

148.544 Purposes of KRS 141.383 and 148.542 to 148.546 -- Kentucky Film Office - Eligibility for refundable motion picture or entertainment production tax incentives -- Incentives available.

- (1) The purposes of KRS 141.383 and 148.542 to 148.546 are to:
 - (a) Encourage the film and entertainment industry to choose locations in the Commonwealth for the filming and production of motion picture or entertainment productions;
 - (b) Encourage the development of a film and entertainment industry in Kentucky;
 - (c) Encourage increased employment opportunities for the citizens of the Commonwealth within the film and entertainment industry; and
 - (d) Encourage the development of a production and postproduction infrastructure in the Commonwealth for film production and touring Broadway show production facilities containing state-of-the-art technologies.
- (2) The Kentucky Film Office is hereby established in the Tourism, Arts and Heritage Cabinet to administer, together with the Finance and Administration Cabinet and the Tourism Development Finance Authority, the tax incentive established by KRS 141.383 and 148.542 to 148.546.
- (3) To qualify for the tax incentive provided in subsection (5) of this section, the following requirements shall be met:
 - (a) For an approved company that is also a Kentucky-based company that:
 1. Films or produces a feature-length film, television program, or industrial film in whole or in part in the Commonwealth, the minimum combined total of qualifying expenditures and qualifying payroll expenditures shall be one hundred twenty-five thousand dollars (\$125,000);
 2. Produces a national touring production of a Broadway show in whole or in part in the Commonwealth, the minimum combined total of qualifying expenditures and qualifying payroll expenditures shall be twenty thousand dollars (\$20,000); or
 3. Films or produces a documentary in whole or in part in the Commonwealth, the minimum combined total of qualifying expenditures and qualifying payroll expenditures shall be ten thousand dollars (\$10,000); and
 - (b) For an approved company that is not a Kentucky-based company that:
 1. Films or produces a feature-length film, television program, or industrial film in whole or in part in the Commonwealth, the minimum combined total of qualifying expenditures and qualifying payroll expenditures shall be two hundred fifty thousand dollars (\$250,000); or
 2. Films or produces a documentary in whole or in part in the Commonwealth or that produces a national touring production of a Broadway show, the minimum combined total of qualifying expenditures and qualifying payroll expenditures shall be twenty thousand dollars (\$20,000).

- (4) (a) Beginning on April 27, 2018, the total tax incentive approved under KRS 141.383 and 148.542 to 148.546 shall be limited to one hundred million dollars (\$100,000,000) for calendar year 2018 and each calendar year thereafter.
- (b) On April 27, 2018, if applications have been approved during the 2018 calendar year which exceed the amount in paragraph (a) of this subsection, the office shall immediately cease in approving any further applications for tax incentives for that calendar year.
- (5) (a) The incentive available under KRS 141.383 and 148.542 to 148.546 is:
1. A refundable credit for applications approved prior to April 27, 2018; and
 2. A nonrefundable and nontransferable credit for applications approved on or after April 27, 2018;
- against the Kentucky income tax imposed under KRS 141.020 or 141.040, and the limited liability entity tax imposed under KRS 141.0401, as provided in KRS 141.383.
- (b) 1. For a motion picture or entertainment production filmed or produced in its entirety in an enhanced incentive county, the amount of the incentive shall be equal to thirty-five percent (35%) of the approved company's:
- a. Qualifying expenditures;
 - b. Qualifying payroll expenditures paid to resident and nonresident below-the-line production crew; and
 - c. Qualifying payroll expenditures paid to resident and nonresident above-the-line production crew not to exceed one million dollars (\$1,000,000) in payroll expenditures per employee.
2. a. To the extent the approved company films or produces a motion picture or entertainment production in part in an enhanced incentive county and in part a Kentucky county that is not an enhanced incentive county, the approved company shall be eligible to receive the incentives provided in this paragraph for those expenditures incurred in the enhanced incentive county and all other expenditures shall be subject to the incentives provided in paragraph (c) of this subsection.
- b. The approved company shall track the requisite expenditures by county. If the approved company can demonstrate to the satisfaction of the cabinet that it is not practical to use a separate accounting method to determine the expenditures by county, the approved company shall determine the correct expenditures by county using an alternative method approved by the cabinet.
- (c) For a motion picture or entertainment production filmed or produced in whole or in part in any Kentucky county other than in an enhanced incentive county, the amount of the incentive shall be equal to:
1. Thirty percent (30%) of the approved company's:

- a. Qualifying expenditures;
 - b. Qualifying payroll expenditures paid to below-the-line production crew that are not residents; and
 - c. Qualifying payroll expenditures paid to above-the-line production crew that are not residents, not to exceed one million dollars (\$1,000,000) in payroll expenditures per employee; and
2. Thirty-five percent (35%) of the approved company's:
 - a. Qualifying payroll expenditures paid to resident below-the-line production crew; and
 - b. Qualifying payroll expenditures paid to resident above-the-line production crew not to exceed one million dollars (\$1,000,000) in payroll expenditures per employee.
- (d) Prior to June 1, 2019, the office and the Department of Revenue shall work jointly to provide the following information for each approved motion picture or entertainment production project to the Interim Joint Committee on Appropriations and Revenue by taxable year for all years that a credit under KRS 141.383 is or has been claimed:
1. The name of the approved company and whether it is Kentucky-based or not;
 2. A brief description of the motion picture or entertainment production project;
 3. The amount of qualifying expenditures and the amount of qualifying payroll expenditures included in the agreement;
 4. The amount of qualifying expenditures and the amount of qualifying payroll expenditures paid to below-the-line production crew and paid to above-the-line production crew in an enhanced incentive county;
 5. The amount of qualifying expenditures and the amount of qualifying payroll expenditures paid to below-the-line production crew and paid to above-the line production crew in a county other than an enhanced incentive county; and
 6. The total amount of the tax credit claimed on a return by tax type, any amount denied, any amount applied against a tax liability, any amount refunded, and any amount remaining that may be claimed on a return filed in the future.

Effective: April 27, 2018

History: Amended 2018 Ky. Acts ch. 171, sec. 62, effective April 14, 2018; and ch. 207, sec. 62, effective April 27, 2018. -- Amended 2015 Ky. Acts ch. 74, sec. 2, effective June 24, 2015. -- Amended 2014 Ky. Acts ch. 102, sec. 12, effective July 15, 2014. -- Created 2009 (1st Extra. Sess.) Ky. Acts ch. 1, sec. 44, effective June 26, 2009.

Legislative Research Commission Note (4/27/2018). This statute was amended by 2018 Ky. Acts chs. 171 and 207, which do not appear to be in conflict and have been codified together.

Legislative Research Commission Note (6/24/2015). 2015 Ky. Acts ch. 74, sec. 4 provides that the amendments made to this statute in that Act apply to taxable periods beginning on or after January 1, 2015.