

1 **FINANCIAL INCENTIVES FOR MOTION**

2 **PICTURE PRODUCTIONS**

3 2009 GENERAL SESSION

4 STATE OF UTAH

5 **Chief Sponsor: Lyle W. Hillyard**

6 House Sponsor: Kevin S. Garn

7 Cosponsors:
8 Allen M. Christensen

Patricia W. Jones
Mark B. Madsen

Karen W. Morgan

9

10 **LONG TITLE**

11 **Committee Note:**

12 The Workforce Services and Community and Economic Development Interim
13 Committee recommended this bill.

14 **General Description:**

15 This bill modifies provisions of the Motion Picture Incentive Fund and enacts
16 additional statutes related to the process and criteria for granting economic incentives to
17 motion picture companies for new state-approved productions.

18 **Highlighted Provisions:**

19 This bill:

20 ▶ modifies statutes governing the Governor's Office of Economic Development's
21 procedures and criteria for granting economic incentives to motion picture
22 companies for the production of motion pictures, television series, and
23 made-for-television movies within the state;

24 ▶ provides for motion picture incentives in the form of cash rebate incentives for
25 small budget productions and refundable tax credits for larger budget productions;

26 ▶ provides for definitions related to the determination and calculation of certain
27 motion picture incentives;



- 28 ▶ provides for standards in determining the awarding of an incentive;
- 29 ▶ provides for reports to the Revenue and Taxation and Workforce Services and
- 30 Community and Economic Development Interim Committees and the Utah Tax
- 31 Review Commission and details the content of those reports; and
- 32 ▶ makes certain technical changes.

33 **Monies Appropriated in this Bill:**

34 None

35 **Other Special Clauses:**

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

38 **Utah Code Sections Affected:**

39 AMENDS:

40 **63M-1-1801**, as renumbered and amended by Laws of Utah 2008, Chapter 382

41 **63M-1-1802**, as renumbered and amended by Laws of Utah 2008, Chapter 382

42 **63M-1-1803**, as renumbered and amended by Laws of Utah 2008, Chapter 382

43 **63M-1-1805**, as renumbered and amended by Laws of Utah 2008, Chapter 382

44 ENACTS:

45 **59-7-614.5**, Utah Code Annotated 1953

46 **59-10-1108**, Utah Code Annotated 1953

47 REPEALS AND REENACTS:

48 **63M-1-1804**, as renumbered and amended by Laws of Utah 2008, Chapter 382



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

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

52 **59-7-614.5. Refundable motion picture tax credit.**

53 (1) As used in this section:

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

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

57 (c) "State-approved production" has the same meaning as defined in Subsection
58 63M-1-1802(10).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

92 **59-10-1108. Refundable motion picture tax credit.**

93 (1) As used in this section:

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

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

97 (c) "State-approved production" has the same meaning as defined in Subsection
98 63M-1-1802(10).

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

101 (3) The tax credit under this section is the amount listed as the tax credit amount on the
102 tax credit certificate that the office issues to a motion picture company under Section
103 63M-1-1803 for the taxable year.

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

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

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

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

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

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

120 (iii) the dollars left in the state, as defined in Subsection 63M-1-1802(2), by each

121 motion picture company for each calendar year;

122 (iv) the information contained in the office's latest report to the Legislature under

123 Section 63M-1-1805; and

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

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

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

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

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

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

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

131 **63M-1-1801. Purpose.**

132 (1) The Legislature finds that:

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

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

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

143 (2) The purpose of this part is to:

144 (a) encourage the use of Utah as a site for the production of motion pictures, television
145 series, and made-for-television movies;

146 (b) provide [~~a~~] financial [~~incentive~~] incentives to the film industry so that Utah might
147 compete successfully with other states and countries for filming locations; and

148 (c) help develop a strong motion picture industry presence in the state that will
149 contribute substantially to improving the state's economy.

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

151 **63M-1-1802. Definitions.**

152 As used in this part:

153 [~~(1)~~ "Administrator" means the director of the Governor's Office of Economic
154 Development or the director's designee.]

155 [~~(2)~~ (1) "Board" means the ~~[Board of Business and]~~ Governor's Office of Economic
156 Development Board.

157 (2) "Dollars left in the state" means expenditures made in the state for a state-approved
158 production, including:

159 (a) an expenditure that is subject to:

160 (i) corporate or business income or franchise tax for a Utah business;

161 (ii) personal income tax for a Utah resident; and

162 (iii) sales and use tax, notwithstanding any sales and use tax exemption allowed by
163 law;

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

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

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

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

173 [~~(4)~~ (5) "Motion picture company" means a company engaged in the production of:

174 (a) motion pictures[;];

175 (b) television series[;]; or

176 (c) made-for-television movies.

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

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

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

182 (9) "Refundable tax credit" means an economic development tax credit authorized

183 under Section 63M-1-1803 and claimed under Section 59-7-614.5 or 59-10-1108.

184 ~~[(5)]~~ (10) "State-approved production" means a motion picture, television series, or
 185 made-for-television movie approved by the administrator and ratified by the board that is
 186 produced in the state by a motion picture company.

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

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

190 (a) lists the name of the applicant;

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

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

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

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

196 **63M-1-1803. Motion Picture Incentive Fund created -- Cash rebate incentives --**
 197 **Refundable tax credit incentives.**

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

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

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

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

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

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

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

213 (2).

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

218 (ii) An independent certified public accountant shall:

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

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

222 (c) The motion picture company, payroll company, or loan-out corporation shall
223 provide the office with a document that expressly directs and authorizes the State Tax
224 Commission to disclose the entity's tax returns and other information concerning the entity that
225 would otherwise be subject to confidentiality under Section 59-1-403 or Section 6103 Internal
226 Revenue Code, to the office.

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

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

233 (f) The office shall:

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

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

239 (g) If the incentive is in the form of a cash rebate, the office shall submit to the
240 Division of Finance:

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

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

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

244 (h) Upon receipt of a request for payment of a cash rebate incentive under Subsection

245 (2)(g), the Division of Finance shall:

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

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

252 (i) If the incentive is in the form of a refundable tax credit under Section 59-7-614.5 or
 253 59-10-1108, the office shall:

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

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

256 (j) A motion picture company may not claim a motion picture tax credit under Section
 257 59-7-614.5 or 59-10-1108 unless the motion picture company has received a tax credit
 258 certificate for the claim issued by the office under Subsection (2)(i)(i).

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

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

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

264 **63M-1-1804. Motion picture incentives -- Standards to qualify for an incentive --**
 265 **Limitations -- Content of agreement between office and motion picture company.**

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

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

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

272 (i) a television series;

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

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

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

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

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

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

284 (b) The office may commit or authorize a motion picture incentive to a motion picture
285 company if that incentive does not exceed 20% of the dollars left in the state by the motion
286 picture company.

287 (c) A cash rebate incentive from the Motion Picture Incentive Fund may not exceed
288 \$500,000 per production.

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

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

293 (b) specifies:

294 (i) the nature of the incentive; and

295 (ii) the maximum amount of the motion picture incentive that the motion picture
296 company may earn for a taxable year and over the life of the production;

297 (c) establishes the length of time over which the motion picture company may claim
298 the motion picture incentive;

299 (d) requires the motion picture company to retain records supporting its claim for a
300 motion picture incentive for at least four years after the motion picture company claims the
301 incentive under this part; and

302 (e) requires the motion picture company to submit to audits for verification of the
303 claimed motion picture incentive.

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

305 **63M-1-1805. Annual report.**

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

307 impact of this part.]

308 [~~(2)~~] The [~~board~~] office shall [~~present the~~] report annually to the Legislature's
309 Workforce Services and Community and Economic Development Interim Committee and the
310 [~~Economic Development and Human Resources Appropriations Subcommittee, together with~~
311 ~~any proposed recommendations for modifications in this part or the annual ongoing~~
312 ~~appropriation for the fund.~~] Utah Tax Review Commission describing:

313 (1) its success in attracting within-the-state production of television series,
314 made-for-television movies, and motion pictures, including feature films and independent
315 films;

316 (2) the amount of incentive commitments made by the office under this part and the
317 period of time over which the incentives will be paid; and

318 (3) the economic impact on the state related to:

319 (a) dollars left in the state; and

320 (b) providing motion picture incentives under this part.

321 Section 8. **Retrospective operation.**

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

Legislative Review Note

as of 10-15-08 1:34 PM

Office of Legislative Research and General Counsel