

Stricken language would be deleted from and underlined language would be added to present law.

State of Arkansas  
89th General Assembly  
Regular Session, 2013

*As Engrossed: H3/11/13*  
**A Bill**

HOUSE BILL 1633

By: Representative J. Edwards

By: Senator D. Sanders

### **For An Act To Be Entitled**

AN ACT TO AMEND THE DIGITAL PRODUCT AND MOTION PICTURE INDUSTRY DEVELOPMENT ACT OF 2009; TO INCREASE THE REBATE AMOUNTS AVAILABLE UNDER THE DIGITAL PRODUCT AND MOTION PICTURE INDUSTRY DEVELOPMENT ACT OF 2009; TO ADDRESS THE EXPENDITURES THAT ARE ELIGIBLE FOR A REBATE; TO INCREASE THE AMOUNT NECESSARY TO BE ELIGIBLE FOR A REBATE; 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(1), concerning the definitions to be used under the Digital Product and Motion Picture Industry Development Act of 2009, is amended to read as follows:

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

- (i) Casting assistants;
- (ii) Costume design;
- (iii) Gaffers;
- (iv) Grips;
- (v) Location managers;
- (vi) Production assistants;



(vii) Set construction staff; and

(viii) Set design staff.

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

SECTION 2. Arkansas Code § 15-4-2003(3), concerning the definitions to be used under the Digital Product and Motion Picture Industry Development Act of 2009, is amended to read as follows:

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

SECTION 3. Arkansas Code § 15-4-2003(7), concerning the definitions to be used under the Digital Product and Motion Picture Industry Development Act of 2009, is amended to read as follows:

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

SECTION 4. Arkansas Code § 15-4-2003(10), concerning the definitions to be used under the Digital Product and Motion Picture Industry Development Act of 2009, is amended to read as follows:

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

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

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

(i) The intellectual property was produced primarily

in Arkansas or the creator of the intellectual property is a resident of Arkansas;

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

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

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

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

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

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

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

SECTION 5. Arkansas Code § 15-4-2003(12), concerning the definitions to be used under the Digital Product and Motion Picture Industry Development Act of 2009, is amended to read as follows:

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

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

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

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

SECTION 6. Arkansas Code § 15-4-2003, concerning the definitions to be used under the Digital Product and Motion Picture Industry Development Act of 2009, is amended to add an additional subdivision to read as follows:

(13) "Application for rebate" means the document required by the Film Office to begin the process for obtaining a rebate under this subchapter.

SECTION 7. Arkansas Code §§ 15-4-2005 – 15-4-2008 are amended to read as follows:

15-4-2005. Production rebate.

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

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

(b) To qualify for this rebate, a production company shall spend at least ~~fifty thousand dollars (\$50,000)~~ two hundred thousand dollars (\$200,000) within a six-month period in connection with the production of one (1) project.

(c) A production rebate 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.

15-4-2006. Postproduction rebate.

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

postproduction of a state-certified film project.

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

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

(c) A postproduction rebate 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.

15-4-2007. Application for rebate.

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

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

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

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

(B) The financial incentive agreement shall include the:

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

certifying eligibility requirements; and

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

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

(d) No later than ~~ninety (90)~~ 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 certificate; and

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

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

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

(3) The following are eligible expenditures:

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

(B) Fringe contributions being paid for work performed in this state, including:

(i) Health benefits;

(ii) Pension contributions;

(iii) Welfare contributions;

(iv) Stipends; and

(v) Living allowances.

(f) Expenditure reports also shall include information as required by the ~~division~~ Revenue Division of the Department of Finance and Administration

to ensure compliance with this subchapter.

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

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

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

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

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

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

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

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

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

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

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

~~(2) The commission shall provide a copy of the certificate to~~

~~the Director of the Department of Finance and Administration.~~

(1)(1)(A) Within two (2) weeks after principal photography begins, the production company shall begin filing weekly expenditure reports.

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

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

(A) 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;

(B) Per diem expenditures by cast or crew, or both, for lodging, when accompanied by receipts, shall be eligible expenditures; and

(C) Expenditure reports shall include without limitation:

(i) Check identification number;

(ii) Date of payment;

(iii) Name of payee;

(iv) Address of payee;

(v) Amount paid; and

(vi) Other information the division deems necessary to ensure compliance with this subsection.

(m) 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.

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

(2) 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 subchapter.

(3) The production company shall provide documentation for expenditures in accordance with rules promulgated by the Film Office.

15-4-2008. Disbursement of rebate incentive.

(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 ~~to~~; and

(3) Provide certification to the Director of the Department of Finance and Administration specifying the amount to be remitted to the production company within ~~ninety (90) days~~ one hundred twenty (120) days after the final expenditure report has been submitted.

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

(1) The production company; or

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

(A) National Film Preservation Foundation;

(B) Motion Picture Retirement Fund; or

(C) Digital Product and Motion Picture Office Fund.

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

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

(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.

*/s/J. Edwards*