state-certified production was first certified by the Film
24 Office.

25
26 */s/C. Fite*