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LEGISLATIVE RESEARCH

Digital Product and Motion Picture Industry Development Act (Act 816 of 2009, as amended)

Rules

MARKUP

I. Introduction

To encourage growth in Arkansas's digital product and motion picture industry, Act 816 of 2009 was enacted by the 87th General Assembly and ~~amended in 2013 and 2019. Amended and~~ codified at ACA § 15-4-2001 et seq.~~,~~ ~~the legislation's~~ The purpose of the Act is to cultivate the industry by offering financial incentives to foster the development of the digital product and traditional film industry in Arkansas.

~~For more information, please contact:~~
~~Arkansas Economic Development Commission~~
~~Arkansas Film Office~~
~~1 Commerce Way, Suite 601~~
~~Little Rock, AR 72202~~
~~(501) 682-7326~~

II. Definitions

(1) "Application for a rebate or a tax credit" means the document required by the Film Office to begin the process for obtaining a ~~rebate~~ tax incentive under the Digital Product and Motion Picture Industry Development Act;

(2) "Below-the-line employees" means:

- (A) employees involved with a motion picture production including but not limited to:
  - (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.
- (B) "Below-the-line employees" does not include directors and producers;

(3) "Commission" means the Arkansas Economic Development Commission;

(4) "DF&A" means the Department of Finance Administration;

~~(4)~~(5) “Film” means a single media or multi-media production that is fixed on film, digital medium, videotape, computer disc, laser disc, or similar delivery medium;

~~(5)~~(6) “Film and digital product” means video images or other visual media entertainment content in digital format, film, or videotape, provided the program meets all the underlying criteria of a qualified production including but not limited to the following:

(A) Motion pictures,
(B) Documentaries,
(C) Long-form programs,
(D) Specials,
(E) Mini-series,
(F) Series,
(G) Music videos,
(H) Television programming,
(I) Interactive television,
(J) Interactive games,
(K) Videogames,
(L) Commercials,
(M) Digital media for distribution or exhibition to the general public, or
(N) Trailer, pilot, video teaser, or demo created primarily to stimulate the sale, marketing, promotion, or exploitation of future investment;

~~(6)~~(7) "Film Office" means the division of the Arkansas Economic Development Commission charged with the responsibility of promoting and assisting the digital content industry in Arkansas in order to enhance Arkansas as a land of opportunity for digital and motion picture filmmaking;

~~(7)~~(8) “Film production company” means a corporation, individual, limited liability company or
partnership that produces one (1) or more films or any part of a film;

~~(8)~~(9) “Financial institution" means any bank or savings and loan in the state which carries Federal Deposit Insurance Corporation Insurance;

~~(9)~~(10) "Highly compensated individual" means:

(A) 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;

~~(10)~~(11) “Interactive television” means a television production in which the viewer’s action(s) may:

(A) Affect the program being watched, or
(B) Affect the outcome of the production;

~~(11)~~(12) “Post-production” means a final stage in the production of film or digital content occurring after the action has been filmed or videotaped, including but not limited to:

(A) Dialogue replacement,
(B) Sound editing,
(C) Addition or deletion of special effects,
(D) Editing music,
(E) Beginning and end credits,
(F) Negative cutting,
(G) Soundtrack production,
(H) Dubbing,
(I) Subtitling,
(J) Addition or deletion of sound or visual effects,
“Post-production” does not include expenditures for advertising, marketing, or distribution;

~~(12)~~(13) “Post-production costs” means all expenditures incurred in the state associated with the post-production phase of a state-certified production within the state;

~~(13)~~(14) "Production" means:

(A) The process of producing a type of entertainment content and includes film and digital content product.
(B) "Production" shall not include:
(i) News reports;
(ii) Weather reports;
(iii) Current events;
(v) Sporting events;
(vi) Fundraising events;
(vii) Gala events;
(viii) Marketing a product or service;
(ix) Corporate training;
(x) Corporate advertising;
(xi) Non-scripted reality show;
(xii) A production containing any material or performance that is obscene; or
(xiii) Sexually explicit productions as defined in 18 U.S.C. § 2257, as it existed on January 1, 2009;

~~(14)~~(15) "Production company" means a corporation, partnership, limited liability company, or other business entity engaged in the business of producing qualified productions and is registered with the Arkansas Secretary of State to engage in business in Arkansas;

~~(15)~~(16) "Qualified production costs" means costs associated with the development, preproduction, production, or postproduction of a qualified production within the state, including but not limited to:

(A) Per diem expenditures by the cast or crew for meals and lodging when accompanied by receipts, signed by the production company and the cast or crew member, evidencing payment of the per diem,
(B) Costs 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) Arkansas residents for labor, wages, fees, talent or management,
(D) Arkansas businesses for personal services,
(E) The story and scenario used in the production,
(F) Set construction,
(G) Set operations,
(H) Wardrobe and accessory services,
(I) Photography,
(J) Sound,
(K) Lighting,
(L) Editing related services,
(M) Rentals of equipment and facilities,
(N) Leasing of motor vehicles,
(O) Chartering of aircraft through an Arkansas-based businesses for in-state transportation attributed to the production,
(P) Commercial airfare purchased ~~through Arkansas-based travel agencies~~ for travel to and from Arkansas attributed to the production,
(Q) Insurance and bonding costs,
(R) Costs 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 fees relating to the transaction, but do not include deferrals, deferments, royalties, profit participation, or recourse or non-recourse loans which the eligible production company may negotiate in order to obtain the rights to the intellectual property;

(S) Other costs of the production in accordance with generally accepted entertainment industry practices,

(T) Fringe contributions being paid for work performed in Arkansas, including:
   (i) Health benefits,
   (ii) Pension contributions,
   (iii) Welfare contributions,
   (iv) Stipends, and
   (v) Living allowances.

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

(V) "Qualified production costs" does not include:
   (i) The optioning or purchase of intellectual property that is not used in the production project;
   (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, without limitation, producer fees, director fees, talent fees, and writer fees;
   (iv) Amounts paid to persons or businesses as a result of their participation in profits from the exploitation of the qualified production; and
   (v) Payments for penalties or fines, payments to nonprofit organizations, and payments to federal and state entities that do not pay state taxes;

~~(16)~~(17) "Resident" means natural persons and includes; for the purpose of determining eligibility for the rebate incentive provided by this program ~~subchapter~~, a person domiciled in Arkansas and who maintains a permanent residence within the state and spends at least six (6) months of the taxable year within the state;

~~(17)~~ (18) "Season" means production of at least six (6) episodes of a television series;

~~(18)~~ (19) "State-certified production" means a qualified production produced by an eligible production company that is:

(A) In compliance with the established rules of the Digital Content and Motion Picture Industry Development Act;

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

(C) Approved by the ~~E~~executive d~~D~~irector of the ~~Arkansas Economic Development~~

Commission as qualifying for a discretionary production ~~rebate~~ tax incentive under this section;

(20)"Tax Incentive" means a rebate under A.C.A. §15-4-2008 or a tax credit under §15-4-2012;

~~(19)~~(21) "Television mini-series" means a limited run program of more than three (3) hours of programming or half-season block associated with serial or series programming;

(22) "Television programming" means a long- or short-form narrative production of a television series, television mini-series or television special that is intended for commercial broadcast;

~~(20)~~(23) "Television series" means at least six (6) hours of television programming exhibited by a television station or network;

~~(21)~~(24) "Television specials" means major dramatized presentations broadcast during times normally occupied by episodes of one or more weekly television series.

(25)"Veteran" means an individual who:

(A) Was honorably discharged from a tour of active duty, other than active duty for training only, with the United States Armed Forces; or
(B) Has served honorably in the National Guard or reserve forces of the United States Armed Forces for at least (6) years, regardless of whether the individual has been discharged;

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

(A) With profits of less than one million dollars ($1,000,000);
(B) In which at least one (1) veteran owns more than fifty percent (50%) of the business; and
(C) That has its principal place of business or its headquarters in Arkansas.

III. Registration Requirements

A production company, which plans to operate within Arkansas shall register with the Film Office of the ~~Arkansas Economic Development~~ Commission on the prescribed forms before beginning operations in Arkansas. The production company shall designate a representative of the production company to work with the Commission on the reporting of expenditures and other information necessary to qualify for the tax incentive.

A production company must also complete all steps required by DF&A to register for a Sales & Use tax number.

Upon registration and signing a financial incentive agreement, the production company shall include the Arkansas Film Office logo, or an alternative approved by the Film Office, in the credits.

IV. Application for Project Approval Requirements

(A) A production company seeking a tax incentive ~~benefits of~~ under this program shall submit an application to receive the benefit as a rebate or an application to receive the benefit as a tax credit to the Commission. ~~The application must include an estimate of the production expenditures and shall be filed with the Commission and approved by the Executive Director prior to incurring any production costs or post-production costs in Arkansas.~~ A production company that is seeking the tax credit incentive benefit must include an income tax account number on the application provided to the Commission.

(B) The application must include an estimate of the production expenditures and shall be filed with the Commission and approved by the executive director prior to incurring any production costs or post-production costs in Arkansas.

~~(A)~~(C) The application shall ~~also~~ include the name, phone number and address of a representative to work with the Commission and the Film Office on the reporting of expenditures and other information necessary to qualify for the ~~rebate~~tax incentive.

~~(B)~~(D) Upon approval of the application by the ~~E~~executive ~~D~~director, the production company and the ~~E~~executive d~~D~~irector shall sign a financial incentive agreement.

~~(C)~~(E) The financial incentive agreement shall define the provisions of the program, which shall include the:

- (i) Effective date of the agreement;
- (ii) Terms of the agreement;
- (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; and~~.~~
- (vii) Whether the tax incentive in the agreement will be issued as a rebate or a tax credit.

V. Production ~~Rebate~~ Tax Incentive

To qualify for ~~this rebate~~a tax incentive under this program, a production company shall spend at least two hundred thousand dollars ($200,000) within a six-month period in connection with the production of one (1) project.

Upon approval of the application by the ~~E~~executive ~~D~~director, the production company may receive a discretionary ~~rebate~~ tax incentive on all qualified production costs in connection with the production of a state-certified film project.

The amount of the ~~rebate~~ tax incentive shall be ~~up to~~ twenty percent (20%) of all qualified production costs associated with the production of a state-certified production.

If the ~~E~~executive ~~D~~director approves a project for a rebate or tax credit of qualified production costs, the production company shall also receive an additional rebate or tax credit of ten percent (10%) for: ~~the payroll of below-the-line employees involved in the production who are full-time residents of Arkansas.~~

(A) The payroll of below-the-line employees involved in the production who are:
- (i) Full-time residents of Arkansas; or
- (ii) Veterans;
- (iii) If a production company hires a payroll service company to handle the payroll of a production company, the payroll payments and otherwise allowable shall be allowed an eligible expenditure if all eligible income payments to employees and independent contractors done through the payroll service are subject to Arkansas state income taxes.
- (iv) If approved by the executive director, the employment incentive shall include the first five hundred thousand dollars ($500,000) of a highly compensated individual's salary.

(B) Expenditures paid to a veteran-owned small business for qualified productions costs.

To receive the enhanced ten percent (10%) incentive, a production company must provide to the Film Office the following completed forms for each individual or business that qualify:
- Declaration of Arkansas Residency form provided by the Commission;
- Declaration of Veteran Status or Veteran-Owned Business Status form provided by the Commission.

A production ~~rebate~~ tax incentive shall not be processed until the production company has met in full all obligations to each Arkansas institution and vendor owed for products and services in the state.

VI. Post-production ~~Rebate~~Tax Incentive

To qualify for ~~this rebate~~ a tax incentive for post-production expenditures, 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.

Upon approval of the application by the ~~E~~executive ~~D~~director, ~~the~~ a production company

~~may~~ shall receive a ~~discretionary rebate~~ tax incentive of twenty percent (20%) on all qualified production costs ~~in connection~~ associated with the post-production of a state-certified film project.

~~The amount of the rebate shall be up to twenty percent (20%) of all qualified production costs associated with the post-production of a state-certified production.~~

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

(A) The aggregate payroll of salaries and wages of below the line employees who are:
  (i) Full-time residents of Arkansas; or
  (ii) Veterans;
  (iii) If a production company hires a payroll service company to handle the payroll of a production company, the payroll payments and otherwise allowable shall be allowed an eligible expenditure if all eligible income payment to employees and independent contractors done through the payroll service are subject to Arkansas state income taxes.
  (iv) If approved by the executive director, the employment incentive shall include the first five hundred thousand dollars ($500,000) of a highly compensated individual's salary.

(B) Expenditures paid to a veteran-owned business for qualified production costs associated with the state-certified post-production.

To receive the enhanced ten percent (10%) incentive, a production company must provide to the Film Office the following completed forms for each individual or business that qualify:

- Declaration of Arkansas Residency form provided by the Commission;
- Declaration of Veteran Status or Veteran-Owned Business Status form provided by the Commission.

A post-production ~~rebate~~ incentive shall not be processed until the production company has met in full all obligations to each Arkansas institution and vendor owed for products and services in the state.

~~VII. Employment Rebate~~

~~In addition to the production and post-production rebates, the Executive Director may approve an employment rebate that entitles a state-certified production company to benefits for employing full-time residents of Arkansas for which the company has submitted a Certified Declaration of Arkansas Residency form with the Film Office.~~

~~A. The employment rebate authorizes a rebate 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.~~

~~B. If a production company hires a payroll service company to handle the payroll of a production, the payroll payments otherwise allowable shall be allowed as eligible expenditures if all eligible income payments to employees and independent contractors done through the payroll service are subject to Arkansas state income taxes.~~

~~C. If approved by the Executive Director, the employment rebate shall include the first five hundred thousand dollars ($500,000) of a highly compensated individual's salary.~~

~~VIII.~~VII. Weekly Expenditure Reports

(A) (i) Within two (2) weeks after principal photography begins, the production company shall begin filing weekly expenditure reports.
(ii) Failure to file weekly expenditure reports may result in a delay in the disbursement of the ~~rebate~~ tax incentive provided in §§ 15-4-2005 and 15-4-2006.

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

(i) Direct cash payments by the 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 that cash payments does not exceed forty percent (40%) of the total verifiable expenditures;

(ii) Per diem expenditures by cast or crew, or both, for lodging, when accompanied by receipts, signed by the production company and cast or crew member, evidencing payment of the per diem, shall be allowed as eligible expenditures; and

(iii) Expenditure reports shall include without limitation:

(a) Check identification number;
(b) Date of payment
(c) Name of payee;
(d) Address of payee;
(e) Amount paid; and
(f) Other information the division deems necessary to ensure compliance with this subsection.

~~IX.~~VIII. Production Costs Certification

Within one hundred eighty (180) days after the last production costs are incurred, the production company shall apply to the Commission for a production rebate certificate or a tax credit certificate and provide a final expenditure report that includes the amount of the company's production expenses or costs. Expenditure reports also shall include information as required by the Revenue Division of ~~the Department of Finance and Administration~~ DF&A to ensure compliance with §15-4-2001 et seq.

The Commission will forward the Final Expenditure Report with supporting documents with its recommendation for ~~rebate~~ a tax incentive to the Revenue Division of DF&A ~~the Department of Finance and Administration (DF&A)~~.

Upon receipt of the Final Expenditure report and supporting documents from the Commission, the Revenue Division of DF&A will review the Commission's recommendation and verify the amount of ~~rebate~~ the tax incentive recommended.

~~X.~~IX. Application ~~for Rebate~~to Receive Program Incentive

Upon completion of filming or production, or both, in Arkansas, the production company shall file an application for the ~~rebate~~ tax incentive allowed under A.C.A.§15-4-2001 et seq. The application ~~for rebate~~ shall include a proof of performance expenditure list that provides the total amount of expenditures that were made in the state in connection with the filming or production, or both, of a film and digital product that complies with this part~~subchapter~~. The production company shall provide documentation for expenditures in accordance with these rules promulgated by the Commission.

(A) The Revenue Division of DF&A shall upon receipt of an application for ~~rebate~~a tax incentive, including a proof of performance expenditure report from the Commission:
- (i) Calculate the total expenditures of the relevant production company for which there are documented receipts for funds expended in the state;
- (ii) Calculate the incentive benefit to which the applicant is entitled subject to any conditions of the approved financial incentive agreement; and
- (iii) Within one hundred twenty (120) days of the date the Final Expenditure Report was submitted to the Commission, the Revenue Division of DF&A will certify to the ~~Director~~ Secretary of DF&A the amount of ~~rebate~~ tax incentive due to the production company.

~~(B) Within ten (10) working days after the receipt of the certification from the Revenue Division, the Director of DF&A shall issue the rebate to:~~
- ~~(i) The production company, or~~
- ~~(ii) 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) (i) The amount of the rebate is limited to the amount specified in the approval financial incentive agreement.~~
- ~~(ii) Rebates to be awarded from the Digital Product and Motion Picture Office Fund may be payable from any source of funds allocated for their rebates.~~

X. Issuance of Tax Incentive

(A) If the production company has opted to receive the incentive as a rebate:

(i) Within ten (10) working days after the receipt of the certification from the Revenue Division, the Secretary of DF&A shall issue the rebate to:

(a) The production company;

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

1. The National Film Preservation Foundation;
2. Motion Picture Retirement Fund; or
3. Digital Product and Motion Picture Office Fund.

(ii) The amount of the rebate is limited to the amount specified in the approved financial incentive agreement;

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

(B) If the production company has opted to receive the incentive as a tax credit:

(i) Within ten (10) business days after the receipt of the certification from the Revenue Division, the Secretary of DF&A shall instruct the division to issue a tax credit certificate to the production company in the amount certified.

(a) Tax credits issued:

1. Shall be issued promptly after the division completes its review of documents provided as listed in Section IX of this rule;
2. Are allowed as a credit against the income tax imposed by the Income Tax Act of 1929, §26-51-101 et seq;
3. Are not refundable; and
4. May be carried forward in part or in whole for five (5) consecutive taxable years to apply against the taxpayer's income taxes due.
5. May be transferred, sold, or assigned by the owner in whole or in part under A.C.A. §15-4-2012.

(ii) The amount of the tax credits issued shall not exceed the amount approved by the Commission in the financial incentive agreement.

(iii) The Commission shall not approve applications for tax credits under this program for more than four million dollars ($4,000,000) in any (1) fiscal year.

(iv) A taxpayer must attach the tax credit certificate to their income tax return in order to claim the credit.

XI. Transfer of Tax Credit Earned

(A) (i) An owner of a tax credit earned under the Digital Products and Motion Picture

Industry Development Act may transfer, sell, or assign some or all of the amount of the tax credit certified as outlined at A.C.A. §15-4-2013.

(ii) A subsequent holder of some or all the amount of the tax credit may transfer, sell, or assign some or all of the remaining tax credit.

(B) A transferee from an original, approved applicant may use the tax credit earned under this program only to the extent the tax credit is available to and has not been previously used by the transferor.

(C) If a transferee of a tax credit earned under this program seeks to use the tax credit, they shall obtain and attach to their income tax return for the years the tax credit is claimed a certified statement from the transferor stating the:

(i) Name and address of the original purchaser and all transferees;

(ii) Tax identification number of all persons entitled to any portion of the original tax credit;

(iii) Original date the tax credit was approved;

(iv) Amount of the tax credit that was transferred; and

(v) Remaining amount of the tax credit that is available for use by the transferee.

(D) The amount of the tax credit received by the transferee may be carried forward in whole or in part for five (5) consecutive taxable years, beginning from the taxable year in which the tax credit originated, to apply against the taxpayer's income taxes due.

(E) If any subsequent audits or adjustments are made to a tax credit issued under this program that reduce the amount of the tax credit, the transferor that originally received the tax credit shall refund the difference between the original amount and the reduced amount to DF&A.

(F) If an owner or holder assigns some or all of a tax credit earned under this program, the owner shall:

(i) Notify DF&A in writing within thirty (30) calendar days following the effective date of the transfer; and

(ii) Provide any information DF&A requires to administer and carry out the transfer and ensure proper tracking of the ownership of the unused tax credit.

XII. Supplemental Tax Credits

(A) If the executive director of the Commission receives an application for tax credits under this program that would exceed the amount of tax credits remaining to be issued in a fiscal year, the executive director of the Commission may request that the Secretary of the Department of Commerce and the Secretary of DF&A approve supplemental credits to be issued in excess of the $4,000,000 annual cap as stated at A.C.A. §15-4-2014.

(B) The supplemental credits shall not exceed the amount in the Arkansas Supplemental Digital Product and Motion Picture Industry Development

Trust Fund, created at A.C.A. §19-5-1157, as certified by the Secretary of the Department of Commerce and the Secretary of DF&A.

(C) The Secretary of the Department of Commerce and the Secretary of DF&A may jointly approve supplemental credits to be issued if a cost-benefit analysis demonstrates the issuance of the credits benefits the State in an amount greater than its cost to the State.

(D) The cost-benefit analysis conducted shall be:

(i) Performed by the executive director of AEDC or his or her designee; and

(ii) Confirmed by the Secretary of DF&A or his or her designee.

(E) Supplemental credits issued under this section shall be considered tax credits for the purposes of A.C.A. §§15-4-1212 and 15-4-1213.

~~XI.~~ XII. Production Costs Limitations

Production companies are encouraged to make payments for production and postproduction expenses from a checking account from an Arkansas financial institution.

Direct cash payments by a production company to Arkansas vendors, businesses, or citizens hired as cast or crew, which are accompanied by receipts, shall not exceed forty percent (40%) of the total verifiable expenditures.

~~XII.~~ XIII. Penalties

A production company that intends to apply for the r~~ebate~~ tax incentive and does not register as required by § 15-4-2004 may be enjoined from engaging in production activities in the state by any court of competent jurisdiction until the production company has registered.

A production company that intends to apply for the ~~rebate~~ tax incentive~~s~~ and fails to comply with any provisions of the Digital Product and Motion Picture Industry Development Act may be denied future participation in this incentive program and shall be subject to penalty in accordance with applicable state or federal law.

~~XIII~~. XIV Rulemaking Authority

The ~~Arkansas Economic Development~~ Commission has authority, at A.C.A. §15-4-2010, to promulgate rules necessary to implement Act 816 of 2009, as amended and to prevent abuse.

Stricken language would be deleted from and underlined language would be added to present law.
Act 797 of the Regular Session

State of Arkansas *As Engrossed: H3/30/21 H4/1/21*
93rd General Assembly
A Bill
Regular Session, 2021 HOUSE BILL 1743

By: Representative C. Fite
By: Senator J. Dismang

For An Act To Be Entitled

AN ACT TO AMEND THE DIGITAL PRODUCT AND MOTION *PICTURE INDUSTRY DEVELOPMENT ACT OF 2009; TO AUTHORIZE TAX CREDITS OR REBATES TO BE ISSUED UNDER THE DIGITAL PRODUCT AND MOTION PICTURE INDUSTRY DEVELOPMENT ACT OF 2009; TO EXTEND THE SUNSET DATE FOR THE DIGITAL* PRODUCT AND MOTION PICTURE INDUSTRY DEVELOPMENT ACT OF 2009; AND FOR OTHER PURPOSES.

Subtitle

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

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

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

15-4-2003. Definitions.

As used in this subchapter:

(1) "Application for <u>*a*</u> *rebate* <u>*or a tax credit*</u>*" means the document required by the Film Office to begin the process for obtaining* ~~*a rebate*~~ <u>*tax incentive*</u> *under this subchapter;*

(2)(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.

(B) “Below-the-line employees” does not include directors and producers;

(3)(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;

(4) “Film Office” means the division of the Arkansas Economic Development Commission charged with the responsibility of promoting and assisting the digital content industry in Arkansas in order to enhance Arkansas as a land of opportunity for digital and motion picture filmmaking;

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

(6)(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;

(7)(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;

(8) "Postproduction costs" means all expenditures associated with the postproduction phase of a state-certified production within the state;

(9)(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;

(10) "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;

(11)(A) "Qualified production costs" means costs associated with the development, preproduction, production, or postproduction of a qualified production within the state.

(B) "Qualified production costs" includes costs 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 *(9)(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 without limitation 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;

(12) "Resident" means natural persons and includes, for the purpose of determining eligibility for the ~~rebate incentive~~ tax credits 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~~

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

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

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

(C) Approved by the Director of the Arkansas Economic *Development Commission as qualifying for a discretionary production ~~rebate~~ tax incentive under this subchapter~~.~~;"*

(15) "Tax incentive" means a rebate under § 15-4-2008 or a tax credit under § 15-4-2012;

(16) "Veteran" means an individual who:

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

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

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

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

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

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

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

15-4-2005. Production ~~rebate~~ tax *incentive*.

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

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

(b) To qualify for this ~~rebate~~ tax *incentive*, a production company shall spend at least two hundred thousand dollars ($200,000) within a six-month period in connection with the production of one (1) project.

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

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

(A) Full-time residents of Arkansas; or

(B) Veterans;

(2) Expenditures paid to a veteran-owned small business for qualified production costs with the state-certified production.

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

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

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

15-4-2006. Postproduction ~~rebate~~ tax *incentives*.

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

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

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

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

(ii) Veterans; or

(B) Expenditures paid to a veteran-owned business for qualified production costs with the state-certified production.

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

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

(d) The maximum total tax *incentives* that may be claimed for a

<u>qualified expenditure under this section is thirty percent (30%) of the qualified expenditure.</u>

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

(a)(1) To apply for the ~~rebates~~ <u>tax *incentives*</u> 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 required under subdivision (a)(1) of this section shall be filed with the Arkansas Economic Development Commission and approved by the Director of the Arkansas Economic Development Commission as eligible for the ~~rebate~~ <u>tax *incentive*</u> provided by this subchapter before the commencement of production in Arkansas.

(b)(1) If an application for a ~~rebate~~ <u>tax *incentive*</u> is approved under subsection (a) of this section, the production company and the director shall sign a financial incentive agreement.

(2)(A) The financial incentive agreement shall define the incentives 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 financial incentive agreement;

(ii) Term of the financial incentive agreement, which shall be calculated from the date the agreement is signed by the production company and the director;

(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~~*.*~~<u>*; and*</u>

<u>*(vii) Whether the tax incentive in the agreement is for a rebate under § 15-4-2008 or a tax credit under § 15-4-2012.*</u>

(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 Film Office on the reporting of expenditures and other information necessary to qualify for the ~~rebates~~ tax *incentives*.

(d) No later than one hundred eighty (180) days 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~~ tax-*incentive* certificate; *and*

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

SECTION 5. Arkansas Code § 15-4-2007(g)-(i), concerning an application for a tax credit under the Digital Product and Motion Picture Industry Development Act of 2009, are amended to read as follows:

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

(h)(1) If approved by the director, the employment ~~rebate~~ tax *incentive* under subsection (g) of this section also entitles a state-certified production to an additional ~~rebate~~ tax *incentive* for employing full-time residents of Arkansas.

(2) The employment ~~rebate~~ tax *incentive* under subsection (g) of this section 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.

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

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

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

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

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

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

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

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

SECTION 8. Arkansas Code § 15-4-2008 is amended to read as follows:

15-4-2008. Disbursement of *rebate*.

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

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

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

(3) Provide certification to the Secretary of the Department of

Finance and Administration specifying the amount to be remitted to the production company within one hundred twenty (120) days after the final expenditure report has been submitted.

(b) The secretary, within ten (10) working days after the receipt of the certification from the division, shall remit the *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) The amount of the *rebate* is limited to the amount specified in the approved financial incentive agreement.

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

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

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

15-4-2009. Penalties.

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

(b) A production company that intends to apply for the *rebate* incentives and fails to comply with this subchapter may be denied future participation in this incentive program and shall be subject to penalty in accordance with applicable state or federal law.

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

15-4-2011. Sunset.

The opportunity ~~for a rebate~~ to apply for a tax incentive provided by this subchapter ~~shall expire~~ expires on June 30, ~~2029~~ 2032.

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

15-4-2012. Tax credit.

(a)(1) After receiving both an application for a tax credit under this subchapter and a proof of performance expenditure report from the Film Office, the Revenue Division of the Department of Finance and Administration shall:

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

(B) Calculate the amount of the tax credits to which the applicant is entitled, subject to any conditions of the approved financial incentive agreement; and

(C) Within one hundred twenty (120) days after receiving the expenditure report from the Film Office, certify to the Secretary of the Department of Finance and Administration the amount of the tax credit that may be claimed by the production company.

(2) The secretary, within ten (10) business days after the receipt of the certification from the division, shall instruct the division to issue the tax credit in the amount certified.

(3) Tax credits under this subchapter:

(A) Shall be issued promptly after the division completes its review under subdivision (a)(1) of this section;

(B) Are allowed as a credit against the income tax imposed by the Income Tax Act of 1929, § 26-51-101 et seq.;

(C) Are not refundable; and

(D) May be carried forward in part or in whole for five (5) consecutive taxable years to apply against the taxpayer's income taxes due.

(b)(1) The Arkansas Economic Development Commission shall not approve applications for tax credits under this subchapter for more than four million dollars ($4,000,000) in any one (1) fiscal year.

(2) The division shall not issue tax credits in excess of the amount approved by the commission in the financial incentive agreement.

15-4-2013. Transfer of tax credit.

(a)(1) An owner of a tax credit under this subchapter may transfer,

sell, or assign some or all of the amount of the tax credit certified under § 15-4-2012.

(2) A subsequent holder of some or all the amount of the tax credit may transfer, sell, or assign some or all of the remaining tax credit.

(b) A transferee from an original, approved applicant under this subchapter may use the tax credit under this subchapter only to the extent the tax credit is still available to and has not previously been used by the transferor.

(c) If a transferee of a tax credit under this subchapter seeks to use the tax credit, the transferee shall obtain and attach to the transferee's income tax return for the years the tax credit is claimed a certified statement from the transferor stating the:

(1) Name and address of the original purchaser and all transferees;

(2) Tax identification number of all persons entitled to any portion of the original tax credit;

(3) Original date the tax credit was approved;

(4) Original amount of the tax credit;

(5) Amount of the tax credit that was transferred; and

(6) Remaining amount of the tax credit that is available for use by the transferee.

(d) The amount of the tax credit received by the transferee may be carried forward in part or in whole for five (5) consecutive taxable years, beginning from the taxable year in which the tax credit originated, to apply against the taxpayer's income taxes due.

(e) If any subsequent audits or adjustments are made to a tax credit issued under this subchapter that reduce the amount of the tax credit, then the transferor that originally received the tax credit under this subchapter shall refund the difference between the original amount and the reduced amount to the Department of Finance and Administration.

(f) An owner or holder that assigns some or all of a tax credit under this section shall perfect the transfer by notifying the department in writing within thirty (30) calendar days following the effective date of the transfer and shall provide any information the department requires to administer and carry out this subchapter and to ensure proper tracking of the ownership of the unused tax credit.

15-4-2014. Supplemental tax credit.

(a) If the Director of the Arkansas Economic Development Commission receives an application for tax credits under this subchapter that would exceed the amount of tax credits remaining to be issued in a fiscal year under § 15-4-2012, the director may request that the Secretary of Commerce and Secretary of the Department of Finance and Administration approve supplemental credits to be issued in excess of the amount in § 15-4-2012.

(b) Supplemental credits under this section shall not exceed the amount in the Arkansas Supplemental Digital Product and Motion Picture Industry Development Trust Fund as certified by the Secretary of the Department of Finance and Administration.

(c)(1) The Secretary of the Department of Commerce and the Secretary of the Department of Finance and Administration may jointly approve supplemental credits under this section if a cost-benefit analysis demonstrates that the issuance of the supplemental credits is in the prudent interests of the State.

(2) The cost-benefit analysis conducted under subdivision (c)(1) of this section shall be:

(A) Performed by the Director of the Arkansas Economic Development Commission or his or her designee; and

(B) Confirmed by the Secretary of the Department of Finance and Administration or his or her designee.

(d) Supplemental credits issued under this section shall be considered tax credits for the purposes of §§ 15-4-1212 and 15-4-1213.

SECTION 12. Arkansas Code Title 19, Chapter 5, Subchapter 11, is amended to add an additional section to read as follows:

19-5-1154. Arkansas Supplemental Digital Product and Motion Picture Industry Development Trust Fund.

(a) There is created on the books of the Treasurer of State, the Auditor of State, and the Chief Fiscal Officer of the State a trust fund to be known as the "Arkansas Supplemental Digital Product and Motion Picture Industry Development Trust Fund".

(b) The Arkansas Supplemental Digital Product and Motion Picture Industry Development Trust Fund shall consist of:

(1) Grants, donations, or transfers made by any person or government agency or office;

(2) Any remaining balances in the fund carried forward from year to year; and

(3) Any other moneys authorized or provided by law.

(c) The fund shall be used to offset the costs of supplemental digital product and motion picture incentive act tax credits allowed under § 15-4-2014, as follows:

(1)(A) At the request of the Secretary of the Department of Commerce, the Secretary of the Department of Finance and Administration shall certify to the Arkansas Economic Development Commission the amount in the fund.

(B) The amount certified under subdivision (c)(1)(A) of this section is the maximum amount of supplemental digital product and motion picture industry development tax credits that may be approved; and

(2) On the first day of the month following the certification in subdivision (c)(1), the Treasurer of State shall transfer the amount certified under subdivision (c)(1) of this section to the General Revenue Fund Account of the State Apportionment Fund to be distributed as authorized under § 19-5-202(b)(2)(B)(iii).

/s/C. Fite

APPROVED: 4/20/21