

# Kentucky's Film Incentive Summary



- In order to apply for incentives, the qualifying applicant will be required to have minimum investments of \$50,000 for documentaries and national touring Broadway shows, \$200,000 for Commercials, \$500,000 for full length films and television shows
- The incentive provides qualifying applicants the ability to recover up to 20% of qualified expenditures through a refundable income tax credit
- An eligible company shall apply at least 30 days before an expenditure occurs
- The company shall be notified within 30 days after receiving the application of its status
- Applications are approved by the Kentucky Film Office, Secretary of the Tourism, Arts and Heritage Cabinet, Finance and Administration Cabinet and Kentucky Tourism Development Finance Authority. All approved applicants must also be submitted to the Legislative Research Commission's and the Government Contract Review Committee.
- The Kentucky Film Office monitors and determines if the applicant is fulfilling all obligations to the program
- In it's credits, the company will acknowledge the production was filmed in Kentucky
- The Kentucky Film Office may require the company to pay an administrative fee of no more than .5% of the estimated amount of the incentive or \$500, whichever is greater
- The Kentucky Film Office and the Secretary or the Tourism, Arts and Heritage Cabinet shall review the final script before the incentive is awarded
- The Finance and Administration Cabinet will verify the company has fulfilled all state tax liabilities

- On and before October 1, 2010 and each year after, the office must report the following to the KT DFA and to the LRC:
  - Name of the approved company and a description of the project
  - Amount of approved costs
  - Total amount recovered
  - Number of applications submitted
  - Number of applications approved
  - Total amount approved for recovery

Contact: M. Todd Cassidy  
Executive Director  
Office of Financial Incentives  
Kentucky Film Office  
500 Mero Street  
2400 Capital Plaza Tower  
Frankfort, Kentucky 40601

[Todd.Cassidy@ky.gov](mailto:Todd.Cassidy@ky.gov)

Office: (502) 564-3456  
(800) 345-6591  
Cell: (502) 330-1733

**148.542 Definitions for KRS 148.542 to 148.546.**

As used in KRS 148.542 to 148.546:

- (1) "Above-the-line production crew" means employees involved with the production of a motion picture or entertainment production whose salaries are negotiated prior to commencement of production, such as actors, directors, producers, and writers;
- (2) "Animated production" means a nationally distributed feature-length film created with the rapid display of a sequence of images using 2-D or 3-D graphics of artwork or model positions in order to create an illusion of movement;
- (3) "Approved company" means an eligible company approved for incentives provided under KRS 141.383 and 148.544;
- (4) "Below-the-line production crew" means employees involved with the production of a motion picture or entertainment production except above-the-line production crew. "Below-the-line production crew" includes but is not limited to:
  - (a) Casting assistants;
  - (b) Costume design;
  - (c) Extras;
  - (d) Gaffers;
  - (e) Grips;
  - (f) Location managers;
  - (g) Production assistants;
  - (h) Set construction staff; and
  - (i) Set design staff;
- (5) "Cabinet" means the Finance and Administration Cabinet;
- (6) "Commercial" means an individual production or series of live-action or animated productions, music videos, infomercials, or interstitials that are:
  - (a) Less than thirty-one (31) minutes in length;
  - (b) Made for the purpose of promoting a product, service, or idea; and
  - (c) Produced for regional or national distribution via broadcast, cable, or any digital format, including but not limited to cable, satellite, Internet, or mobile electronic devices;
- (7) "Commonwealth" means the Commonwealth of Kentucky;
- (8) "Compensation" means compensation included in adjusted gross income as defined in KRS 141.010(10);
- (9) "Documentary" means a production based upon factual information and not subjective interjections;
- (10) "Eligible company" means any person that intends to film or produce a motion picture or entertainment production in the Commonwealth;
- (11) "Employee" means the same as defined in KRS 141.010(20);
- (12) "Feature-length film" means a live-action or animated production that is:
  - (a) More than thirty (30) minutes in length; and

- (b) Produced for distribution in theaters or via digital format, including but not limited to DVD, Internet, or mobile electronic devices;
- (13) "Industrial film" means a business-to-business film that may be viewed by the public, including but not limited to videos used for training or for viewing at a trade show;
- (14) (a) "Motion picture or entertainment production" means:
  - 1. The following if filmed in whole or in part, or produced in whole or in part, in the Commonwealth:
    - a. A feature-length film;
    - b. A television program;
    - c. An industrial film;
    - d. A documentary; or
    - e. A commercial; or
  - 2. A national touring production of a Broadway show produced in Kentucky;
- (b) "Motion picture or entertainment production" does not include the filming or production of obscene material or television coverage of news or athletic events;
- (15) "Obscene" means the same as defined in KRS 531.010;
- (16) "Office" means the Kentucky Film Office in the Tourism, Arts and Heritage Cabinet;
- (17) "Person" means the same as defined in KRS 141.010(15);
- (18) (a) "Qualifying expenditure" means expenditures made in the Commonwealth for the following if directly used in or for a motion picture or entertainment production:
  - 1. The production script and synopsis;
  - 2. Set construction and operations, wardrobe, accessories, and related services;
  - 3. Lease or rental of real property in Kentucky as a set location;
  - 4. Photography, sound synchronization, lighting, and related services;
  - 5. Editing and related services;
  - 6. Rental of facilities and equipment;
  - 7. Vehicle leases;
  - 8. Food; and
  - 9. Accommodations.
- (b) "Qualifying expenditure" does not include Kentucky sales and use tax paid by the approved company on the qualifying expenditure;
- (19) "Qualifying payroll expenditure" means compensation paid to above-the-line crew and below-the line crew while working on a motion picture or entertainment

production in the Commonwealth if the compensation is for services performed in the Commonwealth;

- (20) "Secretary" means the secretary of the Tourism, Arts and Heritage Cabinet;
- (21) "Tax incentive agreement" means the agreement entered into pursuant to KRS 148.546 between the office and the approved company; and
- (22) "Television program" means any live-action or animated production or documentary, including but not limited to:
  - (a) An episodic series;
  - (b) A miniseries;
  - (c) A television movie; or
  - (d) A television pilot;

that is produced for distribution on television via broadcast, cable, or any digital format, including but not limited to cable, satellite, Internet, or mobile electronic devices.

**Effective:** June 26, 2009

**History:** Created 2009 (1st Extra. Sess.) Ky. Acts ch. 1, sec. 43, effective June 26, 2009.

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

- (1) The purposes of KRS 141.383 and 148.542 to 148.546 are to:
  - (a) Encourage the film and entertainment industry to choose locations in the Commonwealth for the filming and production of motion picture or entertainment productions;
  - (b) Encourage the development of a film and entertainment industry in Kentucky;
  - (c) Encourage increased employment opportunities for the citizens of the Commonwealth within the film and entertainment industry; and
  - (d) Encourage the development of a production and postproduction infrastructure in the Commonwealth for film production and touring Broadway show production facilities containing state-of-the-art technologies.
- (2) The Kentucky Film Office is hereby established in the Tourism, Arts and Heritage Cabinet to administer, together with the Finance and Administration Cabinet and the Tourism Development Finance Authority, the tax incentive established by KRS 141.383 and 148.542 to 148.546.
- (3) To qualify for the tax incentive provided in subsection (4) of this section, the following requirements shall be met:
  - (a) For an approved company that films or produces a motion picture production, except for a commercial or documentary, the minimum combined total of qualifying expenditures and qualifying payroll expenditures shall be five hundred thousand dollars (\$500,000);
  - (b) For an approved company that films or produces a commercial in the Commonwealth that is distributed regionally or nationally, the minimum combined total of qualifying expenditures and qualifying payroll expenditures shall be two hundred thousand dollars (\$200,000); and
  - (c) For an approved company that films or produces a documentary in the Commonwealth or that produces a national touring production of a Broadway show, the minimum combined total of qualifying expenditures and qualifying payroll expenditures shall be fifty thousand dollars (\$50,000).
- (4) (a) The incentive available under KRS 141.383 and 148.542 to 148.546 is a refundable credit against the Kentucky income tax imposed under KRS 141.020 or 141.040, and the limited liability entity tax imposed under KRS 141.0401, as provided in KRS 141.383. The amount of the incentive shall not exceed:
  1. Twenty percent (20%) of the approved company's qualifying expenditures;
  2. Twenty percent (20%) of the approved company's qualifying payroll expenditures paid to below-the-line production crew; and
  3. Twenty percent (20%) of the approved company's qualifying payroll expenditures paid to above-the-line production crew not to exceed one

hundred thousand dollars (\$100,000) in payroll expenditures per employee.

- (b) 1. The Tourism Development Finance Authority may accept applications, authorize the execution of tax incentive agreements, and enter into tax incentive agreements beginning on June 26, 2009; however, no credit amount shall be claimed by the taxpayer as a refund or paid by the Department of Revenue prior to July 1, 2010.
- 2. The credit shall be available to approved companies with tax incentive agreements executed before January 1, 2015.

**Effective:** June 26, 2009

**History:** Created 2009 (1st Extra. Sess.) Ky. Acts ch. 1, sec. 44, effective June 26, 2009.

**148.546 Application for motion picture or entertainment production tax incentives -- Tax incentive agreement -- Required terms -- Administrative fee -- Review -- Verification of expenditure reports -- Annual reports.**

- (1) An eligible company shall, at least thirty (30) days prior to incurring any expenditure for which recovery will be sought, file an application for tax incentives with the office. The application shall include:
  - (a) The name and address of the applicant;
  - (b) The production script or a detailed synopsis of the script;
  - (c) The anticipated date on which filming or production shall begin;
  - (d) The anticipated date on which the production will be completed;
  - (e) The total anticipated qualifying expenditures;
  - (f) The total anticipated qualifying payroll expenditures for above-the-line crew;
  - (g) The total anticipated qualifying payroll expenditures for below-the-line crew;
  - (h) The address of a Kentucky location at which records of the production will be kept;
  - (i) An affirmation that if not for the incentive offered under KRS 148.542 to 148.546, the eligible company would not film or produce the production in the Commonwealth; and
  - (j) Any other information the office may require.
- (2) The office shall notify the eligible company within thirty (30) days after receiving the application of its status.
- (3)
  - (a) Upon review of the application and any additional information submitted, the office shall present the application and its recommendation to the Tourism Development Finance Authority established by KRS 148.850 which may, by resolution, authorize the execution of a tax incentive agreement between the Tourism Development Finance Authority and the approved company.
  - (b)
    1. The total amount of tax credits authorized by the Tourism Development Finance Authority during fiscal year 2010-2011 shall not exceed five million dollars (\$5,000,000).
    2. The total amount of tax credits authorized by the Tourism Development Finance Authority during the fiscal year 2011-2012 shall not exceed seven million five hundred thousand dollars (\$7,500,000).
- (4) The tax incentive agreement shall include the following provisions:
  - (a) The duties and responsibilities of the parties;
  - (b) A detailed description of the motion picture or entertainment production for which incentives are requested;
  - (c) The anticipated qualifying expenditures and qualifying payroll expenditures for both above-the-line and below-the-line crews;
  - (d) The minimum combined total of qualifying expenditures and qualifying payroll expenditures necessary for the approved company to qualify for incentives;



- (e) That the approved company shall have no more than two (2) years from the date the tax incentive agreement is executed to start the motion picture or entertainment production;
- (f) That the approved company shall have no more than four (4) years from the execution of the tax incentive agreement to complete the motion picture or entertainment production;
- (g) That the motion picture or entertainment production shall not include obscene materials and shall not negatively impact the economy or the tourism industry of the Commonwealth;
- (h) That the execution of the agreement is not a guarantee of tax incentives and that actual receipt of the incentives shall be contingent upon the approved company meeting the requirements established by the tax incentive agreement;
- (i) That the approved company shall submit to the office within one hundred eighty (180) days of the completion of the motion picture or entertainment production a detailed cost report of the qualifying expenditures, qualifying payroll expenditures, and final script;
- (j) That the approved company shall provide the office with documentation that the approved company has withheld income tax as required by KRS 141.310 on all qualified payroll expenditures for which an incentive under KRS 141.383 and 148.544 is sought;
- (k) That, if the office determines that the approved company has failed to comply with any of its obligations under the tax incentive agreement:
  - 1. The office may deny the incentives available to the approved company;
  - 2. Both the office and the cabinet may pursue any remedy provided under the tax incentive agreement;
  - 3. The office may terminate the tax incentive agreement; and
  - 4. Both the office and the cabinet may pursue any other remedy at law to which it may be entitled;
- (l) That the office shall monitor the tax incentive agreement;
- (m) That the approved company shall provide to the office and the cabinet all information necessary to monitor the tax incentive agreement;
- (n) That the office may share information with the cabinet or any other entity the office determines is necessary for the purposes of monitoring and enforcing the terms of the tax incentive agreement;
- (o) That the motion picture or entertainment production shall contain an acknowledgment that the motion picture production was filmed or the touring show was produced in the Commonwealth of Kentucky;
- (p) Terms of default;
- (q) The method and procedures by which the approved company shall request and receive the incentive provided under KRS 141.383 and 148.544;

- (r) That the approved company may be required to pay an administrative fee as authorized under subsection (5) of this section; and
  - (s) Any other provisions deemed necessary or appropriate by the parties to the tax incentive agreement.
- (5) The office may require the approved company to pay an administrative fee, the amount of which shall be established by administrative regulation promulgated in accordance with KRS Chapter 13A. The administrative fee shall not exceed one-half of one percent (0.5%) of the estimated amount of tax incentive sought or five hundred dollars (\$500), whichever is greater.
  - (6) Prior to commencement of activity as provided in a tax incentive agreement, the tax incentive agreement shall be submitted to the Government Contract Review Committee established by KRS 45A.705 for review, as provided in KRS 45A.695, 45A.705, and 45A.725.
  - (7) The office shall notify the cabinet upon approval of an approved company. The notification shall include the name of the approved company, the name of the motion picture or entertainment production, the estimated amount of qualifying expenditures, the estimated date on which the approved company will complete filming or production, and any other information required by the cabinet.
  - (8) Within one hundred eighty days (180) days of completion of the motion picture or entertainment production, the approved company shall submit to the office a detailed cost report of:
    - (a) Qualifying expenditures;
    - (b) Qualifying payroll expenditures for above-the-line crew;
    - (c) Qualifying payroll expenditures for below-the-line crew; and
    - (d) The final script.
  - (9)
    - (a) The office, together with the secretary, shall review all information submitted for accuracy and shall confirm that all relevant provisions of the tax incentive agreement have been met.
    - (b) Upon confirmation that all requirements of the tax incentive agreement have been met, the office, and the secretary shall review the final script, and if they determine that the motion picture or entertainment production does not:
      - 1. Contain visual or implied scenes that are obscene; or
      - 2. Negatively impact the economy or the tourism industry of the Commonwealth;the office shall forward the detailed cost report to the cabinet for calculation of the refundable credit.
  - (10) The cabinet shall verify that the approved company withheld the proper amount of income tax on qualifying payroll expenditures, and the cabinet shall notify the office of the total amount of refundable credit available on qualifying expenditures and qualifying payroll expenditures.

- (11) On or before October 1, 2010, and on or before each October 1 thereafter, for the immediately preceding fiscal year, the office shall report to the Tourism Development Finance Authority:
- (a) The number of tax incentive agreements that have been executed;
  - (b) The estimated amount of tax incentives that have been requested under KRS 141.383 and 148.542 to 148.546; and
  - (c) The amount of tax incentives approved under KRS 139.538, 141.383, and 148.542 to 148.546.
- (12) (a) By October 1, 2010, and on or before October 1 of each year thereafter, the authority shall file an annual report with the Legislative Research Commission. The report shall also be available on the Tourism, Arts and Heritage Cabinet's Web site.
- (b) The report shall include information for all motion picture or entertainment production projects approved.
  - (c) The report shall include the following information:
    - 1. For each approved motion picture or entertainment production project:
      - a. The name of the approved company and a brief description of the project;
      - b. The amount of approved costs included in the agreement; and
      - c. The total amount recovered under the tax incentive agreement;
    - 2. The number of applications for projects submitted during the prior fiscal year;
    - 3. The number of projects finally approved during the prior fiscal year; and
    - 4. The total dollar amount approved for recovery for all projects approved during the prior fiscal year, and cumulatively under KRS 141.383 and 148.542 to 148.546 since its inception, by year of approval.
  - (d) The information required to be reported under this section shall not be considered confidential taxpayer information and shall not be subject to KRS Chapter 131 or any other provisions of the Kentucky Revised Statutes prohibiting disclosure or reporting of information.

**Effective:** June 4, 2010

**History:** Amended 2010 (1st Extra. Sess.) Ky. Acts ch. 2, sec. 7, effective June 4, 2010.  
-- Created 2009 (1st Extra. Sess.) Ky. Acts ch. 1, sec. 45, effective June 26, 2009.

**148.548 Kentucky Film Commission -- Functions and purpose -- Members -- Meetings -- Nonvoting ex officio members.**

- (1) The Kentucky Film Commission is hereby established and administratively attached to the Office of the Secretary, Tourism, Arts and Heritage Cabinet.
- (2) The functions and purpose of the Kentucky Film Commission shall be:
  - (a) To serve in an advisory capacity to support the Tourism, Arts and Heritage Cabinet in:
    1. Promoting the growth of the film, television, and video production industry within the Commonwealth;
    2. Marketing and promoting Kentucky as a location destination for motion picture productions throughout the Commonwealth for the express purpose of economic development; and
    3. Providing a broad base of industry-specific demographic, economic, and informational support to the Tourism, Arts and Heritage Cabinet; and
  - (b) To advise the Governor and members of the General Assembly on issues relating to the Commonwealth's development and implementation of programs to attract and encourage film, television, and video production in the Commonwealth.
- (3)
  - (a) The commission shall consist of fifteen (15) members who shall be appointed by the Governor.
  - (b) Initially, the Governor shall appoint:
    1. Not more than four (4) members for a term of one (1) year;
    2. Not more than four (4) members for a term of two (2) years;
    3. Not more than four (4) members for a term of three (3) years; and
    4. Not more than three (3) members for a term of four (4) years.
  - (c) Thereafter, the Governor shall make all appointments for a term of four (4) years.
  - (d) The Governor shall appoint a chairman from among the members.
- (4) The members of the commission shall serve without compensation but shall be reimbursed for necessary travel expenses.
- (5) The commission shall meet at the call of the chairman at locations within the Commonwealth designated by the chairman.
- (6) The commission, by majority vote, may appoint other nonvoting ex officio members within the Commonwealth to assist the commission in achieving its functions and purpose as described in subsection (2) of this section.

**Effective:** June 26, 2009

**History:** Created 2009 (1st Extra. Sess.) Ky. Acts ch. 1, sec. 46, effective June 26, 2009.