

AN ACT relating to tax incentives for digital interactive media productions.

***Be it enacted by the General Assembly of the Commonwealth of Kentucky:***

➔Section 1. KRS 148.542 is amended to read as follows:

As used in KRS 148.542 to 148.546:

- (1) "Above-the-line production crew" means employees involved with the production of a motion picture or entertainment production whose salaries are negotiated prior to commencement of production, such as actors, directors, producers, and writers;
- (2) "Animated production" means a nationally distributed feature-length film created with the rapid display of a sequence of images using 2-D or 3-D graphics of artwork or model positions in order to create an illusion of movement;
- (3) "Approved company" means an eligible company approved for incentives provided under KRS 141.383 and 148.544;
- (4) "Below-the-line production crew" means employees involved with the production of a motion picture or entertainment production except above-the-line production crew. "Below-the-line production crew" includes but is not limited to:
  - (a) Casting assistants;
  - (b) Costume design;
  - (c) Extras;
  - (d) Gaffers;
  - (e) Grips;
  - (f) Location managers;
  - (g) Production assistants;
  - (h) Set construction staff; and
  - (i) Set design staff;
- (5) "Cabinet" means the Finance and Administration Cabinet;
- (6) "Commercial" means an individual production or series of live-action or animated productions, music videos, infomercials, or interstitials that are:

- (a) Less than thirty-one (31) minutes in length;
  - (b) Made for the purpose of promoting a product, service, or idea; and
  - (c) Produced for regional or national distribution via broadcast, cable, or any digital format, including but not limited to cable, satellite, Internet, or mobile electronic devices;
- (7) "Commonwealth" means the Commonwealth of Kentucky;
- (8) "Compensation" means compensation included in adjusted gross income as defined in KRS 141.010(10);
- (9) **(a) "Digital interactive media production" means software developed in whole or in part in the Commonwealth that:**
- 1. Is created for a game console, personal computer, handheld console, mobile electronic machine, or an electronic device; and**
  - 2. Provides a user or users with:**
    - a. A game to play for entertainment or educational purposes that rewards the player exclusively with noncash prizes; or**
    - b. Military, medical, or any other simulation training;**
- (b) "Digital interactive media production" does not include the development of obscene material;**
- (10)** "Documentary" means a production based upon factual information and not subjective interjections;
- (11)**~~(10)~~ "Eligible company" means any person that intends to:
- (a)** Film or produce a motion picture or entertainment production; **or**
  - (b) Develop a digital interactive media production;**
- in the Commonwealth;
- (12)**~~(11)~~ "Employee" means the same as defined in KRS 141.010(20);
- (13)**~~(12)~~ "Enhanced incentive county" has the same meaning as in KRS 154.32-010;
- (14)**~~(13)~~ "Feature-length film" means a live-action or animated production that is:

- (a) More than thirty (30) minutes in length; and
- (b) Produced for distribution in theaters or via digital format, including but not limited to DVD, Internet, or mobile electronic devices;

~~(15)~~~~(14)~~ "Industrial film" means a business-to-business film that may be viewed by the public, including but not limited to videos used for training or for viewing at a trade show;

~~(16)~~~~(15)~~ "Kentucky-based company" has the same meaning as in KRS 164.6011;

~~(17)~~~~(16)~~ (a) "Motion picture or entertainment production" means:

1. The following if filmed in whole or in part, or produced in whole or in part, in the Commonwealth:
  - a. A feature-length film;
  - b. A television program;
  - c. An industrial film;
  - d. A documentary; or
  - e. A commercial; or
2. A national touring production of a Broadway show produced in Kentucky;

(b) "Motion picture or entertainment production" does not include the filming or production of obscene material or television coverage of news or athletic events;

~~(18)~~~~(17)~~ "Obscene" means the same as defined in KRS 531.010;

~~(19)~~~~(18)~~ "Office" means the Kentucky Film Office in the Tourism, Arts and Heritage Cabinet;

~~(20)~~~~(19)~~ "Person" means the same as defined in KRS 141.010(15);

~~(21)~~~~(20)~~ (a) "Qualifying expenditure" means expenditures made in the Commonwealth for the following:

1. If directly used in or for a motion picture or entertainment production:

- a.[1.] The production script and synopsis;
- b.[2.] Set construction and operations, wardrobe, accessories, and related services;
- c.[3.] Lease or rental of real property in Kentucky as a set location;
- d.[4.] Photography, sound synchronization, lighting, and related services;
- e.[5.] Editing and related services;
- f.[6.] Rental of facilities and equipment;
- g.[7.] Vehicle leases;
- h.[8.] Food; and
- i.[9.] Accommodations; and

**2. If directly used in or for a digital interactive media production:**

- a. The game design document and pitch document;**
- b. Lease or rental of real property in Kentucky as a level location;**
- c. Photography, lighting, and related services;**
- d. Video production, editing, and related services;**
- e. Animation, motion capture, 2-D or 3-D art asset creation, and related services;**
- f. Voice acting, music scoring, and other audio related services;**
- g. Software localization services such as translating text and adjusting functional elements of software applications to allow games to be played internationally;**
- h. Testing services;**
- i. Marketing and streaming services;**
- j. Software license purchases; and**
- k. Computer hardware purchases such as motherboards, hard drives, random access memory, monitors, keyboards, computer mice, printers, capture devices, and scanners;[-]**

(b) "Qualifying expenditure" does not include Kentucky sales and use tax paid by the approved company on the qualifying expenditure;

~~(22)~~~~(21)~~ "Qualifying payroll expenditure" means:

**(a) For a motion picture or entertainment production,** compensation paid to above-the-line **production** crew and below-the line **production** crew while working on a motion picture or entertainment production in the Commonwealth if the compensation is for services performed in the Commonwealth; **and**

**(b) For a digital interactive media production, wages, salaries, commissions, fringe benefits, and any other remuneration paid to employees and any amount paid to contract laborers under the terms of their contract while working on a digital interactive media production in the Commonwealth if the compensation is for services performed in the Commonwealth;**

~~(23)~~~~(22)~~ "Resident" has the same meaning as in KRS 141.010;

~~(24)~~~~(23)~~ "Secretary" means the secretary of the Tourism, Arts and Heritage Cabinet;

~~(25)~~~~(24)~~ "Tax incentive agreement" means the agreement entered into pursuant to KRS 148.546 between the office and the approved company; and

~~(26)~~~~(25)~~ "Television program" means any live-action or animated production or documentary, including but not limited to:

- (a) An episodic series;
- (b) A miniseries;
- (c) A television movie; or
- (d) A television pilot;

that is produced for distribution on television via broadcast, cable, or any digital format, including but not limited to cable, satellite, Internet, or mobile electronic devices.

➔Section 2. KRS 148.544 is amended to read as follows:

- (1) The purposes of KRS 141.383 and 148.542 to 148.546 are to:
  - (a) Encourage the film and entertainment industry to choose locations in the Commonwealth for the filming and production of motion picture or entertainment productions;
  - (b) Encourage the development of a film and entertainment industry in Kentucky;
  - (c) Encourage increased employment opportunities for the citizens of the Commonwealth within the film and entertainment industry;~~and~~
  - (d) Encourage the development of a production and postproduction infrastructure in the Commonwealth for film production and touring Broadway show production facilities containing state-of-the-art technologies;
  - (e) Encourage the development of a digital interactive media production industry in Kentucky; and
  - (f) Encourage increased employment opportunities for the citizens of the Commonwealth within the digital interactive media production industry.
- (2) The Kentucky Film Office is hereby established in the Tourism, Arts and Heritage Cabinet to administer, together with the Finance and Administration Cabinet and the Tourism Development Finance Authority, the tax incentive established by KRS 141.383 and 148.542 to 148.546.
- (3) To qualify for ~~a~~the tax incentive provided in subsection (4) of this section, the following requirements shall be met:
  - (a) For an approved company that is also a Kentucky-based company that:
    1. Films or produces a feature-length film, television program, or industrial film in whole or in part in the Commonwealth, the minimum combined total of qualifying expenditures and qualifying payroll expenditures shall be one hundred twenty-five thousand dollars (\$125,000);
    2. Films or produces a commercial in whole or in part in the Commonwealth that is distributed regionally or nationally, the minimum

combined total of qualifying expenditures and qualifying payroll expenditures shall be one hundred thousand dollars (\$100,000);

3. Produces a national touring production of a Broadway show in whole or in part in the Commonwealth, the minimum combined total of qualifying expenditures and qualifying payroll expenditures shall be twenty thousand dollars (\$20,000);~~or~~

4. Films or produces a documentary in whole or in part in the Commonwealth, the minimum combined total of qualifying expenditures and qualifying payroll expenditures shall be ten thousand dollars (\$10,000); or

5. *Develops a digital interactive media production in whole or in part in the Commonwealth, the minimum combined total of qualifying expenditures and qualifying payroll expenditures shall be one hundred thousand dollars (\$100,000);* and

(b) For an approved company that is not a Kentucky-based company that:

1. Films or produces a feature-length film, television program, or industrial film in whole or in part in the Commonwealth, the minimum combined total of qualifying expenditures and qualifying payroll expenditures shall be two hundred fifty thousand dollars (\$250,000);

2. Films or produces a commercial in whole or in part in the Commonwealth that is distributed regionally or nationally, the minimum combined total of qualifying expenditures and qualifying payroll expenditures shall be one hundred thousand dollars (\$100,000);~~or~~

3. Films or produces a documentary in whole or in part in the Commonwealth or that produces a national touring production of a Broadway show, the minimum combined total of qualifying expenditures and qualifying payroll expenditures shall be twenty

thousand dollars (\$20,000); or

**4. Develops a digital interactive media production in whole or in part in the Commonwealth, the minimum combined total of qualifying expenditures and qualifying payroll expenditures shall be two hundred thousand dollars (\$200,000).**

- (4) (a) The incentive available under KRS 141.383 and 148.542 to 148.546 is a refundable credit against the Kentucky income tax imposed under KRS 141.020 or 141.040, and the limited liability entity tax imposed under KRS 141.0401, as provided in KRS 141.383.
- (b) 1. For a motion picture or entertainment production filmed or produced in its entirety in an enhanced incentive county, the amount of the incentive shall be equal to thirty-five percent (35%) of the approved company's:
- a. Qualifying expenditures;
  - b. Qualifying payroll expenditures paid to resident and nonresident below-the-line production crew; and
  - c. Qualifying payroll expenditures paid to resident and nonresident above-the-line production crew not to exceed one million dollars (\$1,000,000) in payroll expenditures per employee.
2. a. To the extent the approved company films or produces a motion picture or entertainment production in part in an enhanced incentive county and in part a Kentucky county that is not an enhanced incentive county, the approved company shall be eligible to receive the incentives provided in this paragraph for those expenditures incurred in the enhanced incentive county and all other expenditures shall be subject to the incentives provided in paragraph ~~(d)~~~~(e)~~ of this subsection.
- b. The approved company shall track the qualifying~~[requisite]~~



expenditures by expenditure type by county, the number of resident and nonresident above-the-line and below-the-line production crew members hired by county, and the qualifying payroll expenditures paid to resident and nonresident above-the-line and below-the-line production crews by county. If the approved company can demonstrate to the satisfaction of the cabinet that it is not practical to use a separate accounting method to determine the expenditures and number of hires by county, the approved company shall determine the correct expenditures by county using an alternative method approved by the cabinet.

- (c) 1. For a digital interactive media production developed in its entirety in an enhanced incentive county, the amount of the incentive shall be equal to thirty-five percent (35%) of the approved company's:
- a. Qualifying expenditures; and
  - b. Qualifying payroll expenditures paid to resident and nonresident employees and contract laborers.
2. a. To the extent the approved company develops a digital interactive media production in part in an enhanced incentive county and in part in a Kentucky county that is not an enhanced incentive county, the approved company shall be eligible to receive the incentives provided in this paragraph for those expenditures incurred in the enhanced incentive county and all other expenditures shall be subject to the incentives provided in paragraph (e) of this subsection.
- b. The approved company shall track the qualifying expenditures by expenditure type by county, the number of resident and nonresident employees and contract laborers hired by county,

and the qualifying payroll expenditures paid to resident and nonresident employees and contract laborers by county. If the approved company can demonstrate to the satisfaction of the cabinet that it is not practical to use a separate accounting method to determine the expenditures and number of hires by county, the approved company shall determine the correct expenditures by county using an alternative method approved by the cabinet.

(d) 1. For a motion picture or entertainment production filmed or produced in whole or in part in any Kentucky county other than in an enhanced incentive county, the amount of the incentive shall be equal to:

a.[1-] Thirty percent (30%) of the approved company's:

i.[a-] Qualifying expenditures;

ii.[b-] Qualifying payroll expenditures paid to below-the-line production crew that are not residents; and

iii.[c-] Qualifying payroll expenditures paid to above-the-line production crew that are not residents, not to exceed one million dollars (\$1,000,000) in payroll expenditures per employee; and

b.[2-] Thirty-five percent (35%) of the approved company's:

i.[a-] Qualifying payroll expenditures paid to resident below-the-line production crew; and

ii.[b-] Qualifying payroll expenditures paid to resident above-the-line production crew not to exceed one million dollars (\$1,000,000) in payroll expenditures per employee.

2. The approved company shall track the qualifying expenditures by expenditure type by county, the number of resident and nonresident

above-the-line and below-the-line production crew members hired by county, and the qualifying payroll expenditures paid to resident and nonresident above-the-line and below-the-line production crews by county. If the approved company can demonstrate to the satisfaction of the cabinet that it is not practical to use a separate accounting method to determine the expenditures and number of hires by county, the approved company shall determine the correct expenditures by county using an alternative method approved by the cabinet.

- (e) 1. For a digital interactive media production developed in whole or in part in any Kentucky county other than in an enhanced incentive county, the amount of the incentive shall be equal to:
- a. Thirty percent (30%) of the approved company's:
    - i. Qualifying expenditures; and
    - ii. Qualifying payroll expenditures paid to employees and contract laborers that are not residents; and
  - b. Thirty-five percent (35%) of the approved company's qualifying payroll expenditures paid to resident employees and contract laborers.
2. The approved company shall track the qualifying expenditures by expenditure type by county, the number of resident and nonresident employees and contract laborers hired by county, and the qualifying payroll expenditures paid to resident and nonresident employees and contract laborers by county. If the approved company can demonstrate to the satisfaction of the cabinet that it is not practical to use a separate accounting method to determine the expenditures and number of hires by county, the approved company shall determine the correct expenditures by county using an alternative method approved

**by the cabinet.**

~~(f)(d)~~ The Tourism Development Finance Authority **shall not**~~[may]~~ accept applications, authorize the execution of tax incentive agreements, **or**~~[and]~~ enter into tax incentive agreements **after December 31, 2021**~~[beginning on June 26, 2009; however, no credit amount shall be claimed by the taxpayer as a refund or paid by the Department of Revenue prior to July 1, 2010].~~

➔ Section 3. KRS 148.546 is amended to read as follows:

(1) An eligible company shall, at least thirty (30) days prior to incurring any expenditure for which recovery will be sought, file an application for tax incentives with the office. The application shall include:

(a) **For a motion picture or entertainment production:**

**1.** The name and address of the applicant;

**2.**~~(b)~~ Verification that the applicant is a Kentucky-based company, **if applicable;**

**3.**~~(c)~~ The production script or a detailed synopsis of the script;

**4.**~~(d)~~ The locations where the filming or production will occur;

**5.**~~(e)~~ The anticipated date on which filming or production shall begin;

**6.**~~(f)~~ The anticipated date on which the production will be completed;

**7.**~~(g)~~ The total anticipated qualifying expenditures **by expenditure type by county;**

**8.**~~(h)~~ The total anticipated **number of**~~[qualifying payroll expenditures for]~~ resident and nonresident above-the-line **and below-the-line production** crew **members to be hired** by county;

**9.**~~(i)~~ The total anticipated qualifying payroll expenditures for resident and nonresident **above-the-line and** below-the-line **production crews**~~[crew]~~ by county;

**10.**~~(j)~~ The address of a Kentucky location at which records of the

production will be kept;

11.~~[(k)]~~ An affirmation that if not for the incentive offered under KRS 148.542 to 148.546, the eligible company would not film or produce the production in the Commonwealth; and

12.~~[(d)]~~ Any other information the office may require; or

**(b) For a digital interactive media production:**

**1. The name and address of the applicant;**

**2. Verification that the applicant is a Kentucky-based company, if applicable;**

**3. A game design document that includes the following:**

**a. The type of game;**

**b. The game platform;**

**c. A script, if applicable;**

**d. A brief synopsis of the game story;**

**e. A brief description of game characters; and**

**f. Game levels, scenarios, encounters, or environments;**

**4. The locations where the development will occur;**

**5. The anticipated date on which development will begin;**

**6. The anticipated date on which development will be completed;**

**7. The total anticipated qualifying expenditures by expenditure type by county;**

**8. The total anticipated number of resident and nonresident employees and contract laborers to be hired by county;**

**9. The total anticipated qualifying payroll expenditures for resident and nonresident employees and contract laborers by county;**

**10. The address of a Kentucky location at which records of the digital interactive media production will be kept;**

**11. An affirmation that if not for the incentive offered under KRS 148.542 to 148.546, the eligible company would not develop the digital interactive media production in the Commonwealth; and**

**12. Any other information the office may require.**

(2) The office shall notify the eligible company within thirty (30) days after receiving the application of its status.

(3) ~~{(a)}~~ Upon review of the application and any additional information submitted, the office shall present the application and its recommendation to the Tourism Development Finance Authority established by KRS 148.850 which may until January 1, 2022, by resolution, authorize the execution of a tax incentive agreement between the Tourism Development Finance Authority and the approved company.

~~{(b) 1. The total amount of tax credits authorized by the Tourism Development Finance Authority during fiscal year 2010-2011 shall not exceed five million dollars (\$5,000,000).~~

~~2. The total amount of tax credits authorized by the Tourism Development Finance Authority during the fiscal year 2011-2012 shall not exceed seven million five hundred thousand dollars (\$7,500,000).~~

(4) The tax incentive agreement shall include~~the following provisions~~:

(a) **For a motion picture or entertainment production:**

**1.** The duties and responsibilities of the parties;

**2.**~~{(b)}~~ A detailed description of the motion picture or entertainment production for which incentives are requested;

**3.**~~{(c)}~~ The anticipated qualifying expenditures **by expenditure type by county;**

**4. The anticipated number of resident and nonresident above-the-line and below-the-line production crew members to be hired by county;**

- 5. The anticipated**~~and~~ qualifying payroll expenditures for resident and nonresident above-the-line and below-the-line **production** crews by county;
- 6.**~~(d)~~ The minimum combined total of qualifying expenditures and qualifying payroll expenditures necessary for the approved company to qualify for incentives;
- 7.**~~(e)~~ That the approved company shall have no more than two (2) years from the date the tax incentive agreement is executed to start the motion picture or entertainment production;
- 8.**~~(f)~~ That the approved company shall have no more than four (4) years from the execution of the tax incentive agreement to complete the motion picture or entertainment production;
- 9.**~~(g)~~ That the motion picture or entertainment production shall not include obscene materials and shall not negatively impact the economy or the tourism industry of the Commonwealth;
- 10.**~~(h)~~ That the execution of the agreement is not a guarantee of tax incentives and that actual receipt of the incentives shall be contingent upon the approved company meeting the requirements established by the tax incentive agreement;
- 11.**~~(i)~~ That the approved company shall submit to the office within one hundred eighty (180) days of the completion of the motion picture or entertainment production:
- a.** A detailed cost report of the qualifying expenditures **by expenditure type by county**~~;~~ **and the** qualifying payroll expenditures **for resident and nonresident above-the-line and below-the-line production crews by county**~~;~~
- b. A detailed report of the number of resident and nonresident**

**above-the-line and below-the-line production crew members that were hired by county;** and

**c.** A final script;

**12.**~~{(j)}~~ That the approved company shall provide the office with documentation that the approved company has withheld income tax as required by KRS 141.310 on all qualified payroll expenditures for which an incentive under KRS 141.383 and 148.544 is sought;

**13.**~~{(k)}~~ That, if the office determines that the approved company has failed to comply with any of its obligations under the tax incentive agreement:

**a.**~~{1.}~~ The office may deny the incentives available to the approved company;

**b.**~~{2.}~~ Both the office and the cabinet may pursue any remedy provided under the tax incentive agreement;

**c.**~~{3.}~~ The office may terminate the tax incentive agreement; and

**d.**~~{4.}~~ Both the office and the cabinet may pursue any other remedy at law to which it may be entitled;

**14.**~~{(l)}~~ That the office shall monitor the tax incentive agreement;

**15.**~~{(m)}~~ That the approved company shall provide to the office and the cabinet all information necessary to monitor the tax incentive agreement;

**16.**~~{(n)}~~ That the office may share information with the cabinet or any other entity the office determines is necessary for the purposes of monitoring and enforcing the terms of the tax incentive agreement;

**17.**~~{(o)}~~ That the motion picture or entertainment production shall contain an acknowledgment that the motion picture or entertainment production was produced or filmed in the Commonwealth of Kentucky;

**18.**~~{(p)}~~ That the approved company shall include screen credits in its final



production that:

a.~~[1.]~~ Indicate that the approved company received tax incentives from the Commonwealth of Kentucky; and

b.~~[2.]~~ Display the "Unbridled Spirit" logo;

19.~~[(q)]~~ Terms of default;

20.~~[(r)]~~ The method and procedures by which the approved company shall request and receive the incentive provided under KRS 141.383 and 148.544;

21.~~[(s)]~~ That the approved company may be required to pay an administrative fee as authorized under subsection (5) of this section; and

22.~~[(t)]~~ Any other provisions deemed necessary or appropriate by the parties to the tax incentive agreement; or

**(b) For a digital interactive media production:**

**1. The duties and responsibilities of the parties;**

**2. A detailed description of the digital interactive media production for which incentives are requested;**

**3. The anticipated qualifying expenditures by expenditure type by county;**

**4. The anticipated number of resident and nonresident employees and contract laborers to be hired by county;**

**5. The anticipated qualifying payroll expenditures for resident and nonresident employees and contract laborers by county;**

**6. The minimum combined total of qualifying expenditures and qualifying payroll expenditures necessary for the approved company to qualify for incentives;**

**7. That the approved company shall have no more than two (2) years from the date the tax incentive agreement is executed to start the**

- digital interactive media production;
8. That the approved company shall have no more than four (4) years from the execution of the tax incentive agreement to complete the digital interactive media production;
9. That the digital interactive media production shall not include obscene materials and shall not negatively impact the economy or the tourism industry of the Commonwealth;
10. That the execution of the agreement is not a guarantee of tax incentives and that actual receipt of the incentives shall be contingent upon the approved company meeting the requirements established by the tax incentive agreement;
11. That the approved company shall submit to the office within one hundred eighty (180) days of the completion of the digital interactive media production:
- a. A detailed cost report of the qualifying expenditures by expenditure type by county and the qualifying payroll expenditures for resident and nonresident employees and contract laborers by county;
- b. A detailed report of the number of resident and nonresident employees and contract laborers that were hired by county; and
- c. A final game design document;
12. That the approved company shall provide the office with documentation that the approved company has withheld income tax as required by KRS 141.310 on all qualified payroll expenditures for which an incentive under Sections 2 and 7 of this Act is sought;
13. That, if the office determines that the approved company has failed to comply with any of its obligations under the tax incentive agreement;

- a. The office may deny the incentives available to the approved company;
  - b. Both the office and the cabinet may pursue any remedy provided under the tax incentive agreement;
  - c. The office may terminate the tax incentive agreement; and
  - d. Both the office and the cabinet may pursue any other remedy at law to which it may be entitled;
14. That the office shall monitor the tax incentive agreement;
15. That the approved company shall provide to the office and the cabinet all information necessary to monitor the tax incentive agreement;
16. That the office may share information with the cabinet or any other entity the office determines is necessary for the purposes of monitoring and enforcing the terms of the tax incentive agreement;
17. That the digital interactive media production shall contain an acknowledgment that the digital interactive media production was produced or filmed in the Commonwealth of Kentucky;
18. That the approved company shall include screen credits in its final production that:
  - a. Indicate that the approved company received tax incentives from the Commonwealth of Kentucky; and
  - b. Display the "Unbridled Spirit" logo;
19. Terms of default;
20. The method and procedures by which the approved company shall request and receive the incentive provided under Sections 2 and 7 of this Act;
21. That the approved company may be required to pay an administrative fee as authorized under subsection (5) of this section; and

**22. Any other provisions deemed necessary or appropriate by the parties to the tax incentive agreement.**

- (5) The office may require the approved company to pay an administrative fee, the amount of which shall be established by administrative regulation promulgated in accordance with KRS Chapter 13A. The administrative fee shall not exceed one-half of one percent (0.5%) of the estimated amount of tax incentive sought or five hundred dollars (\$500), whichever is greater.
- (6) Prior to commencement of activity as provided in a tax incentive agreement, the tax incentive agreement shall be submitted to the Government Contract Review Committee established by KRS 45A.705 for review, as provided in KRS 45A.695, 45A.705, and 45A.725.
- (7) The office shall notify the cabinet upon approval of an approved company. The notification shall include the name of the approved company, the name of the motion picture or entertainment production **or the digital interactive media production**, the estimated amount of qualifying expenditures, the estimated date on which the approved company will complete filming, ~~for~~ production, **or development**, and any other information required by the cabinet.
- (8) **(a)** Within one hundred eighty days (180) days of completion of the motion picture or entertainment production, the approved company shall submit to the office:
- 1.** A detailed cost report of:
    - a.**~~{(a)}~~ Qualifying expenditures **by expenditure type by county**;
    - b.**~~{(b)}~~ Qualifying payroll expenditures for resident and nonresident above-the-line crew by county; **and**
    - c.**~~{(c)}~~ Qualifying payroll expenditures for resident and nonresident below-the-line crew by county;
  - 2.** **A detailed report of the number of resident and nonresident above-the-**

line and below-the-line production crew members that were hired by county; and

~~3.[(d)]~~ The final script.

(b) Within one hundred eighty days (180) days of completion of the digital interactive media production, the approved company shall submit to the office:

1. A detailed cost report of:

a. Qualifying expenditures by expenditure type by county; and

b. Qualifying payroll expenditures for resident and nonresident employees and contract laborers by county;

2. A detailed report of the number of resident and nonresident employees and contract laborers that were hired by county; and

3. The final game design document.

(9) (a) The office, together with the secretary, shall review all information submitted for accuracy and shall confirm that all relevant provisions of the tax incentive agreement have been met.

(b) Upon confirmation that all requirements of the tax incentive agreement have been met, the office, and the secretary shall review the final script or game design document, and if they determine that the motion picture or entertainment production or the digital interactive media production does not:

1. Contain visual or implied scenes that are obscene; or

2. Negatively impact the economy or the tourism industry of the Commonwealth;

the office shall forward the detailed cost report to the cabinet for calculation of the refundable credit.

(10) The cabinet shall verify that the approved company withheld the proper amount of

income tax on qualifying payroll expenditures, and the cabinet shall notify the office of the total amount of refundable credit available on qualifying expenditures and qualifying payroll expenditures.

(11) On or before October 1, 2010, and on or before each October 1 thereafter, for the immediately preceding fiscal year, the office shall report to the Tourism Development Finance Authority:

- (a) The number of tax incentive agreements that have been executed;
- (b) The estimated amount of tax incentives that have been requested under KRS 141.383 and 148.542 to 148.546; and
- (c) The amount of tax incentives approved under KRS 139.538, 141.383, and 148.542 to 148.546.

(12) (a) By November 1 of each year, the authority shall file an annual report with the Governor and the Legislative Research Commission. The report shall be submitted in cooperation with the Cabinet for Economic Development and included in the single annual report required in KRS 154.12-2035. The report shall also be available on the Tourism, Arts and Heritage Cabinet's Web site.

(b) The report shall include information for all approved motion picture or entertainment production projects and all approved digital interactive media production projects~~[approved]~~.

(c) The report shall include the following information:

- 1. For each approved motion picture or entertainment production project or digital interactive media production project:
  - a. The name of the approved company and a brief description of the project;
  - b. The amount of approved costs included in the agreement; and
  - c. The total amount recovered under the tax incentive agreement;
- 2. The number of applications for projects submitted during the prior fiscal

year;

3. The number of projects finally approved during the prior fiscal year;  
[and]

4. The total dollar amount approved for recovery for all projects approved during the prior fiscal year, and cumulatively under KRS 141.383 and 148.542 to 148.546 since its inception, by year of approval; and

5. For each completed motion picture or entertainment production project or digital interactive media production project:

a. The amount of qualifying expenditures by expenditure type, production type, and county;

b. The amount of qualifying payroll expenditures for resident and nonresidents by production type and county; and

c. The total number of residents and nonresidents hired by production type and county.

(d) The information required to be reported under this section shall not be considered confidential taxpayer information and shall not be subject to KRS Chapter 131 or any other provisions of the Kentucky Revised Statutes prohibiting disclosure or reporting of information.

➔Section 4. KRS 45A.690 is amended to read as follows:

(1) As used in KRS 45A.690 to 45A.725:

(a) "Committee" means the Government Contract Review Committee of the Legislative Research Commission;

(b) "Contracting body" means each state board, bureau, commission, department, division, authority, university, college, officer, or other entity, except the Legislature, authorized by law to contract for personal services. "Contracting body" includes the Tourism Development Finance Authority with regard to tax incentive agreements;

(c) **"Digital interactive media production" has the same meaning as in Section 1 of this Act;**

**(d)** "Governmental emergency" means an unforeseen event or set of circumstances that creates an emergency condition as determined by the committee by promulgation of an administrative regulation;

**(e)**~~(d)~~ "Memorandum of agreement" means any memorandum of agreement, memorandum of understanding, program administration contract, interlocal agreement to which the Commonwealth is a party, privatization contract, or similar device relating to services between a state agency and any other governmental body or political subdivision of the Commonwealth or entity qualified as nonprofit under 26 U.S.C. sec. 501(c)(3) not authorized under KRS Chapter 65 that involves an exchange of resources or responsibilities to carry out a governmental function. It includes agreements by regional cooperative organizations formed by local boards of education or other public educational institutions for the purpose of providing professional educational services to the participating organizations and agreements with Kentucky Distinguished Educators pursuant to KRS 158.782. This definition does not apply to:

1. Agreements between the Transportation Cabinet and any political subdivision of the Commonwealth for road and road-related projects;
2. Agreements between the Auditor of Public Accounts and any other governmental agency or political subdivision of the Commonwealth for auditing services;
3. Agreements between state agencies as required by federal or state law;
4. Agreements between state agencies and state universities or colleges only when the subject of the agreement does not result in the use of an employee or employees of a state university or college by a state agency



to fill a position or perform a duty that an employee or employees of state government could perform if hired, and agreements between state universities or colleges and employers of students in the Commonwealth work-study program sponsored by the Kentucky Higher Education Assistance Authority;

5. Agreements involving child support collections and enforcement;
6. Agreements with public utilities, providers of direct Medicaid health care to individuals except for any health maintenance organization or other entity primarily responsible for administration of any program or system of Medicaid managed health care services established by law or by agreement with the Cabinet for Health and Family Services, and transit authorities;
7. Nonfinancial agreements;
8. Any obligation or payment for reimbursement of the cost of corrective action made pursuant to KRS 224.60-140;
9. Exchanges of confidential personal information between agencies;
10. Agreements between state agencies and rural concentrated employment programs; or
11. Any other agreement that the committee deems inappropriate for consideration;

~~(f)~~~~(e)~~ "Motion picture or entertainment production" has the~~means the~~ same meaning as ~~defined~~ in Section 1 of this Act~~[KRS 148.542]~~ ;

~~(g)~~~~(f)~~ "Multicontract" means a group of personal service contracts between a contracting body and individual vendors providing the same or substantially similar services to the contracting body that, for purposes of the committee, are treated as one (1) contract;

~~(h)~~~~(g)~~ "Personal service contract" means an agreement whereby an individual,

firm, partnership, or corporation is to perform certain services requiring professional skill or professional judgment for a specified period of time at a price agreed upon. It includes all price contracts for personal services between a governmental body or political subdivision of the Commonwealth and any other entity in any amount. This definition does not apply to:

1. Agreements between the Department of Parks and a performing artist or artists for less than five thousand dollars (\$5,000) per fiscal year per artist or artists;
2. Agreements with public utilities, foster care parents, providers of direct Medicaid health care to individuals except for any health maintenance organization or other entity primarily responsible for administration of any program or system of Medicaid managed health care services established by law or by agreement with the Cabinet for Health and Family Services, individuals performing homemaker services, and transit authorities;
3. Agreements between state universities or colleges and employers of students in the Commonwealth work study program sponsored by the Kentucky Higher Education Assistance Authority;
4. Agreements between a state agency and rural concentrated employment programs;
5. Agreements between the State Fair Board and judges, officials, and entertainers contracted for events promoted by the State Fair Board;
6. Agreements between the Department of Public Advocacy and attorneys for the representation of indigent clients who are entitled to representation under KRS Chapter 31 and who, by reason of conflict or otherwise, cannot be represented by the department, subject to quarterly reports of all such agreements to the committee; or

7. Any other contract that the committee deems inappropriate for consideration;

~~(i)(h)~~ "Tax incentive agreement" means an agreement executed under KRS 148.546; and

~~(i)(i)~~ "Tourism Development Finance Authority" means the authority established by KRS 148.850.

(2) Compliance with the provisions of KRS 45A.690 to 45A.725 does not dispense with the requirements of any other law necessary to make the personal service contract or memorandum of agreement valid.

➔Section 5. KRS 45A.705 is amended to read as follows:

(1) There is hereby created a permanent committee of the Legislative Research Commission to be known as the Government Contract Review Committee. The committee shall be composed of eight (8) members appointed as follows: three (3) members of the Senate appointed by the President of the Senate; one (1) member of the minority party in the Senate appointed by the Minority Floor Leader in the Senate; three (3) members of the House of Representatives appointed by the Speaker of the House of Representatives; and one (1) member of the minority party in the House of Representatives appointed by the Minority Floor Leader in the House of Representatives. Members shall serve for terms of two (2) years, and the members appointed from each chamber shall elect one (1) member from their chamber to serve as co-chair. Any vacancy that may occur in the membership of the committee shall be filled by the appointing authority who made the original appointment.

(2) On an alternating basis, each co-chair shall have the first option to set the monthly meeting date. A monthly meeting may be canceled by agreement of both co-chairs. The co-chairs shall have joint responsibilities for committee meeting agendas and presiding at committee meetings. A majority of the entire membership of the

Government Contract Review Committee shall constitute a quorum, and all actions of the committee shall be by vote of a majority of its entire membership. The members of the committee shall be compensated for attending meetings, as provided in KRS 7.090(3).

- (3) Any professional, clerical, or other employees required by the committee shall be provided in accordance with the provisions of KRS 7.090(4) and (5).
- (4) All proposed personal service contracts, tax incentive agreements, and memoranda of agreement received by the Legislative Research Commission shall be submitted to the committee to:
  - (a) Examine the stated need for the service or benefit to the Commonwealth of the motion picture or entertainment production or the digital interactive media production;
  - (b) Examine whether the service could or should be performed by state personnel, for personal service contracts and memoranda of agreement;
  - (c) Examine the amount and duration of the contract or agreement; and
  - (d) Examine the appropriateness of any exchange of resources or responsibilities.
- (5) If the committee determines that the contract service or agreement, other than an emergency contract approved by the secretary of the Finance and Administration Cabinet or his or her designee, is not needed or inappropriate, the motion picture or entertainment production or the digital interactive media production is not beneficial or is inappropriate, the service could or should be performed by state personnel, the amount or duration is excessive, or the exchange of resources or responsibilities are inappropriate, the committee shall attach a written notation of the reasons for its disapproval or objection to the personal service contract, tax incentive agreement, or memorandum of agreement and shall return the personal service contract, tax incentive agreement, or memorandum of agreement to the secretary of the Finance and Administration Cabinet or his or her designee. The

committee shall act on a personal service contract, tax incentive agreement, or memorandum of agreement submitted to the Legislative Research Commission within forty-five (45) days of the date received.

- (6) Upon receipt of the committee's disapproval or objection to a personal service contract, tax incentive agreement, or memorandum of agreement, the secretary of the Finance and Administration Cabinet or his or her designee shall determine whether the personal service contract, tax incentive agreement, or memorandum of agreement shall:
  - (a) Be revised to comply with the objections of the committee;
  - (b) Be canceled and, if applicable, payment allowed for services rendered under the contract or amendment; or
  - (c) Remain effective as originally approved.
- (7) The secretary of the Finance and Administration Cabinet or his or her designee shall notify the committee of the action taken on personal service contracts, tax incentive agreements, and memoranda of agreement disapproved or objected to within ten (10) days from the date the personal service contracts, tax incentive agreement, or memoranda of agreement were reviewed by the committee.
- (8) Contracting bodies shall make annual reports to the committee not later than December 1 of each year. The committee shall establish reporting procedures for contracting bodies related to personal service contracts, tax incentive agreements, and memoranda of agreement submitted by the secretary of the Finance and Administration Cabinet or his or her designee.

➔Section 6. KRS 141.0205 is amended to read as follows:

If a taxpayer is entitled to more than one (1) of the tax credits allowed against the tax imposed by KRS 141.020, 141.040, and 141.0401, the priority of application and use of the credits shall be determined as follows:

- (1) The nonrefundable business incentive credits against the tax imposed by KRS

141.020 shall be taken in the following order:

- (a) 1. For taxable years beginning after December 31, 2004, and before January 1, 2007, the corporation income tax credit permitted by KRS 141.420(3)(a);
2. For taxable years beginning after December 31, 2006, the limited liability entity tax credit permitted by KRS 141.0401;
- (b) The economic development credits computed under KRS 141.347, 141.381, 141.384, 141.400, 141.401, 141.402, 141.403, 141.407, 141.415, 154.12-2088, and 154.27-080;
- (c) The qualified farming operation credit permitted by KRS 141.412;
- (d) The certified rehabilitation credit permitted by KRS 171.397(1)(a);
- (e) The health insurance credit permitted by KRS 141.062;
- (f) The tax paid to other states credit permitted by KRS 141.070;
- (g) The credit for hiring the unemployed permitted by KRS 141.065;
- (h) The recycling or composting equipment credit permitted by KRS 141.390;
- (i) The tax credit for cash contributions in investment funds permitted by KRS 154.20-263 in effect prior to July 15, 2002, and the credit permitted by KRS 154.20-258;
- (j) The coal incentive credit permitted under KRS 141.0405;
- (k) The research facilities credit permitted under KRS 141.395;
- (l) The employer GED incentive credit permitted under KRS 164.0062;
- (m) The voluntary environmental remediation credit permitted by KRS 141.418;
- (n) The biodiesel and renewable diesel credit permitted by KRS 141.423;
- (o) The environmental stewardship credit permitted by KRS 154.48-025;
- (p) The clean coal incentive credit permitted by KRS 141.428;
- (q) The ethanol credit permitted by KRS 141.4242;
- (r) The cellulosic ethanol credit permitted by KRS 141.4244;

- (s) The energy efficiency credits permitted by KRS 141.436;
  - (t) The railroad maintenance and improvement credit permitted by KRS 141.385;
  - (u) The Endow Kentucky credit permitted by KRS 141.438;
  - (v) The New Markets Development Program credit permitted by KRS 141.434;
  - (w) The food donation credit permitted by KRS 141.392;
  - (x) The distilled spirits credit permitted by KRS 141.389; and
  - (y) The angel investor credit permitted by KRS 141.396.
- (2) After the application of the nonrefundable credits in subsection (1) of this section, the nonrefundable personal tax credits against the tax imposed by KRS 141.020 shall be taken in the following order:
- (a) The individual credits permitted by KRS 141.020(3);
  - (b) The credit permitted by KRS 141.066;
  - (c) The tuition credit permitted by KRS 141.069;
  - (d) The household and dependent care credit permitted by KRS 141.067; and
  - (e) The new home credit permitted by KRS 141.388.
- (3) After the application of the nonrefundable credits provided for in subsection (2) of this section, the refundable credits against the tax imposed by KRS 141.020 shall be taken in the following order:
- (a) The individual withholding tax credit permitted by KRS 141.350;
  - (b) The individual estimated tax payment credit permitted by KRS 141.305;
  - (c) For taxable years beginning after December 31, 2004, and before January 1, 2007, the corporation income tax credit permitted by KRS 141.420(3)(c);
  - (d) The certified rehabilitation credit permitted by KRS 171.3961 and 171.397(1)(b); ~~and~~
  - (e) The film industry tax credit allowed by KRS 141.383; **and**
  - (f) **The digital interactive media production tax credit allowed by Section 7 of this Act.**

- (4) The nonrefundable credit permitted by KRS 141.0401 shall be applied against the tax imposed by KRS 141.040.
- (5) The following nonrefundable credits shall be applied against the sum of the tax imposed by KRS 141.040 after subtracting the credit provided for in subsection (4) of this section, and the tax imposed by KRS 141.0401 in the following order:
  - (a) The economic development credits computed under KRS 141.347, 141.381, 141.384, 141.400, 141.401, 141.402, 141.403, 141.407, 141.415, 154.12-2088, and 154.27-080;
  - (b) The qualified farming operation credit permitted by KRS 141.412;
  - (c) The certified rehabilitation credit permitted by KRS 171.397(1)(a);
  - (d) The health insurance credit permitted by KRS 141.062;
  - (e) The unemployment credit permitted by KRS 141.065;
  - (f) The recycling or composting equipment credit permitted by KRS 141.390;
  - (g) The coal conversion credit permitted by KRS 141.041;
  - (h) The enterprise zone credit permitted by KRS 154.45-090, for taxable periods ending prior to January 1, 2008;
  - (i) The tax credit for cash contributions to investment funds permitted by KRS 154.20-263 in effect prior to July 15, 2002, and the credit permitted by KRS 154.20-258;
  - (j) The coal incentive credit permitted under KRS 141.0405;
  - (k) The research facilities credit permitted under KRS 141.395;
  - (l) The employer GED incentive credit permitted under KRS 164.0062;
  - (m) The voluntary environmental remediation credit permitted by KRS 141.418;
  - (n) The biodiesel and renewable diesel credit permitted by KRS 141.423;
  - (o) The environmental stewardship credit permitted by KRS 154.48-025;
  - (p) The clean coal incentive credit permitted by KRS 141.428;
  - (q) The ethanol credit permitted by KRS 141.4242;



- (r) The cellulosic ethanol credit permitted by KRS 141.4244;
  - (s) The energy efficiency credits permitted by KRS 141.436;
  - (t) The ENERGY STAR home or ENERGY STAR manufactured home credit permitted by KRS 141.437;
  - (u) The railroad maintenance and improvement credit permitted by KRS 141.385;
  - (v) The railroad expansion credit permitted by KRS 141.386;
  - (w) The Endow Kentucky credit permitted by KRS 141.438;
  - (x) The New Markets Development Program credit permitted by KRS 141.434;
  - (y) The food donation credit permitted by KRS 141.392; and
  - (z) The distilled spirits credit permitted by KRS 141.389.
- (6) After the application of the nonrefundable credits in subsection (5) of this section, the refundable credits shall be taken in the following order:
- (a) The corporation estimated tax payment credit permitted by KRS 141.044;
  - (b) The certified rehabilitation credit permitted by KRS 171.3961 and 171.397(1)(b); ~~and~~
  - (c) The film industry tax credit allowed ~~by~~<sup>in</sup> KRS 141.383; and
  - (d) The digital interactive media production tax credit allowed by Section 7 of this Act.**

➔Section 7. KRS 141.383 is amended to read as follows:

- (1) As used in this section:
- (a) ~~["Above the line production crew" means the same as defined in KRS 148.542;~~
  - ~~(b) "Approved company" means the same as defined in KRS 148.542;~~
  - (b)**~~(c) "Below the line production crew" means the same as defined in KRS 148.542;~~
  - ~~(d) "Cabinet" means the same as defined in KRS 148.542;~~
  - (c)**~~(e) "Office" means the same as defined in KRS 148.542;~~

~~(d)~~~~(f)~~ "Qualifying expenditure" means the same as defined in KRS 148.542;

~~(e)~~~~(g)~~ "Qualifying payroll expenditure" means the same as defined in KRS 148.542;

~~(f)~~~~(h)~~ "Secretary" means the same as defined in KRS 148.542; and

~~(g)~~~~(i)~~ "Tax incentive agreement" means the same as defined in KRS 148.542.

- (2) There is hereby created a refundable tax credit against the tax imposed under KRS 141.020 or 141.040 and 141.0401, with the ordering of credits as provided in KRS 141.0205.
- (3) An approved company may receive a refundable tax credit on and after July 1, 2010, if:
  - (a) The cabinet has received notification from the office that the approved company has satisfied all requirements of KRS 148.542 to 148.546; and
  - (b) The approved company has provided a detailed cost report and sufficient documentation to the office, which has been forwarded by the office to the cabinet, that:
    1. The purchases of qualifying expenditures were made after the execution of the tax incentive agreement; and
    2. The approved company has withheld income tax as required by KRS 141.310 on all qualified payroll expenditures.
- (4) The refundable tax credit shall not apply until the taxable year in which the secretary notifies the approved company of the amount of refundable credit that is available. If the notification of approval is provided prior to July 1, 2010, the company shall not claim the credit and the department shall not issue any refunds until on or after July 1, 2010.
- (5) Interest shall not be allowed or paid on any refundable credits provided under this section.
- (6) The cabinet shall promulgate administrative regulations in accordance with KRS

Chapter 13A to administer this section.

- (7) On or before September 1, 2010, and on or before each September 1 thereafter, for the immediately preceding fiscal year, the cabinet shall report to the office the names of the approved companies and the amounts of refundable income tax credit claimed.

➔Section 8. This Act takes effect January 1, 2017.