

Arkansas Digital Product and Motion Picture Industry Development Act (Act 816 of 2009)

Rules and Regulations

I. Introduction

To encourage growth in Arkansas's digital product and motion picture industry, Act 816 of 2009 was enacted by the 87th General Assembly. 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
One Capitol Mall
Little Rock, AR 72201
(501) 682-7326

II. Definitions

(1) "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 actors, directors, producers, and

writers;

(2) "Commission" means the Arkansas Economic Development Commission;

(3) "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;

(4) "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:

- 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,
- N. Trailer,
- O. Pilot,
- P. Video teaser,
- Q. Demo created primarily to stimulate the sale, marketing, promotion, or exploitation of future investment;

(5) "Film Office" means the division of the Arkansas Economic Development Commission charged with the responsibility of promoting and assisting the digital content and motion picture industry in Arkansas;

(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;

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

(8) "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;

(9) "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;

(10) "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;

(11) "Post-Production costs" means all expenditures incurred in the state in the post-production phase of a state-certified production;

(12) "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 news, weather, or financial market reports;

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

(iii) A production deemed an infomercial; or

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

(13) "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 the Secretary of State to engage in business in Arkansas;

(14) "Qualified production costs" means costs incurred in Arkansas for the development, preproduction, production, or postproduction of a qualified production, including but not limited to payments for:

(A) Per diem expenditures by the cast or crew for meals and lodging when accompanied by receipts,

(B) Costs incurred concerning original music compositions produced by an Arkansas resident to be used as incidental music, scoring, 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) "Qualified production costs" does not include:
 - (A) The optioning or purchase of intellectual property that is not used in the production project;

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

(C) Deferred, leveraged, or profit participation costs relating to any and all personnel associated with any and all aspects of the production, including, but not limited to, producer fees, director fees, talent fees, and writer fees;

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

(E) Salaries for highly compensated individuals; and

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

(15) "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;

(16) "Season" means production of at least ten (10) episodes of a television series;

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

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

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

(C) Approved by the Commission as qualifying for a production rebate under this section;

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

(19) "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,

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

(21) "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 Requirement

- 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 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 Revenue Division of the Department of Finance and Administration (DF&A) on the reporting of expenditures and other information necessary to qualify for the rebate.
- C. Upon approval of the application by the Commission, the production company and the Commission will sign a financial incentive agreement.

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 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, the production company shall be eligible 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 fifteen percent (15%) of all qualified production costs associated with the production of a state-certified production.

An approved production company may 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.

VI. Employment Rebate

In addition to the production rebate and post-production rebates, the employment rebate also entitles a state-certified production company for benefits of employing full-time residents of Arkansas for which the company has submitted a Certified Declaration of Arkansas Residency form with the Commission.

1. 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.

2. If a production company hires a payroll service company to handle the payroll of a production, the payroll payments shall be allowed as eligible expenditures provided:
 - (A) Payments made by the production company to the payroll service company are paid through an Arkansas financial institution account; and
 - (B) All eligible income payments to employees and independent contractors done through the payroll service are to Arkansas residents.

3. The salary for an employee whose salary is equal to or greater than five hundred thousand dollars (\$500,000), shall be excluded from eligibility for either rebate.

VII. Production Costs Certification

Within ninety (90) days after the last production costs are incurred, the production company shall certify the total costs to the Commission.

The Final Expenditure Report and all qualified production costs shall be subject to an audit by an outside certified public accountant licensed in the state of Arkansas.

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

Upon review of the Final Expenditure Report, and supporting documentation, the Commission will determine the total eligible production costs that are eligible for rebate and

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.

Within ninety (90) 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.

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:

A. The production company, or

B. At the option of the production company, the full amount or a specified amount noted by the production company to the:

1. National Film Preservation Foundation;
2. Motion Picture Retirement Fund; or
3. Digital Product and Motion Picture Fund.

VIII. Production Costs Limitations

Payments for eligible production and post-production expenses shall be made 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.

IX. 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 provision 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.