

**139.538 Encouragement of motion picture industry -- Legislative purpose -- Definitions -- Tax credit -- Administrative regulations.**

- (1) It is the intent and purpose of the General Assembly in enacting this section and 139.990(5), to encourage the motion picture industry to choose locations in the Commonwealth for the filming or producing of motion pictures, by providing an exemption from sales and use taxes. The exemption is accomplished by granting a refundable credit for sales and use taxes paid on purchases made in connection with the filming or producing of motion pictures in Kentucky.
- (2) As used in this section and KRS 139.990(5):
  - (a) "Financial institution" means any bank or savings and loan institution in the Commonwealth which carries FDIC or FSLIC insurance;
  - (b) "Motion picture production company" means a company engaged in the business of producing motion pictures intended for a theatrical release or for exhibition on national television either by a network or for national syndication, or television programs which will serve as a pilot for or a segment of a nationally televised dramatic series, either by a network or for national syndication; and
  - (c) "Secretary" means the secretary of the Kentucky Finance and Administration Cabinet.
- (3) Any motion picture production company that intends to film all or parts of a motion picture in the Commonwealth and desires to receive the credit provided for in subsection (6) of this section shall, prior to the commencement of filming:
  - (a) Provide the department with the address of a Kentucky location at which records of expenditures qualifying for the tax credit will be maintained, and with the name of the individual maintaining these records; and
  - (b) File an application for the tax credit within sixty (60) days after the completion of filming or production in Kentucky. The application shall include a final expenditure report providing documentation for expenditures in accordance with administrative regulations promulgated by the department.
- (4) To qualify as a basis for the financial incentive, expenditures must be made by check drawn upon any Kentucky financial institution.
- (5) The twelve (12) month period during which expenditures may qualify for the tax credit shall begin on the date of the earliest expenditure reported.
- (6) Any motion picture production company which films or produces one (1) or more motion pictures in the Commonwealth during any twelve (12) month period shall, upon making application therefor and meeting the other requirements prescribed in this section, be entitled to a refundable tax credit equal to the amount of Kentucky sales and use tax paid for purchases made in connection with the filming or production of a motion picture.
- (7) The department shall, within sixty (60) days following the receipt of an application for a credit for sales and use tax paid, calculate the total expenditures of the motion picture production company for which there is documentation for funds expended in the Commonwealth, calculate the amount of credit to which the applicant is

entitled, and certify the amount of the credit to the secretary. In the case of an audit, as provided for in subsection (12) of this section, the department shall certify the amount of the credit due to the secretary within one hundred eighty (180) days following the receipt of the motion picture production company's application.

- (8) Upon receipt of the certification of the amount of credit from the department, the secretary shall cause the refund of sales taxes paid to be remitted to the motion picture production company. For purposes of payment and funding thereof, the credit shall be paid in the same manner as other claims on the State Treasury are paid. They shall not be charged against any appropriation but shall be deducted from tax receipts for the current fiscal year.
- (9) The sales and use taxes paid by the motion picture production company for which a refundable tax credit is granted shall be deemed not to have been legally paid into the State Treasury, and the refund of the credit shall not be in violation of Section 59 of the Kentucky Constitution.
- (10) Any tax credit or part thereof paid to a motion picture production company as a result of error by the department shall be repaid by such company to the secretary.
- (11) Any tax credit or part thereof paid to a motion picture production company as a result of error or fraudulent statements made by the motion picture production company shall be repaid by such company to the secretary, together with interest, at the tax interest rate provided for in KRS 131.010(6).
- (12) The department may require that reported expenditures and the application for the tax credit from a motion picture production company be subjected to an audit by the department auditors to verify expenditures.
- (13) For companies in the business of producing films or television shows other than those which would qualify them for the credit under the definition of "motion picture production company," the department may require separate accounting records for the reporting of expenditures made in connection with the application for a refundable tax credit.
- (14) The department may promulgate appropriate administrative regulations to carry out the intent and purposes of this section.

**Effective:** August 1, 2008

**History:** Amended 2008 Ky. Acts ch. 95, sec. 14, effective August 1, 2008. -- Created 1986 Ky. Acts ch. 464, sec. 1, effective July 15, 1986.

**Legislative Research Commission Note** (11/16/90). Because of the amendment of KRS 139.990 in 1988 Acts Ch. 135, Â§ 6, the text of subsection (6) of that statute was reassigned as subsection (5). Pursuant to KRS 7.136(1), the cross-reference to that subsection in this statute has been changed to agree with this renumbering.