

1 **STATE FILM PRODUCTION INCENTIVES AMENDMENTS**

2 2022 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Ronald M. Winterton**

5 House Sponsor: Stephen G. Handy

6

7 **LONG TITLE**

8 **Committee Note:**

9 The Economic Development and Workforce Services Interim Committee recommended
10 this bill.

11 Legislative Vote: 9 voting for 0 voting against 7 absent

12 **General Description:**

13 This bill modifies provisions related to motion picture incentives.

14 **Highlighted Provisions:**

15 This bill:

- 16 ▶ defines terms;
- 17 ▶ exempts certain rural film productions from limits on the total amount of refundable
18 motion picture tax credit incentives the Governor's Office of Economic Opportunity
19 may issue each fiscal year; and
- 20 ▶ makes technical changes.

21 **Money Appropriated in this Bill:**

22 None

23 **Other Special Clauses:**

24 None

25 **Utah Code Sections Affected:**

26 AMENDS:

27 **63N-8-102**, as last amended by Laws of Utah 2021, Chapter 282



28 **63N-8-103**, as last amended by Laws of Utah 2021, Chapters 282 and 436
29

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

31 Section 1. Section **63N-8-102** is amended to read:

32 **63N-8-102. Definitions.**

33 As used in this chapter:

34 (1) "Digital media company" means a company engaged in the production of a digital
35 media project.

36 (2) "Digital media project" means all or part of a production of interactive
37 entertainment or animated production that is produced for distribution in commercial or
38 educational markets, which shall include projects intended for Internet or wireless distribution.

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

41 (a) an expenditure that is subject to:

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

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

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

48 (iv) a combination of Subsections (3)(a)(i), (ii), and (iii);

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

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

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

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

57 (a) motion pictures;

58 (b) television series; or

- 59 (c) made-for-television movies.
- 60 (6) "Motion picture incentive" means either a cash rebate from the Motion Picture
61 Incentive Account or a refundable tax credit under Section 59-7-614.5 or 59-10-1108.
- 62 (7) "New state revenues" means:
- 63 (a) incremental new state sales and use tax revenues generated as a result of a digital
64 media project that a digital media company pays under Title 59, Chapter 12, Sales and Use Tax
65 Act;
- 66 (b) incremental new state tax revenues that a digital media company pays as a result of
67 a digital media project under:
- 68 (i) Title 59, Chapter 7, Corporate Franchise and Income Taxes;
- 69 (ii) Title 59, Chapter 10, Part 1, Determination and Reporting of Tax Liability and
70 Information;
- 71 (iii) Title 59, Chapter 10, Part 2, Trusts and Estates;
- 72 (iv) Title 59, Chapter 10, Part 4, Withholding of Tax; or
- 73 (v) a combination of Subsections (7)(b)(i), (ii), (iii), and (iv);
- 74 (c) incremental new state revenues generated as individual income taxes under Title
75 59, Chapter 10, Part 1, Determination and Reporting of Tax Liability and Information, paid by
76 employees of the new digital media project as evidenced by payroll records from the digital
77 media company; or
- 78 (d) a combination of Subsections (7)(a), (b), and (c).
- 79 (8) "Payroll company" means a business entity that handles the payroll and becomes
80 the employer of record for the staff, cast, and crew of a motion picture production.
- 81 (9) "Refundable tax credit" means a refundable motion picture tax credit authorized
82 under Section 63N-8-103 and claimed under Section 59-7-614.5 or 59-10-1108.
- 83 (10) "Restricted account" means the Motion Picture Incentive Account created in
84 Section 63N-8-103.
- 85 (11) "Rural production" means a state-approved production in which a majority of the
86 production occurs within a county of the third, fourth, fifth, or sixth class.
- 87 [(H)] (12) "State-approved production" means a production under Subsections (2) and
88 (5) that is:
- 89 (a) approved by the office and ratified by the GO Utah board; and

90 (b) produced in the state by a motion picture company.

91 [~~(12)~~] (13) "Tax credit amount" means the amount the office lists as a tax credit on a
92 tax credit certificate for a taxable year.

93 [~~(13)~~] (14) "Tax credit certificate" means a certificate issued by the office that:

94 (a) lists the name of the applicant;

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

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

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

99 Section 2. Section **63N-8-103** is amended to read:

100 **63N-8-103. Motion Picture Incentive Account created -- Cash rebate incentives --**
101 **Refundable tax credit incentives.**

102 (1) (a) There is created within the General Fund a restricted account known as the
103 Motion Picture Incentive Account, which the office shall use to provide cash rebate incentives
104 for state-approved productions by a motion picture company.

105 (b) All interest generated from investment of money in the restricted account shall be
106 deposited in the restricted account.

107 (c) The restricted account shall consist of an annual appropriation by the Legislature.

108 (d) The office shall:

109 (i) with the advice of the GO Utah board, administer the restricted account; and

110 (ii) make payments from the restricted account as required under this section.

111 (e) The cost of administering the restricted account shall be paid from money in the
112 restricted account.

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

116 (b) The motion picture company or digital media company shall provide the office with
117 an incentive request form, provided by the office, identifying and documenting the dollars left
118 in the state and new state revenues generated by the motion picture company or digital media
119 company for state-approved production, including any related tax returns by the motion picture
120 company, payroll company, digital media company, or loan-out corporation under Subsection

121 (2)(d).

122 (c) For a motion picture company, an independent certified public accountant shall:

123 (i) review the incentive request form submitted by the motion picture company; and

124 (ii) provide a report on the accuracy and validity of the incentive request form,

125 including the amount of dollars left in the state, in accordance with the agreed upon procedures
126 established by the office by rule.

127 (d) The motion picture company, digital media company, payroll company, or loan-out
128 corporation shall provide the office with a document that expressly directs and authorizes the
129 State Tax Commission to disclose the entity's tax returns and other information concerning the
130 entity that would otherwise be subject to confidentiality under Section 59-1-403 or Section
131 6103, Internal Revenue Code, to the office.

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

134 (f) Upon receipt of the document described in Subsection (2)(d), the State Tax
135 Commission shall provide the office with the information requested by the office that the
136 motion picture company, digital media company, payroll company, or loan-out corporation
137 directed or authorized the State Tax Commission to provide to the office in the document
138 described in Subsection (2)(d).

139 (g) Subject to Subsection (3), for a motion picture company the office shall:

140 (i) review the incentive request form from the motion picture company described in
141 Subsection (2)(b) and verify that the incentive request form was reviewed by an independent
142 certified public accountant as described in Subsection (2)(c); and

143 (ii) based upon the independent certified public accountant's report under Subsection
144 (2)(c), determine the amount of the incentive that the motion picture company is entitled to
145 under the motion picture company's agreement with the office.

146 (h) Subject to Subsection (3), for a digital media company, the office shall:

147 (i) ensure the digital media project results in new state revenues; and

148 (ii) based upon review of new state revenues, determine the amount of the incentive
149 that a digital media company is entitled to under the digital media company's agreement with
150 the office.

151 (i) Subject to Subsection (3), if the incentive is in the form of a cash rebate, the office

152 shall pay the incentive from the restricted account to the motion picture company,
153 notwithstanding Subsections 51-5-3(23)(b) and 63J-1-105(6).

154 (j) If the incentive is in the form of a refundable tax credit under Section 59-7-614.5 or
155 59-10-1108, the office shall:

156 (i) issue a tax credit certificate to the motion picture company or digital media
157 company; and

158 (ii) provide a digital record of the tax credit certificate to the State Tax Commission.

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

163 (l) A motion picture company or digital media company may claim a motion picture
164 tax credit on the motion picture company's or the digital media company's tax return for the
165 amount listed on the tax credit certificate issued by the office.

166 (m) A motion picture company or digital media company that claims a tax credit under
167 Subsection (2)(l) shall retain the tax credit certificate and all supporting documentation in
168 accordance with Subsection 63N-8-104(6).

169 (3) (a) Subject to Subsections (3)(b) [~~and (c)~~] through (d), the office may issue
170 \$6,793,700 in tax credit certificates under this part in each fiscal year.

171 (b) For the fiscal year ending June 30, 2022, the office may issue \$8,393,700 in tax
172 credit certificates under this part.

173 (c) If the office does not issue tax credit certificates in a fiscal year totaling the amount
174 authorized under Subsections (3)(a) and (b), the office may carry over that amount for issuance
175 in subsequent fiscal years.

176 (d) The limitations described in Subsections (3)(a) and (b) do not apply to a tax credit
177 certificate issued for a rural production.