

SUMMARY OF ALABAMA FILM INCENTIVES

SUMMARY

In order to promote the development of the entertainment industry in Alabama, the Alabama Film Office is authorized to award up to **\$20 million** each year in incentives to production companies that produce certain projects in Alabama. This legislation, which was passed in 2009, is currently codified as Article 3, Chapter 7A, Title 41, Code of Alabama 1975. Available incentives include an income tax rebate and an exemption from the state portion of sales, use, and lodgings taxes, if the production project meets certain conditions.

TYPES OF PROJECTS ELIGIBLE TO QUALIFY FOR INCENTIVES

Incentives are available to entities that produce a Qualified Production. Qualified Productions include a wide variety of entertainment content as long as some portion of the project is produced in Alabama. Qualified Productions include motion pictures; soundtracks for motion pictures; documentaries; most television programming (except those exclusively for news, weather, sports or financial market reports); sound recordings; videos and music videos; commercials; and video games.

AVAILABLE INCENTIVES

Rebate

A Qualified Production Company may be eligible to receive a Rebate of a portion of the expenditures incurred to produce a Qualified Production. The amount of the Rebate equals 25% of certain Production Expenditures (discussed below) on the project that are incurred in Alabama plus 35% of the payroll paid to Alabama residents.

The Rebate may be used to offset any Alabama income tax liability of the Qualified Production Company for the tax year during which such expenditures were paid or incurred. If the amount of the Rebate exceeds the Qualified Production Company's Alabama income tax liability, that excess will be refunded to the Qualified Production Company.

State Sales, Use, and Lodging Tax Exemption

In addition to the Rebate, a Qualified Production Company approved to receive incentives may receive an exemption of certain state sales, use, and lodging taxes. By presenting an Alabama Department of Revenue exemption certificate to Alabama vendors, the Qualified Production Company will be exempt from the state portion of sales, use, and lodgings taxes. The exemption only applies to the state portion, however, not to the local portion of those taxes. Thus, the Qualified Production Company would still be liable for the local portion of any applicable sales, use, or lodgings taxes on its expenditures in Alabama, even if it is approved to receive incentives. The exemption is effective on the date the exemption certificate is issued by the Department of Revenue.

REQUIREMENTS FOR INCENTIVES

Production Expenditure Requirement

In order to be eligible to receive incentives, a Qualified Production Company must incur a minimum amount of Production Expenditures. The required amount of Production Expenditures varies based on the type of production.

- **Soundtracks:** A Qualified Production Company must incur total Production Expenditures of at least \$50,000, but no Rebate shall be available for Production Expenditures in excess of \$300,000.
- **Music Videos:** A Qualified Production Company must incur total Production Expenditure of at least \$50,000, but no Rebate shall be available for Production Expenditures in excess of \$200,000.
- **All Other Qualified Productions:** A Qualified Production Company must incur total Production Expenditures of at least \$500,000, but no Rebate shall be available for Production Expenditures in excess of \$20,000,000.

To be exempt from state sales, use, and lodgings taxes, a Qualified Production Company must spend, in the aggregate, \$150,000 or more in connection with one or more approved projects within a consecutive 12-month period.

Production Expenditures include most preproduction, production, and postproduction expenditures incurred by a Qualified Production Company in Alabama after the Film Office approves a project. Expenditures incurred before a Qualified Production Company receives approval for incentives are not qualified Production Expenditures eligible for incentives.

In addition, for an expenditure to qualify as a “Production Expenditure,” it must be directly related to the production of the approved project. Examples of Production Expenditures include: payroll; set construction and operation; wardrobe; makeup; set accessories and related services; costs associated with photography and sound synchronization; lighting; and related services and materials. A list of qualifying Production Expenditures is available.

Selection by Film Office

To receive any incentives, a production company must submit an application for approval to the Film Office, along with script, budget, and detailed information regarding how the production will be financed. Generally, applications must be received at least 30 days prior to the commencement of production activities within Alabama. Applications for incentives are available.

The Film Office shall review each application submitted for consideration. The Qualified Production Company must meet the Production Expenditure requirements of any incentives for

which it applied. In approving applications, the Film Office shall consider, among other things, the following criteria:

- The project's economic impact upon the State of Alabama;
- The project's affect upon workforce development in the State of Alabama; and
- The educational opportunities for the people of the State of Alabama that are created by the project.

The Film Office retains the sole discretion to determine the projects that are selected and the amount of incentives available to each. Upon review of the application, the Film Office shall determine the amount of total incentives assigned to the Qualified Production Company. Such amount shall be determined based on the project's estimated Production Expenditures and the amount of incentives available at the time the application is approved.

Within 10 days of approval, the Film Office shall issue a letter to the Qualified Production Company and to the Department of Revenue notifying both that the Qualified Production has been approved. That approval letter shall also include notification of the maximum amount of total incentives for which the project has been approved. Upon receipt of the letter of approval, the Department of Revenue will issue a state sales, use, and lodgings tax exemption certificate to the Qualified Production Company.

Amended Applications

If a Qualified Production Company exceeds or anticipates exceeding its estimated Production Expenditures and desires to receive additional incentives, it may amend its application. An amended application, which is submitted by a previously approved Qualified Production Company with respect to the same project, shall include the total Production Expenditures associated with the project rather than just those additional expenditures for which additional incentives are requested.

Ongoing Requirements

In addition to meeting the Production Expenditure requirements, a Qualified Production Company receiving incentives must also meet certain ongoing requirements.

- **Compliance with the Laws of Alabama:** Within 60 days of commencing operations in Alabama, a Qualified Production Company must register with the Alabama Secretary of State, comply with all requirements of doing business within the State, and must provide written evidence of doing so to the Film Office before completion of production activities within Alabama on the project.
- **Filing Alabama Tax Returns:** A Qualified Production Company must file any and all tax returns required by the laws of the State of Alabama (e.g., an initial business privilege tax return, as provided by Ala. Code § 40-14A-29, or a composite income tax return as provided by Ala. Code § 40-18-24.2, which requires a Qualified Production

Company taxed under Subchapter K of the Internal Revenue Code to file a composite income tax return and make a composite income tax payment on behalf of its nonresident owners at the highest marginal tax rate).

- **Biannual Review.** Once production activities on an approved project have commenced, the Film Office shall review the Qualified Production Company's progress towards completion of the project at least twice every 12 months. If the Film Office determines that the Qualified Production Company has not made reasonable progress towards completion of the project, it may revoke, or suspend any incentives for which the Qualified Production Company was approved until reasonable progress is demonstrated.
- **Completion of Production Activities in Alabama.** Within 60 days of completion of production activities within Alabama on the project, the Qualified Production Company shall return the state sales, use, and lodgings tax exemption certificate to the Department of Revenue. Within 60 days of completion of the project, the Qualified Production Company must provide the Film Office with a complete list of crew, cast, and vendors employed in the project.

Final Incentive Audit and the Audit Report

A Final Incentive Audit is an audit, by a CPA, of the books and records of a Qualified Production Company performed upon completion of the production activities in Alabama associated with the project. Such audit shall verify each Production Expenditure claimed by a Qualified Production Company.

The Qualified Production Company shall submit the audit report to both the Film Office and to the Department of Revenue within 120 days of completion of production activities in Alabama on the project, unless an extension is granted. If the Qualified Production Company does not timely submit the audit report, the Qualified Production Company may:

- Become liable for the state sales, use, and lodgings taxes that would otherwise have been paid had the incentives not been granted; and
- Forfeit any incentives otherwise awarded to and/or set aside for the Qualified Production Company's Rebate.

Noncompliance Provisions

If the Qualified Production Company incurs Production Expenditures in excess of \$500,000 (or \$50,000 if producing a motion picture soundtrack), but less than the amount of Production Expenditures estimated in its application, then the Film Office may reduce the amount of the Rebate available to the Qualified Production Company based on the difference between the total estimated Production Expenditures and the actual Production Expenditures.

If the Qualified Production Company incurs Production Expenditures in excess of \$150,000, but less than \$500,000, then the Qualified Production Company shall not be liable for the state sales, use, and lodgings taxes that would have been paid had the exemption from the

same such taxes not been granted, but the Qualified Production Company shall not be entitled to any Rebate otherwise awarded to and/or set aside for it.

If the Qualified Production Company incurs Production Expenditures in an amount less than \$150,000, then the Qualified Production Company shall be liable for the state sales, use, and lodgings taxes that would have been paid had the exemption from the same such taxes not been granted. However, if the Qualified Production Company pays the state sales, use, and lodgings taxes due within 60 days of the date on which the audit report was submitted, the Qualified Production Company shall incur no penalties. The Qualified Production Company shall not be entitled to any Rebate otherwise awarded to and/or set aside for it, unless it was producing a motion picture soundtrack and incurred Production Expenditures in excess of \$50,000.

If the Qualified Production Company that is producing a soundtrack to be used in a motion picture incurs Production Expenditures in an amount less than \$50,000, then the Qualified Production Company shall be liable for the state sales, use, and lodgings taxes that would have been paid had the exemption from the same such taxes not been granted. However, if the Qualified Production Company pays the state sales, use, and lodgings taxes due within 60 days of the date on which the audit report was submitted, the Qualified Production Company shall incur no penalties. The Qualified Production Company shall not be entitled to any Rebate otherwise awarded to and/or set aside for it.

CONTACT US

Questions regarding the applicability of the incentives and how to qualify should be directed to:

Alabama Film Office

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