

148.546 Application for motion picture or entertainment production tax incentives -- Tax incentive agreement -- Required terms -- Administrative fee -- Review -- Verification of expenditure reports -- Annual reports.

- (1) An eligible company shall, at least thirty (30) days prior to incurring any expenditure for which recovery will be sought, file an application for tax incentives with the office. The application shall include:
 - (a) The name and address of the applicant;
 - (b) The production script or a detailed synopsis of the script;
 - (c) The anticipated date on which filming or production shall begin;
 - (d) The anticipated date on which the production will be completed;
 - (e) The total anticipated qualifying expenditures;
 - (f) The total anticipated qualifying payroll expenditures for above-the-line crew;
 - (g) The total anticipated qualifying payroll expenditures for below-the-line crew;
 - (h) The address of a Kentucky location at which records of the production will be kept;
 - (i) An affirmation that if not for the incentive offered under KRS 148.542 to 148.546, the eligible company would not film or produce the production in the Commonwealth; and
 - (j) Any other information the office may require.
- (2) The office shall notify the eligible company within thirty (30) days after receiving the application of its status.
- (3)
 - (a) Upon review of the application and any additional information submitted, the office shall present the application and its recommendation to the Tourism Development Finance Authority established by KRS 148.850 which may, by resolution, authorize the execution of a tax incentive agreement between the Tourism Development Finance Authority and the approved company.
 - (b)
 1. The total amount of tax credits authorized by the Tourism Development Finance Authority during fiscal year 2010-2011 shall not exceed five million dollars (\$5,000,000).
 2. The total amount of tax credits authorized by the Tourism Development Finance Authority during the fiscal year 2011-2012 shall not exceed seven million five hundred thousand dollars (\$7,500,000).
- (4) The tax incentive agreement shall include the following provisions:
 - (a) The duties and responsibilities of the parties;
 - (b) A detailed description of the motion picture or entertainment production for which incentives are requested;
 - (c) The anticipated qualifying expenditures and qualifying payroll expenditures for both above-the-line and below-the-line crews;
 - (d) The minimum combined total of qualifying expenditures and qualifying payroll expenditures necessary for the approved company to qualify for

incentives;

- (e) That the approved company shall have no more than two (2) years from the date the tax incentive agreement is executed to start the motion picture or entertainment production;
- (f) That the approved company shall have no more than four (4) years from the execution of the tax incentive agreement to complete the motion picture or entertainment production;
- (g) That the motion picture or entertainment production shall not include obscene materials and shall not negatively impact the economy or the tourism industry of the Commonwealth;
- (h) That the execution of the agreement is not a guarantee of tax incentives and that actual receipt of the incentives shall be contingent upon the approved company meeting the requirements established by the tax incentive agreement;
- (i) That the approved company shall submit to the office within one hundred eighty (180) days of the completion of the motion picture or entertainment production a detailed cost report of the qualifying expenditures, qualifying payroll expenditures, and final script;
- (j) That the approved company shall provide the office with documentation that the approved company has withheld income tax as required by KRS 141.310 on all qualified payroll expenditures for which an incentive under KRS 141.383 and 148.544 is sought;
- (k) That, if the office determines that the approved company has failed to comply with any of its obligations under the tax incentive agreement:
 - 1. The office may deny the incentives available to the approved company;
 - 2. Both the office and the cabinet may pursue any remedy provided under the tax incentive agreement;
 - 3. The office may terminate the tax incentive agreement; and
 - 4. Both the office and the cabinet may pursue any other remedy at law to which it may be entitled;
- (l) That the office shall monitor the tax incentive agreement;
- (m) That the approved company shall provide to the office and the cabinet all information necessary to monitor the tax incentive agreement;
- (n) That the office may share information with the cabinet or any other entity the office determines is necessary for the purposes of monitoring and enforcing the terms of the tax incentive agreement;
- (o) That the motion picture or entertainment production shall contain an acknowledgment that the motion picture production was filmed or the touring show was produced in the Commonwealth of Kentucky;
- (p) Terms of default;
- (q) The method and procedures by which the approved company shall request and receive the incentive provided under KRS 141.383 and 148.544;

- (r) That the approved company may be required to pay an administrative fee as authorized under subsection (5) of this section; and
 - (s) Any other provisions deemed necessary or appropriate by the parties to the tax incentive agreement.
- (5) The office may require the approved company to pay an administrative fee, the amount of which shall be established by administrative regulation promulgated in accordance with KRS Chapter 13A. The administrative fee shall not exceed one-half of one percent (0.5%) of the estimated amount of tax incentive sought or five hundred dollars (\$500), whichever is greater.
- (6) Prior to commencement of activity as provided in a tax incentive agreement, the tax incentive agreement shall be submitted to the Government Contract Review Committee established by KRS 45A.705 for review, as provided in KRS 45A.695, 45A.705, and 45A.725.
- (7) The office shall notify the cabinet upon approval of an approved company. The notification shall include the name of the approved company, the name of the motion picture or entertainment production, the estimated amount of qualifying expenditures, the estimated date on which the approved company will complete filming or production, and any other information required by the cabinet.
- (8) Within one hundred eighty days (180) days of completion of the motion picture or entertainment production, the approved company shall submit to the office a detailed cost report of:
- (a) Qualifying expenditures;
 - (b) Qualifying payroll expenditures for above-the-line crew;
 - (c) Qualifying payroll expenditures for below-the-line crew; and
 - (d) The final script.
- (9) (a) The office, together with the secretary, shall review all information submitted for accuracy and shall confirm that all relevant provisions of the tax incentive agreement have been met.
- (b) Upon confirmation that all requirements of the tax incentive agreement have been met, the office, and the secretary shall review the final script, and if they determine that the motion picture or entertainment production does not:
- 1. Contain visual or implied scenes that are obscene; or
 - 2. Negatively impact the economy or the tourism industry of the Commonwealth;
- the office shall forward the detailed cost report to the cabinet for calculation of the refundable credit.
- (10) The cabinet shall verify that the approved company withheld the proper amount of income tax on qualifying payroll expenditures, and the cabinet shall notify the office of the total amount of refundable credit available on qualifying expenditures and qualifying payroll expenditures.
- (11) On or before October 1, 2010, and on or before each October 1 thereafter, for the immediately preceding fiscal year, the office shall report to the Tourism Development Finance Authority:

- (a) The number of tax incentive agreements that have been executed;
 - (b) The estimated amount of tax incentives that have been requested under KRS 141.383 and 148.542 to 148.546; and
 - (c) The amount of tax incentives approved under KRS 139.538, 141.383, and 148.542 to 148.546.
- (12) (a) By October 1, 2010, and on or before October 1 of each year thereafter, the authority shall file an annual report with the Legislative Research Commission. The report shall also be available on the Tourism, Arts and Heritage Cabinet's Web site.
- (b) The report shall include information for all motion picture or entertainment production projects approved.
- (c) The report shall include the following information:
- 1. For each approved motion picture or entertainment production project:
 - a. The name of the approved company and a brief description of the project;
 - b. The amount of approved costs included in the agreement; and
 - c. The total amount recovered under the tax incentive agreement;
 - 2. The number of applications for projects submitted during the prior fiscal year;
 - 3. The number of projects finally approved during the prior fiscal year; and
 - 4. The total dollar amount approved for recovery for all projects approved during the prior fiscal year, and cumulatively under KRS 141.383 and 148.542 to 148.546 since its inception, by year of approval.
- (d) The information required to be reported under this section shall not be considered confidential taxpayer information and shall not be subject to KRS Chapter 131 or any other provisions of the Kentucky Revised Statutes prohibiting disclosure or reporting of information.

Effective: June 4, 2010

History: Amended 2010 (1st Extra. Sess.) Ky. Acts ch. 2, sec. 7, effective June 4, 2010. -- Created 2009 (1st Extra. Sess.) Ky. Acts ch. 1, sec. 45, effective June 26, 2009.