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Digital Product and Motion Picture Industry Development Act (Acts 816 of 2009, as amended)

Section 101. ~~I.~~ Introduction.

(a) To encourage growth in Arkansas's digital product and motion picture industry, the Digital Product and Motion Picture Industry Development Act 816 of 2009 was enacted by the 87th General Assembly and codified at Arkansas Code ~~ACA~~ § 15-4-2001 et seq.

(b) The purpose of the Act is to cultivate the industry by offering financial incentives to foster the development of the digital product and traditional film industry in Arkansas.

Section 102. ~~II.~~ Definitions.

(1) "Application for a rebate or a tax credit" means the document required by the Film Office, a division of the Arkansas Economic Development Commission, to begin the process for obtaining a tax incentive under the Digital Product and Motion Picture Industry Development Act;

(2)(A) "Below-the-line employees" means~~: (A)~~ employees involved with a motion picture production, including but not limited to:

(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 directors and producers;

~~(3) "Commission" means the Arkansas Economic Development Commission~~

~~(4) "DF&A" means the Department of Finance Administration;~~

(~~5~~3) "Film" means a single media or multi-media production that is fixed on:

(A) ~~film~~ Film~~,~~;
(B) ~~digital~~ Digital medium~~,~~;
(C) ~~videotape~~ Videotape~~,~~;
(D) ~~computer~~ Computer disc~~,~~;
(E) ~~laser~~ Laser disc~~,~~; or
(F) ~~similar~~ Similar delivery medium;

(~~6~~4) "Film and digital products" means video images or other visual media entertainment content in digital format, film, or videotape, provided the program meets all the underlying criteria of a qualified production, including, but not limited to, the following:

(A) Motion pictures~~,~~;
(B) Documentaries~~,~~;
(C) Long-form programs~~,~~;
(D) Specials~~,~~;
(E) Mini-series~~,~~;
(F) Series~~,~~;
(G) Music videos~~,~~;
(H) Television programming~~,~~;

(I) Interactive television~~,~~;

(J) Interactive games~~,~~;

(K) Video games~~,~~;

(L) Commercials~~,~~;

(M) Digital media for distribution or exhibition to the general public~~,~~; or

(N) Trailer, pilot, video teaser, or demo created primarily to stimulate the sale, marketing, promotion, or exploitation of future investment;

(~~7~~5) "Film Office" means the division of the Arkansas Economic Development 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;

(~~8~~6) "Film production company" means a corporation, individual, limited liability company, or partnership that produces one (1) or more films or any part of a film;

(~~9~~7) "Financial institution" means any bank or savings and loan in the state ~~which~~ that carries Federal Deposit Insurance Corporation ~~Insurance~~ insurance;

(~~10~~8)(A) Highly compensated individual" means~~: (A) An~~ an individual who directly or indirectly receives compensation in excess of five hundred thousand dollars ($500,000) for personal services with respect to a single production;

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

(~~11~~9) "Interactive television" means a television production in which the viewer's ~~action(s)~~ action or actions may:

(A) Affect the program being watched~~,~~; or

(B) Affect the outcome of the production;

(10) "Multi project production" means two or more qualified digital production projects by the same director or producer that have:

(A) Signed two (2) or more financial incentive agreements for production projects in Arkansas within a twelve (12) month period; and

(B) Have commenced principal photography or post-production within a twelve (12) month period.

(~~12~~11)(A) "Post-production" means a final stage in the production of film or digital content occurring after the action has been filmed or videotaped, including but not limited to:

~~(A)~~(i) Dialogue replacement~~,~~;

~~(B)~~(ii) Sound editing~~,~~;

~~(C)~~(iii) Addition or deletion of special effects~~,~~;

~~(D)~~(iv) Editing music~~,~~;

~~(E)~~(v) Beginning and end credits~~,~~;

~~(F)~~(vi) Negative cutting~~,~~;

~~(G)~~(vii) Soundtrack production~~,~~;

~~(H)~~(viii) Dubbing~~,~~;

~~(I)~~(ix) Subtitling~~,~~; or

~~(J)~~(x) Addition or deletion of sound or visual effects~~,~~.

(B) "Post-production" does not include expenditures for:

(i) ~~advertising~~ Advertising~~,~~;

(ii) ~~marketing~~ Marketing~~,~~; or

(iii) ~~distribution~~ Distribution.

(~~13~~12) “Post-production costs” means all expenditures incurred in the state associated with the post-production phase of a state-certified production within the state;

(~~14~~13)(A) “Production” means~~: (A) The~~ the process of producing a type of entertainment content and includes film and digital content product.

(B) “Production” shall not include:

(i) News reports;

(ii) Weather reports;

(iii) Current events;

(iv) Sporting events;

(v) Fundraising events;

(vi) Gala events;

(vii) Marketing a product or service;

(viii) Corporate training;

(ix) Corporate advertising;

(~~xi~~x) Non-scripted reality shows;

(~~xii~~xi) ~~production~~ Productions containing any material or performance that is obscene; or

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

(~~15~~14) “Production company” means a corporation, partnership, limited liability company, or other business entity:

(A) ~~engaged~~ Engaged in the business of producing qualified productions; and

(B) ~~is registered~~ Registered with the Arkansas Secretary of State to engage in business in Arkansas;

(~~16~~15)(A) “Qualified production costs” means costs associated with the development, preproduction, production, or post-production of a qualified production within the state, including but not limited to:

~~(A)~~(i) Per diem expenditures by the cast or crew for meals and lodging when accompanied by receipts, signed by the production company and the cast or crew member, evidencing payment of the per diem~~,~~;

~~(B)~~(ii) Costs associated with original music compositions produced by an Arkansas resident to be used as incident music, the score, or the soundtrack in film or video games~~,~~;

~~(C)~~(iii) Arkansas residents for labor, wages, fees, talent, or management~~,~~;

~~(D)~~(iv) Arkansas businesses for personal services~~,~~;

~~(E)~~(v) The story and scenario used in the production~~,~~;

~~(F)~~(vi) Set construction~~,~~;

~~(G)~~(vii) Set operations~~,~~;

~~(H)~~(viii) Wardrobe and accessory services~~,~~;

~~(I)~~(ix) Photography~~,~~;

~~(J)~~(x) Sound~~,~~;

~~(K)~~(xi) Lighting~~,~~;

~~(L)~~(xii) Editing-related services~~,~~;

~~(M)~~(xiii) Rentals of equipment and facilities~~,~~;

~~(N)~~(xiv) Leasing of motor vehicles~~,~~;

~~(O)~~(xv) Chartering of aircraft through ~~an~~ Arkansas-based businesses for in-state transportation attributed to the production~~,~~;

~~(P)~~(xvi) Commercial airfare purchased for travel to and from Arkansas attributed to the production~~,~~;

~~(Q)~~(xvii) Insurance and bonding costs~~,~~;

~~(R)~~(xviii) Costs 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)~~*(a)* The intellectual property was produced primarily in Arkansas, or the creator of the intellectual property is a resident of Arkansas;

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

~~(iii)~~*(c)(1)* 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.

(2) The expenses or costs include all expenditures associated with the optioning or purchase of intellectual property, including option money, agent fees, and attorney fees relating to the transaction, but do not include deferrals, deferments, royalties, profit participation, or recourse or non-recourse loans ~~which~~ that the eligible production company may negotiate to obtain the rights to the intellectual property;

~~(S)~~(xix) Other costs of the production in accordance with generally accepted entertainment industry practices~~,~~;

~~(T)~~(xx) Fringe contributions being paid for work performed in Arkansas, including:

~~(i)~~*(a)* Health benefits~~,~~;

~~(ii)~~*(b)* Pension contributions~~,~~;

~~(iii)~~*(c)* Welfare contributions~~,~~;

~~(iv)~~*(d)* Stipends~~,~~; and

~~(v)~~*(e)* Living allowances~~,~~; and

~~(U)~~(xxi)*(a)* Food catering services.

(b) 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~~,~~.

~~(V)~~(B) “Qualified production costs” does not include:

(i) The optioning or purchase of intellectual property that is not used in the production project;

(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 without limitation:

(a) Producer ~~producer~~ fees~~,~~;

(b) Director ~~director~~ fees~~,~~;

(c) Talent ~~talent~~ fees~~,~~; and

(d) Writer ~~writer~~ fees;

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

(v) Payments for penalties or fines, payments to nonprofit organizations, and payments to federal and state entities that do not pay state taxes;

(~~17~~16) "Resident" means natural persons and includes, for the purpose of determining eligibility for the rebate incentive provided by this program, a person:

(A) Domiciled ~~domiciled~~ in Arkansas; ~~and~~

(B) Who ~~who~~ maintains a permanent resident within the state; and

(C) Who spends at least six (6) months of the taxable year within the state;

(~~18~~17) "Season" means production of at least six (6) episodes of a television series;

(~~19~~18) "State-certified production" means a qualified production produced by an eligible production company that is:

(A) In compliance with the established rules of the Digital Content and Motion Picture Industry Development Act;

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

(C) Approved by the ~~executive director~~ Director of the Arkansas Economic Development Commission as qualifying for a discretionary production tax incentive under this ~~section~~ part;

(~~20~~19) "Tax incentive ~~Incentive~~" means a:

(A) Rebate ~~rebate~~ under ~~A.C.A.~~ Arkansas Code § 15-4-2008; or

(B) ~~a tax~~ Tax credit under Arkansas Code § 15-4-2012;

(~~21~~20) "Television mini-series" means a limited run program of more than three (3) hours of programming or half-season block associated with serial or series programming;

(~~22~~21) "Television programming" means a long-form or short-form narrative production of a television series, television mini-series, or television special that is intended for commercial broadcast;

(~~23~~22) "Television series" means at least six (6) hours of television programming exhibited by a television station or network;

(~~24~~23) "Television specials" means major dramatized presentations broadcast during times normally occupied by episodes of one (1) or more weekly television series;

(~~25~~24) "Veteran" means an individual who:

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

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

(~~26~~25) "Veteran-owned small business" means a business:

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

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

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

Section 103. ~~III.~~ Registration ~~Requirements~~ requirements.

(a)(1) A production company~~, which~~ that plans to operate within Arkansas shall register with the Film Office of the Arkansas Economic Development Commission on the prescribed forms before beginning operations in Arkansas.

(2) The production company shall designate a representative of the production company to work with the Commission on the reporting of expenditures and other information necessary to qualify for the tax incentive.

(b) A production company must also complete all steps required by the Department of Finance and Administration ~~DF&A~~ to register for a ~~Sales & Use~~ sales and use tax number.
(c) Upon registration and signing a financial incentive agreement, the production company shall include the Arkansas Film Office logo, or an alternative approved by the Film Office, in the credits.

Section 104. ~~IV.~~ Application for ~~Project Approval Requirements~~ project approval requirements.

~~(A)~~ (a)(1) A production company seeking a tax incentive under this program shall submit an application to receive the benefit as a rebate or an application to receive the benefit as a tax credit to the Arkansas Economic Development Commission.

(2) A production company that is seeking the tax credit incentive benefit must include an income tax account number on the application provided to the Commission.

~~(B)~~ (b) The application:

(1) Must include an estimate of the production expenditures; and

(2) Shall be filed with the Commission and approved by the ~~executive director~~ Director of the Commission prior to incurring any production costs or post-production costs in Arkansas.

~~(C)~~ (c) The application shall include the name, phone number, and address of a representative to work with the Commission and the Film Office on the reporting of expenditures and other information necessary to qualify for the tax incentive.

~~(D)~~ (d) Upon approval of the application by the ~~executive director~~ Director, the production company and the ~~executive director~~ Director shall sign a financial incentive agreement.

~~(E)~~ (e) The financial incentive agreement shall define the provisions of the program, which shall include the:

~~(i)~~ (1) Effective date of the agreement;

~~(ii)~~ (2) Terms of the agreement;

~~(iii)~~ (3) Incentive for which the production company may qualify;

~~(iv)~~ (4) Investment threshold requirements necessary to qualify for eligibility;

~~(v)~~ (5) Production company's responsibilities for certifying eligibility requirements;

~~(vi)~~ (6) Production company's responsibilities for failure to meet or maintain eligibility requirements; and

~~(vii)~~ (7) Whether the tax incentive in the agreement will be issued as a rebate or a tax credit.

Section 105. Production ~~Tax Incentive~~ tax incentive.

(a) To qualify for a tax incentive for post-production expenditures, 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.

(b) Upon approval of the application by the ~~executive director~~ Director of the Arkansas Economic Development Commission, a production company may receive a discretionary tax incentive on all qualified production costs in connection with the production of a state-certified film project.

(c) The amount of the tax incentive shall be twenty-five percent (~~20%~~ 25%) on all qualified production costs associated with the post-production of a state-certified film project.

(d) If the ~~executive director~~ Director approves a project for a rebate or tax credit of qualified production costs, the production company shall also receive an additional rebate or tax credit of ten percent (10%) for:

(1)(A) The payroll of below-the-line employees involved in the production who are:

(i) Full-time residents of Arkansas; or

(ii) Veterans~~;~~.

~~(iii)~~(B) If a production company hires a payroll service company to handle the payroll o fa production company, the payroll payments and otherwise allowable shall be allowed an eligible expenditure if all eligible income payments to employees and independent contractors done through the payroll service are subject to Arkansas state income taxes.

~~(iv)~~(C) If approved by the ~~executive director~~ Director, the employment incentive shall include the first five hundred thousand dollars ($500,000) of a highly compensated individual's salary~~.~~; and

~~(B)~~(2) Expenditures paid to a veteran-owned small business for qualified production costs.

(e) To receive the enhanced ten percent (10%) incentive, a production company must provide to the Film Office the following completed forms for each individual or business that ~~qualify~~ qualifies:

(1) Declaration of Arkansas Residency form provided by the Commission; or

(2) Declaration of Veteran Status or Veteran-Owned Business Status form provided by the Commission.

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

(g) If the Director of the Commission approves a project for a tax incentive under this program, a state-certified production shall be granted an additional tax incentive of five percent (5%) for either:

(1)(A) The payroll of below-the-line employees whose full-time permanent address is located in a Tier 3 or Tier 4 county in the annual ranking of counties established by the Arkansas Economic Development Commission under Arkansas Code § 15-4-2704; or

(B) Expenditures paid to a person or business for qualified production costs associated with a state certified production project whose address is located in a Tier 3 or Tier 4 county in the annual ranking of counties established by the Commission under Arkansas Code § 15-4-2704;

(2) Producing a qualified multi-project production including without limitation:

(A) A television series; or

(B) A multi-film project.

(3) To receive the enhanced five percent (5%) incentive allowed for an employee, or persons or businesses located in a Tier 3 or Tier 4 county, a production company must submit to the Film Office a Declaration of Arkansas Residency form that verifies:

(A) An employee's full-time permanent address is located in a Tier 3 or Tier 4 county; or

(B) A person's or business's address is located in a Tier 3 or Tier 4 county.

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

Section 106. ~~VI.~~ Post-production ~~Tax Incentive~~ tax incentive.

(a) To qualify for a tax incentive for post-production expenditures, a production company shall spend at least fifty thousand dollars ($50,000) within a six-month period in connection with the production of one (1) project.

(b) Upon approval of the application by the ~~executive director~~ Director of the Arkansas Economic Development Commission, a production company shall receive a tax incentive of twenty-five percent

(~~20%~~ 25%) on all qualified production costs associated with the post-production of a state-certified film project.

(c) An additional incentive of ten percent (10%) shall be granted for:

~~(A)~~(1)(A) The aggregate payroll of salaries and wages of below the line employees who are:

(i) Full-time residents of Arkansas; or

(ii) Veterans~~;~~.

~~(iii)~~(B) If a production company hires a payroll service company to handle the payroll of a production company, the payroll payments and otherwise allowable shall be allowed an eligible expenditure if all eligible income payments to employees and independent contractors done through the payroll service are subject to Arkansas state income taxes.

~~(iv)~~(C) If approved by the ~~executive director~~ Director of the Commission, the employment incentive shall include the first five hundred thousand dollars ($500,000) of a highly compensated individual's salary~~.~~; and

~~(B)~~(2) Expenditures paid to a veteran-owned business for qualified production costs associated with the state-certified post-production.

(d) To receive the enhanced ten percent (10%) incentive, a production company must provide to the Film Office the following completed forms for each individual or business that ~~qualify~~ qualifies:

(1) Declaration of Arkansas Residency form provided by the Commission; or

(2) Declaration of Veteran Status or Veteran-Owned Business Status form provided by the Commission.

(e) If the Director of the Commission approves a project for a tax incentive under this program, a state-certified production shall be granted an additional tax incentive of five percent (5%) for either:

(1)(A) The payroll of below-the-line employees whose full-time permanent address is located in a Tier 3 or Tier 4 county in the annual ranking of counties established by the Arkansas Economic Development Commission under Arkansas Code § 15-4-2704; or

(B) Expenditures paid to a person or business for qualified production costs associated with a state certified production project whose address is located in a Tier 3 or Tier 4 county in the annual ranking of counties established by the Commission under Arkansas Code § 15-4-2704;

(2) Producing a qualified multi-project production including without limitation:

(A) A television series; or

(B) A multi-film project.

(3) To receive the enhanced five percent (5%) incentive allowed for an employee, or persons or businesses located in a Tier 3 or Tier 4 county, a production company must submit to the Film Office a Declaration of Arkansas Residency form that verifies:

(A) An employee's full-time permanent address is located in a Tier 3 or Tier 4 county; or

(B) A person's or business's address is located in a Tier 3 or Tier 4 county.

(f) The maximum total tax incentives that may be claimed for a qualified expenditure under this section is thirty percent (30%) of the qualified expenditure.

(g) A post-production incentive shall not be processed until the production company has met in full all obligations to each Arkansas institution and vendor owed for products and services in the state.

Section 107. ~~VII.~~ Weekly ~~Expenditure Reports~~ expenditure reports.

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

~~(ii)~~(2) Failure to file weekly expenditure reports may result in a delay in the disbursement of the tax incentive provided in Arkansas Code §§ 15-4-2005 and 15-4-2006.

~~(B)~~(b) The weekly expenditure report shall be filed in accordance with, but shall not be limited to, the following:

~~(i)~~(1) 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~~ the cash payments does not exceed forty percent (40%) of the total verifiable expenditures;

~~(ii)~~(2) Per diem expenditures by cast or crew, or both, for lodging, when accompanied by receipts signed by the production company and cast or crew member evidencing payment of the per diem, shall be allowed s eligible expenditures; and

~~(iii)~~(3) Expenditure reports shall include without limitation:

~~(a)~~(A) Check identification number;

~~(b)~~(B) Date of payment;

~~(c)~~(C) Name of payee;

~~(d)~~(D) Address of payee;

~~(e)~~(E) Amount paid; and

~~(f)~~(F) Other information the Revenue Division of the Department of Finance and Administration ~~division~~ deems necessary to ensure compliance with this ~~subsection~~ section.

Section 108. ~~VIII.~~ Production ~~Costs Certification~~ costs certification.

(a)(1) Within one hundred eighty (180) days after the last production costs are incurred, the production company shall:

(A) ~~apply~~ Apply to the Arkansas Economic Development Commission for a production rebate certificate or a tax credit certificate; and

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

(2) Expenditure reports also shall include information as required by the Revenue Division of the Department of Finance and Administration ~~DF&A~~ to ensure compliance with Arkansas Code § 15-4-2001 et seq.

(b) The Commission will forward the ~~Final Expenditure Report~~ final expenditure report with supporting documents with its recommendation for a tax incentive to the Revenue Division ~~of DF&A~~.

(c) Upon receipt of the ~~Final Expenditure~~ final expenditure report and supporting documents from the Commission, the Revenue Division ~~of DF&A~~ will review the Commission's recommendation and verify the amount of the tax incentive recommended.

Section 109. ~~IX.~~ Application to ~~Receive Program Incentive~~ receive program incentive.

(a)(1) Upon completion of filming or production, or both, in Arkansas, the production company shall file an application for the tax incentive allowed under the Digital Product and Motion Picture Industry Development Act, Arkansas Code ~~A.C.A.~~ § 15-4-2001 et seq.

(2) The application 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 part.

(3) The production company shall provide documentation for expenditures in accordance with these rules promulgated by the Arkansas Economic Development Commission.

~~(A)~~(b) The Revenue Division of the Department of Finance and Administration ~~DF&A~~ shall upon receipt of an application for a tax incentive, including a proof of performance expenditure report from the Commission:

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

~~(ii)~~(2) Calculate the incentive benefit to which the applicant is entitled subject to any conditions of the approved financial incentive agreement; and

~~(iii)~~(3) Within one hundred (120) days of the date the Final Expenditure Report was submitted to the Commission, the Revenue Division ~~of DF&A~~ will certify to the Secretary of the Department of Finance and Administration ~~DF&A~~ the amount of tax incentive due to the production company.

Section 110. ~~X.~~ Issuance of ~~Tax Incentive~~ tax incentive.

~~(A)~~(a) If the production company has opted to receive the incentive as a rebate:

~~(i)~~(1) Within ten (10) working days after the receipt of the certification from the Revenue Division of the Department of Finance and Administration, the Secretary of the Department of Finance and Administration ~~DF&A~~ shall issue the rebate to:

~~(a)~~(A) The production company; or

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

~~1.~~(i) ~~The~~ National Film Preservation Foundation;

~~2.~~(ii) Motion Picture Retirement Fund; or

~~3.~~(iii) Digital Product and Motion Picture Office Fund~~.~~;

~~(ii)~~(2) The amount of the rebate is limited to the amount specified in the approved financial incentive agreement; and

~~(iii)~~(3) Rebates to be awarded from the Digital Product and Motion Picture Office Fund may be payable from any source of funds allocated for their rebates.

~~(B)~~(b) If the production company has opted to receive the incentive as a tax credit:

~~(i)~~(1) Within ten (10) business days after the receipt of the certification from the Revenue Division, the Secretary of the Department ~~DF&A~~ shall instruct the division to issue a tax credit certificate to the production company in the amount certified~~.~~;

~~(ii)~~(2) Tax credits issued:

~~1.~~(A) Shall be issued promptly after the division completes its review of documents provided as listed in Section 109 ~~IX~~ of this rule;

~~2.~~(B) Are allowed as a credit against the income tax imposed by the income tax Act of 1929, Arkansas Code § 26-51-101 et seq.;

~~3.~~(C) Are not refundable; ~~and~~

~~4.~~(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~~.~~; and

~~5.~~(E) May be transferred, sold, or assigned by the owner in whole or in part under ~~A.C.A.~~ Arkansas Code § 15-4-2012~~.~~;

~~(iii)~~(3) The amount of tax credits issued shall not exceed the amount approved by the Arkansas Economic Development Commission in the financial incentive agreement~~.~~;

~~(iv)~~(4) The Commission shall not approve applications for tax credits under this program for more than four million dollars ($4,000,000) in any one (1) fiscal year~~.~~; and

~~(v)~~(5) A taxpayer must attach the tax credit certificate to their income tax return in order to claim the credit.

Section 111. ~~XI.~~ Transfer of ~~Tax Credit Earned~~ tax credit earned.

~~(A)(i)~~(a)(1) An owner of a tax credit earned under the Digital Products and Motion Picture Industry Development Act may transfer, sell, or assign some or all of the amount of the tax credit certified as outlined at ~~A.C.A.~~ Arkansas Code § 15-4-2013.

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

~~(B)~~(b) A transferee from an original, approved applicant may use the tax credit earned under this program only to the extent the tax credit is available to and has not been previously used by the transferor.

~~(C)~~(c) If a transferee of a tax credit earned under this program seeks to use the tax credit, they shall obtain and attach to their income tax return for the years the tax credit is claimed a certified statement form the transferor stating the:

~~(i)~~(1) Name and address of the original purchaser and all transferees;

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

~~(iii)~~(3) Original date the tax credit was approved;

~~(iv)~~(4) Amount of the tax credit that was transferred; and

~~(v)~~(5) Remaining amount of the tax credit that is available for use by the transferee.

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

~~(E)~~(e) If any subsequent audits or adjustments are made to a tax credit issued under this program that reduce the amount of the tax credit, the transferor that originally received the tax credit shall refund the difference between the original amount and the reduced amount to the Department of Finance and Administration ~~DF&A~~.

~~(F)~~(f) If an owner or holder assigns some or all of a tax credit earned under this program, the owner shall:

~~(i)~~(1) Notify the Department ~~DF&A~~ in writing within thirty (30) calendar days following the effective date of the transfer; and

~~(ii)~~(2) Provide any information the Department ~~DF&A~~ requires to administer and carry out the transfer and ensure proper tracking of the ownership of the unused tax credit.

Section 112. ~~XII.~~ Supplemental ~~Tax Credits~~ tax credits.

~~(A)~~(a) If the ~~executive director~~ Director of the Arkansas Economic Development Commission receives an application for tax credits under this program that would exceed the amount of tax credits remaining to be issued in a fiscal year, the ~~executive director~~ Director of the Commission may request that the Secretary of the Department of Commerce and the Secretary of ~~DF&A~~ the Department of Finance and Administration approve supplemental credits to be issued in excess of the four million dollar ($4,000,000) annual cap as stated at ~~A.C.A.~~ Arkansas Code § 15-4-2014.

~~(B)~~(b) The supplemental credits shall not exceed the amount in the Arkansas Supplemental Digital Product and Motion Picture Industry Development Trust Fund, created at ~~A.C.A.~~ Arkansas Code § 19-

5-1157, as certified by the Secretary of the Department of Commerce and the Secretary of ~~DF&A~~ the Department of Finance and Administration.

~~(C)~~(c) The Secretary of the Department of Commerce and the Secretary of ~~DF&A~~ the Department of Finance and Administration may jointly approve supplemental credits to be issued if a cost-benefit analysis demonstrates the issuance of the credits benefits the State in an amount greater than its cost to the State.

~~(D)~~(d) The cost-benefit analysis conducted shall be:

~~(i)~~(1) Performed by the ~~executive director of AEDC~~ Director of the Commission or his or her designee; and

~~(ii)~~(2) Confirmed by the Secretary of ~~DF&A~~ the Department of Finance and Administration or his or her designee.

~~(E)~~(e) Supplemental credits issued under this section shall be considered tax credits for the purposes of ~~A.C.A.~~ Arkansas Code §§ ~~15-4-1212 and 15-4-1213~~ 15-4-2012 and 15-4-2013.

Section 113. ~~XII.~~ Production ~~Costs Limitations~~ costs limitations.

(a) Production companies are encouraged to make payments for production and post-production expenses from a checking account from an Arkansas financial institution.

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

Section 114. ~~XIII.~~ Penalties.

(a) A production company that intends to apply for the tax incentive and does not register as required by Arkansas Code § 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 tax incentive and fails to comply with any provisions of the Digital Product and Motion Picture Industry Development Act~~,~~ may be denied future participation in this incentive program and shall be subject to penalty in accordance with applicable state or federal law.

~~XIV. XIV. Rulemaking Authority~~

~~The Commission has authority, at A.C.A. §15-4-2010, to promulgate rules necessary to implement Act 816 of 2009, as amended and to prevent abuse.~~

Stricken language would be deleted from and underlined language would be added to present law.
Act 517 of the Regular Session

State of Arkansas *As Engrossed: H3/14/23 H3/16/23*
94th General Assembly
A Bill
Regular Session, 2023 HOUSE BILL 1592

By: Representatives C. Fite, Duffield
By: Senator J. Dismang

For An Act To Be Entitled

AN ACT TO AMEND THE DIGITAL PRODUCT AND MOTION PICTURE INDUSTRY DEVELOPMENT ACT OF 2009; 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 § 15-4-2005, as amended by Acts 2023, No. 204, §§ 2 and 3, is amended to read as follows:

15-4-2005. Production tax ~~incentive~~ incentives.

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

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

(b) To qualify for this tax incentive, 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 state-certified production shall be granted an additional tax incentive of ten percent (10%) for:

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

(A) Full-time residents of Arkansas; or

(B) Veterans; or

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

(d)(1) A state-certified production shall be granted an additional tax incentive of five percent (5%) for either:

(A) Hiring below-the-line employees whose full-time permanent address is located in a Tier 3 or Tier 4 county in the annual ranking of counties established by the Arkansas Economic Development Commission under § 15-4-2704; or

(B) Expenditures paid to a person or business for qualified production costs with a state-certified production located in a Tier 3 or Tier 4 county in the annual ranking of counties established by the commission under § 15-4-2704.

(2) A state-certified production shall be granted an additional tax incentive of five percent (5%) for producing a multi-project production, including without limitation a television series and a multi-film project.

(e) A production tax incentive 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.

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

SECTION 2. Arkansas Code § 15-4-2006, as amended by Acts 2023, No. 204, § 4, is amended to read as follows:

15-4-2006. Postproduction tax incentives.

(a)(1) The Director of the Arkansas Economic Development Commission shall offer a tax credit or a rebate of ~~twenty percent (20%)~~ twenty-five percent (25%) to a qualifying production company that has submitted an approved application for a tax incentive under § 15-4-2007 for a tax incentive on all qualified production costs in connection with the postproduction of an approved state-certified film project.

(2) A state-certified production shall be granted an additional tax incentive:

(A) In the amount of ten percent (10%) for:

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

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

~~(ii)~~(b) Veterans; or

~~(B)~~(ii) Expenditures paid to a veteran-owned business for qualified production costs with the state-certified production;

(B) In the amount of five percent (5%) for either of the following:

(i) Hiring below-the-line employees whose full-time permanent address is located in a Tier 3 or Tier 4 county in the annual ranking of counties established by the Arkansas Economic Development Commission under § 15-4-2704; or

(ii) Expenditures paid to a person or business for qualified production costs with a state-certified production located in a Tier 3 or Tier 4 county in the annual ranking of counties established by the commission under § 15-4-2704; and

(C) In the amount of five percent (5%) for producing a multi-project production, including without limitation a television series and a multi-film project.

(b) To qualify for a tax incentive under this section, a production company 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 tax incentive 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.

(d) The maximum total tax incentives that may be claimed for a qualified expenditure under this section is thirty percent (30%) of the qualified expenditure.

SECTION 3. EFFECTIVE DATE. Sections 1 and 2 of this act are effective *for financial incentive agreements signed on or after the effective date of this act.*

/s/C. Fite

APPROVED: 4/10/23