HB326

2HFHSKS-1

By Representative Kiel

RFD: Ways and Means Education

First Read: 19-Mar-24

SYNOPSIS:

Under existing law, certain state rebates and sales, use, and lodging tax exemptions are provided for qualified production companies in the entertainment industry working in efforts to attract the entertainment industry to Alabama.

This bill would amend the Entertainment Industry Incentive Act of 2009 to rename the Alabama Film Office as the Alabama Entertainment Office, allow music albums to be included as qualified production, set the minimum expenditure threshold for music albums to qualify for incentives, and set aside incentives for music albums until July 1 of each year.

A BILL

TO BE ENTITLED

AN ACT

Relating to the Entertainment Industry Incentive Act of 2009; to amend Sections 41-7A-1, 41-7A-2, 41-7A-42, 41-7A-43, and 41-7A-48, Code of Alabama 1975, to rename the Alabama Film Office as the Alabama Entertainment Office; to include music albums as a qualified production; to set minimum expenditure limits for music albums to qualify for incentives; and to set aside a portion of the incentives annually for music albums until July 1 of each year.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. Sections 41-7A-1, 41-7A-2, 41-7A-42, 41-7A-43, and 41-7A-48, Code of Alabama 1975, are amended to read as follows:

"§41-7A-1

On September 1, 1995, the management of the Alabama Entertainment ~~Film~~ Office shall be vested in a director who shall be appointed by the Governor and shall serve at his or her pleasure. The salary shall be established by the Governor at an amount not to exceed forty-eight thousand dollars ($48,000) annually and adjusted thereafter consistent with general cost-of-living adjustments approved for state employees. In fixing the salary, the Governor shall give due consideration to the salaries of comparable positions in other states in the southeast. The director shall have the same rights, privileges, benefits, and membership status in the Employees' Retirement System as other unclassified employees in the state service."

"§41-7A-2

All other employees necessary to carry out the duties and functions of the Alabama Entertainment ~~Film~~ Office shall be employed subject to the provisions of the Merit System law. The State Personnel Board, with the assistance of the Director of the Alabama Development Office, shall establish positions as needed in the classified service for the employees of the Alabama Entertainment ~~Film~~ Office."

"§41-7A-42

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

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

(2) DEPARTMENT. The Alabama Department of Revenue.

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

(4) 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 in the State of Alabama.

(5) OFFICE. The Alabama Entertainment ~~Film~~ Office.

(6) PAYROLL. All salary, wages, and other compensation, including related benefits, including specifically, but not limited to, compensation and benefits provided to resident and nonresident producers, directors, writers, actors, and other personnel involved in qualified production projects in Alabama.

(7) PRODUCTION EXPENDITURES.

a. The term includes preproduction, production, and postproduction expenditures incurred in the State of Alabama that are directly used in a state-certified production, including, but not limited to, the following: Set construction and operation, wardrobe, makeup, set accessories, and related services; costs associated with photography and sound synchronization, lighting, and related services and materials; editing and related services; rental of facilities and equipment; leasing of vehicles; costs of food and lodging; costs of catering; digital or tape editing, film processing, transfer of film to tape or digital format; transfer direct to DVD, cable, or satellite for distribution; sound mixing, special and visual effects including duplication, film processing digital, DVD, music composition, and satellite distribution; total aggregate payroll; music; airfare; insurance costs of bonding; or other similar production expenditures as determined by rule or regulation.

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

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

(8) QUALIFIED PRODUCTION.

a. The term means entertainment content created in whole or in part within the state, including motion pictures; soundtracks for motion pictures; documentaries; long-form, specials, miniseries, series, sound recordings, music albums, videos and music videos, and interstitials television programming; interactive television; interactive games; video games; commercials; infomercials; any format of digital media, including an interactive website that is intended for national or international distribution or exhibition to the general public; and any trailer, pilot, video teaser, or demo created primarily to stimulate the sale, marketing, promotion, or exploitation of future investment in either a product or a qualified production via any means and media in any digital media format, film, or videotape, provided such program meets all the underlying criteria of a qualified production.

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; nor does the term include any production for which records are required to be maintained under 18 U.S.C. § 2257 with respect to sexually explicit content; nor does the term mean or include any form of gambling, gaming, wagering, or pari-mutuel wagering activity or enterprise.

(9) QUALIFIED PRODUCTION COMPANY.

a. The term means a company engaged in the business of producing a qualified production, as that term is defined.

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

(10) RESIDENT OF ALABAMA. A natural person and, for the

purpose of determining eligibility for the incentives provided by this article, any person domiciled in the State of Alabama and any other person who maintains a permanent place of abode within the state and spends in the aggregate more than six months of each year within the State of Alabama.

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

"§41-7A-43

(a) Beginning January 1, 2009, a qualified production company shall be entitled to a rebate for production expenditures, as defined in ~~subdivision (7) of~~ Section 41-7A-42(7), related to a state-certified production. The rebate shall be equal to 25 percent of the state-certified production's production expenditures excluding payroll paid to residents of Alabama plus 35 percent of all payroll paid to residents of Alabama for the state-certified production, provided the total production expenditures for a project must equal or exceed at least five hundred thousand dollars ($500,000), but no rebate shall be available for production expenditures incurred after the first twenty million dollars ($20,000,000) of production expenditures expended in Alabama on a state-certified production.

(b) A single episode in a television series or miniseries may be considered a single production project for purposes of this section. However, in determining the total production expenditures incurred by a qualified production company on a qualified production, the total production expenditures of a television series or miniseries, whether a single season or multiple seasons thereof, to be filmed within a period of 12 consecutive months, each individual episode of which separately and independently meets the definition of a qualified production, may be aggregated to meet the monetary requirements set forth in subsection (a) as long as each individual episode within the series pertains to the same subject as the other episodes in the series.

(c) A single commercial may be considered a single production project for purposes of this section. However, in determining the total production expenditures incurred by a qualified production company on a qualified production, the total production expenditures of a series of commercials to be filmed within a period of 12 consecutive months, each of which separately and independently meets the definition of a qualified production, may be aggregated to meet the monetary requirements set forth in subsection (a) as long as each individual commercial within the series pertains to the same subject as the other commercials in the series and was planned as part of a series of commercials to be filmed within a period of 12 consecutive months at the time the qualified production company applied for the incentives.

(d) A qualified production company shall be entitled to the rebate for production expenditures as provided in subsection (a) for a qualified project that is limited only to the production of a soundtrack used in a motion picture or documentary, provided that the production expenditures for the soundtrack project must equal or exceed at least fifty thousand dollars ($50,000), but no rebate shall be available for production expenditures incurred after the first three hundred thousand dollars ($300,000) of production expenditures expended in Alabama.

(e) A qualified production company shall be entitled to the rebate for production expenditures as provided in subsection (a) for a qualified project that is limited only to the production of a music video, provided that the production expenditures for the music video equal or exceed fifty thousand dollars ($50,000), but no rebate shall be available for production expenditures incurred after the first two hundred thousand dollars ($200,000) of production expenditures expended in Alabama.

(f) A qualified production company shall be entitled to the rebate for production expenditures as provided in subsection (a) for a qualified project that is limited only to the production of a music album, provided that the production expenditures for the music album equal or exceed thirty thousand dollars ($30,000), but no rebate shall be available for production expenditures incurred after the first two hundred thousand dollars ($200,000) of production expenditures expended in Alabama.

~~(f)~~(g) The rebate described in this section may be applied to offset any income tax liability applicable to a qualified production company for the tax year in which production activity in Alabama on the state-certified production concludes.

~~(g)~~(h) If the rebate available under this section exceeds a qualified production company's Alabama income tax liability for the tax year in which production activity in Alabama concludes on the state-certified production, the excess of the rebate over a qualified production company's Alabama income tax liability shall be rebated to the qualified production company.

~~(h)~~(i) The Commissioner of the Department of Revenue and the office shall ~~promulgate~~ adopt rules necessary to administer this section."

"§41-7A-48

(a) For the fiscal year ending September 30, 2009, the aggregate cap of incentives granted under this article shall not exceed five million dollars ($5,000,000) for all qualified production companies. For the fiscal year ending September 30, 2010, the aggregate cap of incentives granted under this article shall not exceed seven million five hundred thousand dollars ($7,500,000) for all qualified production companies. For fiscal years ending September 30, 2011, and September 30, 2012, the aggregate cap of incentives granted under this article shall not exceed ten million dollars ($10,000,000) for all qualified production companies. For the fiscal year ending September 30, 2013, the aggregate cap of incentives granted under this article shall not exceed fifteen million dollars ($15,000,000). For the fiscal year ending September 30, 2014, the aggregate cap of incentives granted under this article shall not exceed fifteen million dollars ($15,000,000) and for all subsequent fiscal years thereafter, the aggregate cap of incentives granted under this article shall not exceed twenty million dollars ($20,000,000) for all qualified production companies.

(b) For each fiscal year beginning October 1, 2024, two million dollars ($2,000,000) of the amounts in subsection (a) shall be reserved for music albums. In the event applications are not received and incentives are not allocated for music albums by July 1 of each year, the funds may revert for rebates to other qualified production companies."

Section 2. This act shall become effective on June 1, 2024.