

MOTION PICTURE COMPANY INCENTIVE AMENDMENTS

2014 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Brad R. Wilson

Senate Sponsor: _____

LONG TITLE

General Description:

This bill modifies provisions related to motion picture incentives.

Highlighted Provisions:

This bill:

- ▶ phases out corporate and individual income tax credits used as an incentive for motion picture production in the state after fiscal year 2013-2014;
- ▶ repeals provisions for reports on refundable motion picture tax credits;
- ▶ removes the \$500,000 maximum cash rebate incentive per motion picture project from the Motion Picture Incentive Account;
- ▶ allows the Governor's Office of Economic Development to issue a cash rebate incentive for a digital media project; and
- ▶ makes technical changes.

Money Appropriated in this Bill:

This bill appropriates in fiscal year 2014-15:

- ▶ to the Motion Picture Incentive Account, as an ongoing appropriation:
 - from the General Fund \$6,793,700; and
- ▶ to the Governor's Office of Economic Development, as an ongoing appropriation:
 - from the Motion Picture Incentive Account \$6,793,700.

Other Special Clauses:

None



28 **Utah Code Sections Affected:**

29 AMENDS:

30 **59-7-614.5**, as last amended by Laws of Utah 2012, Chapter 246

31 **59-10-1108**, as last amended by Laws of Utah 2012, Chapter 246

32 **63M-1-1803**, as last amended by Laws of Utah 2011, Chapter 338

33 **63M-1-1804**, as last amended by Laws of Utah 2011, Chapter 338



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

36 Section 1. Section **59-7-614.5** is amended to read:

37 **59-7-614.5. Refundable motion picture tax credit.**

38 (1) As used in this section:

39 (a) "Motion picture company" means a taxpayer that meets the definition of a motion
40 picture company under Section **63M-1-1802**.

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

42 (c) "State-approved production" has the same meaning as defined in Section
43 **63M-1-1802**.

44 (2) For [~~taxable years~~] a taxable year beginning on or after January 1, 2009, a motion
45 picture company may claim a refundable tax credit for a state-approved production in
46 accordance with the provisions of Section **63M-1-1803**.

47 (3) The tax credit under this section is the amount listed as the tax credit amount on the
48 tax credit certificate that the office issues to a motion picture company under Section
49 **63M-1-1803** for the taxable year.

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

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

57 [~~(5) (a) On or before October 1, 2014, and every five years after October 1, 2014, the~~
58 ~~Revenue and Taxation Interim Committee shall study the tax credit allowed by this section and~~

59 ~~make recommendations to the Legislative Management Committee concerning whether the tax~~
 60 ~~credit should be continued, modified, or repealed.]~~

61 ~~[(b) For purposes of the study required by this Subsection (5), the office shall provide~~
 62 ~~the following information to the Revenue and Taxation Interim Committee:]~~

63 ~~[(i) the amount of tax credit that the office grants to each motion picture company for~~
 64 ~~each calendar year;]~~

65 ~~[(ii) the criteria that the office uses in granting the tax credit;]~~

66 ~~[(iii) the dollars left in the state, as defined in Section [63M-1-1802](#), by each motion~~
 67 ~~picture company for each calendar year;]~~

68 ~~[(iv) the information contained in the office's latest report to the Legislature under~~
 69 ~~Section [63M-1-1805](#); and]~~

70 ~~[(v) any other information requested by the Revenue and Taxation Interim Committee.]~~

71 ~~[(c) The Revenue and Taxation Interim Committee shall ensure that its~~
 72 ~~recommendations under Subsection (5)(a) include an evaluation of:]~~

73 ~~[(i) the cost of the tax credit to the state;]~~

74 ~~[(ii) the effectiveness of the tax credit; and]~~

75 ~~[(iii) the extent to which the state benefits from the tax credit.]~~

76 Section 2. Section **59-10-1108** is amended to read:

77 **59-10-1108. Refundable motion picture tax credit.**

78 (1) As used in this section:

79 (a) "Motion picture company" means a claimant, estate, or trust that meets the
 80 definition of a motion picture company under Section [63M-1-1802](#).

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

82 (c) "State-approved production" [~~has the same meaning~~] is as defined in Section
 83 [63M-1-1802](#).

84 (2) For [~~taxable years~~] a taxable year beginning on or after January 1, 2009, a motion
 85 picture company may claim a refundable tax credit for a state-approved production in
 86 accordance with the provisions of Section [63M-1-1803](#).

87 (3) The tax credit under this section is the amount listed as the tax credit amount on the
 88 tax credit certificate that the office issues to a motion picture company under Section
 89 [63M-1-1803](#) for the taxable year.

90 (4) (a) In accordance with any rules [~~prescribed~~] made by the commission under
91 Subsection (4)(b), the commission shall make a refund to a motion picture company that claims
92 a tax credit under this section if the amount of the tax credit exceeds the motion picture
93 company's tax liability for the taxable year.

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

97 [~~(5) (a) On or before October 1, 2014, and every five years after October 1, 2014, the~~
98 ~~Revenue and Taxation Interim Committee shall study the tax credit allowed by this section and~~
99 ~~make recommendations to the Legislative Management Committee concerning whether the tax~~
100 ~~credit should be continued, modified, or repealed.]~~

101 [~~(b) For purposes of the study required by this Subsection (5), the office shall provide~~
102 ~~the following information to the Revenue and Taxation Interim Committee:]~~

103 [~~(i) the amount of tax credit the office grants to each taxpayer for each calendar year;]~~

104 [~~(ii) the criteria the office uses in granting a tax credit;]~~

105 [~~(iii) the dollars left in the state, as defined in Section [63M-1-1802](#), by each motion~~
106 ~~picture company for each calendar year;]~~

107 [~~(iv) the information contained in the office's latest report to the Legislature under~~
108 ~~Section [63M-1-1805](#), and]~~

109 [~~(v) any other information requested by the Revenue and Taxation Interim Committee.]~~

110 [~~(c) The Revenue and Taxation Interim Committee shall ensure that its~~
111 ~~recommendations under Subsection (5)(a) include an evaluation of:]~~

112 [~~(i) the cost of the tax credit to the state;]~~

113 [~~(ii) the effectiveness of the tax credit; and]~~

114 [~~(iii) the extent to which the state benefits from the tax credit.]~~

115 Section 3. Section [63M-1-1803](#) is amended to read:

116 **[63M-1-1803. Motion Picture Incentive Account created -- Cash rebate incentives](#)**
117 **-- Refundable tax credit incentives.**

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

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

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

124 (d) The office shall:

125 (i) with the advice of the board, administer the restricted account; and

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

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

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

132 (b) The motion picture company or digital media company shall provide the office with
133 a report identifying and documenting the dollars left in the state or new state revenues
134 generated by the motion picture company or digital media company for its state-approved
135 production, including any related tax returns by the motion picture company, payroll company,
136 digital media company, or loan-out corporation under Subsection (2)(d).

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

138 (i) review the report submitted by the motion picture company; and

139 (ii) attest to the accuracy and validity of the report, including the amount of dollars left
140 in the state.

141 (d) The motion picture company, digital media company, payroll company, or loan-out
142 corporation shall provide the office with a document that expressly directs and authorizes the
143 State Tax Commission to disclose the entity's tax returns and other information concerning the
144 entity that would otherwise be subject to confidentiality under Section 59-1-403 or Section
145 6103, Internal Revenue Code, to the office.

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

148 (f) Upon receipt of the document described in Subsection (2)(d), the State Tax
149 Commission shall provide the office with the information requested by the office that the
150 motion picture company, digital media company, payroll company, or loan-out corporation
151 directed or authorized the State Tax Commission to provide to the office in the document

152 described in Subsection (2)(d).

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

154 (i) review the report from the motion picture company described in Subsection (2)(b)
155 and verify that it was reviewed by an independent certified public accountant as described in
156 Subsection (2)(c); and

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

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

161 (i) ensure the digital media project results in new state revenue; and

162 (ii) based upon review of new state revenue, determine the amount of the incentive that
163 a digital media company is entitled to under its agreement with the office.

164 (i) Subject to Subsection (3), if the incentive is in the form of a cash rebate, the office
165 shall pay the incentive from the restricted account to the motion picture company,
166 notwithstanding Subsections 51-5-3(23)(b) and 63J-1-104(4)(c).

167 (j) If the incentive is in the form of a refundable tax credit under Section 59-7-614.5 or
168 59-10-1108, the office shall:

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

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

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

176 (l) A motion picture company or digital media company may claim a motion picture
177 tax credit on its tax return for the amount listed on the tax credit certificate issued by the office.

178 (m) A motion picture company or digital media company that claims a tax credit under
179 Subsection (2)(l) shall retain the tax credit certificate and all supporting documentation in
180 accordance with Subsection 63M-1-1804(6).

181 (3) (a) Subject to Subsection (3)(b), the office may ~~issue~~ award \$6,793,700 in tax
182 credit certificates under this part in a fiscal year from fiscal year 2009-10 through fiscal year

183 2013-14.

184 (b) If the office does not [~~issue~~] award tax credit certificates in a fiscal year totaling the
185 amount authorized under Subsection (3)(a), it may carry over that amount for issuance in a
186 subsequent fiscal [~~years~~] year until the fiscal year ending June 30, 2020.

187 Section 4. Section **63M-1-1804** is amended to read:

188 **63M-1-1804. Motion picture incentives -- Standards to qualify for an incentive --**
189 **Limitations -- Content of agreement between office and motion picture company or**
190 **digital media company.**

191 (1) In addition to the requirements for receiving a motion picture incentive as set forth
192 in this part, the office, in accordance with Title 63G, Chapter 3, Utah Administrative
193 Rulemaking Act, shall make rules establishing:

194 (a) the standards that a motion picture company or digital media company [~~must~~] shall
195 meet to qualify for the motion picture incentive; and

196 (b) criteria for determining the amount of the incentive.

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

198 (a) an incentive may only be issued for a state approved production by a motion picture
199 company or digital media company;

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

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

203 (3) With respect to a digital media project, the office shall consider economic
204 modeling, including the costs and benefits of the digital media project to state and local
205 governments in determining the motion picture incentive amount.

206 (4) The office may also consider giving preference to a production that stimulates
207 economic activity in rural areas of the state or that has Utah content, [~~such as~~] including
208 recognizing that the production was made in the state or uses Utah as Utah in the production.

209 (5) (a) The office, with advice from the board, may enter into an agreement with a
210 motion picture company or digital media company that meets the standards established under
211 this section and satisfies the other qualification requirements under this part.

212 (b) Subject to Subsection **63M-1-1803(3)** and funds made available for that purpose,
213 the office may commit or authorize a motion picture incentive:

214 (i) to a motion picture company of up to 20% of the dollars left in the state by the
215 motion picture company, and a motion picture company [~~can~~] may receive an additional 5%
216 ~~not to exceed 25% of the dollars left in the state by the motion picture company]~~ if the
217 company fulfills certain requirements determined by the office including:

218 (A) employing a significant percentage of cast and crew from Utah;

219 (B) highlighting the state of Utah and the Utah Film Commission in the motion picture
220 credits; or

221 (C) other [~~promotion~~] promotional opportunities as agreed upon by the office and the
222 motion picture company; and

223 (ii) to a digital media company, if the incentive does not exceed 100% of the new state
224 revenue less the considerations under Subsection (3), but not to exceed 20% of the dollars left
225 in the state by the digital media company.

226 [~~(c) A cash rebate incentive from the Motion Picture Incentive Restricted Account may~~
227 ~~not exceed \$500,000 per state approved production for a motion picture project.]~~

228 [~~(d) The office may not give a cash rebate incentive from the Motion Picture Incentive~~
229 ~~Restricted Account for a digital media project.]~~

230 (6) The office shall ensure that the agreement entered into with a motion picture
231 company or digital media company under Subsection (5)(a):

232 (a) [~~details~~] describes the requirements that the motion picture company or digital
233 media company [~~must~~] shall meet to qualify for an incentive under this part;

234 [~~(b) specifies:~~]

235 [~~(i)~~] (b) describes the nature of the incentive; [~~and~~]

236 [~~(ii)~~] (c) specifies the maximum amount of the motion picture incentive that the motion
237 picture company or digital media company may [~~earn~~] receive for a taxable year and over the
238 life of the production;

239 [~~(e)~~] (d) establishes the length of time over which the motion picture company or
240 digital media company may claim the motion picture incentive;

241 [~~(d)~~] (e) requires the motion picture company or digital media company to retain
242 records supporting its claim for a motion picture incentive for at least four years after the
243 motion picture company or digital media company claims the incentive under this part; and

244 [~~(e)~~] (f) requires the motion picture company or digital media company to submit to

245 audits for verification of the claimed motion picture incentive.

246 Section 5. **Appropriation.**

247 Under the terms and conditions of Title 63J, Chapter 1, Budgetary Procedures Act, for
248 the fiscal year beginning July 1, 2014, and ending June 30, 2015, the following sums of money
249 are appropriated from resources not otherwise appropriated, or reduced from amounts
250 previously appropriated, out of the funds or accounts indicated. These sums of money are in
251 addition to any amounts previously appropriated for fiscal year 2015.

252 To General Fund Restricted - Motion Picture Incentive Account

253 From General Fund \$6,793,700

254 Schedule of Programs:

255 General Fund Restricted - Motion Picture

256 Incentive Account \$6,793,700

257 To Governor's Office of Economic Development - Office of Tourism

258 From General Fund Restricted - Motion Picture

259 Incentive Account \$6,793,700

260 Schedule of Programs:

261 Film Commission \$6,793,700

Legislative Review Note
as of 2-28-14 1:24 PM

Office of Legislative Research and General Counsel