

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

State of Arkansas  
90th General Assembly  
Regular Session, 2015

As Engrossed: S3/18/15

# A Bill

SENATE BILL 854

By: Senators D. Sanders, J. Woods

## For An Act To Be Entitled

AN ACT TO AMEND THE LAWS PERTAINING TO INCENTIVES FOR THE DIGITAL PRODUCT AND MOTION PICTURE INDUSTRIES; TO AMEND THE DIGITAL PRODUCT AND MOTION PICTURE INDUSTRY DEVELOPMENT ACT OF 2009; TO DECLARE AN EMERGENCY; AND FOR OTHER PURPOSES.

### Subtitle

TO AMEND THE DIGITAL PRODUCT AND MOTION PICTURE INDUSTRY DEVELOPMENT ACT OF 2009; AND TO DECLARE AN EMERGENCY.

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

*SECTION 1. Arkansas Code § 15-4-2003(1), concerning the definitions used under the Digital Product and Motion Picture Industry Development Act of 2009, is amended to read as follows:*

*(1) "Application for ~~rebate~~ income tax credit" means the document required by the Film Office to begin the process for obtaining a ~~rebate~~ an income tax credit under this subchapter;*

*SECTION 2. Arkansas Code § 15-4-2003(9)(B), concerning the definitions used under the Digital Product and Motion Picture Industry Development Act of 2009, is amended to read as follows:*

*(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; or

(v) A television series that portrays unscripted, actual events for purposes of entertainment rather than information;

SECTION 3. Arkansas Code § 15-4-2003(11)(C), concerning the definitions used under the Digital Product and Motion Picture Industry Development Act of 2009, is amended to read as follows:

(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~~ fifty percent (50%) of the workforce, including without limitation extras and day players, are residents of Arkansas; and

(iii)(a) 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.

(b) The expenses or costs under this subdivision (11)(C)(iii) 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.

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

(14) "United States Armed Forces" means:

- (A) The United States Army;
- (B) The United States Marine Corps;
- (C) The United States Navy;
- (D) The United States Air Force;
- (E) The United States Coast Guard;
- (F) The National Guard of any state;
- (G) The reserve components of any of the armed forces listed in this subdivision (14); and
- (H) Any other branch of the military and naval forces or auxiliaries of any state or the United States.

SECTION 5. Arkansas Code §§ 15-4-2005 and 15-4-2006 are amended to read as follows:

15-4-2005. Production ~~rebate~~ income tax credit.

(a)(1) A production company, upon approval of the application by the Arkansas Economic Development Commission, shall be eligible for ~~a rebate~~ an income tax credit of ~~twenty percent (20%)~~ twenty-five percent (25%), 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~~ income tax credit of ten percent (10%) shall be granted for the payroll of below-the-line employees who are full-time residents of Arkansas.

(3) In addition to the income tax credits available under subdivisions (a)(1) and (2) of this section, an income tax credit of five percent (5%) shall be granted for the payroll of a below-the-line employee who is:

(A) An honorably discharged veteran of the United States Armed Forces; and

(B) Subject to the Income Tax Act of 1929, § 26-51-101 et seq.

(b) To qualify for ~~this rebate~~ an income tax credit under this section, 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 production ~~rebate~~ income tax credit under this section 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~~ income tax credit.

(a)(1) A qualifying production company, upon approval of the application by the Arkansas Economic Development Commission, shall be eligible for ~~a rebate~~ an income tax credit of ~~twenty percent (20%)~~ twenty-five percent (25%), 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~~ income tax credit of ten percent (10%) shall be granted for the payroll of below-the-line employees who are full-time residents of Arkansas.

(3) In addition to the income tax credits available under subdivisions (a)(1) and (2) of this section, an income tax credit of five percent (5%) shall be granted for the payroll of a below-the-line employee who is:

(A) An honorably discharged veteran of the United States Armed Forces; and

(B) Subject to the Income Tax Act of 1929, § 26-51-101 et seq.

(b) To qualify for ~~this rebate~~ an income tax credit under this section, 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~~ income tax credit under this section 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.

SECTION 6. Arkansas Code § 15-4-2007(a), concerning the application for an income tax credit under the Digital Product and Motion Picture Industry Development Act of 2009, is amended to read as follows:

(a)(1) To qualify for the ~~rebates~~ income tax credits 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~~ income tax credit provided by this subchapter before the commencement of production in Arkansas.

SECTION 7. Arkansas Code § 15-4-2007(c) and (d), concerning the application for an income tax credit under the Digital Product and Motion Picture Industry Development Act of 2009, are amended to read as follows:

(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 rebate~~ an income tax credit under this subchapter.

(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~~ income tax credit certificate; and

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

SECTION 8. Arkansas Code § 15-4-2007(g)-(i), concerning the application for an income 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~~ an income tax credit if they are reported to the division and are subject to state income taxes.

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

(2) The employment ~~rebate~~ income tax credit authorizes an additional income tax 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) In addition to the employment income tax credits described

in subdivisions (h)(1) and (2) of this section, an employment income tax credit authorizes an income tax credit of five percent (5%) for the payroll of a below-the-line employee who is:

(A) An honorably discharged veteran of the United States Armed Forces; and

(B) Subject to the Income Tax Act of 1929, § 26-51-101 et seq.

(i) The employment ~~rebate~~ income tax credit shall include the first five hundred thousand dollars (\$500,000) of a highly compensated individual's salary.

SECTION 9. Arkansas Code § 15-4-2007(1), concerning the application for an income tax credit under the Digital Product and Motion Picture Industry Development Act of 2009, is amended to read as follows:

(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~~ certification of the ~~rebate~~ income tax credit 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 those 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.

*SECTION 10. Arkansas Code § 15-4-2007(n), concerning the application for an income tax credit 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~~ income tax credit allowed under this subchapter.*

*(2) The application for ~~rebate~~ income tax credit 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.*

*SECTION 11. Arkansas Code §§ 15-4-2008 and 15-4-2009 are amended to read as follows:*

*15-4-2008. ~~Disbursement of rebate~~ Certificate of income tax credit incentive.*

*(a) The Revenue Division of the Department of Finance and Administration shall upon receipt of an application for ~~a rebate~~ an income tax credit under this subchapter, 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; and*

*(3) Provide certification to the Director of the Department of Finance and Administration specifying the amount ~~to be remitted to~~ of the income tax credit to which the production company is entitled within 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 rebate~~ issue a certificate stating the amount of the income tax credit to*

*~~(1) The~~ 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 income tax credits under this subchapter, 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 income tax credit 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.~~

~~(d) The total cumulative amount of income tax credits under this subchapter available to all production companies under this subchapter in any calendar year shall not exceed ten million dollars (\$10,000,000).~~

15-4-2009. Penalties.

(a) A production company that intends to apply for ~~the~~ rebate an income tax credit under this subchapter 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~~ income tax credit 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 12. Arkansas Code § 15-4-2011 is amended to read as follows:

15-4-2011. Sunset.

The opportunity for ~~a rebate provided by~~ an income tax credit under this subchapter shall expire on June 30, 2019.

SECTION 13. Arkansas Code Title 15, Chapter 4, Subchapter 20, is amended to add an additional section to read as follows:

15-4-2012. Use of an income tax credit.

(a) A production company that is entitled to an income tax credit under this subchapter may claim the income tax credit against any state income tax liability that may be imposed on the production company for the tax year in which the income tax credit was earned.

(b)(1) A production company earning income tax credits under this subchapter may sell its income tax credits only one (1) time, in whole or in part, the balance of which shall be used by the production company within the time frame allowed under this subchapter.

(2) However, an income tax credit sold under this subsection shall be sold for at least eighty-five percent (85%) of the initial value of the income tax credit.

(3) A transferee from a production company is entitled to the income tax credit described in this section only to the extent the income tax credit is still available to and has not previously been used by the production company.

(4) A transferee of income tax credits who seeks to qualify for the income tax credit provided in this subchapter shall obtain and attach to the income tax return for the year the income tax credit is claimed a certified statement from the production company stating:

(A) The name and address of the production company and all transferees;

(B) The tax identification number of all persons entitled to any portion of the original income tax credit;

(C) The amount paid by the transferee for the income tax credit; and

(D) The original amount of the income tax credit earned by the production company.

(c)(1) If a production company is a pass-through entity for tax purposes, such as a limited liability company or a partnership, then the owner of the pass-through entity is entitled to any income tax credit provided under this subchapter.

(2) If a pass-through entity entitled to an income tax credit under subdivision (c)(1) of this section is owned by two (2) or more persons, then the income tax credit may be allocated among the pass-through entity owners in the method selected by the owners as described in the governing documents of the pass-through entity or by other written agreement among the

owners.

SECTION 14. EMERGENCY CLAUSE. It is found and determined by the General Assembly of the State of Arkansas that Arkansas is uniquely qualified to attract digital product and motion picture projects due to the state's natural beauty, availability of labor and materials, moderate climate, and hospitality; that Arkansas has a unique and immediate opportunity to enhance investment and employment in the digital product and motion picture industry; that as competition among states and nations to recruit digital products and motion picture projects intensifies, it is imperative that Arkansas have investment incentives to remain competitive in attracting such investment and employment to grow the state's economy; that because similar incentives in surrounding states have been a catalyst for substantial economic growth within those states, it is necessary to establish an effective mechanism to sustain growth of the digital product and motion picture industry in Arkansas by creating an income tax credit program that attracts specific types of projects, production companies, and infrastructure; that a successfully cultivated film industry will create a sector of high technology in Arkansas, provide a much-needed infusion of capital into areas of the state that may be economically depressed, and offer skilled labor employment opportunities to Arkansans; and that this act is immediately necessary because without these income tax credit incentives, significant investment and employment opportunities will bypass Arkansas and accrue to other states. Therefore, an emergency is declared to exist, and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on:

(1) The date of its approval by the Governor;

(2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or

(3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto.

/s/D. Sanders