

1 AN ACT relating to the film industry credit.

2 ***Be it enacted by the General Assembly of the Commonwealth of Kentucky:***

3 ➔Section 1. KRS 141.383 is amended to read as follows:

4 (1) As used in this section:

5 (a) "Above-the-line production crew" has the same meaning as in KRS 154.61-
6 010;

7 (b) "Approved company" has the same meaning as in KRS 154.61-010;

8 (c) "Below-the-line production crew" has the same meaning as in KRS 154.61-
9 010;

10 (d) "Continuous film production" has the same meaning as in KRS 154.61-010;

11 (e) "Council" means the Kentucky Film Leadership Council created in KRS
12 154.12-282;

13 (f) "Loan-out entity" has the same meaning as in KRS 154.61-010;

14 (g) **"Office" means the Kentucky Film Office created in Section 2 of this Act;**

15 **(h)** "Qualifying expenditure" has the same meaning as in KRS 154.61-010;

16 ~~**(i)**~~ ~~**(h)**~~ "Qualifying payroll expenditure" has the same meaning as in KRS
17 154.61-010;

18 ~~**(j)**~~ ~~**(i)**~~ "Secretary" has the same meaning as in KRS 154.61-010; and

19 ~~**(k)**~~ ~~**(j)**~~ "Tax incentive agreement" has the same meaning as KRS 154.61-010.

20 (2) (a) There is hereby created a tax credit against the tax imposed under KRS
21 141.020 or 141.040 and 141.0401, with the ordering of credits as provided in
22 KRS 141.0205.

23 (b) The incentive available under paragraph (a) of this section is:

24 1. A refundable credit for applications approved prior to April 27, 2018;

25 2. A nonrefundable and nontransferable credit for applications approved on
26 or after April 27, 2018, but before January 1, 2022; and

27 3. A refundable credit for applications approved on or after January 1,

1 2022, if the provisions of paragraph (c) of this subsection are met.

2 (c) 1. The total tax incentive approved under KRS 154.61-020 shall be limited
3 to:

4 a. ~~One hundred million dollars (\$100,000,000) for calendar year~~
5 ~~2018 and each calendar year through the calendar year 2021;~~

6 ~~b. Seventy-five million dollars (\$75,000,000) for the calendar year~~
7 ~~2022 and each calendar year thereafter; and~~

8 ~~b.~~ Beginning with calendar year 2024, the amount in subdivision
9 ~~a.~~ of this subparagraph shall be allocated accordingly:

10 i. Twenty-five million dollars (\$25,000,000) shall be allocated
11 for all approved companies with a continuous film
12 production; and

13 ii. On the first day of April 2025, and on April 1 of each
14 calendar year thereafter, any unused balance allocated under
15 subpart i. of this subdivision for continuous film productions
16 shall be made available for all approved companies with a
17 motion picture or entertainment production; and

18 c. 1. Beginning with calendar year 2026, any unallocated
19 balance of the amount allocated in subdivision a. of this
20 subparagraph for the previous calendar year shall carry
21 forward into the subsequent calendar year to be made
22 available for approved companies with high-impact motion
23 pictures or entertainment productions.

24 2. For purposes of this subdivision and Section 5 of this Act,
25 the determination of a high-impact motion picture or
26 entertainment production shall be based upon criteria
27 established in administrative regulations promulgated

1 under subsection (4)(c) of Section 5 of this Act.

2 2. To qualify for the refundable credit, all applicants shall:

3 a. Begin filming or production in Kentucky within one hundred
4 eighty (180) days~~[six (6) months]~~ of approval by the
5 office~~[council]~~; and

6 b. Complete filming or production in Kentucky within two (2) years
7 of their production start date.

8 (3) An approved company may receive a refundable tax credit if:

9 (a) The department has received notification from the office~~[council]~~ that the
10 approved company has satisfied all requirements of KRS 154.61-020 and
11 154.61-030; and

12 (b) The approved company has provided a detailed cost report and sufficient
13 documentation to the office~~[council]~~, which has been forwarded by the
14 office~~[council]~~ to the department, that:

15 1. The purchases of qualifying expenditures were made after the execution
16 of the tax incentive agreement; and

17 2. The approved company or loan-out entity has withheld income tax as
18 required by KRS 141.310 on all qualified payroll expenditures, and
19 remitted and certified the withheld amount to the department.

20 (4) Interest shall not be allowed or paid on any refundable credits provided under this
21 section.

22 (5) The department may promulgate administrative regulations under KRS Chapter
23 13A to administer this section.

24 (6) On or before September 1, 2010, and on or before each September 1 thereafter, for
25 the immediately preceding fiscal year, the department shall report to the
26 office~~[council]~~ and the Interim Joint Committee on Appropriations and Revenue the
27 names of the approved companies and the amounts of refundable income tax credit

1 claimed.

2 (7) No later than September 1, 2021, and by November 1 every four (4) years
3 thereafter, the department and the Cabinet for Economic Development shall
4 cooperatively provide historical data related to the tax credit allowed in this section
5 and KRS 154.61-020 and 154.61-030, including data items beginning with tax
6 credits claimed for taxable years beginning on or after January 1, 2018:

- 7 (a) The name of the taxpayer claiming the tax credit;
- 8 (b) The date that the application was approved and the date the filming or
9 production was completed;
- 10 (c) The taxable year in which the taxpayer claimed the tax credit;
- 11 (d) The total amount of the tax credit, including any amount denied, any amount
12 applied against a tax liability, any amount refunded, and any amount
13 remaining that may be claimed on a return filed in the future;
- 14 (e) Whether the taxpayer is a Kentucky-based company as defined in KRS
15 154.61-010;
- 16 (f) Whether the taxpayer films or produces a:
- 17 1. Feature-length film, television program, ~~or~~ industrial film, video game,
18 music video, or commercial;
- 19 2. National touring production of a Broadway show; or
- 20 3. Documentary;
- 21 (g) Whether the filming or production was performed:
- 22 1. Entirely in an enhanced county; or
- 23 2. In whole or in part in any Kentucky county other than in an enhanced
24 incentive county;
- 25 (h) The amount of qualifying expenditures incurred by the taxpayer;
- 26 (i) The amount of qualifying payroll expenditures paid to:
- 27 1. Resident below-the-line crew; and

- 1 2. Nonresident below-the-line production crew;
 2 including the number of crew members in each category;
 3 (j) The amount of qualifying payroll expenditures paid to:
 4 1. Resident above-the-line crew; and
 5 2. Nonresident above-the-line crew;
 6 including the number of crew members in each category; and
 7 (k) A brief description of the type of motion picture or entertainment production
 8 project.

9 (8) The information required to be reported under this section shall not be considered
 10 confidential taxpayer information and shall not be subject to KRS Chapter 131 or
 11 any other provisions of the Kentucky Revised Statutes prohibiting disclosure or
 12 reporting of information.

13 ➔Section 2. KRS 154.12-280 is amended to read as follows:

14 (1) There is created the Kentucky Film Office, which shall be attached to the Cabinet
 15 for Economic Development for administrative purposes only. The office shall be
 16 headed by an executive director selected and compensated as provided in KRS
 17 154.12-282(2)(~~g~~)(~~e~~). The executive director shall have the authority to hire staff,
 18 including a marketing and development director, contract for services, expend
 19 funds, and operate the normal business activities of the council.

20 (2) The duties of the ~~[Kentucky Film]~~ office shall include but not be limited to:

21 (a) **Reviewing all applications submitted for tax incentives in accordance with**
 22 **Section 6 of this Act;**

23 (b) **Notifying the applicant within thirty (30) days of receipt and that:**

24 **1. The application is complete; or**

25 **2. Additional information is required;**

26 (c) **Forwarding each eligible application to the cabinet for an economic**
 27 **analysis of the project;**

1 (d) Submitting the application and all related documents to the Kentucky Film
 2 Leadership Council for a final decision, if the analysis supports the project;

3 (e) Coordinating with local and regional film offices or local tourism
 4 commissions on issues impacting the film industry in Kentucky, including
 5 streamlining local permitting processes;

6 (f)~~(b)~~ Marketing Kentucky as a location for film production;

7 (g)~~(e)~~ Providing assistance to production companies for compliance with
 8 Subchapter 61 of KRS Chapter 154;

9 (h)~~(d)~~ Assisting film studios and workforce training programs to increase the
 10 film production workforce;

11 (i)~~(e)~~ Coordinating with the Kentucky Film Leadership Council established in
 12 KRS 154.12-282 to develop marketing strategies to promote and grow the
 13 film production industry in Kentucky;

14 (j)~~(f)~~ Creating a ~~[Kentucky Film Office]~~ website and a one-stop portal to
 15 provide information to film producers regarding studios, local and regional
 16 commissions, personnel, filming locations, permitting, and other matters
 17 relevant to the film industry; and

18 (k)~~(g)~~ Adopting the recommendations of the council created pursuant to KRS
 19 154.12-282 and promulgating regulations in accordance with KRS Chapter
 20 13A necessary to conduct the operations of the office.

21 (3) The office shall receive and retain all tax incentive application fees collected
 22 pursuant to KRS 154.61-030. The nonrefundable application fee that is~~[that's]~~
 23 currently payable to the office upon submission of a tax incentive application shall
 24 be determined by the total amount of qualifying expenditures and qualifying payroll
 25 expenditures, as defined in KRS 154.61-010. If the total is:

26 (a) Less than fifty thousand dollars (\$50,000), the application fee shall be two
 27 hundred fifty dollars (\$250);

1 (b) Between fifty thousand dollars (\$50,000) and one hundred thousand dollars
2 (\$100,000), the application fee shall be five hundred dollars (\$500); or

3 (c) More than one hundred thousand dollars (\$100,000), the application fee shall
4 be one thousand dollars (\$1,000).

5 (4) The office may accept contributions, grants, and other property of value to hold and
6 apply to projects for which the office is created. Any funds not expended at the
7 close of a fiscal year shall not lapse but shall be carried forward into the next fiscal
8 year. Notwithstanding KRS 142.406, for the period beginning July 1, 2025, and
9 ending June 30, 2027, two and one-half percent (2.5%) of the transient room tax
10 collected pursuant to KRS 142.400, up to the maximum amount of five hundred
11 thousand dollars (\$500,000), shall be transferred to the office and dedicated to staff
12 and operational costs.

13 ➔Section 3. KRS 154.12-282 is amended to read as follows:

14 (1) There is hereby established the Kentucky Film Leadership Council. The council
15 shall be administratively attached to the Kentucky Film Office established in KRS
16 154.12-280.

17 (2) The functions and purposes of the council shall be to:

18 (a) Review all applications for tax incentives under KRS 141.383 and Subchapter
19 61 of KRS Chapter 154;

20 **(b) Review all related documents presented by the office;**

21 ~~(c) [to determine eligibility within twenty (20) days of receipt and forward each
22 eligible application to the cabinet for an economic analysis of the project.~~

23 ~~Notwithstanding KRS 154.61-020, if the analysis supports the project, the
24 application and all related documents shall be submitted back to the council to~~

25 ~~Make a[the] final decision at a meeting held at the call of the chair regarding
26 whether to authorize a tax incentive agreement~~ **if the cabinet's economic**

27 **analysis supports the project.** The cabinet shall be responsible for negotiating,

1 preparing, and executing tax incentive agreements under this section;

2 ~~(d)(b)~~ Recommend policies and standards for the Kentucky Film Office ~~created in KRS 154.12-280~~;

3
4 ~~(e)(c)~~ Develop comprehensive film industry strategies in partnership with the
5 Cabinet for Economic Development, the Tourism, Arts and Heritage Cabinet,
6 and the Education and Labor Cabinet;

7 ~~(f)(d)~~ Partner with local and regional film offices, production studios, and
8 relevant workforce training programs in Kentucky; and

9 ~~(g)(e)~~ Conduct a nationwide search for the executive director of the Kentucky
10 Film Office and make decisions regarding hiring and compensation. The
11 salary of the executive director of the ~~Kentucky Film~~ office shall not exceed
12 two hundred twenty-five thousand dollars (\$225,000) and shall be exempt
13 from KRS 64.640.

14 (3) (a) The council shall consist of the following seven (7) voting members:

15 1. The secretary of the Cabinet for Economic Development or his or her
16 designee;

17 2. The secretary of the Tourism, Arts and Heritage Cabinet or his or her
18 designee;

19 3. The secretary of the Education and Labor Cabinet or his or her designee;
20 and

21 4. Four (4) members who shall be appointed by the Governor as follows:

22 a. Two (2) representatives from Kentucky film production
23 companies;

24 b. One (1) representative from a film profession, including but not
25 limited to producers, actors, production accountants with film
26 industry experience, or film financiers; and

27 c. One (1) representative who is the head of a local or regional film

1 commission.

2 (b) All members appointed by the Governor under ~~paragraph (a)4. of~~ this
 3 subsection shall have knowledge of or experience in the Kentucky film
 4 industry. After the expiration of their initial terms, the appointed members
 5 shall serve a term of four (4) years and until a successor is appointed and
 6 qualified~~[in accordance with paragraph (a)4. of this subsection]~~. Any vacancy
 7 that occurs shall be filled for the unexpired term in the same manner as the
 8 original appointment. All members appointed by the Governor shall be
 9 subject to confirmation by the Senate as provided in KRS 11.160.

10 (c) A majority of the members shall appoint the chair from among the members
 11 of the council.

12 (d) Members shall serve without compensation but shall be reimbursed for
 13 necessary travel expenses.

14 (e) The council shall meet at the call of the chair, **but not less than quarterly.**

15 (f) A quorum shall be a majority of the membership of the council.

16 **(g) A member of the council shall not be subject to any personal liability or**
 17 **accountability by reason of the execution of any obligation duly authorized**
 18 **by the council.**

19 ➔Section 4. KRS 154.61-010 is amended to read as follows:

20 As used in this subchapter:

21 (1) "Above-the-line production crew" means employees involved with the production
 22 of a motion picture or entertainment production whose salaries are negotiated prior
 23 to commencement of production, such as actors, directors, producers, and writers;

24 (2) "Animated production" means a nationally distributed feature-length film created
 25 with the rapid display of a sequence of images using 2-D or 3-D graphics of
 26 artwork or model positions in order to create an illusion of movement;

27 (3) "Approved company" means an eligible company approved for incentives provided

- 1 under KRS 141.383 and 154.61-020;
- 2 (4) "Below-the-line production crew" means employees involved with the production
3 of a motion picture or entertainment production except above-the-line production
4 crew. "Below-the-line production crew" includes but is not limited to:
- 5 (a) Casting assistants;
- 6 (b) Costume design;
- 7 (c) Extras;
- 8 (d) Gaffers;
- 9 (e) Grips;
- 10 (f) Location managers;
- 11 (g) Production assistants;
- 12 (h) Set construction staff; and
- 13 (i) Set design staff;
- 14 (5) "Cabinet" means the Cabinet for Economic Development;
- 15 (6) **"Certified audit" means an audit that:**
- 16 **(a) Contains all production-related expenditures;**
- 17 **(b) Is completed within one hundred eighty (180) days of the completion of**
18 **production in Kentucky;**
- 19 **(c) Is conducted in accordance with the office's standards established by**
20 **administrative regulations promulgated in accordance with KRS Chapter**
21 **13A;**
- 22 **(7)** "Commonwealth" means the Commonwealth of Kentucky;
- 23 **(8)**~~(7)~~ "Compensation" means:
- 24 **(a)** Compensation included in adjusted gross income as **calculated in KRS**
25 **141.019**~~[defined in KRS 141.010]~~; **and**
- 26 **(b) The following:**
- 27 **1. Employer-paid payroll taxes;**

1 2. Union and guild benefits;

2 3. Workers' compensation insurance premiums;

3 4. Payroll service fees; and

4 5. Qualifying per diem;

5 ~~(9)~~~~(8)~~ "Continuous film production" means a motion picture or entertainment
6 production that:

7 (a) 1. Has a projected budget of a minimum of ten million dollars
8 (\$10,000,000) ~~per calendar year~~, with a minimum of sixty percent

9 (60%) of the projected budget for qualifying expenditures and
10 qualifying payroll expenditures ~~allocated to all qualifying motion~~
11 ~~picture or entertainment productions to be filmed or produced in~~
12 ~~Kentucky, with a minimum of one million five hundred thousand dollars~~
13 ~~(\$1,500,000) per production in Kentucky~~; and

14 2. Has a minimum of fifty percent (50%) of the funds available and the
15 ability to raise the remaining funds necessary to complete the filming
16 and production, which may be verified by:

17 a. Bank statements or other financial documents; or

18 b. A fundraising plan at the request of the office~~council~~;

19 (b) Demonstrates a distribution contract for each motion or entertainment
20 production; and

21 ~~(c) Films and produces a minimum of twelve (12) or more days per production~~
22 ~~within the Commonwealth; and~~

23 ~~(d)~~ Maintains:

24 1. An apprenticeship program or on-the-job training program as defined in
25 KRS 343.010; or

26 2. Partners with a film studies program with an accredited institution of
27 postsecondary education located in the Commonwealth;

- 1 ~~(10)~~⁽⁹⁾ "Council" means the Kentucky Film Leadership Council created in KRS
2 154.12-282;
- 3 ~~(11)~~⁽¹⁰⁾ "Documentary" means a production based upon factual information and not
4 subjective interjections;
- 5 ~~(12)~~⁽¹¹⁾ "Eligible company" means any person that intends to film or produce a
6 motion picture or entertainment production in the Commonwealth;
- 7 ~~(13)~~⁽¹²⁾ "Employee" has the same meaning as in KRS 141.010, and, for purposes of
8 this subchapter, also may include the employees or independent contractors of an
9 approved company or the employees of a loan-out entity engaged by an approved
10 company if they meet the requirements of KRS 141.310;
- 11 ~~(14)~~⁽¹³⁾ **"Employer-paid payroll taxes" means the tax paid by an approved company**
12 **as an employer under the Federal Insurance Contributions Act, 26 U.S.C. sec.**
13 **3101 et seq., and the approved company's share of contributions required under**
14 **KRS Chapter 341;**
- 15 ~~(15)~~ "Enhanced incentive county" has the same meaning as in KRS 154.32-010;
- 16 ~~(16)~~⁽¹⁴⁾ "Feature-length film" means a live-action or animated production that is:
17 (a) More than thirty (30) minutes in length; and
18 (b) Produced for distribution in theaters or via digital format, including
19 **broadcast, cable, and streaming**~~[but not limited to DVD, Internet, or mobile~~
20 ~~electronic devices];~~
- 21 ~~(17)~~⁽¹⁵⁾ "Industrial film" means a business-to-business film that may be viewed by the
22 public, including but not limited to videos used for training or for viewing at a trade
23 show;
- 24 ~~(18)~~⁽¹⁶⁾ "Kentucky-based company" has the same meaning as in KRS 164.6011;
- 25 ~~(19)~~⁽¹⁷⁾ "Loan-out entity" means a corporation, partnership, limited liability company,
26 or other entity through which an artist or other person is loaned out to perform
27 services for the approved company. A loan-out entity shall be registered and in

1 good standing with the Kentucky Secretary of State. Notwithstanding the business
 2 organization, the loan-out entity and all employees of and other persons performing
 3 services for the loan-out entity shall be subject to all applicable provisions of the
 4 Kentucky personal income tax and any applicable payroll or other tax provisions;

5 ~~(20)~~~~(18)~~ (a) "Motion picture or entertainment production" means:

- 6 1. The following if filmed in whole or in part, or produced in whole or in
 7 part, in the Commonwealth:
- 8 a. A feature-length film;
 - 9 b. A television program;
 - 10 c. An industrial film;~~or~~
 - 11 d. A documentary;~~or~~
 - 12 **e. A video game;**
 - 13 **f. A music video; or**
 - 14 **g. A commercial; or**
- 15 2. A national touring production of a Broadway show produced in
 16 Kentucky.

17 (b) "Motion picture or entertainment production" does not include the filming or
 18 production of obscene material or television coverage of news or athletic
 19 events;

20 ~~(21)~~~~(19)~~ "Obscene" has the same meaning as in KRS 531.010;

21 ~~(22)~~~~(20)~~ **"Office" means the Kentucky Film Office created in Section 2 of this Act;**

22 ~~(23)~~ **"Payroll service fees" means administrative fees paid by an approved company to**
 23 **a third-party payroll service company providing Kentucky-based payroll**
 24 **processing for above-the-line and below-the-line production crew members;**

25 ~~(24)~~ "Person" has the same meaning as in KRS 141.010;

26 ~~(25)~~~~(21)~~ (a) "Qualifying expenditure" means expenditures made in the
 27 Commonwealth for the following if directly used in or for a motion picture or

1 entertainment production:

- 2 1. The production script and synopsis;
- 3 2. Set construction and operations, wardrobe, accessories, and related
- 4 services;
- 5 3. Lease or rental of real property in Kentucky as a set location;
- 6 4. Photography, sound synchronization, lighting, and related services;
- 7 5. Editing and related services;
- 8 6. Rental of facilities and equipment;
- 9 7. Vehicle leases;
- 10 8. Food; and
- 11 9. Accommodations.

12 (b) "Qualifying expenditure" does not include:

- 13 1. Kentucky sales and use tax paid by the approved company on the
- 14 qualifying expenditure; or
- 15 2. Distribution expenses;

16 ~~(26)~~~~(22)~~ "Qualifying payroll expenditure" means compensation paid to above-the-line
 17 crew and below-the line crew while working on a motion picture or entertainment
 18 production in the Commonwealth if the compensation is for services performed in
 19 the Commonwealth;

20 ~~(27)~~~~(23)~~ "Qualifying per diem"

21 (a) Means:

- 22 1. Meal and incidental allowance per diems, including those not taken
- 23 on set, in the amounts established by the United States General
- 24 Services Administration, if incurred in the Commonwealth; and
- 25 2. Hotel and other overnight living accommodations per diems, in the
- 26 amounts established by the United States General Services
- 27 Administration, if incurred in the Commonwealth; and

1 **(b) Includes any amounts that:**

2 **1. Exceed the limits in paragraph (a)1. and 2. of this subsection; and**

3 **2. Are included in taxable compensation and subject to the withholding**
4 **required under KRS Chapter 341;**

5 **(28)** "Resident" has the same meaning as in KRS 141.010;

6 **(29)**~~(24)~~ "Secretary" means the secretary of the Cabinet for Economic Development;

7 **(30)**~~(25)~~ "Tax incentive agreement" means the agreement entered into pursuant to KRS
8 154.61-030 between the council and the approved company; ~~and~~

9 **(31)**~~(26)~~ "Television program" means any live-action or animated production or
10 documentary, including but not limited to:

11 (a) An episodic series;

12 (b) A miniseries;

13 (c) A television movie; or

14 (d) A television pilot;

15 that is produced for distribution on television via broadcast, cable, or any digital
16 format, including but not limited to cable, satellite, internet, or mobile electronic
17 devices;

18 **(32) "Union and guild benefits" means any mandatory contributions to pension,**
19 **health, and welfare plans paid by an approved company pursuant to a union or**
20 **guild agreement entered into for the provision of services by above-the-line or**
21 **below-the-line production crew members; and**

22 **(33) "Workers' compensation insurance premiums" means premiums paid by an**
23 **approved company for the provision of workers' compensation covering above-**
24 **the-line or below-the-line production crew members.**

25 ➔Section 5. KRS 154.61-020 is amended to read as follows:

26 (1) The purposes of KRS 141.383 and this subchapter are to encourage:

27 (a) The film and entertainment industry to choose locations in the

- 1 Commonwealth for the filming and production of motion picture or
2 entertainment productions;
- 3 (b) The development of a film and entertainment industry in Kentucky;
- 4 (c) Increased employment opportunities for the citizens of the Commonwealth
5 within the film and entertainment industry; and
- 6 (d) The development of a production and postproduction infrastructure in the
7 Commonwealth for film production and touring Broadway show production
8 facilities containing state-of-the-art technologies.
- 9 (2) The council, together with the Department of Revenue, shall administer the tax
10 credit established by KRS 141.383, this section, and KRS 154.61-030.
- 11 (3) To qualify for the tax incentive provided in subsection (5) of this section, the
12 following requirements shall be met:
- 13 (a) For an approved company that is also a Kentucky-based company that:
- 14 1. Films or produces a feature-length film, television program, ~~for~~
15 ~~industrial film,~~ video game, music video, or commercial in whole or in
16 part in the Commonwealth, the minimum combined total of qualifying
17 expenditures and qualifying payroll expenditures shall be two
18 hundred~~[one — hundred — twenty five]~~ thousand dollars
19 (\$200,000)~~[((\$125,000)]~~;
- 20 2. Produces a national touring production of a Broadway show in whole or
21 in part in the Commonwealth, the minimum combined total of
22 qualifying expenditures and qualifying payroll expenditures shall be
23 twenty thousand dollars (\$20,000); or
- 24 3. Films or produces a documentary in whole or in part in the
25 Commonwealth, the minimum combined total of qualifying
26 expenditures and qualifying payroll expenditures shall be ten thousand
27 dollars (\$10,000); and

- 1 (b) For an approved company that is not a Kentucky-based company that:
- 2 1. Films or produces a feature-length film, television program, ~~for~~
- 3 ~~industrial film,~~ **video game, music video, or commercial** in whole or in
- 4 part in the Commonwealth, the minimum combined total of qualifying
- 5 expenditures and qualifying payroll expenditures shall be **four**
- 6 **hundred**~~[two hundred fifty]~~ thousand dollars **(\$400,000)**~~[(250,000)]~~; or
- 7 2. Films or produces a documentary in whole or in part in the
- 8 Commonwealth or that produces a national touring production of a
- 9 Broadway show, the minimum combined total of qualifying
- 10 expenditures and qualifying payroll expenditures shall be twenty
- 11 thousand dollars (\$20,000).
- 12 (4) (a) Beginning on January 1, 2022, the total tax incentive approved under KRS
- 13 141.383 and this subchapter shall be limited to seventy-five million dollars
- 14 (\$75,000,000) for calendar year 2022 and each calendar year thereafter.
- 15 (b) Beginning with calendar year 2024:
- 16 1. Twenty-five million dollars (\$25,000,000) shall be allocated for all
- 17 approved companies with a continuous film production; and
- 18 2. On the first day of July of each calendar year, any unused balance of the
- 19 amount allocated under subparagraph 1. of this paragraph for continuous
- 20 film productions shall be made available for all approved companies
- 21 with motion picture or entertainment productions.
- 22 **(c) Beginning with calendar year 2026, any unallocated balance of the amount**
- 23 **allocated in paragraph (a) of this subsection for the previous calendar year**
- 24 **shall carry forward into the subsequent calendar year to be made available**
- 25 **for approved companies with high-impact motion pictures or entertainment**
- 26 **productions. The council shall promulgate administrative regulations in**
- 27 **accordance with KRS Chapter 13A to establish the criteria for a high-**

1 **impact motion picture or entertainment production.**

2 (5) (a) To qualify for the tax incentive available under KRS 141.383 and this
3 subchapter, all applicants shall:

4 1. Begin filming or production in Kentucky within **one hundred eighty**
5 **days (180)**~~[six (6) months]~~ of approval by the council;~~[and]~~

6 2. Complete filming or production in Kentucky within two (2) years of the
7 filming or production start date; **and**

8 **3. Submit a certified audit to the office.**

9 (b) The tax credit shall be against the Kentucky income tax imposed under KRS
10 141.020 or 141.040, and the limited liability entity tax imposed under KRS
11 141.0401, and shall be refundable as provided in KRS 141.383.

12 (c) 1. For a **continuous film production filmed or produced in any Kentucky**
13 **county; or a feature-length film, television program, industrial film,**
14 **documentary, video game, music video, or national touring production**
15 **of a Broadway show**~~[motion picture or entertainment production or~~
16 ~~continuous film production]~~ filmed or produced in its entirety in an
17 enhanced incentive county;~~[,]~~

18 the amount of the incentive shall be equal to thirty-five percent (35%) of
19 the approved company's:

- 20 a. Qualifying expenditures;
- 21 b. Qualifying payroll expenditures paid to resident and nonresident
22 below-the-line production crew; and
- 23 c. Qualifying payroll expenditures paid to resident and nonresident
24 above-the-line production crew not to exceed one million dollars
25 (\$1,000,000) in payroll expenditures per employee.

26 2. a. To the extent the approved company films or produces a motion
27 picture or entertainment production or continuous film production

1 in part in an enhanced incentive county and in part a Kentucky
 2 county that is not an enhanced incentive county, the approved
 3 company shall be eligible to receive the incentives provided in this
 4 paragraph for those expenditures incurred in the enhanced
 5 incentive county and all other expenditures shall be subject to the
 6 incentives provided in paragraph (d) of this subsection.

7 b. The approved company shall track the requisite expenditures by
 8 county. If the approved company can demonstrate to the
 9 satisfaction of the cabinet that it is not practical to use a separate
 10 accounting method to determine the expenditures by county, the
 11 approved company shall determine the correct expenditures by
 12 county using an alternative method approved by the cabinet.

13 (d) For a commercial filmed or produced in any Kentucky county; or a feature-
 14 length film, television program, industrial film, documentary, video game,
 15 music video or national touring production of a Broadway show~~motion~~
 16 ~~picture or entertainment production or continuous film production]~~ filmed or
 17 produced in whole or in part in any Kentucky county other than in an
 18 enhanced incentive county; ~~and~~

19 the amount of the incentive shall be equal to:

- 20 1. Thirty percent (30%) of the approved company's:
 - 21 a. Qualifying expenditures;
 - 22 b. Qualifying payroll expenditures paid to below-the-line production
 - 23 crew that are not residents; and
 - 24 c. Qualifying payroll expenditures paid to above-the-line production
 - 25 crew that are not residents, not to exceed one million dollars
 - 26 (\$1,000,000) in payroll expenditures per employee; and
- 27 2. Thirty-five percent (35%) of the approved company's:

- 1 a. Qualifying payroll expenditures paid to resident below-the-line
2 production crew; and
- 3 b. Qualifying payroll expenditures paid to resident above-the-line
4 production crew not to exceed one million dollars (\$1,000,000) in
5 payroll expenditures per employee.

6 ➔Section 6. KRS 154.61-030 is amended to read as follows:

- 7 (1) An eligible company shall, at least thirty (30) days prior to incurring any
8 expenditure for which recovery will be sought, file an application for tax incentives
9 with the office~~[[council]]~~. The application shall include:
- 10 (a) The name and address of the applicant;
- 11 (b) Verification that the applicant is a Kentucky-based company;
- 12 (c) The preliminary production script or a detailed synopsis of the script;
- 13 (d) The locations where the filming or production will occur;
- 14 (e) The anticipated date on which filming or production shall begin in Kentucky;
- 15 (f) The anticipated date on which the applicant will complete incurring
16 expenditures in Kentucky;
- 17 (g) The total anticipated qualifying expenditures;
- 18 (h) The total anticipated qualifying payroll expenditures for resident and
19 nonresident above-the-line crew by county;
- 20 (i) The total anticipated qualifying payroll expenditures for resident and
21 nonresident below-the-line crew by county;
- 22 (j) The address of a Kentucky location at which records of the production will be
23 kept;
- 24 (k) An affirmation that if not for the incentive offered under this subchapter, the
25 eligible company would not film or produce the production in the
26 Commonwealth; and
- 27 (l) Any other information the office~~[[council]]~~ may require.

- 1 (2) The ~~office~~~~[council]~~ shall notify the eligible company within thirty (30) days after
2 receiving the application that:
3 (a) The application is complete; or
4 (b) Additional information is required~~[of its status].~~
- 5 (3) Upon receipt of the application and any additional information submitted by the
6 office and cabinet, the council shall consider all submitted information and, if
7 appropriate, authorize the execution of a tax incentive agreement between the
8 council and the approved company, if the amount of anticipated tax credit from the
9 application would not make the total tax credit approved for the calendar year
10 exceed the annual tax credit cap under KRS 154.61-020(4).
- 11 (4) The tax incentive agreement shall include the following provisions:
- 12 (a) The duties and responsibilities of the parties;
- 13 (b) A detailed description of the motion picture or entertainment production for
14 which incentives are requested;
- 15 (c) The anticipated qualifying expenditures and qualifying payroll expenditures
16 for resident and nonresident above-the-line and below-the-line crews by
17 county;
- 18 (d) The minimum combined total of qualifying expenditures and qualifying
19 payroll expenditures necessary for the approved company to qualify for
20 incentives;
- 21 (e) That the approved company shall:
- 22 1. Begin filming or production in Kentucky within one hundred eighty
23 (180) days~~[six (6) months]~~ of approval by the council; and
24 2. Complete production in Kentucky within two (2) years of their
25 production start date;
- 26 (f) That the motion picture or entertainment production shall not include obscene
27 materials and shall not negatively impact the economy or the tourism industry

1 of the Commonwealth;

2 (g) That the execution of the agreement is not a guarantee of tax incentives and
3 that actual receipt of the incentives shall be contingent upon the approved
4 company meeting the requirements established by the tax incentive
5 agreement;

6 (h) That the approved company shall submit to the office and cabinet~~[council]~~
7 within one hundred eighty (180) days of the completion of production in
8 Kentucky for the motion picture or entertainment production;

9 1. A detailed cost report of the qualifying expenditures and~~[,]~~ qualifying
10 payroll expenditures;~~[,]~~

11 2. Certified audit; and

12 3. The latest version of the production script at the time of cost report
13 submission;

14 (i) That the approved company shall provide the office and cabinet~~[council]~~ with
15 documentation that the approved company or the associated loan-out entity
16 has withheld income tax as required by KRS 141.310 or the individual income
17 tax rate imposed by KRS 141.020 on all qualified payroll expenditures for
18 which an incentive under this subchapter is sought;

19 (j) That, if the cabinet~~[council]~~ determines that the approved company has failed
20 to comply with any of its obligations under the tax incentive agreement:

21 1. The council may deny the incentives available to the approved
22 company;

23 2. Both the council and the Department of Revenue may pursue any
24 remedy provided under the tax incentive agreement;

25 3. The council may terminate the tax incentive agreement; and

26 4. Both the council and the Department of Revenue may pursue any other
27 remedy at law to which it may be entitled;

- 1 (k) That the cabinet~~[council]~~ and the Department of Revenue shall monitor the
2 tax incentive agreement;
- 3 (l) That the approved company shall provide to the cabinet~~[council]~~ and the
4 Department of Revenue all information necessary to monitor the tax incentive
5 agreement;
- 6 (m) That the council may share information with the Department of Revenue and
7 the Interim Joint Committee on Appropriations and Revenue or any other
8 entity the cabinet~~[council]~~ determines is necessary for the purposes of
9 monitoring and enforcing the terms of the tax incentive agreement;
- 10 (n) That the motion picture or entertainment production shall contain an
11 acknowledgment that the motion picture or entertainment production was
12 produced or filmed in the Commonwealth of Kentucky;
- 13 (o) That the approved company shall include screen credits in its final production,
14 indicating the approved company received tax incentives from the
15 Commonwealth of Kentucky;
- 16 (p) Terms of default;
- 17 (q) The method and procedures by which the approved company shall request and
18 receive the incentive provided under KRS 141.383 and 154.61-020;
- 19 (r) That the approved company may be required to pay an administrative fee as
20 authorized under subsection (5) of this section;~~[and]~~
- 21 (s) **The approved company may be required to pay a fee of two thousand dollars**
22 **(\$2,000) for expenses incurred as a result of preparation of the tax incentive**
23 **agreement; and**
- 24 **(t)** Any other provisions deemed necessary or appropriate by the parties to the tax
25 incentive agreement.
- 26 (5) The council may require the approved company to pay an administrative fee, the
27 amount of which shall be established by administrative regulation promulgated in

1 accordance with KRS Chapter 13A. The administrative fee shall not exceed one-
 2 half of one percent (0.5%) of the estimated amount of tax incentive sought or five
 3 hundred dollars (\$500), whichever is greater.

4 (6) Prior to commencement of activity as provided in a tax incentive agreement, the tax
 5 incentive agreement shall be approved by the council. Following approval by the
 6 council, the tax incentive agreement shall be submitted to the Government Contract
 7 Review Committee established by KRS 45A.705 for review, as provided in KRS
 8 45A.695, 45A.705, and 45A.725.

9 (7) The council shall notify the Department of Revenue following approval of an
 10 approved company. The notification shall include the name of the approved
 11 company, the name of the motion picture or entertainment production, the estimated
 12 amount of qualifying expenditures, the estimated date on which the approved
 13 company will complete filming or production in Kentucky, and any other
 14 information required by the department.

15 (8) Within one hundred eighty days (180) days of completion of production in
 16 Kentucky for the motion picture or entertainment production, the approved
 17 company shall submit to the council:

18 (a) A detailed cost report of:

19 ~~1.~~~~(a)~~ Qualifying expenditures;

20 ~~2.~~~~(b)~~ Qualifying payroll expenditures for resident and nonresident
 21 above-the-line crew by county; ***and***

22 ~~3.~~~~(c)~~ Qualifying payroll expenditures for resident and nonresident
 23 below-the-line crew by county; ~~and~~

24 ~~(b)~~~~(d)~~ The latest version of the production script available at the time of cost
 25 report submission; ***and***

26 (c) ***The certified audit.***

27 (9) (a) Cabinet staff shall review all information submitted for accuracy and shall

1 confirm that all relevant provisions of the tax incentive agreement have been
2 met.

3 (b) Upon confirmation that all requirements of the tax incentive agreement have
4 been met, cabinet staff shall review the latest version of the production script
5 available at the time of cost report submission, and if they determine that the
6 motion picture or entertainment production does not:

- 7 1. Contain visual or implied scenes that are obscene; or
- 8 2. Negatively impact the economy or the tourism industry of the
9 Commonwealth;

10 the council shall forward the detailed cost report to the Department of
11 Revenue for calculation of the refundable credit.

12 (10) The Department of Revenue shall:

- 13 (a) Verify that the approved company withheld the proper amount of income tax
14 on qualifying payroll expenditures; and
- 15 (b) Notify the council of the total amount of refundable credit available on
16 qualifying expenditures and qualifying payroll expenditures.