

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

A Bill

SENATE BILL 841

4
5 By: Senator J. Jeffress
6 By: Representative Patterson

For An Act To Be Entitled

9 AN ACT TO REVISE THE DIGITAL PRODUCT AND MOTION
10 PICTURE INDUSTRY DEVELOPMENT ACT OF 2009; TO INCREASE
11 THE REBATE AMOUNT; TO ADDRESS EXPENDITURES ELIGIBLE
12 FOR THE REBATE; AND FOR OTHER PURPOSES.

Subtitle

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16 TO REVISE THE DIGITAL PRODUCT AND MOTION
17 PICTURE INDUSTRY DEVELOPMENT ACT OF 2009;
18 TO INCREASE THE REBATE AMOUNT; TO ADDRESS
19 EXPENDITURES ELIGIBLE FOR THE REBATE.

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

23
24 SECTION 1. Arkansas Code § 15-4-2003 is amended to read as follows:
25 15-4-2003. Definitions.

26 As used in this subchapter:

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

- 29 (i) Casting assistants;
30 (ii) Costume design;
31 (iii) Gaffers;
32 (iv) Grips;
33 (v) Location managers;
34 (vi) Production assistants;
35 (vii) Set construction staff; ~~and~~
36 (viii) Set design staff; and



1 (ix) Arkansas residents subject to Arkansas income
2 tax.

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

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

7 (B) “Film and digital product” includes without
8 limitation:

- 9 (i) Motion pictures;
- 10 (ii) Documentaries;
- 11 (iii) Long-form programs, specials, miniseries,
12 series, music videos, and television programming;

- 13 (iv) Interactive television;
- 14 (v) Interactive games;

- 15 (vi) Video games;
- 16 (vii) Commercials;

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

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

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

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

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

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

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

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

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

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

11 (B) “Production” shall not include:

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

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

16 (iii) A production deemed an infomercial; or

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

19 ~~(9)(8)~~ “Production company” means a corporation, partnership,
 20 limited liability company, or other business entity engaged in the business
 21 of producing qualified productions and qualified by the Secretary of State to
 22 engage in business in the state;

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

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

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

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

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

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

12 (D) “Qualified production costs” does not include:

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

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

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

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

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

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

32 ~~(12)~~(11) “State-certified production” means a qualified
33 production produced by an eligible production company that is:

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

36 (B) Authorized by the ~~commission~~ Film Office to conduct

1 business in this state; and

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

4
5 SECTION 2. Arkansas Code § 15-4-2005(a)(1), concerning production
6 rebates, is amended to read as follows

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

12
13 SECTION 3. Arkansas Code § 15-4-2006(a)(1), concerning postproduction
14 rebates, is amended to read as follows

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

20
21 SECTION 4. Arkansas Code § 15-4-2007 is amended to read as follows
22 15-4-2007. Application for rebate.

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

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

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

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

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

1 (i) Effective date of the agreement;
 2 (ii) Term of the agreement, which shall be
 3 calculated from the date the agreement is signed by the production company
 4 and the ~~Revenue Division of the Department of Finance and Administration~~
 5 Director of the Arkansas Economic Development Commission;

6 (iii) Incentive for which the production company may
 7 qualify;

8 (iv) Investment threshold requirements necessary to
 9 qualify for eligibility;

10 (v) Production company's responsibilities for
 11 certifying eligibility requirements; and

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

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

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

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

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

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

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

33 ~~(3)(2)~~ The following shall be eligible expenditures:

34 (A) Per diem expenditures by the cast or crew for lodging
 35 when accompanied by receipts shall be eligible expenditures; and

36 (B) Fringe contributions being paid for work performed in

1 this state, including:

2 (i) Health benefits;

3 (ii) Pension contributions;

4 (iii) Welfare contributions;

5 (iv) Stipends; and

6 (v) Living allowances.

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

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

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

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

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

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

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

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

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

35 ~~(1)-(1)(k)(1)~~ (1) The final expenditure report and all qualified production
36 costs shall be subject to an audit by an outside certified public accountant

1 licensed in the state.

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

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

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

11

12 SECTION 5. Arkansas Code § 15-4-2008 is amended to read as follows:
13 15-4-2008. Disbursement of rebate incentive.

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

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

19 (2) Calculate the incentive benefit to which the applicant is
20 entitled ~~to, and.~~

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

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

28 (1) The production company; or

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

31 (A) National Film Preservation Foundation;

32 (B) Motion Picture Retirement Fund; or

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

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

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