HOW TO USE THE ARKANSAS DIGITAL PRODUCT & MOTION PICTURE INDUSTRY REBATE PROGRAM

Access to Opportunity Handbook Series
INTRODUCTION

Background
In 2019, Arkansas re-authorized the Film Rebate Program. This incentive program allows a qualified production company a rebate of up to 20% of all qualified production costs associated with the project, with an additional 10% “local hire” rebate (for a total of 30% for local hires). The program is administered through the Film Office at the Arkansas Economic Development Corporation (AEDC) and is paid for by the Arkansas Department of Finance and Administration (DFA).

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[1] Arkansas Code § 15-4-2005(a)
WHO CAN RECEIVE THE TAX REBATE?

Who Qualifies?

A production company can apply to receive the rebates in Arkansas as long as it is registered with the Secretary of State’s Office. If you are an Arkansas company, you already should be filed as a domestic corporation (or LLC, etc); an out of state business will still need to register as a foreign corporation doing business in Arkansas.

What Does Not Qualify?

While any company can apply for the rebates, be aware that some types of productions do not qualify. The following are some examples of productions that do not qualify under this program:

- An ongoing program created primarily as news, weather, or financial market reports;
- A production containing any material or performance that is obscene;
- A production deemed an infomercial; or:
- Sexually explicit production.

[3] Arkansas Code § 15-4-2007(a) and (b)
[5] No specific definition is provided by statute
A production seeking a rebate in Arkansas can qualify for either, or both, of the available film rebates in Arkansas. The production would still have to meet the criteria state below; if you qualify, your ability to receive either or both rebates would be negotiated and agreed upon when you complete the “Financial Incentive Agreement” (Step 3 in the Process Section) with AEDC.

- Production Rebate - To qualify for this rebate, a production company must spend at least two hundred thousand dollars ($200,000) within a six-month period in connection with the production of one (1) project.\(^6\)

- Postproduction Rebate - To qualify for this rebate, a production company must spend at least fifty thousand dollars ($50,000) within a six-month period in connection with the production of one (1) project.\(^7\)

\(^6\) Arkansas Code § 15-4-2005(b)
\(^7\) Arkansas Code § 15-4-2006(b)
WHICH EXPENSES QUALIFY?

The following list, called “Qualified Productions Costs,” lists expenditures that qualify for the 20% rebate. Qualifying expenditures must be made within the state of Arkansas, and expenses that are incurred outside of Arkansas do not qualify for the rebate.

It is strongly recommended that all interested parties seek the assistance of an Arkansas attorney. However, the following is a non-exhaustive list of expenditures that likely qualify for the tax incentive if the purchase occurred within the state:

Qualified Expenses

- Per diem expenditures by the cast or crew for meals and lodging in Arkansas when accompanied by receipts (Not eligible for additional 10% rebate)
- 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
- Arkansas residents employed for labor, wages, fees, talent, or management
- Arkansas businesses for personal services
- Set construction
- Set operations
- Wardrobe and accessory services
- Photography services
- Sound
- Lighting
- Editing related services
- Rentals of equipment and facilities
- Leasing of motor vehicles
- Chartering of aircraft through an Arkansas-based business for in-state transportation attributed to the production
- Commercial airfare purchased through Arkansas-based travel agencies for travel to and from Arkansas attributed to the production
- Insurance and bonding costs
- Other costs of the production in accordance with generally accepted entertainment industry practices,
  - Health benefits,
  - Pension contributions,
  - Welfare contributions,
  - Stipends, and
  - Living allowances.
- 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 will be allowed as eligible expenditures

Qualified Expenses (Cont'd)

- 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:
  - The intellectual property was produced primarily in Arkansas or the creator of the intellectual property is a resident of Arkansas,
  - At least seventy-five percent (75%) of the subsequent film or digital content is produced in Arkansas; and
  - 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.

- 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 will be allowed as eligible expenditures

For the additional 10% rebate:

- payroll (aggregate payroll of wages and salaries) of below-the-line employees who are full-time residents of Arkansas (This employment rebate can also include the first $500,000 of a highly compensated individual’s salary.\(^9\) This may also apply to employees who are hired out of state but are brought in-state for the production; however, be sure to verify this, and all other questions with DFA.

- With regard to regular employees, certain fringe benefits are Included in the additional 10% incentive for below-the-line Arkansas residents:
  - Box or Equipment Rentals, assuming that they are subject to a 1099 filing
  - State Unemployment Insurance
  - Federal Unemployment Insurance
  - FICA Employer portion
  - Workers Compensation Insurance
  - Pension Contributions
  - Health Insurance Premiums
  - Paid Holiday Days
  - Paid Vacation Days

[9] A “highly compensated individual is defined as someone who makes over $500,000 in connection with a single production, directly or indirectly.
ITEMS THAT DO NOT QUALIFY

Sometimes a production has to purchase an item online, or from an out-of-state vendor. If that occurs (including rentals), the production must pay the applicable “use” tax on that outside item that was brought to Arkansas to be eligible for the incentive.

For example, think of it like ordering something from Amazon. While this item was bought from an out-of-state vendor, you will use it in-state, and to claim the incentive on this item, you will need to pay the Arkansas taxes on that item. To pay this tax, apply for a sales and use tax account with DFA (https://www.dfa.arkansas.gov/images/uploads/exciseTaxOffice/ar1r.pdf).

You can calculate your taxes here (https://www.dfa.arkansas.gov/sales-and-use-tax-section-local-tax-lookup-tools). Vendors like Amazon collect and remit this sales tax already, so keep your receipt which demonstrates that the tax was collected and will be paid on this item by the vendor if that is the case.

Non-Qualifying Items

- The optioning or purchase of intellectual property that is not used in the production project;
- Media buys, promotional events, or gifts or public relations associated with the promotion or marketing of any qualified production;
- 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;
- Amounts paid to persons or businesses as a result of their participation in profits from the exploitation of the qualified production; and
- Payments for penalties or fines, payments to nonprofit organizations, and payments to federal and state entities that do not pay state taxes.
FILM REBATE PROCESS

Step 1:
Apply through the Film Commission at AEDC to become a “State-certified production.” Your application must be accompanied by an estimate of total expenditures to be made in Arkansas in connection with the production. You will also need to designate a person to act as the representative of your production to AEDC and DFA. This must be done before you begin on a production.

Step 2:
The Film Office will need to conduct meetings with the Governor at this phase to seek funding for the project. Each project is subject to discretionary approval by the Governor because the funding for the Arkansas rebate comes from the Governor’s “Quick Action Closing Fund” (which is essentially a discretionary economic development fund). You may have to have meetings and provide further information if the Governor or his staff request such.

Step 3:
If the application for the rebate program is approved, next you will sign and complete a financial incentive agreement with AEDC.

Step 4:
Now that you have an approved production and have a signed financial incentive agreement, production can begin your project. It is recommended, though not required, to use an Arkansas financial institution.

Step 5:
Your production will need to keep and submit weekly expenditure reports detailing your expenses for the production. It is highly recommended to keep all receipts and invoices organized to line up with your expense reports.

[12] Arkansas Code § 15-4-2007(c)
[14] Arkansas Code § 15-4-2007(b)
FILM REBATE PROCESS

Step 6: Within 180 days of the completion of production, the production company must submit a final expenditure report with total amounts of all expenses incurred during the production. If AEDC considers your submission sufficient, they will provide a “Production Rebate Certificate,” which will be sent to DFA, along with your expense reports and supporting documentation (receipts and invoices), for review.17

Step 7: DFA has 120 days from the date you submitted your final documentation to AEDC to complete their audit of your report, calculate the amount of the rebate, and certify to the DFA Secretary the amount of money your rebate will be worth.18

Step 8: Once the Secretary of DFA has the certification from the Revenue Division, the Secretary has ten (10) days to issue your rebate.19

WHAT IS A WEEKLY EXPENDITURE REPORT?

The Weekly Expenditure Report submission requirement begins within two weeks of the beginning of principal photography. The Business Innovations Legal Clinic has developed two tools to help you record this information:

- **Document 1: Tracking Expenses.** This toolkit includes an excel spreadsheet template designed to help you comply with this requirement. Columns E through G contain the check, receipt, or invoice number sections; it is likely only one of these columns is necessary per row. Columns H and I contain drop-down lists that contain the qualified rebate expenditures for ease of compliance with the rules. This excel file is titled, “Film Rebate Financial Report,” and is also accompanied by the “Financial Report Cover Sheet.”

- **Document 2: Documenting expenses.** This toolkit also contains an invoice template. DFA requires receipts of all qualified expenditures, but labor payments do not necessarily contain “receipts.” The best practice would be to make sure each worker submits an invoice so when the final submission is sent in there is sufficient supporting documentation for each expenditure. This document is titled, “Production Labor Invoice.”
The Weekly Expenditure Report should include, but not be limited to the following:

- **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 40% of the total verifiable expenditures.

- **Records of per diem expenditures** by cast or crew, or both, for lodging, when accompanied by receipts.

- **Your weekly report**, which should contain the following information:
  - Check/receipt/invoice number
  - Date of payment
  - Name of payee
  - Address of payee
  - Amount paid
HAVE MORE QUESTIONS?

Contact

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