

1 SB461
2 128863-2
3 By Senator Marsh
4 RFD: Finance and Taxation General Fund
5 First Read: 28-APR-11

8 SYNOPSIS: Under existing law, tax incentives are
9 available to qualified production companies that
10 engage in qualified productions associated with the
11 entertainment industry in the state that provide
12 economic and job opportunities.

13 This bill would revise parts of the
14 Entertainment Industry Incentive Act of 2009 to
15 create a process by which a company could be
16 designated a qualified production company for
17 purposes of receiving an entertainment industry tax
18 incentive in the form of a rebate on certain
19 expenses associated with entertainment content.

20 This bill would require a company seeking
21 status as a qualified production company to file an
22 application with the Alabama Development Office.
23 This bill would provide that the Alabama
24 Development Office and the department would each
25 prepare a separate economic and incentive impact
26 report on the application.

This bill would create an Alabama Entertainment Incentive Review Board to review the economic and incentive impact report and to approve the application. The bill would require the Department of Revenue to confirm the amount of any rebate. This bill would require approved applicants to register with the Secretary of State.

This bill would also require an independent certified public accountant to conduct an audit upon completion of the qualified project for which an incentive is awarded.

A BILL

TO BE ENTITLED

AN ACT

Relating to entertainment industry incentives; to amend Sections 41-7A-42, 41-7A-43, and 41-7A-44, Code of Alabama 1975; to provide further for certain tax incentives available to a qualified production company for engaging in certain projects related to promoting the entertainment industry in the state; to provide for an application process; and to create a board to review applications for designation as a qualified production company.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. Sections 41-7A-42, 41-7A-43, and 41-7A-44, Code of Alabama 1975, are amended to read as follows:

"§41-7A-42.

"For purposes of this article, the following terms shall have the following meanings:

"(1) ALABAMA-BASED COMPANY. Any company registered with the Secretary of State to do business in the State of Alabama.

"(2) ALABAMA ENTERTAINMENT FACILITATOR. A person or persons who help a qualified production company with on-the-ground production needs in order to keep a production process running smoothly.

"(3) APPLICANT. An entity intending to produce entertainment content in Alabama who submits an application to become a qualified production company for the purpose of claiming the incentive rebate.

"(4) APPLICATION. The form requesting the incentive rebate to be completed by an applicant and submitted to the Alabama Development Office.

"(5) APPLICATION PROCESS. The process the applicant must follow to become a qualified production company and to be eligible for the incentive rebate provided in Section 41-7A-43.

"(6) BOARD. The Alabama Entertainment Incentive Rebate Review Board created pursuant to Section 4 of the act adding this subdivision.

1 "(7) BOARD APPROVAL. Approval by the board for an
2 applicant to become a qualified production company.

3 "(8) CERTIFIED PUBLIC ACCOUNTANT. A certified public
4 accountant, having passed the uniform certified public
5 accountant examination, who is licensed to practice
6 accountancy by the State Board of Public Accountancy, or its
7 designee, and who is in good standing with the board.

8 "(1) (9) COMPANY. A corporation, partnership, limited
9 liability company, or any other business entity.

10 "(2) (10) DEPARTMENT. The Alabama Department of
11 Revenue.

12 "(11) ENTERTAINMENT CONTENT.

13 "(a. The term includes content created or produced in
14 whole or in part within the state, including motion pictures;
15 soundtracks for motion pictures; documentaries; long-form,
16 specials, miniseries, series, sound recordings, videos and
17 music videos, and interstitials television programming;
18 interactive television; interactive games; video games;
19 commercials; infomercials; any format of digital media,
20 including an interactive website, that is intended for
21 national or international distribution or exhibition to the
22 general public; and any trailer, pilot, video teaser, or demo
23 created primarily to stimulate the sale, marketing, promotion,
24 or exploitation of future investment in either a product or a
25 production via any means and media in any digital media
26 format, film, or videotape, provided such program meets all
27 the criteria to become a qualified production company.

"b. The term does not include any ongoing television program created primarily as news, weather, or financial market reports, a production featuring current events, sporting events, an awards show or other gala event, a production whose sole purpose is fund-raising, a long form production that primarily markets a product or service, a production used for corporate training or in-house corporate advertising or other similar productions; any production for which records are required to be maintained under 18 U.S.C. § 2257 with respect to sexually explicit content; or any form of gambling, gaming, wagering, or pari-mutuel wagering activity or enterprise.

"~~(3)~~(12) ENTERTAINMENT INDUSTRY. Those persons or entities engaged in the production of entertainment content as defined under paragraph a. of subdivision (8).

"~~(4)~~ (13) EXPENDED IN ALABAMA. In the case of tangible property, property which is acquired or leased from a source within the State of Alabama; in the case of services, services performed for a qualified production ~~project~~ company in the State of Alabama.

"(14) FINAL INCENTIVE AUDIT. An audit, by a certified public accountant, of the books and records of a qualified production company performed upon completion of the production activities in the State of Alabama associated with a qualified production company which verifies each production expenditure claimed by the qualified production company.

"(15) INCENTIVE CAP. The aggregate cap of incentives granted under this article.

"(16) INCENTIVE REBATE. A rebate available for production expenditures incurred by a qualified production company pursuant to Section 41-7A-43.

"(17) LOAN-OUT COMPANY. A company, owned in whole or in part by a person performing services for a qualified production company, with which a qualified production company contracts and pays for the performance of the services.

"(5)(18) OFFICE. The Alabama Film Development Office.

"(6)(19) PAYROLL. All salary, wages, and other compensation, ~~including related benefits~~, including specifically, but not limited to, compensation and benefits, related benefits, and any corresponding state and federal income, unemployment, or other payroll tax obligation, and workers compensation provided to resident and nonresident producers, directors, writers, actors, and other personnel involved ~~in with a~~ qualified production projects in Alabama company.

"(7)(20) PRODUCTION EXPENDITURES.

"a. The term includes preproduction, production, and postproduction expenditures incurred in the State of Alabama that are directly used ~~in~~ by a ~~state-certified~~ qualified production company, including, but not limited to, the following: Set construction and operation, wardrobe, makeup, set accessories, and related services; costs associated with

1 photography and sound synchronization, lighting, and related
2 services and materials; editing and related services; rental
3 of facilities and equipment; leasing of vehicles; costs of
4 food and lodging; costs of catering; digital or tape editing,
5 film processing, transfer of film to tape or digital format;
6 transfer direct to DVD, cable, or satellite for distribution;
7 sound mixing, special and visual effects including
8 duplication, film processing digital, DVD, music composition,
9 and satellite distribution; total aggregate payroll; music;
10 airfare; insurance costs of bonding; or other similar
11 production expenditures as determined by rule or regulation.

12 **"b.** The term includes financial contributions or
13 educational or workforce development in partnership with
14 related educational institutions, or local industry
15 organizations, or both, contributed toward the furtherance of
16 the local entertainment media industries.

17 **"c.** The term does not include postproduction
18 expenditures for marketing or any amounts that are paid to
19 persons or entities as a result of their participation in
20 profits from the exploitation of a motion picture production.

21 **"(8) QUALIFIED PRODUCTION.**

22 **"a.** The term means entertainment content created in
23 whole or in part within the state, including motion pictures,
24 soundtracks for motion pictures; documentaries; long-form,
25 specials, miniseries, series, sound recordings, videos and
26 music videos, and interstitials television programming;
27 interactive television; interactive games; video games,

1 commercials, infomercials, any format of digital media,
2 including an interactive website that is intended for national
3 or international distribution or exhibition to the general
4 public; and any trailer, pilot, video teaser, or demo created
5 primarily to stimulate the sale, marketing, promotion, or
6 exploitation of future investment in either a product or a
7 qualified production via any means and media in any digital
8 media format, film, or videotape, provided such program meets
9 all the underlying criteria of a qualified production.

10 "b. The term does not include any ongoing television
11 program created primarily as news, weather, or financial
12 market reports, a production featuring current events,
13 sporting events, an awards show or other gala event, a
14 production whose sole purpose is fund-raising, a long-form
15 production that primarily markets a product or service, a
16 production used for corporate training or in-house corporate
17 advertising or other similar productions; nor does the term
18 include any production for which records are required to be
19 maintained under 18 U.S.C. §2257 with respect to sexually
20 explicit content; nor does the term mean or include any form
21 of gambling, gaming, wagering, or pari-mutuel wagering
22 activity or enterprise.

23 "(9) (21) QUALIFIED PRODUCTION COMPANY.

24 "a. The term means a company An applicant engaged in
25 the business of producing a qualified production, as that term
26 is defined entertainment content, who has obtained board
27 approval and who completes registration to do business in the

1 state with the Secretary of State within 30 days of receipt of
2 notification of board approval.

3 "b. The term does not ~~mean or~~ include any company
4 owned, affiliated, or controlled, in whole or in part, by any
5 company or person which is in default on a loan.

6 "c. If the applicant does not register to do
7 business in the State of Alabama within 30 days of receipt of
8 board approval, the applicant forfeits the incentive
9 qualification and relinquishes the approval to be a qualified
10 production company.

11 "~~(10) (22)~~ RESIDENT OF ALABAMA. A natural person and,
12 for the purpose of determining eligibility for the incentives
13 provided by this article, any person domiciled in the State of
14 Alabama and any other person who maintains a permanent place
15 of abode within the state and spends in the aggregate more
16 than six months of each year within the State of Alabama.

17 "~~(11) STATE-CERTIFIED PRODUCTION.~~ A ~~qualified~~
18 production ~~approved by the office, produced by a qualified~~
19 production company.

20 "§41-7A-43.

21 "(a) Beginning January 1, 2009, a qualified
22 production company shall be entitled to a rebate for ~~all~~
23 production expenditures, ~~as defined in subdivision (7) of~~
24 Section 41-7A-41, related to a state-certified production. The
25 rebate shall be equal to 25 percent of the state-certified
26 production's production expenditures excluding payroll paid to
27 residents of Alabama plus 35 percent of all payroll paid to

1 residents of Alabama for the state-certified production,
2 provided the total production expenditures for a project must
3 equal or exceed at least five hundred thousand dollars
4 (\$500,000), but must not exceed ten million dollars
5 (\$10,000,000). A single episode in a television series shall
6 be considered a single production project for purposes of this
7 section on which state sales, use, and lodging taxes,
8 corresponding state and federal income taxes, unemployment, or
9 other payroll tax obligations, and workers compensation costs
have been paid.

11 "(b) A qualified production company shall be
12 entitled to the rebate for production expenditures as provided
13 in subsection (a) for a qualified project that is limited only
14 to the production of a soundtrack used in a motion picture,
15 provided that the production expenditures for the soundtrack
16 project must equal or exceed at least fifty thousand dollars
17 (\$50,000), but must not exceed three hundred thousand dollars
18 (\$300,000).

19 "(c) The rebate described in this section may be
20 applied to any income tax liability applicable to a qualified
21 production company.

22 "(d) If the rebate under this section exceeds a
23 qualified production company's Alabama income tax liability,
24 the excess of rebate over liability shall be rebated to the
25 qualified production company.

26 "(b) The rebate shall be equal to 25 percent of all
27 production expenditures except payroll expenditures.

1 " (c) The rebate shall be 25 percent of all payroll
2 paid to nonresidents of Alabama.

3 " (d) The rebate shall be 35 percent of all payroll
4 paid to residents of Alabama.

5 " (e) In order to qualify for the rebate, the
6 production expenditure shall have been made in Alabama in
7 connection with a qualified production company.

8 " (f) A full reporting of state sales, use, and
9 lodging taxes shall be included as production expenditures
10 reported in the final incentive audit.

11 " (g) The total production expenditures for a project
12 shall be at least five hundred thousand dollars (\$500,000),
13 but may not exceed 10 million dollars (\$10,000,000).

14 " (h) A single episode in a television series may be
15 considered a single qualified production company for purposes
16 of this section.

17 " (i) An applicant that limits its production
18 expenditures to only the production of a soundtrack to be used
19 in a motion picture may apply for the incentive provided in
20 this section if all of the following requirements are met:

21 " (1) Production expenditures for the soundtrack
22 shall be at least fifty thousand dollars (\$50,000), but not
23 more than three hundred thousand dollars (\$300,000).

24 " (2) The applicant shall follow the application
25 process to become a qualified production company to receive
26 the incentive rebate.

1 "(3) The rebate provided by this section may not be
2 used in conjunction with any other incentive described in this
3 article.

4 "(j) A final incentive audit by a certified public
5 accountant pursuant to Section 5 of the act adding this
6 amendatory language shall be performed before distribution of
7 the rebate to the qualified production company.

8 "(k) The rebate described in this section shall be
9 applied to the state income tax liability of the qualified
10 production company before distribution of the remaining
11 balance, if any.

12 "(e)(1) The Commissioner of the Department of
13 Revenue shall promulgate rules necessary to administer this
14 section.

15 "§41-7A-44.

16 "Commercial or financial information given
17 Information provided to the state by the applicant or the
18 qualified production company in confidence that is not
19 required to be disclosed pursuant to this article or any other
20 state statute, and trade secrets, including, but not limited
21 to, information relating to formulas, patterns, compilations,
22 programs, devices, methods, techniques, processes, drawings,
23 cost data, customer lists, film or television scripts, or
24 detailed production budgets shall be treated by the office,
25 and the department, and the board as proprietary and
26 confidential."

Section 2. An applicant for approval as a qualified production company shall complete the following application process:

(1) The applicant shall request an application to become a qualified production company through the Alabama Development Office.

(2) The Alabama Development Office shall send necessary application forms to the applicant.

(3) The applicant shall file the application forms with the Alabama Development Office.

(4) The Alabama Development Office shall submit the completed application to the department. The Alabama Development Office and the department shall review the application and each shall prepare a separate report which shall include an evaluation of factors, including, but not limited to, the economic, education, and workforce impact potential of the applicant for presentation to the board. The report shall contain a synopsis of the production and an assessment of the statewide impact based on the above criteria.

(5) The Alabama Development Office and the department shall present their respective reports to the board on a timely basis.

(6) The board shall make the decision as to acceptance or rejection of the applicant as a qualified production company and notify the applicant of the decision.

(7) If the board approves the applicant, the department shall confirm the amount of rebate allowed by law and inform the Alabama Development Office.

(8) The Alabama Development Office shall send a letter of approval to an approved applicant informing the applicant to register with the Secretary of State to do business in the State of Alabama within 30 days of receipt of the letter of approval. Once registered with the Secretary of State, the applicant becomes a qualified production company and shall be eligible for the incentive rebate. Should the applicant fail to register within 30 days, the applicant shall forfeit the right to request the incentive and the board shall revoke the status of the applicant as a qualified production company.

Section 3. (a) The Alabama Entertainment Incentive Review Board is created as a neutral board with the primary goal of determining which applicants shall become qualified production companies.

(b) The board shall review the reports prepared by the Alabama Development Office and department on each application for designation as a qualified production company and shall make the final decision as to which applicants are approved as qualified production companies.

(c) The criteria to be considered by the board in reviewing an application to become a qualified production company shall be the economic, workforce, and education development potential of the production and the future

1 development of the entertainment industry in the state, not
2 creativity.

3 (d) The board shall be comprised of all of the
4 following members each of whom shall serve at the pleasure of
5 the appointing authority:

6 (1) One member of the Senate appointed by the Chair
7 of the Senate Finance and Taxation General Fund Committee or
8 the designee of the Senator. The initial member shall be
9 appointed to serve the remainder of the current quadrennium on
10 the effective date of this act. Subsequent members shall be
11 appointed to a term of four years to coincide with the
12 legislative quadrennium in which the member is appointed.

13 (2) One member of the House of Representatives
14 appointed by the Chair of the House Government Finance and
15 Appropriations Committee or the designee of the
16 Representative. The initial member shall be appointed to serve
17 the remainder of the current quadrennium on the effective date
18 of this act.

19 (3) One economist with a background in evaluating
20 the economic impact of business and industry development in
21 the state appointed by the Director of Finance to a term of
22 two years.

23 (4) One member with a background in industrial
24 development and training appointed by the Governor to a term
25 of four years.

26 (5) One member with a background in economic
27 development and a knowledge of the entertainment industry

1 appointed by the Economic Development Partnership of Alabama
2 to a term of three years.

3 (6) One member who is an educator at a four-year
4 college or university and who is involved teaching a
5 curriculum on the subject of the entertainment industry
6 appointed by the Alabama Commission on Higher Education to a
7 term of two years.

8 (7) One member who is an educator at a two-year
9 college who is currently involved in teaching a curriculum on
10 the subject of the entertainment industry appointed by the
11 Chancellor of the Department of Postsecondary Education to a
12 term of two years.

13 (e) The membership of the board shall be inclusive
14 and reflect the racial, gender, geographic, urban/rural, and
15 economic diversity of the state.

16 Section 4. The Alabama Development Office shall do
17 all of the following to assist companies in receiving the
18 incentive rebate:

19 (1) Search for and recruit qualified production
20 companies that are best suited to support economic, workforce,
21 education development, and the future development of the
22 Alabama entertainment industry.

23 (2) Oversee the Alabama entertainment facilitators
24 who help a qualified production company with on-the-ground
25 needs and keep the production process running smoothly.

26 (3) Guide a qualified production company through the
27 application process and become its ombudsman.

Section 5. (a) A qualified production company shall hire a certified public accountant to perform a final incentive audit of the qualified production company's production expenditures and the certified public accountant shall prepare a report verifying each production expenditure. The final incentive audit shall be sent to the Department of Revenue.

(b) In claiming the rebate provided in this act, a qualified production company shall calculate amounts paid of state sales, use, and lodging taxes levied pursuant to Sections 40-23-2, 40-23-61, and 40-26-1, respectively, of the Code of Alabama 1975, as production expenditures. Sales, use, and lodging taxes paid shall be considered production expenditures and shall be reported in the final audit.

(c) The certified public accountant performing the final incentive audit shall meet the following criteria:

(1) Be independent from the qualified production company and any of its owners or affiliates.

(2) Plan and perform the final incentive audit using due professional care.

(3) Obtain sufficient appropriate audit evidence by performing audit procedures to afford a reasonable basis for the report, verifying each individual expenditure claimed by the qualified production company.

(d) A final incentive audit may commence upon completion of a qualified production company's production

1 activities in the State of Alabama, or at any time prior
2 thereto.

3 (e) The qualified production company shall provide
4 the certified public accountant performing the final incentive
5 audit with all of the following information:

6 (1) A complete chart of accounts.
7 (2) A complete general ledger.
8 (3) A final cost report relating to all expenditures
9 claimed as production expenditures.

10 (4) Payroll expense reports.
11 (5) Copies of all paid invoices and receipts
12 relating to each expenditure claimed as a production
13 expenditure.

14 (6) A completed crew list, including Social Security
15 numbers or other employer identification numbers.

16 (7) A completed cast list, including Social Security
17 numbers or other employer identification numbers.

18 (8) Any and all records verifying the residency of
19 employees.

20 (9) A completed vendor list, including Social
21 Security numbers or other employer identification numbers.

22 (10) Copies of issued W-2s and 1099s relating to all
23 activities within the State of Alabama relating to the
24 qualified production company, but if the qualified production
25 company has not issued any W-2s or 1099s prior to completion
26 of the final incentive audit, then it shall provide other
27 comparable documentation to verify payment.

(11) Documentation or other verification that a vendor is an Alabama-based company.

(12) Documentation showing that any loan-out companies that received payments for services performed by their owners have registered to do business with the Secretary of State.

(13) Documentation showing that the qualified production company has registered to do business with the Secretary of State.

(14) Any other documentation needed to confirm production expenditures during the final incentive audit and produce the report.

(f) The final incentive audit shall identify, on a city-by-city and county-by-county basis, the amount of total incentives attributable to state sales, use, and lodgings taxes specifically identifying the amount of the total production expenditures eligible for the rebate.

(g) The certified public accountant performing the final incentive audit may not include a production expenditure on the report unless the qualified production company has provided a receipt of payment or other evidence that the expenditure has been paid and was expended in Alabama.

(h) The certified public accountant shall submit the report within 120 days of completion of production activities in the State of Alabama; provided, however, that the qualified production company may request an extension of up to 45 days to submit the final incentive audit to the department.

(i) Failure of a qualified production company to timely submit the final incentive audit, at the board's discretion, may cause the qualified production company to forfeit any incentives otherwise awarded to or set aside the qualified production company rebate.

(j) At the discretion of the qualified production company, it may provide a confidentiality agreement to the certified public accountant engaged to perform the final incentive audit, which limits the certified public accountant's ability to discuss production expenditures to only those designated representatives of the qualified production company, the department, the office, or any combination of the foregoing.

Section 6. This act shall become effective on the first day of the third month following its passage and approval by the Governor, or its otherwise becoming law.