

1 State of Arkansas
2 93rd General Assembly
3 Regular Session, 2021
4

As Engrossed: H3/30/21 H4/1/21

A Bill

HOUSE BILL 1743

5 By: Representative C. Fite
6 By: Senator J. Dismang
7

For An Act To Be Entitled

9 AN ACT TO AMEND THE DIGITAL PRODUCT AND MOTION
10 PICTURE INDUSTRY DEVELOPMENT ACT OF 2009; TO
11 AUTHORIZE TAX CREDITS OR REBATES TO BE ISSUED UNDER
12 THE DIGITAL PRODUCT AND MOTION PICTURE INDUSTRY
13 DEVELOPMENT ACT OF 2009; TO EXTEND THE SUNSET DATE
14 FOR THE DIGITAL PRODUCT AND MOTION PICTURE INDUSTRY
15 DEVELOPMENT ACT OF 2009; AND FOR OTHER PURPOSES.
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Subtitle

18 TO AMEND THE DIGITAL PRODUCT AND MOTION
19 PICTURE INDUSTRY DEVELOPMENT ACT OF 2009.
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23 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
24

25 SECTION 1. Arkansas Code § 15-4-2003 is amended to read as follows:
26 15-4-2003. Definitions.

27 As used in this subchapter:

28 (1) "Application for a rebate or a tax credit" means the document
29 required by the Film Office to begin the process for obtaining a ~~rebate tax~~
30 incentive under this subchapter;

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

- 33 (i) Casting assistants;
- 34 (ii) Costume design;
- 35 (iii) Gaffers;
- 36 (iv) Grips;



- 1 (v) Location managers;
- 2 (vi) Production assistants;
- 3 (vii) Set construction staff; and
- 4 (viii) Set design staff.

5 (B) "Below-the-line employees" does not include directors
6 and producers;

7 (3)(A) "Film and digital product" means video images or other
8 visual media entertainment content.

9 (B) "Film and digital product" includes without
10 limitation:

- 11 (i) Motion pictures;
- 12 (ii) Documentaries;
- 13 (iii) Long-form programs, specials, miniseries,
14 series, music videos, and television programming;
- 15 (iv) Interactive television;
- 16 (v) Interactive games;
- 17 (vi) Video games;
- 18 (vii) Commercials;
- 19 (viii) Digital media created primarily for
20 distribution or exhibition to the general public; and
- 21 (ix) A trailer, pilot, video teaser, or demo created
22 primarily to stimulate the sale, marketing, promotion, or exploitation of
23 future investment in either a product or a qualified production through any
24 means and media in a digital media format, film, or videotape if the program
25 meets all the underlying criteria of a qualified production;

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

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

33 (6)(A) "Highly compensated individual" means an individual who
34 directly or indirectly receives compensation in excess of five hundred
35 thousand dollars (\$500,000) for personal services with respect to a single
36 production.

1 (B) An individual receives compensation indirectly when a
2 production company pays a personal service company or an employee-leasing
3 company that pays the individual;

4 (7)(A) "Postproduction" means a final stage in the production of
5 digital content occurring after the action has been filmed or videotaped and
6 involves editing and the addition of soundtracks.

7 (B) "Postproduction" includes without limitation editing,
8 music, soundtracks, special effects, and credits;

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

12 (9)(A) "Production" means the process of producing a type of
13 entertainment content and includes film and digital product.

14 (B) "Production" shall not include:

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

17 (ii) A production containing any material or
18 performance that is obscene;

19 (iii) A production deemed an infomercial; or

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

22 (10) "Production company" means a corporation, partnership,
23 limited liability company, or other business entity engaged in the business
24 of producing qualified productions and qualified by the Secretary of State to
25 engage in business in the state;

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

29 (B) "Qualified production costs" includes costs associated
30 with original music compositions produced by an Arkansas resident to be used
31 as incidental music, the score, or the soundtrack in film or video games.

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

36 (i) The intellectual property was produced primarily

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

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

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

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

15 (i) The optioning or purchase of intellectual
16 property that does not comply with the provisions of subdivision (9)(A) of
17 this section;

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

21 (iii) Deferred, leveraged, or profit participation
22 costs relating to any and all personnel associated with any and all aspects
23 of the production, including without limitation producer fees, director fees,
24 talent fees, and writer fees; and

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

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

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

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

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

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

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

8 (16) "Veteran" means an individual who:

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

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

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

16 (A) With profits of less than one million dollars
17 (\$1,000,000);

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

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

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

24 15-4-2005. Production ~~rebate~~ tax incentive.

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

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

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

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

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

4 (A) Full-time residents of Arkansas; or

5 (B) Veterans;

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

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

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

13
 14 SECTION 3. Arkansas Code § 15-4-2006 is amended to read as follows:

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

16 (a)(1) The Director of the Arkansas Economic Development Commission
 17 shall offer a tax credit or a rebate of twenty percent (20%) to a qualifying
 18 production company that has submitted an approved application under § 15-4-
 19 2007 for a tax incentive a rebate of up to twenty percent (20%) on all
 20 qualified production costs in connection with the postproduction of a an
 21 approved state-certified film project.

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

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

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

27 (ii) Veterans; or

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

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

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

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

1 qualified expenditure under this section is thirty percent (30%) of the
2 qualified expenditure.

3
4 SECTION 4. Arkansas Code § 15-4-2007(a)-(d), concerning an application
5 for a rebate under the Digital Product and Motion Picture Industry
6 Development Act of 2009, are amended to read as follows:

7 (a)(1) To apply for the ~~rebates~~ tax incentives provided under this
8 subchapter, a production company shall submit an application and provide an
9 estimate of total expenditures to be made in Arkansas in connection with the
10 production.

11 (2) The application and estimate of expenditures required under
12 subdivision (a)(1) of this section shall be filed with the Arkansas Economic
13 Development Commission and approved by the Director of the Arkansas Economic
14 Development Commission as eligible for the ~~rebate~~ tax incentive provided by
15 this subchapter before the commencement of production in Arkansas.

16 (b)(1) If an application for a ~~rebate~~ tax incentive is approved under
17 subsection (a) of this section, the production company and the director shall
18 sign a financial incentive agreement.

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

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

22 (i) Effective date of the financial incentive
23 agreement;

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

27 (iii) Incentive for which the production company may
28 qualify;

29 (iv) Investment threshold requirements necessary to
30 qualify for eligibility;

31 (v) Production company's responsibilities for
32 *certifying eligibility requirements; and*

33 (vi) *Production company's responsibilities for*
34 *failure to meet or maintain eligibility requirements; and*

35 (vii) Whether the tax incentive in the agreement is
36 for a rebate under § 15-4-2008 or a tax credit under § 15-4-2012.

1 (c) At the time the production company registers and provides the
2 estimate of expenditures to the commission, the production company also shall
3 designate a member or representative to work with the commission and the Film
4 Office on the reporting of expenditures and other information necessary to
5 qualify for the ~~rebates~~ tax incentives.

6 (d) No later than one hundred eighty (180) days after the last
7 production expenses or costs are incurred in the production of a qualified
8 production, the production company shall:

9 (1) Apply to the commission for a production ~~rebate tax-~~
10 incentive certificate; and

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

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

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

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

24 (2) The employment ~~rebate tax incentive~~ under subsection (g) of
25 this section authorizes an additional credit of ten percent (10%) for the
26 aggregate payroll of salaries and wages to Arkansas residents who are below-
27 the-line employees of the state-certified production.

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

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

35
36 SECTION 6. Arkansas Code § 15-4-2007(1)(1)(B), concerning weekly

1 reports a production company is required to file under the Digital Product
2 and Motion Picture Industry Development Act of 2009, is amended to read as
3 follows:

4 (B) Failure to file weekly expenditure reports may result
5 in a delay in the disbursement of the ~~rebates~~ tax incentives provided in §§
6 15-4-2005 and 15-4-2006.

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

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

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

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

24
25 SECTION 8. Arkansas Code § 15-4-2008 is amended to read as follows:
26 15-4-2008. Disbursement of rebate.

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

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

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

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

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

4 (b) The secretary, within ten (10) working days after the receipt of
5 the certification from the division, shall remit the *rebate* to:

6 (1) The production company; or

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

9 (A) National Film Preservation Foundation;

10 (B) Motion Picture Retirement Fund; or

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

12 (c)(1) The amount of the *rebate* is limited to the amount specified in
13 the approved financial incentive agreement.

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

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

19 SECTION 9. Arkansas Code § 15-4-2009 is amended to read as follows:
20 15-4-2009. Penalties.

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

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

29

30 SECTION 10. Arkansas Code § 15-4-2011 is amended to read as follows:
31 15-4-2011. Sunset.

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

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

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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,

1 sell, or assign some or all of the amount of the tax credit certified under §
2 15-4-2012.

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

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

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

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

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

17 (3) Original date the tax credit was approved;

18 (4) Original amount of the tax credit;

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

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

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

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

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

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

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

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

6 (c) The fund shall be used to offset the costs of supplemental digital
7 product and motion picture incentive act tax credits allowed under § 15-4-
8 2014, as follows:

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

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

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

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22 /s/C. Fite

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25 **APPROVED: 4/20/21**