

1 **STATE FILM PRODUCTION INCENTIVES AMENDMENTS**

2 2022 GENERAL SESSION

3 STATE OF UTAH

4

5 **LONG TITLE**

6 **General Description:**

7 This bill modifies provisions related to motion picture incentives.

8 **Highlighted Provisions:**

9 This bill:

- 10 ▶ defines terms;
- 11 ▶ exempts certain rural film productions from limits on the total amount of refundable
- 12 motion picture tax credit incentives the Governor's Office of Economic Opportunity
- 13 may issue each fiscal year; and
- 14 ▶ makes technical changes.

15 **Money Appropriated in this Bill:**

16 None

17 **Other Special Clauses:**

18 None

19 **Utah Code Sections Affected:**

20 AMENDS:

21 **63N-8-102**, as last amended by Laws of Utah 2021, Chapter 282

22 **63N-8-103**, as last amended by Laws of Utah 2021, Chapters 282 and 436

23

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

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

26 **63N-8-102. Definitions.**

27 As used in this chapter:

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

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

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

35 (a) an expenditure that is subject to:

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

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

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

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

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

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

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

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

51 (a) motion pictures;

52 (b) television series; or

53 (c) made-for-television movies.

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

56 (7) "New state revenues" means:

57 (a) incremental new state sales and use tax revenues generated as a result of a digital
58 media project that a digital media company pays under Title 59, Chapter 12, Sales and Use Tax
59 Act;

60 (b) incremental new state tax revenues that a digital media company pays as a result of
61 a digital media project under:

62 (i) Title 59, Chapter 7, Corporate Franchise and Income Taxes;

63 (ii) Title 59, Chapter 10, Part 1, Determination and Reporting of Tax Liability and

64 Information;

65 (iii) Title 59, Chapter 10, Part 2, Trusts and Estates;

66 (iv) Title 59, Chapter 10, Part 4, Withholding of Tax; or

67 (v) a combination of Subsections (7)(b)(i), (ii), (iii), and (iv);

68 (c) incremental new state revenues generated as individual income taxes under Title
69 59, Chapter 10, Part 1, Determination and Reporting of Tax Liability and Information, paid by
70 employees of the new digital media project as evidenced by payroll records from the digital
71 media company; or

72 (d) a combination of Subsections (7)(a), (b), and (c).

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

75 (9) "Refundable tax credit" means a refundable motion picture tax credit authorized
76 under Section 63N-8-103 and claimed under Section 59-7-614.5 or 59-10-1108.

77 (10) "Restricted account" means the Motion Picture Incentive Account created in
78 Section 63N-8-103.

79 (11) "Rural production" means a state-approved production in which a majority of the
80 production occurs within a county of the third, fourth, fifth, or sixth class.

81 [~~(11)~~] (12) "State-approved production" means a production under Subsections (2) and
82 (5) that is:

83 (a) approved by the office and ratified by the GO Utah board; and

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

85 [~~(12)~~] (13) "Tax credit amount" means the amount the office lists as a tax credit on a
86 tax credit certificate for a taxable year.

87 [~~(13)~~] (14) "Tax credit certificate" means a certificate issued by the office that:

88 (a) lists the name of the applicant;

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

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

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

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

94 **63N-8-103. Motion Picture Incentive Account created -- Cash rebate incentives --**

95 **Refundable tax credit incentives.**

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

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

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

102 (d) The office shall:

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

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

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

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

110 (b) The motion picture company or digital media company shall provide the office with
111 an incentive request form, provided by the office, identifying and documenting the dollars left
112 in the state and new state revenues generated by the motion picture company or digital media
113 company for state-approved production, including any related tax returns by the motion picture
114 company, payroll company, digital media company, or loan-out corporation under Subsection
115 (2)(d).

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

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

118 (ii) provide a report on the accuracy and validity of the incentive request form,
119 including the amount of dollars left in the state, in accordance with the agreed upon procedures
120 established by the office by rule.

121 (d) The motion picture company, digital media company, payroll company, or loan-out
122 corporation shall provide the office with a document that expressly directs and authorizes the
123 State Tax Commission to disclose the entity's tax returns and other information concerning the
124 entity that would otherwise be subject to confidentiality under Section 59-1-403 or Section
125 6103, Internal Revenue Code, to the office.

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

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

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

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

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

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

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

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

145 (i) Subject to Subsection (3), if the incentive is in the form of a cash rebate, the office
146 shall pay the incentive from the restricted account to the motion picture company,
147 notwithstanding Subsections 51-5-3(23)(b) and 63J-1-105(6).

148 (j) If the incentive is in the form of a refundable tax credit under Section 59-7-614.5 or
149 59-10-1108, the office shall:

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

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

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

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

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

163 (3) (a) Subject to Subsections (3)(b) [~~and (c)~~] through (d), the office may issue
164 \$6,793,700 in tax credit certificates under this part in each fiscal year.

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

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

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