

30 Review Commission and details the content of those reports; and

31 ▶ makes certain technical changes.

32 **Monies Appropriated in this Bill:**

33 None

34 **Other Special Clauses:**

35 This bill has retrospective operation of certain provisions for a taxable year beginning
36 on or after January 1, 2009.

37 **Utah Code Sections Affected:**

38 AMENDS:

39 **63M-1-1801**, as renumbered and amended by Laws of Utah 2008, Chapter 382

40 **63M-1-1802**, as renumbered and amended by Laws of Utah 2008, Chapter 382

41 **63M-1-1803**, as renumbered and amended by Laws of Utah 2008, Chapter 382

42 **63M-1-1805**, as renumbered and amended by Laws of Utah 2008, Chapter 382

43 ENACTS:

44 **59-7-614.5**, Utah Code Annotated 1953

45 **59-10-1108**, Utah Code Annotated 1953

46 REPEALS AND REENACTS:

47 **63M-1-1804**, as renumbered and amended by Laws of Utah 2008, Chapter 382



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

50 Section 1. Section **59-7-614.5** is enacted to read:

51 **59-7-614.5. Refundable motion picture tax credit.**

52 (1) As used in this section:

53 (a) "Motion picture company" means a taxpayer that meets the definition of a motion
54 picture company under Subsection 63M-1-1802(5).

55 (b) "Office" means the Governor's Office of Economic Development.

56 (c) "State-approved production" has the same meaning as defined in Subsection
57 63M-1-1802(10).

58 (2) For taxable years beginning on or after January 1, 2009, a motion picture company
59 may claim a refundable tax credit for a state-approved production.

60 (3) The tax credit under this section is the amount listed as the tax credit amount on
61 the tax credit certificate that the office issues to a motion picture company under Section
62 63M-1-1803 for the taxable year.

63 (4) (a) In accordance with any rules prescribed by the commission under Subsection
64 (4)(b), the commission shall make a refund to a motion picture company that claims a tax
65 credit under this section if the amount of the tax credit exceeds the motion picture company's
66 tax liability for a taxable year.

67 (b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act,
68 the commission may make rules providing procedures for making a refund to a motion picture
69 company as required by Subsection (4)(a).

70 (5) (a) On or before October 1, 2014, and every five years after October 1, 2014, the
71 Utah Tax Review Commission shall study the tax credit allowed by this section and make
72 recommendations to the Revenue and Taxation Interim Committee and the Workforce
73 Services and Community and Economic Development Interim Committee concerning whether
74 the tax credit should be continued, modified, or repealed.

75 (b) For purposes of the study required by this Subsection (5), the office shall provide
76 the following information to the Utah Tax Review Commission:

77 (i) the amount of tax credit that the office grants to each motion picture company for
78 each calendar year;

79 (ii) the criteria that the office uses in granting the tax credit;

80 (iii) the dollars left in the state, as defined in Subsection 63M-1-1802(2), by each
81 motion picture company for each calendar year;

82 (iv) the information contained in the office's latest report to the Legislature under
83 Section 63M-1-1805; and

84 (v) any other information requested by the Utah Tax Review Commission.

85 (c) The Utah Tax Review Commission shall ensure that its recommendations under

86 Subsection (5)(a) include an evaluation of:

- 87 (i) the cost of the tax credit to the state;
- 88 (ii) the effectiveness of the tax credit; and
- 89 (iii) the extent to which the state benefits from the tax credit.

90 Section 2. Section **59-10-1108** is enacted to read:

91 **59-10-1108. Refundable motion picture tax credit.**

92 (1) As used in this section:

93 (a) "Motion picture company" means a claimant, estate, or trust that meets the
94 definition of a motion picture company under Subsection 63M-1-1802(5).

95 (b) "Office" means the Governor's Office of Economic Development.

96 (c) "State-approved production" has the same meaning as defined in Subsection
97 63M-1-1802(10).

98 (2) For taxable years beginning on or after January 1, 2009, a motion picture company
99 may claim a refundable tax credit for a state-approved production.

100 (3) The tax credit under this section is the amount listed as the tax credit amount on
101 the tax credit certificate that the office issues to a motion picture company under Section
102 63M-1-1803 for the taxable year.

103 (4) (a) In accordance with any rules prescribed by the commission under Subsection
104 (4)(b), the commission shall make a refund to a motion picture company that claims a tax
105 credit under this section if the amount of the tax credit exceeds the motion picture company's
106 tax liability for the taxable year.

107 (b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act,
108 the commission may make rules providing procedures for making a refund to a motion picture
109 company as required by Subsection (4)(a).

110 (5) (a) On or before October 1, 2014, and every five years after October 1, 2014, the
111 Utah Tax Review Commission shall study the tax credit allowed by this section and make
112 recommendations to the Revenue and Taxation Interim Committee and the Workforce
113 Services and Community and Economic Development Interim Committee concerning whether

114 the tax credit should be continued, modified, or repealed.

115 (b) For purposes of the study required by this Subsection (5), the office shall provide
116 the following information to the Utah Tax Review Commission:

117 (i) the amount of tax credit the office grants to each taxpayer for each calendar year;

118 (ii) the criteria the office uses in granting a tax credit;

119 (iii) the dollars left in the state, as defined in Subsection 63M-1-1802(2), by each
120 motion picture company for each calendar year;

121 (iv) the information contained in the office's latest report to the Legislature under
122 Section 63M-1-1805; and

123 (v) any other information requested by the Utah Tax Review Commission.

124 (c) The Utah Tax Review Commission shall ensure that its recommendations under
125 Subsection (5)(a) include an evaluation of:

126 (i) the cost of the tax credit to the state;

127 (ii) the effectiveness of the tax credit; and

128 (iii) the extent to which the state benefits from the tax credit.

129 Section 3. Section **63M-1-1801** is amended to read:

130 **63M-1-1801. Purpose.**

131 (1) The Legislature finds that:

132 (a) the state's natural beauty, scenic wonders, and diverse topography provide a variety
133 of magnificent settings from which the motion picture industry can choose to film part or all of
134 major or independent motion pictures, made-for-television movies, and television series;

135 (b) the state has an abundance of resources, including a skilled and able workforce, the
136 required infrastructure, and a friendly and hospitable populace that have been instrumental in
137 the filming of [~~several~~] hundreds of successful motion pictures and several television series;
138 and

139 (c) further development of the motion picture industry in Utah is a state public
140 purpose that will significantly impact growth in the state's economy and contribute to the
141 fiscal well being of the state and its people.

- 142 (2) The purpose of this part is to:
- 143 (a) encourage the use of Utah as a site for the production of motion pictures, television
- 144 series, and made-for-television movies;
- 145 (b) provide [a] financial [~~incentive~~] incentives to the film industry so that Utah might
- 146 compete successfully with other states and countries for filming locations; and
- 147 (c) help develop a strong motion picture industry presence in the state that will
- 148 contribute substantially to improving the state's economy.

149 Section 4. Section **63M-1-1802** is amended to read:

150 **63M-1-1802. Definitions.**

151 As used in this part:

152 [~~(1) "Administrator" means the director of the Governor's Office of Economic~~

153 ~~Development or the director's designee.]~~

154 [~~(2)~~] (1) "Board" means the [~~Board of Business and~~] Governor's Office of Economic

155 Development Board.

156 (2) "Dollars left in the state" means expenditures made in the state for a state-approved

157 production, including:

158 (a) an expenditure that is subject to:

159 (i) a corporate franchise or income tax under Title 59, Chapter 7, Corporate Franchise

160 and Income Taxes;

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

162 and

163 (iii) a sales and use tax under Title 59, Chapter 12, Sales and Use Tax Act,

164 notwithstanding any sales and use tax exemption allowed by law;

165 (b) payments made to a nonresident only to the extent of the income tax paid to the

166 state on the payments, the amount of per diems paid, and other direct reimbursements

167 transacted in the state; and

168 (c) payments made to a payroll company or loan-out corporation that is registered to

169 do business in the state, only to the extent of the amount of withholding under Section

170 59-10-402.

171 (3) "Fund" means the restricted account known as the Motion Picture Incentive Fund
172 created in Section 63M-1-1803.

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

175 [~~(4)~~] (5) "Motion picture company" means a company engaged in the production of:

176 (a) motion pictures[;];

177 (b) television series[;]; or

178 (c) made-for-television movies.

179 (6) "Motion picture incentive" means either a cash rebate from the Motion Picture
180 Incentive Fund or a refundable tax credit under Section 59-7-614.5 or 59-10-1108.

181 (7) "Office" means the Governor's Office of Economic Development.

182 (8) "Payroll company" means a business entity that handles the payroll and becomes
183 the employer of record for the staff, cast, and crew of a motion picture production.

184 (9) "Refundable tax credit" means a refundable motion picture tax credit authorized
185 under Section 63M-1-1803 and claimed under Section 59-7-614.5 or 59-10-1108.

186 [~~(5)~~] (10) "State-approved production" means a motion picture, television series, or
187 made-for-television movie approved by the administrator and ratified by the board that is
188 produced in the state by a motion picture company.

189 (11) "Tax credit amount" means the amount the office lists as a tax credit on a tax
190 credit certificate for a taxable year.

191 (12) "Tax credit certificate" means a certificate issued by the office that:

192 (a) lists the name of the applicant;

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

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

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

197 Section 5. Section **63M-1-1803** is amended to read:

198 **63M-1-1803. Motion Picture Incentive Fund created -- Cash rebate incentives --**
199 **Refundable tax credit incentives.**

200 (1) (a) There is created within the General Fund a restricted account known as the
201 Motion Picture Incentive Fund, which shall be used to provide cash rebate incentives for
202 within-the-state production of television series, made-for-television movies, and motion
203 pictures, including feature films and independent films.

204 ~~[(2) (a) The fund shall be administered by the administrator with advice from the~~
205 ~~board.]~~

206 ~~[(b) The administrator, with advice from the board, shall approve fund policies and~~
207 ~~qualification criteria to receive an incentive award consistent with the provisions of this part.]~~

208 ~~[(3)]~~ (b) All interest generated from investment of money in the fund shall be
209 deposited in the fund.

210 ~~[(4)]~~ (c) The fund shall consist of an annual appropriation by the Legislature.

211 (d) The Division of Finance shall make payments from the account as required under
212 this section.

213 (2) (a) A motion picture company seeking disbursement of an incentive allowed under
214 an agreement with the office shall follow the procedures and requirements of this Subsection
215 (2).

216 (b) (i) The motion picture company shall provide the office with a report identifying
217 and documenting the dollars left in the state by the motion picture company for its
218 state-approved production, including any related tax returns by the motion picture company,
219 payroll company, or loan-out corporation under Subsection (2)(c).

220 (ii) An independent certified public accountant shall:

221 (A) prepare the report on behalf of the motion picture company; and

222 (B) attest to the accuracy and validity of the report, including the amount of dollars
223 left in the state.

224 (c) The motion picture company, payroll company, or loan-out corporation shall
225 provide the office with a document that expressly directs and authorizes the State Tax

226 Commission to disclose the entity's tax returns and other information concerning the entity
227 that would otherwise be subject to confidentiality under Section 59-1-403 or Section 6103,
228 Internal Revenue Code, to the office.

229 (d) The office shall submit the document described in Subsection (2)(c) to the State
230 Tax Commission.

231 (e) Upon receipt of the document described in Subsection (2)(c), the State Tax
232 Commission shall provide the office with the information requested by the office that the
233 motion picture company, payroll company, or loan-out corporation directed or authorized the
234 State Tax Commission to provide to the office in the document described in Subsection (2)(c).

235 (f) Subject to Subsection (3), the office shall:

236 (i) review the report from the motion picture company described in Subsection (2)(b)
237 and verify that it was prepared by an independent certified public accountant; and

238 (ii) based upon the certified public accountant's attestation under Subsection (2)(b),
239 determine the amount of the incentive that the motion picture company is entitled to under its
240 agreement with the office.

241 (g) Subject to Subsection (3), if the incentive is in the form of a cash rebate, the office
242 shall submit to the Division of Finance:

243 (i) a request for payment of the cash rebate incentive to the motion picture company;

244 (ii) the name and address of the payee; and

245 (iii) any other information requested by the Division of Finance.

246 (h) Upon receipt of a request for payment of a cash rebate incentive under Subsection
247 (2)(g), the Division of Finance shall:

248 (i) transfer from the General Fund to the restricted account the amount contained in
249 the request for payment of a cash rebate incentive after reducing the amount transferred by any
250 unencumbered balances in the restricted account; and

251 (ii) notwithstanding Subsections 51-5-3(23)(b) and 63J-1-404(4)(c), after receiving a
252 request for payment of a cash rebate incentive and making the transfer required by Subsection
253 (2)(h)(i), pay the incentive from the restricted account.

254 (i) If the incentive is in the form of a refundable tax credit under Section 59-7-614.5 or
255 59-10-1108, the office shall:

256 (i) issue a tax credit certificate to the motion picture company; and

257 (ii) provide a duplicate copy of the tax credit certificate to the State Tax Commission.

258 (j) A motion picture company may not claim a motion picture tax credit under Section
259 59-7-614.5 or 59-10-1108 unless the motion picture company has received a tax credit
260 certificate for the claim issued by the office under Subsection (2)(i)(i).

261 (k) A motion picture company may claim a motion picture tax credit on its tax return
262 for the amount listed on the tax credit certificate issued by the office.

263 (l) A motion picture company that claims a tax credit under Subsection (2)(k) shall
264 retain the tax credit certificate in accordance with Subsection 63M-1-1804(5)(d).

265 (3) (a) Subject to Subsection (3)(b), the office may issue up to:

266 (i) (A) \$7,793,700 in tax credit certificates under this part in fiscal year 2009-10; and

267 (B) \$7,793,700 in tax credit certificates under this part in fiscal year 2010-11; and

268 (ii) \$2,206,300 in motion picture cash rebates under this part in a fiscal year.

269 (b) If the total amount of tax credit certificates the office issues in a fiscal year is less
270 than the amount of tax credit certificates the office may issue in that fiscal year under
271 Subsection (3)(a)(i)(A) or (B), the office may issue the remaining amount of tax credit
272 certificates in a fiscal year after the fiscal year for which there is a remaining amount of tax
273 credit certificates.

274 (c) Notwithstanding any other provision of this part or Section 59-7-614.5 or
275 59-10-1108, beginning on July 1, 2011, the office may not issue a tax credit certificate unless:

276 (i) the Legislature expressly provides funding in the office's budget for the office to
277 issue the tax credit certificate; or

278 (ii) there is a remaining amount of tax credit that the office may issue in accordance
279 with Subsection (3)(b).

280 Section 6. Section **63M-1-1804** is repealed and reenacted to read:

281 **63M-1-1804. Motion picture incentives -- Standards to qualify for an incentive --**

282 **Limitations -- Content of agreement between office and motion picture company.**

283 (1) In addition to the requirements for receiving a motion picture incentive as set forth
284 in this part, the office, in accordance with Title 63G, Chapter 3, Utah Administrative
285 Rulemaking Act, shall make rules establishing the standards that a motion picture company
286 must meet to qualify for the motion picture incentive.

287 (2) The office shall ensure that those standards include the following:

288 (a) an incentive may only be issued for a within-the-state production of:

289 (i) a television series;

290 (ii) a made-for-television movie; or

291 (iii) a motion picture, including feature films and independent films;

292 (b) financing has been obtained and is in place for the production; and

293 (c) the economic impact of the production on the state represents new incremental
294 economic activity in the state as opposed to existing economic activity.

295 (3) The office may also consider giving preference to a production that stimulates
296 economic activity in rural areas of the state or that has Utah content, such as recognizing that
297 the production was made in the state or uses Utah as Utah in the production.

298 (4) (a) The office, with advice from the board, may enter into an agreement with a
299 motion picture company that meets the standards established under this section and satisfies
300 the other qualification requirements under this part.

301 (b) Subject to Subsection 63M-1-1803(3), the office may commit or authorize a
302 motion picture incentive to a motion picture company if that incentive does not exceed 20% of
303 the dollars left in the state by the motion picture company.

304 (c) A cash rebate incentive from the Motion Picture Incentive Fund may not exceed
305 \$500,000 per production.

306 (5) The office shall ensure that the agreement entered into with a motion picture
307 company under Subsection (4)(a):

308 (a) details the requirements that the motion picture company must meet to qualify for
309 an incentive under this part;

- 310 (b) specifies:
- 311 (i) the nature of the incentive; and
- 312 (ii) the maximum amount of the motion picture incentive that the motion picture
- 313 company may earn for a taxable year and over the life of the production;
- 314 (c) establishes the length of time over which the motion picture company may claim
- 315 the motion picture incentive;
- 316 (d) requires the motion picture company to retain records supporting its claim for a
- 317 motion picture incentive for at least four years after the motion picture company claims the
- 318 incentive under this part; and
- 319 (e) requires the motion picture company to submit to audits for verification of the
- 320 claimed motion picture incentive.

321 Section 7. Section **63M-1-1805** is amended to read:

322 **63M-1-1805. Annual report.**

323 ~~[(1) The administrator shall prepare an annual report for the board on the economic~~

324 ~~impact of this part.]~~

325 ~~[(2)]~~ The ~~[board]~~ office shall ~~[present the]~~ report annually to the Legislature's

326 Workforce Services and Community and Economic Development Interim Committee and the

327 ~~[Economic Development and Human Resources Appropriations Subcommittee, together with~~

328 ~~any proposed recommendations for modifications in this part or the annual ongoing~~

329 ~~appropriation for the fund.]~~ Utah Tax Review Commission describing:

- 330 (1) its success in attracting within-the-state production of television series,
- 331 made-for-television movies, and motion pictures, including feature films and independent
- 332 films;
- 333 (2) the amount of incentive commitments made by the office under this part and the
- 334 period of time over which the incentives will be paid; and
- 335 (3) the economic impact on the state related to:
- 336 (a) dollars left in the state; and
- 337 (b) providing motion picture incentives under this part.

338 Section 8. **Retrospective operation.**

339 Sections 59-7-614.5 and 59-10-1108 have retrospective operation for a taxable year
340 beginning on or after January 1, 2009.