

**Hall of the House of Representatives**  
88th General Assembly - Regular Session, 2011  
**Amendment Form**

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**Subtitle of House Bill No. 2055**

TO REVISE THE DIGITAL PRODUCT AND MOTION PICTURE INDUSTRY  
DEVELOPMENT ACT OF 2009.

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**Amendment No. 1 to House Bill No. 2055**

Amend House Bill No. 2055 as originally introduced:

Delete everything after the enacting clause and substitute the following:

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

As used in this subchapter:

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

- (i) Casting assistants;
- (ii) Costume design;
- (iii) Gaffers;
- (iv) Grips;
- (v) Location managers;
- (vi) Production assistants;
- (vii) Set construction staff; ~~and~~
- (viii) Set design staff; and
- (ix) Arkansas residents subject to Arkansas income

tax.

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

(2)(A) "Film and digital product" means video images or other  
visual media entertainment content.

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

- (i) Motion pictures;
- (ii) Documentaries;
- (iii) Long-form programs, specials, miniseries,  
series, music videos, and television programming;
- (iv) Interactive television;
- (v) Interactive games;
- (vi) Video games;
- (vii) Commercials;



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

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

(3) "~~Film office~~ Office" means the division of the Arkansas Economic Development ~~Council~~ Commission charged with the responsibility of promoting and assisting the digital content industry in Arkansas;

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

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

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

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

(B) "Postproduction" includes without limitation editing, music, soundtracks, special effects, and credits;

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

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

(B) "Production" shall not include:

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

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

(iii) A production deemed an infomercial; or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(B) The financial incentive agreement shall include the:

- (i) Effective date of the agreement;
- (ii) Term of the agreement, which shall be calculated from the date the agreement is signed by the production company and the ~~Revenue Division of the Department of Finance and Administration~~ Executive Director of the Arkansas Economic Development Commission;
- (iii) Incentive for which the production company may qualify;
- (iv) Investment threshold requirements necessary to qualify for eligibility;
- (v) Production company's responsibilities for certifying eligibility requirements; and
- (vi) Production company's responsibilities for failure to meet or maintain eligibility requirements.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) The production company; or

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

(A) National Film Preservation Foundation;

(B) Motion Picture Retirement Fund; or

(C) Digital Product and Motion Picture Office Fund.

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

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

The Amendment was read \_\_\_\_\_  
By: Representative Patterson  
KLL/DRM - 03/14/11 03:31  
KLL247

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Chief Clerk