

AR H 1743, Enacted

Arkansas

SUMMARY: Amends the Digital Product and Motion Picture Industry Development Act of 2009; converts therebates under the Act to tax credits; extends the sunset date for the Act.

Legislative History and Analysis

Changes in Bill text reflected as:

~~Text Deleted~~

Text Added

~~Text Vetoed~~

Current Legislative Status

03/15/2021 INTRODUCED.

03/15/2021 To HOUSE Committee on AGRICULTURE, FORESTRY AND ECONOMIC DEVELOPMENT.

03/30/2021 Withdrawn from HOUSE Committee on AGRICULTURE, FORESTRY AND ECONOMIC DEVELOPMENT.

03/30/2021 Amended on HOUSE floor.

04/01/2021 Amended on HOUSE floor.

04/05/2021 Rereferred to HOUSE Committee on AGRICULTURE, FORESTRY AND ECONOMIC DEVELOPMENT.

04/05/2021 From HOUSE Committee on AGRICULTURE, FORESTRY AND ECONOMIC DEVELOPMENT: Do pass.

04/06/2021 Passed HOUSE. *****To SENATE.

04/06/2021 To SENATE Committee on AGRICULTURE, FORESTRY AND ECONOMIC DEVELOPMENT.

04/13/2021 Withdrawn from SENATE Committee on AGRICULTURE, FORESTRY AND ECONOMIC DEVELOPMENT.

04/13/2021 Rereferred to SENATE Committee on REVENUE AND TAXATION.

04/14/2021 From SENATE Committee on REVENUE AND TAXATION: Do pass.

04/15/2021 Passed SENATE.

04/16/2021 *****To GOVERNOR.

04/20/2021 Signed by GOVERNOR.

04/20/2021 Act No. 797

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session: Arkansas 93rd General Assembly

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Enacted

April 20, 2021

Fite

Act 797 of the Regular Session

State of Arkansas

As Engrossed: H3/30/21 H4/1/2193rd General Assembly

A Bill

Regular Session, 2021

HOUSE BILL 1743

By: Representative C. Fite

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; TO AUTHORIZE TAX CREDITS OR REBATES TO BE ISSUED UNDER THE DIGITAL PRODUCT AND MOTION PICTURE INDUSTRY DEVELOPMENT ACT OF 2009; TO EXTEND THE SUNSET DATE FOR 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 Section 15-4-2003 is amended to read as follows:

15-4-2003. Definitions.

As used in this subchapter:

- (1) "Application for **a rebate or a tax credit**" means the document required by the Film Office to begin the process for obtaining **a-rebate tax incentive** under this subchapter;
- (2)(A) "Below-the-line employees" means employees involved with the production of a motion picture production, including without limitation:
- (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)(A) "Film and digital product" means video images or other visual media entertainment content.
- (B) "Film and digital product" includes without limitation:
- (i) Motion pictures;
 - (ii) Documentaries;
 - (iii) Long-form programs, specials, miniseries, series, music videos, and television programming;
 - (iv) Interactive television;
 - (v) Interactive games;
 - (vi) Video games;
 - (vii) Commercials;
 - (viii) Digital media created primarily for distribution or exhibition to the general public; and
 - (ix) A trailer, pilot, video teaser, or demo created primarily to stimulate the sale, marketing, promotion, or exploitation of future investment in either a product or a qualified production through any means and media in a digital media format, film, or videotape if the program meets all the underlying criteria of a qualified production;
- (4) "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;

- (5) "Financial institution" means any bank or savings and loan association in the state that carries Federal Deposit Insurance Corporation insurance;
- (6)(A) "Highly compensated individual" means 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;
- (7)(A) "Postproduction" means a final stage in the production of digital content occurring after the action has been filmed or videotaped and involves editing and the addition of soundtracks.
 - (B) "Postproduction" includes without limitation editing, music, soundtracks, special effects, and credits;
- (8) "Postproduction costs" means all expenditures associated with the postproduction phase of a state-certified production within the state;
- (9)(A) "Production" means the process of producing a type of entertainment content and includes film and digital 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. Section 2257, as it existed on January 1, 2009;
- (10) "Production company" means a corporation, partnership, limited liability company, or other business entity engaged in the business of producing qualified productions and qualified by the Secretary of State to engage in business in the state;
- (11)(A) "Qualified production costs" means costs associated with the development, preproduction, production, or postproduction of a qualified production within the state.
 - (B) "Qualified production costs" includes 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) "Qualified production costs" includes the cost 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's fees relating to the transaction but do not include deferrals, deferments, royalties, profit participation, or recourse or nonrecourse loans that the eligible production company may negotiate in order to obtain the rights to the intellectual property.

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

- (i) The optioning or purchase of intellectual property that does not comply with the provisions of subdivision (9)(A) of this section;
- (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; and
- (iv) Amounts paid to persons or businesses as a result of their participation in profits from the exploitation of the qualified production;

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

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

- (A) In compliance with established rules to this subchapter;
- (B) Authorized by the Film Office to conduct business in this state; and
- (C) Approved by the Director of the Arkansas Economic Development Commission as qualifying for a discretionary production **rebate tax incentive** under this subchapter ; "

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

(16) "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 States 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

(17) "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 2. Arkansas Code Section 15-4-2005 is amended to read as follows:

15-4-2005. Production **rebate tax incentive** .

- (a)(1) The Director of the Arkansas Economic Development Commission may offer to a production company that has submitted an **approved** application under Section 15-4-2007 a **rebate tax incentive** of ~~up to~~ twenty percent (20%) 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 **rebate 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-timeresidents of Arkansas.
- (b) To qualify for this **rebate 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;***
 - (2) Expenditures paid to a veteran-owned small business for qualified production costs with the state- certified production.***
- (d) A production **rebate 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) ***The maximum total tax incentives that shall be claimed for an expenditure under this section is thirty percent (30%) of the expenditure.***

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

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

- (a)(1) The Director of the Arkansas Economic Development Commission *shall* offer *a tax credit or a rebate of twenty percent (20%)* to a qualifying production company that has submitted an *approved* application under Section 15-4- 2007 *for a tax incentive a rebate of up to twenty percent (20%)* on all qualified production costs in connection with the postproduction of *a an approved* state-certified film project.
- (2) If the director approves a project *A state-certified production for a rebate under this section, shall be granted* an additional *rebate tax incentive* of ten percent (10%) *shall be granted* for :
- (A) *the The* payroll of below-the-line employees who are :
- (i) *full-time Full-time* residents of Arkansas *; or*
- (ii) *Veterans; or*
- (B) *Expenditures paid to a veteran-owned business for qualified production costs with the state-certified production.*
- (b) To qualify for *this rebate a tax incentive* , a production company *must 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 *rebate 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 4. Arkansas Code Section 15-4-2007(a)-(d), concerning an application for a rebate under the Digital Product and Motion Picture Industry Development Act of 2009, are amended to read as follows:

- (a)(1) To apply for the *rebates tax incentives* provided under this subchapter, a production company shall submit an application and provide an estimate of total expenditures to be made in Arkansas in connection with the production.
- (2) The application and estimate of expenditures required under subdivision (a)(1) of this section shall be filed with the Arkansas Economic Development Commission and approved by the Director of the Arkansas Economic Development Commission as eligible for the *rebate tax incentive* provided by this subchapter before the commencement of production in Arkansas.
- (b)(1) If an application for a *rebate tax incentive* is approved under subsection (a) of this section, the production company and the director shall sign a financial incentive agreement.
- (2)(A) The financial incentive agreement shall define the incentives to be received and the start and end date of the project.
- (B) The financial incentive agreement shall include the:
- (i) Effective date of the financial incentive agreement;

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

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

- (c) At the time the production company registers and provides the estimate of expenditures to the commission, the production company also shall designate a member or representative to work with the commission and the Film Office on the reporting of expenditures and other information necessary to qualify for the **rebates tax incentives**.
- (d) No later than one hundred eighty (180) days after the last production expenses or costs are incurred in the production of a qualified production, the production company shall:
 - (1) Apply to the commission for a production **rebate tax-incentive** certificate; and
 - (2) Provide a final expenditure report that includes the amount of the production company's production expenses or costs.

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

- (g) Payments for salaries or wages shall be eligible for the **rebate tax incentive** if they are reported to the division and are subject to state income taxes.
- (h)(1) If approved by the director, the employment **rebate tax incentive under subsection (g) of this section** also entitles a state- certified production to an additional **rebate tax incentive** for employing full-time residents of Arkansas.
 - (2) The employment **rebate tax incentive under subsection (g) of this section** authorizes an additional credit 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.
 - (3) The veteran hire tax credit under Sections 15-4-2005 and 15-4-2006 also entitles a state-certified production to receive an additional tax credit for employing veterans.***
- (i) If approved by the director, the **employment-rebate tax incentives under subsections (g) and (h) of this section** may include the first five hundred thousand dollars (\$500,000) of a highly compensated individual's salary.

SECTION 6. Arkansas Code Section 15-4-2007(l)(1)(B), concerning weekly reports a production company is required to file under the Digital Product and Motion Picture Industry Development Act of 2009, is amended to read as follows:

(B) Failure to file weekly expenditure reports may result in a delay in the disbursement of the **rebates taxincentives** provided in Sections 15-4-2005 and 15-4-2006.

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

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

(2) The application for **rebate a tax incentive** 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.

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

SECTION 8. Arkansas Code Section 15-4-2008 is amended to read as follows: 15-4-2008. Disbursement of **rebate** .

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

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

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

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

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

(1) The production company; or

(2) 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)(1) The amount of the rebate is limited to the amount specified in the approved financial incentive agreement.

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

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

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

(a) A production company that intends to apply for the rebate and does not register as required by Section 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 rebate incentives and fails to comply with this subchapter may be denied future participation in this incentive program and shall be subject to penalty in accordance with applicable state or federal law.

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

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

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

15-4-2012. Tax credit.

(a)(1) After receiving both an application for a tax credit under this subchapter and a proof of performance expenditure report from the Film Office, the Revenue Division of the Department of Finance and Administration shall:

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

(B) Calculate the amount of the tax credits to which the applicant is entitled, subject to any conditions of the approved financial incentive agreement; and

(C) Within one hundred twenty (120) days after receiving the expenditure report from the Film Office, certify to the Secretary of the Department of Finance and Administration the amount of the tax credit that may be claimed by the production company.

(2) The secretary, within ten (10) business days after the receipt of the certification from the division, shall instruct the division to issue the tax credit in the amount certified.

(3) Tax credits under this subchapter:

- (A) Shall be issued promptly after the division completes its review under subdivision (a)(1) of this section;**
 - (B) Are allowed as a credit against the income tax imposed by the Income Tax Act of 1929, Section 26-51-101 et seq.;**
 - (C) Are not refundable; and**
 - (D) May be carried forward in part or in whole for five (5) consecutive taxable years to apply against the taxpayer's income taxes due.**
- (b)(1) The Arkansas Economic Development Commission shall not approve applications for tax credits under this subchapter for more than four million dollars (\$4,000,000) in any one (1) fiscal year.**
- (2) The division shall not issue tax credits in excess of the amount approved by the commission in the financial incentive agreement.**

15-4-2013. Transfer of tax credit.

- (a)(1) An owner of a tax credit under this subchapter may transfer, sell, or assign some or all of the amount of the tax credit certified under Section 15-4-2012.**
- (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) A transferee from an original, approved applicant under this subchapter may use the tax credit under this subchapter only to the extent the tax credit is still available to and has not previously been used by the transferor.**
- (c) If a transferee of a tax credit under this subchapter seeks to use the tax credit, the transferee shall obtain and attach to the transferee's income tax return for the years the tax credit is claimed a certified statement from the transferor stating the:**
- (1) Name and address of the original purchaser and all transferees;**
 - (2) Tax identification number of all persons entitled to any portion of the original tax credit;**
 - (3) Original date the tax credit was approved;**
 - (4) Original amount of the tax credit;**
 - (5) Amount of the tax credit that was transferred; and**
 - (6) Remaining amount of the tax credit that is available for use by the transferee.**
- (d) The amount of the tax credit received by the transferee may be carried forward in part or in whole 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) If any subsequent audits or adjustments are made to a tax credit issued under this subchapter that reduce the amount of the tax credit, then the transferor that originally received the tax credit under this subchapter shall refund the difference between the original amount and the reduced amount to the Department of Finance and Administration.*
- (f) An owner or holder that assigns some or all of a tax credit under this section shall perfect the transfer by notifying the department in writing within thirty (30) calendar days following the effective date of the transfer and shall provide any information the department requires to administer and carry out this subchapter and to ensure proper tracking of the ownership of the unused tax credit.*

15-4-2014. Supplemental tax credit.

- (a) If the Director of the Arkansas Economic Development Commission receives an application for tax credits under this subchapter that would exceed the amount of tax credits remaining to be issued in a fiscal year under Section 15-4-2012, the director may request that the Secretary of Commerce and Secretary of the Department of Finance and Administration approve supplemental credits to be issued in excess of the amount in Section 15-4-2012.*
- (b) Supplemental credits under this section shall not exceed the amount in the Arkansas Supplemental Digital Product and Motion Picture Industry Development Trust Fund as certified by the Secretary of the Department of Finance and Administration.*
- (c)(1) The Secretary of the Department of Commerce and the Secretary of the Department of Finance and Administration may jointly approve supplemental credits under this section if a cost-benefit analysis demonstrates that the issuance of the supplemental credits is in the prudent interests of the State.*
- (2) The cost-benefit analysis conducted under subdivision (c)(1) of this section shall be:*
 - (A) Performed by the Director of the Arkansas Economic Development Commission or his or her designee; and*
 - (B) Confirmed by the Secretary of the Department of Finance and Administration or his or her designee.*
- (d) Supplemental credits issued under this section shall be considered tax credits for the purposes of Sections 15-4-1212 and 15-4-1213.*

SECTION 12. Arkansas Code Title 19, Chapter 5, Subchapter 11, is amended to add an additional section to read as follows:

19-5-1154. Arkansas Supplemental Digital Product and Motion Picture Industry Development Trust Fund.

- (a) There is created on the books of the Treasurer of State, the Auditor of State, and the Chief Fiscal Officer of the State a trust fund to be known as the "Arkansas Supplemental Digital Product and Motion Picture Industry Development Trust Fund".*

(b) The Arkansas Supplemental Digital Product and Motion Picture Industry Development Trust Fund shall consist of:

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

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

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

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

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

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

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