

ALABAMA DEPARTMENT OF COMMERCE
ADMINISTRATIVE CODE

CHAPTER 281-3-1
ALABAMA FILM OFFICE INCENTIVES

281-3-1-.04 Selection Of State-Certified Productions.

(1) To receive any Incentives available under the Act, an Applicant must submit an Application for approval to the Office. Applications for approval must be received in accordance with deadlines and procedures determined by the Office, but in all circumstances, except as provided in Paragraph (1)(c) below, must be received no later than 30 days prior to the commencement of production activities on the project within the State of Alabama.

(a) Office to Specify Form and Content of Application. The Office shall specify the form and content of the Application. Such Application, shall, at a minimum, include:

1. The name, contact information, and organizational information of the Applicant;
2. The name and contact information of any Related Party of the Applicant who has provided or the Applicant expects to provide goods or services for the Qualified Production; And Ala. Tourism Dept/Ala. Film Office)
3. A description/synopsis of the Qualified Production;
4. One hard copy and an electronic copy, in an industry standard budgeting program approved by the Office, of an estimated itemized budget for the Qualified Production;
5. Estimate of the total expenditures to be Expended in Alabama in connection with the Qualified Production, including the estimated number of Residents of Alabama to be hired on the Qualified Production, and the estimated music and licensing costs;
6. Estimate of the total amount of state sales, use, and lodgings taxes to be incurred during production with respect to Production Expenditures;
7. Information that will permit the Office to make a reasonable cost/benefit analysis as to the proposed Qualified Production, to determine whether such project qualifies for Incentives, and to determine the maximum amount of Incentives to be awarded.

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8. Production start date, production schedule, number of total production days, and number of proposed production days in Alabama;
9. Key production personnel;
10. A working script, where applicable, that, to the best of the Applicant's knowledge, represents the actual shooting script or comparable treatment as of the date of the Application;
11. A designated representative of the Qualified Production Company to work with the Office and the Department on the reporting of information necessary to apply for the Incentives provided in the Act;
12. Written consent by the Qualified Production Company to include an End Credit, where applicable, and an on-screen or comparable acknowledgement to the "ALABAMA FILM OFFICE," along with a state logo submitted and approved by the Alabama Film Office, except where that acknowledgement may be And Ala. Tourism Department/Ala. Film Office) prohibited by the Children's Television Act or any other local, state, or federal government policy;
13. A non-refundable Application fee of \$100 made payable to the "Alabama Film Office"; and
14. Detailed information regarding how the production will be financed, including any binding financing commitment such as a loan agreement, commitment letter or investment letter. Evidence that a majority of the funding for the production has been secured before an application is submitted.

(b) Office to Approve Applications. The Office shall review each Application submitted for consideration. The Office retains the sole discretion to determine which projects are selected and the amount of Incentives available to each selected project. In approving Applications, the Office shall consider, among other things, the following criteria:

1. The project's economic impact upon the State of Alabama;
2. The project's affect upon workforce development in the State of Alabama;
3. The educational opportunities for the people of the State of Alabama that are created by the project;

(c) Notwithstanding any provision to the contrary, the Office may, in its discretion, approve an Application that it

received within 30 days of the commencement of production activities on the project within the State of Alabama. In such instances, the Office shall follow its customary review procedures, taking into consideration those factors provided in Paragraph (1)(b), and may, if it so chooses, convene the Advisory Board for its review and comment on the pending Application.

(d) Amount of Incentives.

1. Upon review of the information provided in the Applicant's Application, if the Office approves such project, the Office shall determine the amount of total Incentives assigned to the Qualified Production Company. Such amount shall be determined based on the project's estimated Production Expenditures, including the estimated state sales, use and And Ala. Tourism Dept/Ala. Film Office) lodgings taxes applicable thereto, and the remaining amount of Incentives available for the fiscal year during which the Application is approved.
2. The amount of total Incentives for which the project qualifies shall be the sum of (i) the state portion, but not the local portion, of sales, use, and lodgings taxes that otherwise would have been paid but for the exemption from such taxes and (ii) the amount of the Rebate.
3. The Incentives provided under the Act shall not exceed: (i) \$5,000,000 for the fiscal year ending September 30, 2009; (ii) \$7,500,000 for the fiscal year ending September 30, 2010; (iii) \$10,000,000 for fiscal years ending September 30, 2011 and September 30, 2012; (iv) \$15,000,000 for the fiscal years ending September 30, 2013 and September 30, 2014 and (v) \$20,000,000 for all subsequent fiscal years.

(e) Advisory Board. The Office shall have an Advisory Board that, from time to time, will advise the Office on the selection of projects, the determination of the amount of total Incentives granted to a Qualified Production Company, and other matters related to the administration of the Incentives provided by the Act. The Office shall recommend names of individuals to serve on the Advisory Board to the Office of the Governor of the State of Alabama and the Governor shall appoint the members of the Advisory Board. Any member of the Advisory Board may participate in any meeting of the Advisory Board by means of a telephone conference or other similar means of communication through which all persons participating in such meeting can hear each other, and participation in such a meeting shall constitute presence in person. Where written consent of a member of the Advisory Board may be required, such written consent may be provided electronically, or by facsimile.

(f) Office to Notify Qualified Production Company and Department. Within 10 days of approval, the Office shall issue a letter to the Qualified Production Company and to the Department notifying both that the Qualified Production has been approved. Such approval letter shall also include notification of the maximum amount of total Incentives for which the project has been approved. Upon receipt of the letter of approval, the Department will issue a state sales, use, and lodgings tax exemption certificate to the Qualified Production Company. The exemption is effective on the date the certificate is issued by the Department. The principal photography for a Qualified Production must begin within ninety (90) And Ala. Tourism Department/Ala. Film Office) days of receiving approval of the application or the approval will expire unless the approval is extended at the discretion of the Office. Such an extension will typically last no longer than thirty (30) days and will typically be granted only when there are facts and circumstances beyond the control of the Qualified Production Company.

(g) Amended Applications.

1. If an Applicant's Application for Incentives is not approved by the Office, or, if approved, is approved for Incentives in an amount less than anticipated by the Applicant, the Applicant may (i) appeal to the Office, in writing, regarding its Application within 45 days of the date of notification of the Office's determination; or (ii) amend and resubmit its Application for further consideration for Incentives pursuant to the procedures established in this rule.

2. If a Qualified Production Company exceeds or anticipates exceeding its estimated Production Expenditures and desires to receive additional Incentives, it may amend its Application to request additional Incentives pursuant to the procedures established in this rule. An amended Application requesting additional Incentives by a previously approved Qualified Production Company with respect to the same State-Certified Production shall, for purposes of calculating the minimum Production Expenditure requirements set forth in the Act and in Ala. Admin. Code. r. 281-X-3-.03, include the total Production Expenditures associated with the State-Certified Production rather than only considering the additional expenditures for which additional Incentives are requested in the amended Application.

3. In the event that a Qualified Production Company amends its previous Application to request additional Incentives and such subsequent Application is approved by the Office, the approval shall reduce the statutorily

prescribed aggregate cap set forth in the Act and in Ala. Admin. Code r. 281- 3-1-.04 for the fiscal year in which such approval is granted.

(i) Example. An Applicant's original Application is approved for certain Incentives on July 15, 2010. On August 15, 2010, the Qualified Production Company begins production on its State-Certified Production. During the course of filming the State-Certified Production, the Qualified Production Company incurs Production Expenditures in excess of And Ala. Tourism Dept/Ala. Film Office) that anticipated in its initial Application for Incentives. Consequently, the Qualified Production Company, on September 15, 2010, reapplies for additional Incentives. On October 1, 2010, the Office approves the Qualified Production Company's reapplication resulting in additional Incentives totaling \$50,000. The additional \$50,000 granted by the Office shall apply to the aggregate cap for the fiscal year ending September 30, 2011 because that was the fiscal year in which the reapplication was approved, rather than the fiscal year ending September 30, 2010, which was when the original Application was approved and when the production activities began. This result remains unchanged even if the aggregate cap for the fiscal year ending September 30, 2010 was not fully utilized.

(ii) Example. Same facts as in Example (i) above, except that the Office approves the Qualified Production Company's reapplication in an amount totaling \$50,000 on September 30, 2010. The additional \$50,000 granted by the Office shall reduce the aggregate cap for the fiscal year ending September 30, 2010 because that was the fiscal year in which the reapplication was approved.

(h) Notice. Correspondence between the Office or the Department, and the Qualified Production Company shall be deemed to have been delivered on the date of the United States postmark stamped on the cover in which the correspondence is mailed. Thus correspondence is considered timely filed if postmarked by the due date. If a due date falls on a Saturday, Sunday or a declared state holiday, correspondence must be filed the next working day. However, if the due date for correspondence falls on a day that is a federal holiday, but not a state holiday, the due date is not extended.

1. Registered Mail. If the correspondence is sent by United States registered mail, such registration shall be prima facie evidence that the correspondence was

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delivered and the date of registration shall be deemed the postmark date.

2. Certified Mail. If the correspondence is sent by United States certified mail, return receipt requested showing to whom and when delivered; and the receipt reflects receipt of the mailing by the proper official, the mailing will be considered as if sent by registered mail as provided in subparagraph 1 above. And Ala. Tourism Department/Ala. Film Office)

3. Treatment of Private Delivery Services. Any reference in this rule to the United States Postal Service shall be deemed to include a reference to any designated delivery service, as defined by 26 U.S.C. §7502(f), any U.S. Treasury Department Regulations promulgated thereunder, or any such designated delivery service listed in Internal Revenue Service Revenue Notice 97-26, 1997-1 C.B. 413, or any successor Notice or similar pronouncement b; the Internal Revenue Service.

Author: Department of Commerce/Alabama Film Office

Statutory Authority: Code of Ala. 1975, §§41-7A-40 through -48.

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