

# ARKANSAS REGISTER

## Proposed Rule Cover Sheet



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Name of Department \_\_\_\_\_

Agency or Division Name \_\_\_\_\_

Other Subdivision or Department, If Applicable \_\_\_\_\_

Previous Agency Name, If Applicable \_\_\_\_\_

Contact Person \_\_\_\_\_

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Name of Rule \_\_\_\_\_

Newspaper Name \_\_\_\_\_

Date of Publishing \_\_\_\_\_

Final Date for Public Comment \_\_\_\_\_

Location and Time of Public Meeting \_\_\_\_\_

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

## Rules and Regulations

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### I. Introduction

To encourage growth in Arkansas's digital product and motion picture industry, Act 816 of 2009 was enacted by the 87<sup>th</sup> General Assembly and amended in 2013 and 2019. Amended and codified at ACA § 15-4-2001 et seq. ~~the~~ the legislation's purpose is to cultivate the industry by offering financial incentives to foster the development of the digital and traditional film industry in Arkansas. ~~See Arkansas Code Annotated § 15-4-2001 et seq.~~

For more information, please contact:

Arkansas Economic Development Commission  
Arkansas Film Office  
~~900 West Capitol~~ 1 Commerce Way, Suite 601  
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### II. Definitions

(1) "Application for rebate" means the document required by the Film Office to begin the process for obtaining a rebate under the Digital Product and Motion Picture Industry Development Act;

(2) "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) "Film" means a single media or multi-media production that is fixed on film, digital medium, videotape, computer disc, laser disc, or similar delivery medium;

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(5) "Film and digital product" 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) Videogames,
- (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;

(6) "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;

(7) "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;

(8) "Financial institution" means any bank or savings and loan in the state which carries Federal Deposit Insurance Corporation Insurance;

(9) "Highly compensated individual" means:

- (A) 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;

(10) "Interactive television" means a television production in which the viewer's action(s) may:

- (A) Affect the program being watched, or
- (B) Affect the outcome of the production;

(11) "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) Dialogue replacement,
- (B) Sound editing,
- (C) Addition or deletion of special effects,
- (D) Editing music,
- (E) Beginning and end credits,
- (F) Negative cutting,
- (G) Soundtrack production,
- (H) Dubbing,
- (I) Subtitling,
- (J) Addition or deletion of sound or visual effects,

~~(K) Soundtrack production,~~

"Post-production" does not include expenditures for advertising, marketing, or distribution;

(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;

(13) "Production" means:

(A) The process of producing a type of entertainment content and includes film and digital content product.

(B) "Production" shall not include:

~~(i) An ongoing program created primarily as a News reports, weather, or financial market reports;~~

~~(ii) A production containing any material or performance that is obscene~~  
Weather reports;

~~(iii) A production deemed an infomercial~~ Financial market reports; ~~or~~

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

(v) Sporting events;

(vi) Fundraising events;

(vii) Gala events;

(viii) Marketing a product or service;

(ix) Corporate training;

(x) Corporate advertising;

(xi) A production 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;

(14) "Production company" means a corporation, partnership, limited liability company, or other business entity engaged in the business of producing qualified productions and is registered with the Arkansas Secretary of State to engage in business in Arkansas;

(15) "Qualified production costs" means costs associated with the development, preproduction, production, or postproduction of a qualified production within the state, including but not limited to:

- (A) Per diem expenditures by the cast or crew for meals and lodging when accompanied by receipts,
- (B) Costs 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) Arkansas residents for labor, wages, fees, talent or management,
- (D) Arkansas businesses for personal services,
- (E) The story and scenario used in the production,
- (F) Set construction,
- (G) Set operations,
- (H) Wardrobe and accessory services,
- (I) Photography,
- (J) Sound,
- (K) Lighting,
- (L) Editing related services,
- (M) Rentals of equipment and facilities,
- (N) Leasing of motor vehicles,
- (O) Chartering of aircraft through an Arkansas-based businesses for in-state transportation attributed to the production,
- (P) Commercial airfare purchased through Arkansas-based travel agencies for travel to and from Arkansas attributed to the production,
- (Q) Insurance and bonding costs,
- (R) 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) 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 fees relating to the transaction, but do not include deferrals, deferments, royalties, profit participation, or recourse or non-recourse loans which the eligible production company may negotiate in order to obtain the rights to the intellectual property;
- (S) Other costs of the production in accordance with generally accepted entertainment industry practices,

- (T) Fringe contributions being paid for work performed in Arkansas, including:
  - (i) Health benefits,
  - (ii) Pension contributions,
  - (iii) Welfare contributions,
  - (iv) Stipends, and
  - (v) Living allowances.
- (U) Food catering services. 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) "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, producer fees, director fees, talent fees, and 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;

(16) "Resident" means natural persons and includes for the purpose of determining eligibility for the rebate incentive provided by this subchapter, a person domiciled in Arkansas and who maintains a permanent residence within the state and spends at least six (6) months of the taxable year within the state;

(17) "Season" means production of at least ~~ten (10)~~ six (6) episodes of a television series;

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

- (A) In compliance with the established rules and regulations 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 ~~Film Office~~ Executive Director of the Arkansas Economic Development Commission as qualifying for a discretionary production rebate under this section;

(19) "Television mini-series" means a limited run program of more than ~~two (2)~~ three (3) hours of programming and ~~less than the thirteen (13) part-season~~ or half-season block associated with serial or series programming;

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

~~Television programming does not include programs created primarily as:~~

- ~~(i) News reports,~~
- ~~(ii) Weather reports,~~
- ~~(iii) Financial market reports,~~
- ~~(iv) Current events,~~
- ~~(v) Sporting events,~~
- ~~(vi) Award shows,~~
- ~~(vii) Gala events,~~
- ~~(viii) Fundraising events,~~
- ~~(ix) Marketing a product or service,~~
- ~~(x) Corporate training, or~~
- ~~(xi) Corporate advertising;~~

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

(22) "Television specials" means major dramatized presentations broadcast during times normally occupied by episodes of one or more weekly television series.

### **III. Registration Requirements**

A production company, which 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.

### **IV. Application Requirements**

- A. A production company seeking benefits of this program shall submit an application to the Commission. The application must include an estimate of the production expenditures and shall be filed with the Commission and approved by the Executive Director prior to incurring any production costs or post-production costs in Arkansas.
- B. The application shall also 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 rebate.
- C. Upon approval of the application by the ~~Commission~~ Executive Director, the production company and the ~~Commission~~ Executive Director shall sign a financial incentive agreement.

D. The financial incentive agreement shall define the provisions of the program, which shall include the:

- (i) Effective date of the agreement;
- (ii) Term of the agreement;
- (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.

## V. Production Rebate

To qualify for this rebate, 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.

Upon approval of the application by the ~~Commission~~ Executive Director, the production company ~~shall be eligible~~ may receive a discretionary for a rebate on all qualified production costs in connection with the production of a state-certified film project.

The amount of the rebate shall be up to twenty percent (20%) of all qualified production costs associated with the production of a state-certified production.

~~As~~ If the Executive Director approved approves a project for a rebate of qualified production costs, the production company shall also receive an additional rebate of ten percent (10%) for the payroll of below-the-line employees involved in the production who are full-time residents of Arkansas.

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 and services in the state.

## VI. Post-production Rebate

To qualify for this rebate, 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.

Upon approval of the application by the ~~Commission~~ Executive Director, the production company ~~shall be eligible~~ may receive a discretionary for a rebate on all qualified production costs in connection with the post-production of a state-certified film project.



The amount of the rebate shall be up to twenty percent (20%) of all qualified production costs associated with the post-production of a state-certified production.

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

A post-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 and services in the state.

## **VII. Employment Rebate**

In addition to the production rebate and post-production rebates, the Executive Director may approve an employment rebate ~~also that~~ entitles a state-certified production company ~~for to~~ benefits ~~of for~~ employing full-time residents of Arkansas for which the company has submitted a Certified Declaration of Arkansas Residency form with the Film Office.

- A. The employment rebate authorizes a rebate 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.
- B. 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 if all eligible income payments to employees and independent contractors done through the payroll service are subject to Arkansas state income taxes.
- C. ~~The~~ If approved by the Executive Director, the employment rebate shall include the first five hundred thousand dollars (\$500,000) of a highly compensated individual's salary.

## **VIII. Weekly Expenditure Reports**

- A. (i) Within two (2) weeks after principal photography begins, the production company shall begin filing weekly expenditure reports.  
(ii) 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.
- B. The weekly expenditure report shall be filed in accordance with but shall not be limited to the following:
  - (i) 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;

- (ii) Per diem expenditures by cast or crew, or both, for lodging, when accompanied by receipts, shall be allowed as eligible expenditures; and
- (iii) Expenditure reports shall include without limitation:
  - (a) Check identification number;
  - (b) Date of payment;
  - (c) Name of payee;
  - (d) Address of payee;
  - (e) Amount paid; and
  - (f) Other information the division deems necessary to ensure compliance with this subsection.

## **IX. Production Costs Certification**

Within one hundred eighty (180) days after the last production costs are incurred, the production company shall apply to the Commission for a production rebate certificate and provide a final expenditure report that includes the amount of the company's production expenses or costs. Expenditure reports also shall include information as required by the Revenue Division of the Department of Finance and Administration to ensure compliance with §15-4-2001 et seq.

The Commission will forward the Final Expenditure Report with supporting documents with its recommendation for rebate to the Revenue Division of the Department of Finance and Administration (DF&A).

Upon receipt of the 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 rebate recommended.

## **X. Application for Rebate**

Upon completion of filming or production, or both, in Arkansas, the production company shall file an application for the rebate allowed under A.C.A. §15-4-2001 et seq. 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. The production company shall provide documentation for expenditures in accordance with rules promulgated by the ~~Film Office~~ Commission.

- A. The Revenue Division of ~~the Department of Finance and Administration~~ DF&A shall upon receipt of an application for rebate, including a proof of performance expenditure report from the ~~Film Office~~ Commission:

- (i) Calculate the total expenditures of the relevant production company for which there are documented receipts for funds expended in the state;
  - (ii) Calculate the incentive benefit to which the applicant is entitled subject to any conditions of the approved financial incentive agreement; and
  - (iii) Within one hundred twenty (120) days of the date the Final Expenditure Report was submitted to the Commission, the Revenue Division of DF&A will certify to the Director of ~~the~~ DF&A the amount of rebate due to the production company.
- B. Within ten (10) working days after the receipt of the certification from the Revenue Division, the Director of DF&A shall issue the rebate to:
- (i) The production company, or
  - (ii) 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. (i) ~~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~~ The amount of the rebate is limited to the amount specified in the approved financial incentive agreement.
- (ii) ~~The rebate shall be awarded on a first come, first served basis.~~
  - ~~(iii)~~ 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.

## **XI. Production Costs Limitations**

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

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.

## **XII. Penalties**

A production company that intends to apply for the rebate 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.

A production company that intends to apply for the rebate incentives and fails to comply with ~~the~~ 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.

### **XIII. Rulemaking Authority**

The Arkansas Economic Development 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.

## **Summary of Proposed Revised Rules Digital Product and Motion Picture Industry Development Act**

The Arkansas Economic Development Commission, a division of the Arkansas Department of Commerce, has created proposed revised rules for administration of the Digital Product and Motion Picture Industry Development Act. This proposed revised rule implements amendments to the program by Act 367 of 2019.

The Digital Product and Motion Picture Industry Development Act encourages growth in Arkansas's digital product and motion picture industry by offering financial incentives to foster the development of the digital and traditional film industry in Arkansas.

The proposed changes in the revised rule include:

- Revises the financial incentive to a discretionary incentive offered by the Executive Director of the Arkansas Economic Development Commission;
- Executive Director may offer a discretionary incentive rebate of **up to** twenty percent (20%) of qualified production costs;
- Allows an additional employment rebate of ten percent (10%) for a state-certified production company for employing full-time Arkansas residents at the discretion of the Executive Director;
- A production company that has applied to AEDC must have had the application approved by the Executive Director prior to incurring any production or post-production costs in Arkansas;
- Upon approval of the application, the production company and the Executive Director shall sign a financial incentive agreement;
- The amount of the incentive rebate may not exceed the amount agreed upon in the signed financial incentive agreement;
- Makes technical corrections and changes; and
- Clarifies definitions.