

STATE-LAW, 2009 UT S 14 , Enacted, (March 23, 2009)

2009 UT S 14 , Enacted

Utah

Changes in Bill text reflected as:

~~Text Deleted~~

Text Added

~~Text Vetoed~~

SUMMARY: Modifies statutes governing the Governor's Office of Economic Development's procedures and criteria for granting economic incentives to motion picture companies for the production of motion pictures, television series, and made-for-television movies within the state; provides for motion picture incentives in the form of cash rebate incentives for small budget productions and refundable tax credits for larger budget productions.-SAME__AS:

Current Legislative Status

12/19/2008 PREFILED.

01/26/2009 INTRODUCED.

01/26/2009 To SENATE Committee on RULES.

01/26/2009 From SENATE Committee on RULES. To SENATE Standing Committee.

01/26/2009 To SENATE Committee on WORKFORCE SERVICES AND COMMUNITY AND ECONOMIC DEVELOPMENT.

02/10/2009 From SENATE Committee on WORKFORCE SERVICES AND COMMUNITY AND ECONOMIC DEVELOPMENT: Reported favorably.

02/24/2009 Amended on SENATE floor.

02/26/2009 Passed SENATE. *****To HOUSE.

02/26/2009 To HOUSE Committee on RULES.

03/02/2009 From HOUSE Committee on RULES. To Standing Committee.

03/02/2009 To HOUSE Committee on REVENUE AND TAXATION.

03/04/2009 From HOUSE Committee on REVENUE AND TAXATION: Reported favorably as amended.

03/04/2009 To HOUSE Committee on RULES.

03/11/2009 From HOUSE Committee on RULES.

03/11/2009 Passed HOUSE.

03/12/2009 Motion to reconsider. Reconsideration granted.

03/12/2009 Recalled by HOUSE. *****Returned to HOUSE.

03/12/2009 Substituted on HOUSE floor.

03/12/2009 Passed HOUSE. *****To SENATE for concurrence.

03/12/2009 SENATE concurred in HOUSE amendments.

03/19/2009 Enrolled.

03/20/2009 *****To GOVERNOR.

03/23/2009 Signed by GOVERNOR.

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session: Utah 58th Legislature -- 2009 General Session

cite: 2009 ◀UT S▶ 14

Enacted

March 23, 2009

Hillyard

 14 Enrolled


FINANCIAL INCENTIVES FOR MOTION

PICTURE PRODUCTIONS

2009 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Lyle W. Hillyard

House Sponsor:  Kevin S. Garn

Cosponsors: Allen M. Christensen Patricia W. Jones Mark B. Madsen

Karen W. Morgan

LONG TITLE

General Description:

This bill modifies provisions of the Motion Picture Incentive Fund and enacts additional statutes related to the process and criteria for granting economic incentives to motion picture companies for new state-approved productions.

Highlighted Provisions:

This bill:

. modifies statutes governing the Governor's Office of Economic Development's procedures and criteria for granting economic incentives to motion picture companies for the production of motion pictures, television series, and made-for-television movies within the state;

. provides for motion picture incentives in the form of cash rebate incentives for small budget productions and refundable tax credits for larger budget productions;

. provides for definitions related to the determination and calculation of certain motion picture incentives;

. provides for standards in determining the awarding of an incentive;

. provides for certain restrictions in the issuance of motion picture tax credit certificates;

. provides for reports to the Revenue and Taxation and Workforce Services and Community and Economic Development Interim Committees and the Utah Tax Review Commission and details the content of those reports; and

. makes certain technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

This bill has retrospective operation of certain provisions for a taxable year beginning on or after January 1, 2009.

Utah Code Sections Affected:

AMENDS:

63M-1-1801, as renumbered and amended by Laws of Utah 2008, Chapter 382

63M-1-1802, as renumbered and amended by Laws of Utah 2008, Chapter 382

63M-1-1803, as renumbered and amended by Laws of Utah 2008, Chapter 382

63M-1-1805, as renumbered and amended by Laws of Utah 2008, Chapter 382

ENACTS:

59-7-614.5, Utah Code Annotated 1953

59-10-1108, Utah Code Annotated 1953

REPEALS AND REENACTS:

63M-1-1804, as renumbered and amended by Laws of Utah 2008, Chapter 382

Be it enacted by the Legislature of the state of Utah:

Section 1. Section 59-7-614.5 is enacted to read:

59-7-614.5. Refundable motion picture tax credit.

(1) As used in this section:

(a) "Motion picture company" means a taxpayer that meets the definition of a motion picture company under Subsection 63M-1-1802 (5).

(b) "Office" means the Governor's Office of Economic Development.

(c) "State-approved production" has the same meaning as defined in Subsection 63M-1-1802 (10).

(2) For taxable years beginning on or after January 1, 2009, a motion picture company may claim a refundable tax credit for a state-approved production.

(3) The tax credit under this section is the amount listed as the tax credit amount on the tax credit certificate that the office issues to a motion picture company under Section 63M-1-1803 for the taxable year.

(4) (a) In accordance with any rules prescribed by the commission under Subsection (4)(b), the commission shall make a refund to a motion picture company that claims a tax credit under this section if the amount of the tax credit exceeds the motion picture company's tax liability for a taxable year.

(b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission may make rules providing procedures for making a refund to a motion picture company as required by Subsection (4)(a).

(5) (a) On or before October 1, 2014, and every five years after October 1, 2014, the Utah Tax Review Commission shall study the tax credit allowed by this section and make recommendations to the Revenue and Taxation Interim Committee and the Workforce Services and Community and Economic Development Interim Committee concerning whether the tax credit should be continued, modified, or repealed.

(b) For purposes of the study required by this Subsection (5), the office shall provide the following information to the Utah Tax Review Commission:

(i) the amount of tax credit that the office grants to each motion picture company for each calendar year;

(ii) the criteria that the office uses in granting the tax credit;

(iii) the dollars left in the state, as defined in Subsection 63M-1-1802 (2), by each motion picture company for each calendar year;

(iv) the information contained in the office's latest report to the Legislature under Section 63M-1-1805; and

(v) any other information requested by the Utah Tax Review Commission.

(c) The Utah Tax Review Commission shall ensure that its recommendations under Subsection (5)(a) include an evaluation of:

(i) the cost of the tax credit to the state;

(ii) the effectiveness of the tax credit; and

(iii) the extent to which the state benefits from the tax credit.

Section 2. Section 59-10-1108 is enacted to read:

59-10-1108. Refundable motion picture tax credit.

(1) As used in this section:

(a) "Motion picture company" means a claimant, estate, or trust that meets the definition of a motion picture company under Subsection 63M-1-1802 (5).

(b) "Office" means the Governor's Office of Economic Development.

(c) "State-approved production" has the same meaning as defined in Subsection 63M-1-1802 (10).

(2) For taxable years beginning on or after January 1, 2009, a motion picture company may claim a refundable tax credit for a state-approved production.

(3) The tax credit under this section is the amount listed as the tax credit amount on the tax credit certificate that the office issues to a motion picture company under Section 63M-1-1803 for the taxable year.

(4) (a) In accordance with any rules prescribed by the commission under Subsection (4)(b), the commission shall make a refund to a motion picture company that claims a tax credit under this section if the amount of the tax credit exceeds the motion picture company's tax liability for the taxable year.

(b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission may make rules providing procedures for making a refund to a motion picture company as required by Subsection (4)(a).

(5) (a) On or before October 1, 2014, and every five years after October 1, 2014, the Utah Tax Review Commission shall study the tax credit allowed by this section and make recommendations to the Revenue and Taxation Interim Committee and the Workforce Services and Community and Economic Development Interim Committee concerning whether the tax credit should be continued, modified, or repealed.

(b) For purposes of the study required by this Subsection (5), the office shall provide the following information to the Utah Tax Review Commission:

(i) the amount of tax credit the office grants to each taxpayer for each calendar year;

(ii) the criteria the office uses in granting a tax credit;

(iii) the dollars left in the state, as defined in Subsection 63M-1-1802 (2), by each motion picture company for each calendar year;

(iv) the information contained in the office's latest report to the Legislature under Section 63M-1-1805; and

(v) any other information requested by the Utah Tax Review Commission.

(c) The Utah Tax Review Commission shall ensure that its recommendations under Subsection (5)(a) include an evaluation of:

- (i) the cost of the tax credit to the state;
- (ii) the effectiveness of the tax credit; and
- (iii) the extent to which the state benefits from the tax credit.

Section 3. Section 63M-1-1801 is amended to read:

63M-1-1801. Purpose.

(1) The Legislature finds that:

(a) the state's natural beauty, scenic wonders, and diverse topography provide a variety of magnificent settings from which the motion picture industry can choose to film part or all of major or independent motion pictures, made-for-television movies, and television series;

(b) the state has an abundance of resources, including a skilled and able workforce, the required infrastructure, and a friendly and hospitable populace that have been instrumental in the filming of ~~several~~ hundreds of successful motion pictures and several television series; and

(c) further development of the motion picture industry in Utah is a state public purpose that will significantly impact growth in the state's economy and contribute to the fiscal well being of the state and its people.

(2) The purpose of this part is to:

(a) encourage the use of Utah as a site for the production of motion pictures, television series, and made-for-television movies;

(b) provide a financial ~~incentive~~ incentives to the film industry so that Utah might compete successfully with other states and countries for filming locations; and

(c) help develop a strong motion picture industry presence in the state that will contribute substantially to improving the state's economy.

Section 4. Section 63M-1-1802 is amended to read:

63M-1-1802. Definitions.

As used in this part:

~~(1) "Administrator" means the director of the Governor's Office of Economic Development or the director's designee.~~

~~(2)~~ (1) "Board" means the ~~Board of Business and~~ Governor's Office of Economic Development Board .

(2) "Dollars left in the state" means expenditures made in the state for a state-approved production, including:

(a) an expenditure that is subject to:

(i) a corporate franchise or income tax under Title 59, Chapter 7, Corporate Franchise and Income Taxes;

(ii) an individual income tax under Title 59, Chapter 10, Individual Income Tax Act; and

(iii) a sales and use tax under Title 59, Chapter 12, Sales and Use Tax Act, notwithstanding any sales and use tax exemption allowed by law;

(b) payments made to a nonresident only to the extent of the income tax paid to the state on the payments, the amount of per diems paid, and other direct reimbursements transacted in the state; and

(c) payments made to a payroll company or loan-out corporation that is registered to do business in the state, only to the extent of the amount of withholding under Section 59-10-402 .

(3) "Fund" means the restricted account known as the Motion Picture Incentive Fund created in Section 63M-1-1803.

(4) "Loan-out corporation" means a corporation owned by one or more artists that provides services of the artists to a third party production company.

~~(4)~~(5) "Motion picture company" means a company engaged in the production of :

(a) motion pictures ~~;~~;

(b) television series ~~;~~; or

(c) made-for-television movies.

(6) "Motion picture incentive" means either a cash rebate from the Motion Picture Incentive Fund or a refundable tax credit under Section 59-7-614.5 or 59-10-1108 .

(7) "Office" means the Governor's Office of Economic Development.

(8) "Payroll company" means a business entity that handles the payroll and becomes the employer of record for the staff, cast, and crew of a motion picture production.

(9) "Refundable tax credit" means a refundable motion picture tax credit authorized under Section 63M-1-1803 and claimed under Section 59-7-614.5 or 59-10-1108 .

~~(6)~~(10) "State-approved production" means a motion picture, television series, or made-for-television movie approved by the administrator and ratified by the board that is produced in the state by a motion picture company.

(11) "Tax credit amount" means the amount the office lists as a tax credit on a tax credit certificate for a taxable year.

(12) "Tax credit certificate" means a certificate issued by the office that:

(a) lists the name of the applicant;

(b) lists the applicant's taxpayer identification number;

(c) lists the amount of tax credit that the office awards the applicant for the taxable year; and

(d) may include other information as determined by the office.

Section 5. Section 63M-1-1803 is amended to read:

63M-1-1803. Motion Picture Incentive Fund created -- Cash rebate incentives -- Refundable tax credit incentives.

(1) (a) There is created within the General Fund a restricted account known as the Motion Picture Incentive Fund, which shall be used to provide cash rebate incentives for within-the-state production of television series, made-for-television movies, and motion pictures, including feature films and independent films.

~~(2) (a) The fund shall be administered by the administrator with advice from the board.~~

~~(b) The administrator, with advice from the board, shall approve fund policies and qualification criteria to receive an incentive award consistent with the provisions of this part.~~

~~(3) (b) All interest generated from investment of money in the fund shall be deposited in the fund.~~

~~(4) (c) The fund shall consist of an annual appropriation by the Legislature.~~

(d) The Division of Finance shall make payments from the account as required under this section.

(2) (a) A motion picture company seeking disbursement of an incentive allowed under an agreement with the office shall follow the procedures and requirements of this Subsection (2).

(b) (i) The motion picture company shall provide the office with a report identifying and documenting the dollars left in the state by the motion picture company for its state-approved production, including any related tax returns by the motion picture company, payroll company, or loan-out corporation under Subsection (2)(c).

(ii) An independent certified public accountant shall:

(A) prepare the report on behalf of the motion picture company; and

(B) attest to the accuracy and validity of the report, including the amount of dollars left in the state.

(c) The motion picture company, payroll company, or loan-out corporation shall provide the office with a document that expressly directs and authorizes the State Tax Commission to disclose the entity's tax returns and other information concerning the entity that would otherwise be subject to confidentiality under Section 59-1-403 or Section 6103, Internal Revenue Code, to the office.

(d) The office shall submit the document described in Subsection (2)(c) to the State Tax Commission.

(e) Upon receipt of the document described in Subsection (2)(c), the State Tax Commission shall provide the office with the information requested by the office that the motion picture company, payroll company, or loan-out corporation directed or authorized the State Tax Commission to provide to the office in the document described in Subsection (2)(c).

(f) Subject to Subsection (3), the office shall:

(i) review the report from the motion picture company described in Subsection (2)(b) and verify that it was prepared by an independent certified public accountant; and

(ii) based upon the certified public accountant's attestation under Subsection (2)(b), determine the amount of the incentive that the motion picture company is entitled to under its agreement with the office.

(g) Subject to Subsection (3), if the incentive is in the form of a cash rebate, the office shall submit to the Division of Finance:

(i) a request for payment of the cash rebate incentive to the motion picture company;

(ii) the name and address of the payee; and

(iii) any other information requested by the Division of Finance.

(h) Upon receipt of a request for payment of a cash rebate incentive under Subsection (2)(g), the Division of Finance shall:

(i) transfer from the General Fund to the restricted account the amount contained in the request for payment of a cash rebate incentive after reducing the amount transferred by any unencumbered balances in the restricted account; and

(ii) notwithstanding Subsections 51-5-3 (23)(b) and 63J-1-404 (4)(c), after receiving a request for payment of a cash rebate incentive and making the transfer required by Subsection (2)(h)(i), pay the incentive from the restricted account.

(i) If the incentive is in the form of a refundable tax credit under Section 59-7-614.5 or 59-10-1108, the office shall:

(i) issue a tax credit certificate to the motion picture company; and

(ii) provide a duplicate copy of the tax credit certificate to the State Tax Commission.

(j) A motion picture company may not claim a motion picture tax credit under Section 59-7-614.5 or 59-10-1108 unless the motion picture company has received a tax credit certificate for the claim issued by the office under Subsection (2)(i)(i).

(k) A motion picture company may claim a motion picture tax credit on its tax return for the amount listed on the tax credit certificate issued by the office.

(l) A motion picture company that claims a tax credit under Subsection (2)(k) shall retain the tax credit certificate in accordance with Subsection 63M-1-1804 (5)(d).

(3) (a) Subject to Subsection (3)(b), the office may issue up to:

(i) (A) \$7,793,700 in tax credit certificates under this part in fiscal year 2009-10; and

(B) \$7,793,700 in tax credit certificates under this part in fiscal year 2010-11; and

(ii) \$2,206,300 in motion picture cash rebates under this part in a fiscal year.

(b) If the total amount of tax credit certificates the office issues in a fiscal year is less than the amount of tax credit certificates the office may issue in that fiscal year under Subsection (3)(a)(i)(A) or (B), the office may issue the remaining amount of tax credit certificates in a fiscal year after the fiscal year for which there is a remaining amount of tax credit certificates.

(c) Notwithstanding any other provision of this part or Section 59-7-614.5 or 59-10-1108, beginning on July 1, 2011, the office may not issue a tax credit certificate unless:

(i) the Legislature expressly provides funding in the office's budget for the office to issue the tax credit certificate; or

(ii) there is a remaining amount of tax credit that the office may issue in accordance with Subsection (3)(b).

Section 6. Section 63M-1-1804 is repealed and reenacted to read:

63M-1-1804. Motion picture incentives -- Standards to qualify for an incentive -- Limitations -
- Content of agreement between office and motion picture company.

(1) In addition to the requirements for receiving a motion picture incentive as set forth in this part, the office, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, shall make rules establishing the standards that a motion picture company must meet to qualify for the motion picture incentive.

(2) The office shall ensure that those standards include the following:

(a) an incentive may only be issued for a within-the-state production of:

(i) a television series;

(ii) a made-for-television movie; or

(iii) a motion picture, including feature films and independent films;

(b) financing has been obtained and is in place for the production; and

(c) the economic impact of the production on the state represents new incremental economic activity in the state as opposed to existing economic activity.

(3) The office may also consider giving preference to a production that stimulates economic activity in rural areas of the state or that has Utah content, such as recognizing that the production was made in the state or uses Utah as Utah in the production.

(4) (a) The office, with advice from the board, may enter into an agreement with a motion picture company that meets the standards established under this section and satisfies the other qualification requirements under this part.

(b) Subject to Subsection 63M-1-1803 (3), the office may commit or authorize a motion picture incentive to a motion picture company if that incentive does not exceed 20% of the dollars left in the state by the motion picture company.

(c) A cash rebate incentive from the Motion Picture Incentive Fund may not exceed \$500,000 per production.

(5) The office shall ensure that the agreement entered into with a motion picture company under Subsection (4)(a):

(a) details the requirements that the motion picture company must meet to qualify for an incentive under this part;

(b) specifies:

(i) the nature of the incentive; and

(ii) the maximum amount of the motion picture incentive that the motion picture company may earn for a taxable year and over the life of the production;

(c) establishes the length of time over which the motion picture company may claim the motion picture incentive;

(d) requires the motion picture company to retain records supporting its claim for a motion picture incentive for at least four years after the motion picture company claims the incentive under this part; and

(e) requires the motion picture company to submit to audits for verification of the claimed motion picture incentive.

Section 7. Section 63M-1-1805 is amended to read:

63M-1-1805. Annual report.

~~(1) The administrator shall prepare an annual report for the board on the economic impact of this part.~~

~~(2) The board office shall present the report annually to the Legislature's Workforce Services and Community and Economic Development Interim Committee and the Economic Development and Human Resources Appropriations Subcommittee, together with any proposed recommendations for modifications in this part or the annual ongoing appropriation for the fund. Utah Tax Review Commission describing:~~

(1) its success in attracting within-the-state production of television series, made-for-television movies, and motion pictures, including feature films and independent films;

(2) the amount of incentive commitments made by the office under this part and the period of time over which the incentives will be paid; and

(3) the economic impact on the state related to:

(a) dollars left in the state; and

(b) providing motion picture incentives under this part.

Section 8. Retrospective operation.

Sections 59-7-614.5 and 59-10-1108 have retrospective operation for a taxable year beginning on or after January 1, 2009.