

1 AN ACT relating to tax incentives for continuous film production projects.

2 ***Be it enacted by the General Assembly of the Commonwealth of Kentucky:***

3 ➔Section 1. KRS 154.61-010 is amended to read as follows:

4 As used in this subchapter:

- 5 (1) "Above-the-line production crew" means employees involved with the production
6 of a motion picture or entertainment production whose salaries are negotiated prior
7 to commencement of production, such as actors, directors, producers, and writers;
- 8 (2) "Animated production" means a nationally distributed feature-length film created
9 with the rapid display of a sequence of images using 2-D or 3-D graphics of
10 artwork or model positions in order to create an illusion of movement;
- 11 (3) "Approved company" means an eligible company approved for incentives provided
12 under KRS 141.383 and 154.61-020;
- 13 (4) "Authority" means the Kentucky Economic Development Finance Authority
14 created in KRS 154.20-010;
- 15 (5) "Below-the-line production crew" means employees involved with the production
16 of a motion picture or entertainment production except above-the-line production
17 crew. "Below-the-line production crew" includes but is not limited to:
- 18 (a) Casting assistants;
- 19 (b) Costume design;
- 20 (c) Extras;
- 21 (d) Gaffers;
- 22 (e) Grips;
- 23 (f) Location managers;
- 24 (g) Production assistants;
- 25 (h) Set construction staff; and
- 26 (i) Set design staff;
- 27 (6) "Commonwealth" means the Commonwealth of Kentucky;

1 (7) "Compensation" means compensation included in adjusted gross income as defined
2 in KRS 141.010;

3 (8) "Continuous film production" means a motion picture or entertainment
4 production that:

5 (a) 1. Has a projected budget of a minimum of twenty million dollars
6 (\$20,000,000) biennially allocated to all qualifying film productions;

7 2. Has a minimum of one million five hundred thousand dollars
8 (\$1,500,000) for qualifying expenditures and qualifying payroll
9 expenditures per production:

10 a. Directly related to expenditures made within the Commonwealth;

11 b. Demonstrated by the:

12 i. Availability of funds; or

13 ii. Ability to raise these funds by the eligible company upon
14 approval by the authority; and

15 c. Verified by:

16 i. Bank statements or other financial documents; or

17 ii. A fundraising plan at the request of the authority;

18 (b) Films and produces a minimum of three hundred (300) days with twelve
19 (12) or more of these days within the Commonwealth; and

20 (c) Maintains:

21 1. An apprenticeship program or on-the-job training program as defined
22 in KRS 343.010; or

23 2. A film studies program with an accredited institution of postsecondary
24 education located in the Commonwealth;

25 (9) "Documentary" means a production based upon factual information and not
26 subjective interjections;

27 (10)~~(9)~~ "Eligible company" means any person that intends to film or produce a

1 motion picture or entertainment production in the Commonwealth;

2 ~~(11)~~~~(10)~~ "Employee" has the same meaning as in KRS 141.010;

3 ~~(12)~~~~(11)~~ "Enhanced incentive county" has the same meaning as in KRS 154.32-010;

4 ~~(13)~~~~(12)~~ "Feature-length film" means a live-action or animated production that is:

5 (a) More than thirty (30) minutes in length; and

6 (b) Produced for distribution in theaters or via digital format, including but not
7 limited to DVD, Internet, or mobile electronic devices;

8 ~~(14)~~~~(13)~~ "Industrial film" means a business-to-business film that may be viewed by the
9 public, including but not limited to videos used for training or for viewing at a trade
10 show;

11 ~~(15)~~~~(14)~~ "Kentucky-based company" has the same meaning as in KRS 164.6011;

12 ~~(16)~~~~(15)~~ (a) "Motion picture or entertainment production" means:

13 1. The following if filmed in whole or in part, or produced in whole or in
14 part, in the Commonwealth:

15 a. A feature-length film;

16 b. A television program;

17 c. An industrial film; or

18 d. A documentary; or

19 2. A national touring production of a Broadway show produced in
20 Kentucky.

21 (b) "Motion picture or entertainment production" does not include the filming or
22 production of obscene material or television coverage of news or athletic
23 events;

24 ~~(17)~~~~(16)~~ "Obscene" has the same meaning as in KRS 531.010;

25 ~~(18)~~~~(17)~~ "Person" has the same meaning as in KRS 141.010;

26 ~~(19)~~~~(18)~~ (a) "Qualifying expenditure" means expenditures made in the
27 Commonwealth for the following if directly used in or for a motion picture or

1 entertainment production:

- 2 1. The production script and synopsis;
- 3 2. Set construction and operations, wardrobe, accessories, and related
- 4 services;
- 5 3. Lease or rental of real property in Kentucky as a set location;
- 6 4. Photography, sound synchronization, lighting, and related services;
- 7 5. Editing and related services;
- 8 6. Rental of facilities and equipment;
- 9 7. Vehicle leases;
- 10 8. Food; and
- 11 9. Accommodations.

12 (b) "Qualifying expenditure" does not include Kentucky sales and use tax paid by
13 the approved company on the qualifying expenditure;

14 ~~(20)~~~~(19)~~ "Qualifying payroll expenditure" means compensation paid to above-the-line
15 crew and below-the line crew while working on a motion picture or entertainment
16 production in the Commonwealth if the compensation is for services performed in
17 the Commonwealth;

18 ~~(21)~~~~(20)~~ "Resident" has the same meaning as in KRS 141.010;

19 ~~(22)~~~~(21)~~ "Secretary" means the secretary of the Cabinet for Economic Development;

20 ~~(23)~~~~(22)~~ "Tax incentive agreement" means the agreement entered into pursuant to KRS
21 154.61-030 between the authority and the approved company; and

22 ~~(24)~~~~(23)~~ "Television program" means any live-action or animated production or
23 documentary, including but not limited to:

- 24 (a) An episodic series;
- 25 (b) A miniseries;
- 26 (c) A television movie; or
- 27 (d) A television pilot;

1 that is produced for distribution on television via broadcast, cable, or any digital
2 format, including but not limited to cable, satellite, Internet, or mobile electronic
3 devices.

4 ➔Section 2. KRS 154.61-020 is amended to read as follows:

- 5 (1) The purposes of KRS 141.383 and this subchapter are to encourage:
- 6 (a) The film and entertainment industry to choose locations in the
7 Commonwealth for the filming and production of motion picture or
8 entertainment productions;
- 9 (b) The development of a film and entertainment industry in Kentucky;
- 10 (c) Increased employment opportunities for the citizens of the Commonwealth
11 within the film and entertainment industry; and
- 12 (d) The development of a production and postproduction infrastructure in the
13 Commonwealth for film production and touring Broadway show production
14 facilities containing state-of-the-art technologies.
- 15 (2) The authority, together with the Department of Revenue, shall administer the tax
16 credit established by KRS 141.383, this section, and KRS 154.61-030.
- 17 (3) To qualify for the tax incentive provided in subsection ~~(6)~~(5) of this section, the
18 following requirements shall be met:
- 19 (a) For an approved company that is also a Kentucky-based company that:
- 20 1. Films or produces a feature-length film, television program, or industrial
21 film in whole or in part in the Commonwealth, the minimum combined
22 total of qualifying expenditures and qualifying payroll expenditures
23 shall be one hundred twenty-five thousand dollars (\$125,000);
- 24 2. Produces a national touring production of a Broadway show in whole or
25 in part in the Commonwealth, the minimum combined total of
26 qualifying expenditures and qualifying payroll expenditures shall be
27 twenty thousand dollars (\$20,000); or

- 1 3. Films or produces a documentary in whole or in part in the
2 Commonwealth, the minimum combined total of qualifying
3 expenditures and qualifying payroll expenditures shall be ten thousand
4 dollars (\$10,000); and
- 5 (b) For an approved company that is not a Kentucky-based company that:
- 6 1. Films or produces a feature-length film, television program, or industrial
7 film in whole or in part in the Commonwealth, the minimum combined
8 total of qualifying expenditures and qualifying payroll expenditures
9 shall be two hundred fifty thousand dollars (\$250,000); or
- 10 2. Films or produces a documentary in whole or in part in the
11 Commonwealth or that produces a national touring production of a
12 Broadway show, the minimum combined total of qualifying
13 expenditures and qualifying payroll expenditures shall be twenty
14 thousand dollars (\$20,000).
- 15 (4) Beginning on January 1, 2022, **but before January 1, 2024**, the total tax incentive
16 approved under KRS 141.383 and this subchapter shall be limited to seventy-five
17 million dollars (\$75,000,000)~~[for calendar year 2022 and each calendar year~~
18 ~~thereafter]~~.
- 19 (5) **Beginning on January 1, 2024, the total tax incentive approved under KRS**
20 **141.383 and this subchapter shall be limited to a total of:**
- 21 **(a) Twenty-five million dollars (\$25,000,000) for all approved companies with a**
22 **continuous film production; or**
- 23 **(b) Fifty million dollars (\$50,000,000) for all other approved companies.**
- 24 **(6)** (a) To qualify for the tax incentive available under KRS 141.383 and this
25 subchapter all applicants shall:
- 26 1. Begin filming or production within six (6) months of filing an
27 application with the authority; and

- 1 2. Complete filming or production within two (2) years of the filming or
2 production start date.
- 3 (b) The tax credit shall be against the Kentucky income tax imposed under KRS
4 141.020 or 141.040, and the limited liability entity tax imposed under KRS
5 141.0401, and shall be refundable as provided in KRS 141.383.
- 6 (c) 1. For a motion picture or entertainment production filmed or produced in
7 its entirety in an enhanced incentive county, the amount of the incentive
8 shall be equal to thirty-five percent (35%) of the approved company's:
- 9 a. Qualifying expenditures;
- 10 b. Qualifying payroll expenditures paid to resident and nonresident
11 below-the-line production crew; and
- 12 c. Qualifying payroll expenditures paid to resident and nonresident
13 above-the-line production crew not to exceed one million dollars
14 (\$1,000,000) in payroll expenditures per employee.
- 15 2. a. To the extent the approved company films or produces a motion
16 picture or entertainment production in part in an enhanced
17 incentive county and in part a Kentucky county that is not an
18 enhanced incentive county, the approved company shall be eligible
19 to receive the incentives provided in this paragraph for those
20 expenditures incurred in the enhanced incentive county and all
21 other expenditures shall be subject to the incentives provided in
22 paragraph (d) of this subsection.
- 23 b. The approved company shall track the requisite expenditures by
24 county. If the approved company can demonstrate to the
25 satisfaction of the cabinet that it is not practical to use a separate
26 accounting method to determine the expenditures by county, the
27 approved company shall determine the correct expenditures by

1 county using an alternative method approved by the cabinet.

2 (d) For a motion picture or entertainment production filmed or produced in whole
3 or in part in any Kentucky county other than in an enhanced incentive county,
4 the amount of the incentive shall be equal to:

5 1. Thirty percent (30%) of the approved company's:

6 a. Qualifying expenditures;

7 b. Qualifying payroll expenditures paid to below-the-line production
8 crew that are not residents; and

9 c. Qualifying payroll expenditures paid to above-the-line production
10 crew that are not residents, not to exceed one million dollars
11 (\$1,000,000) in payroll expenditures per employee; and

12 2. Thirty-five percent (35%) of the approved company's:

13 a. Qualifying payroll expenditures paid to resident below-the-line
14 production crew; and

15 b. Qualifying payroll expenditures paid to resident above-the-line
16 production crew not to exceed one million dollars (\$1,000,000) in
17 payroll expenditures per employee.

18 **(e) For a continuous film production filmed or produced in whole or in part in**
19 **any Kentucky county, the amount of the incentive shall be equal to:**

20 **1. Thirty-five percent (35%) of the approved company's:**

21 **a. Qualifying expenditures;**

22 **b. Qualifying payroll expenditures paid to below-the-line**
23 **production crew that are not residents; and**

24 **c. Qualifying payroll expenditures paid to above-the-line**
25 **production crew that are not residents, not to exceed one million**
26 **dollars (\$1,000,000) in payroll expenditures per employee; and**

27 **2. Forty percent (40%) of the approved company's:**

- 1 a. Qualifying payroll expenditures paid to resident below-the-line
 2 production crew; and
 3 b. Qualifying payroll expenditures paid to resident above-the-line
 4 production crew, not to exceed one million dollars (\$1,000,000)
 5 in payroll expenditures per employee.

6 ➔Section 3. KRS 141.383 is amended to read as follows:

7 (1) As used in this section:

- 8 (a) "Above-the-line production crew" has the same meaning as in KRS 154.61-
 9 010;
 10 (b) "Approved company" has the same meaning as in KRS 154.61-010;
 11 (c) "Authority" has the same meaning as in KRS 154.61-010;
 12 (d) "Below-the-line production crew" has the same meaning as in KRS 154.61-
 13 010;
 14 (e) "Continuous film production" has the same meaning as in Section 1 of this
 15 Act;
 16 (f) "Qualifying expenditure" has the same meaning as in KRS 154.61-010;
 17 (g)~~(f)~~ "Qualifying payroll expenditure" has the same meaning as in KRS
 18 154.61-010;
 19 (h)~~(g)~~ "Secretary" has the same meaning as in KRS 154.61-010; and
 20 (i)~~(h)~~ "Tax incentive agreement" has the same meaning as KRS 154.61-010.

21 (2) (a) There is hereby created a tax credit against the tax imposed under KRS
 22 141.020 or 141.040 and 141.0401, with the ordering of credits as provided in
 23 KRS 141.0205.

24 (b) The incentive available under paragraph (a) of this section is:

- 25 1. A refundable credit for applications approved prior to April 27, 2018;
 26 2. A nonrefundable and nontransferable credit for applications approved on
 27 or after April 27, 2018, but before January 1, 2022; and

- 1 3. A refundable credit for applications approved on or after January 1,
2 2022, if the provisions of paragraph (c) of this subsection are met.
- 3 (c) 1. The total tax incentive approved under KRS 154.61-020 shall be limited
4 to:
- 5 a. One hundred million dollars (\$100,000,000) for calendar year
6 2018 and each calendar year through the calendar year 2021;~~and~~
- 7 b. Seventy-five million dollars (\$75,000,000) for the calendar year
8 2022 and each calendar year through the calendar year
9 2023~~[thereafter]~~; and
- 10 c. For calendar year 2024 and each calendar year thereafter:
- 11 i. Twenty-five million dollars (\$25,000,000) for approved
12 companies with continuous film production projects; and
- 13 ii. Fifty million dollars (\$50,000,000) for all other approved
14 companies.
- 15 2. Beginning January 1, 2022, to qualify for the refundable credit, all
16 applicants shall:
- 17 a. Begin production within six (6) months of filing an application
18 with the authority; and
- 19 b. Complete production within two (2) years of their production start
20 date.
- 21 (3) Beginning January 1, 2022, an approved company may receive a refundable tax
22 credit if:
- 23 (a) The department has received notification from the authority that the approved
24 company has satisfied all requirements of KRS 154.61-020 and 154.61-030;
25 and
- 26 (b) The approved company has provided a detailed cost report and sufficient
27 documentation to the authority, which has been forwarded by the authority to

1 the department, that:

2 1. The purchases of qualifying expenditures were made after the execution
3 of the tax incentive agreement; and

4 2. The approved company has withheld income tax as required by KRS
5 141.310 on all qualified payroll expenditures.

6 (4) Interest shall not be allowed or paid on any refundable credits provided under this
7 section.

8 (5) The department may promulgate administrative regulations under KRS Chapter
9 13A to administer this section.

10 (6) **The department shall recapture any portion, or the full amount, of the credit or**
11 **credits awarded to an approved company with an enhanced film production upon**
12 **notification from the authority that a recapture is required pursuant to Section 4**
13 **of this Act.**

14 **(7)** On or before September 1, 2010, and on or before each September 1 thereafter, for
15 the immediately preceding fiscal year, the department shall report to the authority
16 and the Interim Joint Committee on Appropriations and Revenue the names of the
17 approved companies and the amounts of refundable income tax credit claimed.

18 ~~**(8)**~~ ~~**(7)**~~ No later than September 1, 2021, and by September 1 every four (4) years
19 thereafter, the department and the Cabinet for Economic Development shall
20 cooperatively provide historical data related to the tax credit allowed in this section
21 and KRS 154.61-020 and 154.61-030, including data items beginning with tax
22 credits claimed for taxable years beginning on or after January 1, 2018:

23 (a) The name of the taxpayer claiming the tax credit;

24 (b) The date that the application was approved and the date the filming or
25 production was completed;

26 (c) The taxable year in which the taxpayer claimed the tax credit;

27 (d) The total amount of the tax credit, including any amount denied, any amount

- 1 applied against a tax liability, any amount refunded, and any amount
2 remaining that may be claimed on a return filed in the future;
- 3 (e) Whether the taxpayer is a Kentucky-based company as defined in KRS
4 154.61-010;
- 5 (f) Whether the taxpayer films or produces a:
- 6 1. Feature-length film, television program, or industrial film;
7 2. National touring production of a Broadway show; or
8 3. Documentary;
- 9 (g) Whether the filming or production was performed:
- 10 1. Entirely in an enhanced county; or
11 2. In whole or in part in any Kentucky county other than in an enhanced
12 incentive county;
- 13 (h) The amount of qualifying expenditures incurred by the taxpayer;
- 14 (i) The amount of qualifying payroll expenditures paid to:
- 15 1. Resident below-the-line crew; and
16 2. Nonresident below-the-line production crew;
17 including the number of crew members in each category;
- 18 (j) The amount of qualifying payroll expenditures paid to:
- 19 1. Resident above-the-line crew; and
20 2. Nonresident above-the-line crew;
21 including the number of crew members in each category;~~and~~
- 22 (k) A brief description of the type of motion picture or entertainment production
23 project.
- 24 ~~(9)(8)~~ The information required to be reported under this section shall not be
25 considered confidential taxpayer information and shall not be subject to KRS
26 Chapter 131 or any other provisions of the Kentucky Revised Statutes prohibiting
27 disclosure or reporting of information.

1 ➔Section 4. A NEW SECTION OF SUBCHAPTER 61 OF KRS CHAPTER 154
2 IS CREATED TO READ AS FOLLOWS:

3 *If an approved company already awarded enhanced film production incentives is*
4 *unable to meet the biennial budget requirements as established in Section 1 of this Act,*
5 *the authority shall notify the Department of Revenue, which shall recapture any*
6 *portion, or the full amount, of the credits awarded to the approved company. Any*
7 *amounts collected from the recapture shall be deposited in the general fund.*