

**154.61-030 Applications -- Tax incentive agreements -- Fee -- Approval -- Cost report.**

- (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 authority. The application shall include:
  - (a) The name and address of the applicant;
  - (b) Verification that the applicant is a Kentucky-based company;
  - (c) The production script or a detailed synopsis of the script;
  - (d) The locations where the filming or production will occur;
  - (e) The anticipated date on which filming or production shall begin;
  - (f) The anticipated date on which the production will be completed;
  - (g) The total anticipated qualifying expenditures;
  - (h) The total anticipated qualifying payroll expenditures for resident and nonresident above-the-line crew by county;
  - (i) The total anticipated qualifying payroll expenditures for resident and nonresident below-the-line crew by county;
  - (j) The address of a Kentucky location at which records of the production will be kept;
  - (k) An affirmation that if not for the incentive offered under this subchapter, the eligible company would not film or produce the production in the Commonwealth; and
  - (l) Any other information the authority may require.
- (2) The authority shall notify the eligible company within thirty (30) days after receiving the application of its status.
- (3) Upon receipt of the application and any additional information submitted, the authority shall consider all submitted information and, if appropriate, authorize the execution of a tax incentive agreement between the authority and the approved company, if the amount of anticipated tax credit from the application would not make the total tax credit approved for the calendar year exceed the annual tax credit cap under KRS 154.61-020(4).
- (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 resident and nonresident above-the-line and below-the-line crews by county;
  - (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:

1. Begin production within six (6) months of filing an application with the authority; and
  2. Complete production within two (2) years of their production start date;
- (f) 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;
- (g) 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;
- (h) That the approved company shall submit to the authority 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;
- (i) That the approved company shall provide the authority 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 this subchapter is sought;
- (j) That, if the authority determines that the approved company has failed to comply with any of its obligations under the tax incentive agreement:
1. The authority may deny the incentives available to the approved company;
  2. Both the authority and the Department of Revenue may pursue any remedy provided under the tax incentive agreement;
  3. The authority may terminate the tax incentive agreement; and
  4. Both the authority and the Department of Revenue may pursue any other remedy at law to which it may be entitled;
- (k) That the authority and the Department of Revenue shall monitor the tax incentive agreement;
- (l) That the approved company shall provide to the authority and the Department of Revenue all information necessary to monitor the tax incentive agreement;
- (m) That the authority may share information with the Department of Revenue and the Interim Joint Committee on Appropriations and Revenue or any other entity the authority determines is necessary for the purposes of monitoring and enforcing the terms of the tax incentive agreement;
- (n) That the motion picture or entertainment production shall contain an acknowledgment that the motion picture or entertainment production was produced or filmed in the Commonwealth of Kentucky;
- (o) That the approved company shall include screen credits in its final production, indicating the approved company received tax incentives from 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 154.61-020;
  - (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 authority 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 authority shall notify the Department of Revenue 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 department.
- (8) Within one hundred eighty days (180) days of completion of the motion picture or entertainment production, the approved company shall submit to the authority a detailed cost report of:
- (a) Qualifying expenditures;
  - (b) Qualifying payroll expenditures for resident and nonresident above-the-line crew by county;
  - (c) Qualifying payroll expenditures for resident and nonresident below-the-line crew by county; and
  - (d) The final script.
- (9) (a) The authority, 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 authority 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 authority shall forward the detailed cost report to the Department of Revenue for calculation of the refundable credit.
- (10) The Department of Revenue shall:

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

**Effective:** June 29, 2021

**History:** Created 2021 Ky. Acts ch. 156, sec. 19, effective June 29, 2021.