

State of Arizona
House of Representatives
Forty-eighth Legislature
First Regular Session
2007

HOUSE BILL 2322

AN ACT

AMENDING SECTIONS 41-1517, 42-2003, 43-1075 AND 43-1163, ARIZONA REVISED STATUTES; RELATING TO MOTION PICTURE PRODUCTION TAXATION.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 41-1517, Arizona Revised Statutes, is amended to
3 read:

4 41-1517. Motion picture production tax incentives; duties;
5 definitions

6 A. From and after December 31, 2005 through December 31, 2010, the
7 department of commerce shall qualify motion picture production companies that
8 produce one or more motion pictures in this state for motion picture
9 production tax incentives, subject to the following requirements and
10 conditions:

11 1. EXCEPT AS PROVIDED IN SUBSECTION L OF THIS SECTION, a motion
12 picture production company must incur production costs in this state of at
13 least two hundred fifty thousand dollars in producing one or more motion
14 pictures during each twelve month period for which it is qualified for the
15 tax incentives.

16 2. For the purpose of this section, production costs are limited to
17 and subject to the following conditions:

18 (a) Salaries and other compensation for talent, management and labor
19 paid to residents of this state, as defined by section 43-104.

20 (b) A story and scenario to be used for a motion picture.

21 (c) Set construction and operations, wardrobe, props, accessories and
22 related services in this state. Expenses paid for construction contracts are
23 limited to contractors who are licensed under title 32, chapter 10.

24 (d) Photography, sound synchronization, lighting and related costs
25 incurred in this state.

26 (e) Editing and related services performed in this state.

27 (f) Rental of facilities and equipment in this state.

28 (g) Catered food, drink and condiment purchased in this state.

29 (h) Other direct in-state costs of producing the motion picture,
30 pursuant to rules adopted by the department of revenue that follow generally
31 accepted accounting standards for the motion picture industry.

32 (i) Payments for penalties and fines do not qualify as production
33 costs.

34 (j) EXPENSES INCURRED BEFORE THE DATE OF NOTICE OF PREAPPROVAL UNDER
35 SUBSECTION D OF THIS SECTION DO NOT QUALIFY AS PRODUCTION COSTS.

36 3. A motion picture production company or its authorized payroll
37 service company must employ residents of this state in its production
38 activities as follows:

39 (a) In 2006, at least twenty-five per cent of full-time employees
40 working in this state must be residents of this state.

41 (b) In 2007, at least thirty-five per cent of full-time employees
42 working in this state must be residents of this state.

43 (c) In 2008 and every subsequent taxable year, at least fifty per cent
44 of full-time employees working in this state must be residents of this state.

1 4. A motion picture production company must submit a completed
2 application pursuant to subsection ~~B~~- C or ~~I~~- P of this section. An
3 application is complete on receipt of all requested information.

4 5. A motion picture production company must include in the credits for
5 each motion picture, other than a commercial advertisement OR MUSIC VIDEO, an
6 acknowledgement that the production was filmed in ~~this state~~ ARIZONA.

7 B. ONLY A MOTION PICTURE PRODUCTION COMPANY THAT HAS THE LAWFUL RIGHT
8 TO PRODUCE A PARTICULAR PRODUCTION MAY APPLY FOR QUALIFICATION UNDER THIS
9 SECTION WITH RESPECT TO THAT PRODUCTION. IF MORE THAN ONE COMPANY APPLIES
10 FOR THE SAME PRODUCTION, OR IF A COMPANY HAS BEEN PREAPPROVED BY THE
11 DEPARTMENT OF COMMERCE BEFORE ANOTHER APPLICANT FOR THE SAME PRODUCTION:

12 1. ONLY THE APPLICANT THAT CAN DEMONSTRATE TO THE DEPARTMENT THAT IT
13 HAS WRITTEN AUTHORITY FROM THE OWNER OR LICENSEE OF THE COPYRIGHT MAY BE
14 CONSIDERED TO BE A VALID APPLICANT.

15 2. ALL OTHER APPLICANTS SHALL BE DENIED QUALIFICATION AND THEIR
16 APPLICATIONS ARE VOID.

17 ~~B~~- C. A motion picture production company initially applying for
18 qualification under this section must report the following to the department
19 of commerce on a form and in a manner prescribed by the department, with the
20 cooperation of the department of revenue:

21 1. The name, address, telephone number and web site of the motion
22 picture production company.

23 2. The name and address of an individual who will maintain records of
24 expenditures in this state.

25 3. The projected first preproduction date and last production date in
26 this state.

27 4. The production office address and office telephone number in this
28 state.

29 5. The estimated total budget of the production.

30 6. The estimated total expenditures in this state.

31 7. The estimated total percentage of the production taking place in
32 this state.

33 8. The estimated level of employment of residents of this state in the
34 cast and crew.

35 9. A script, including a synopsis, the proposed director and a
36 preliminary list of the cast and producer, EXCEPT THAT, WITH RESPECT TO A
37 TELEVISION SERIES, IN LIEU OF A SCRIPT THE APPLICANT MUST INCLUDE:

38 (a) A SYNOPSIS OF THE GENERAL NATURE OF THE SERIES.

39 (b) A DESCRIPTION OF THE CHARACTERS AND THE INTENDED NATURE OF THEIR
40 INTERACTION WITH EACH OTHER.

41 (c) A DESCRIPTION OF THE LOCATIONS.

42 (d) A DESCRIPTION OF THE SETS.

43 (e) THE INTENDED DISTRIBUTION OR BROADCAST MEDIUM WITH SPECIFIC
44 TELEVISION CHANNELS, IF KNOWN.

1 10. ~~A signed affirmation from the applicant~~ AN AFFIRMATION SIGNED BY
2 ANY PERSON WHO WILL BE CREDITED ON SCREEN AS THE PRODUCER OR PRODUCERS OF THE
3 MOTION PICTURE, NOT INCLUDING THE EXECUTIVE PRODUCERS, ASSOCIATE PRODUCERS,
4 ASSISTANT PRODUCERS OR LINE PRODUCERS, that:

5 (a) The motion picture production company agrees to furnish records of
6 expenditures in this state to the department of revenue on request.

7 (b) Any items purchased with a certification issued under section
8 42-5009, subsection H are intended for use by the applicant directly in
9 motion picture production.

10 ~~C.~~ D. The department of commerce shall review all applications within
11 thirty days after submission pursuant to subsection ~~B- C~~ or ~~I- P~~ of this
12 section to determine whether the motion picture production company satisfies
13 all of the criteria provided in subsection A of this section and shall
14 establish the process by which the department qualifies and preapproves a
15 company for motion picture production tax incentives. This process shall
16 preapprove a company for motion picture production tax incentives based on
17 priority placement established by the date that such motion picture
18 production company filed its initial application for qualification with the
19 department.

20 E. IF FOR ANY REASON A MOTION PICTURE PRODUCTION COMPANY ASSIGNS THE
21 RIGHTS AND OBLIGATIONS OF A PRODUCTION AFTER THE DEPARTMENT OF COMMERCE
22 PREAPPROVES THE COMPANY UNDER SUBSECTION D OF THIS SECTION, THE COMPANY MAY
23 ASSIGN THE PREAPPROVAL TO THE ASSIGNEE OF THE PRODUCTION. THE RIGHTS
24 ASSIGNED APPLY ONLY TO THE PRODUCTION OF THE MOTION PICTURE ORIGINALLY
25 PREAPPROVED. SUBSTITUTION OF PROJECTS BY ASSIGNMENT IS PROHIBITED. THE
26 ASSIGNMENT IS SUBJECT TO THE FOLLOWING REQUIREMENTS:

27 1. WRITTEN NOTICE OF THE ASSIGNMENT, SIGNED BY BOTH THE ASSIGNOR AND
28 ASSIGNEE, MUST BE FILED WITH THE DEPARTMENT OF COMMERCE.

29 2. THE ASSIGNEE MUST MEET THE REQUIREMENTS OF SUBSECTIONS A, B AND C
30 OF THIS SECTION.

31 3. THE ASSIGNEE MUST NOT HAVE A DELINQUENT TAX BALANCE OWING TO THE
32 DEPARTMENT OF REVENUE UNDER TITLE 42 OR 43.

33 ~~D. F. If a company fails to begin production within four months after~~
34 ~~the department preapproves the company or fails to provide notice pursuant to~~
35 ~~this subsection, the preapproval lapses, the application is void and the~~
36 ~~amount of the preapproved incentives does not apply to the dollar limit~~
37 ~~prescribed by subsection E of this section for that year.~~ The department of
38 commerce may conduct a site visit to verify that production has begun.
39 Within four months after the department preapproves the company's initial
40 application, the company must submit notice to the department ~~of commerce~~
41 that production has begun and provide at least one of the following:

42 1. A copy of a contract, loan out agreement or deal memo with a
43 cameraman and crew.

44 2. A copy of the crew call sheet for the first day of production.

1 3. Evidence that residents of this state have been paid a total of at
2 least five thousand dollars for work on the preapproved motion picture.

3 4. A copy of a contract or agreement directly attributable to the
4 preapproved motion picture.

5 G. PREAPPROVAL BY THE DEPARTMENT OF COMMERCE UNDER SUBSECTION D OF
6 THIS SECTION LAPSES, THE APPLICATION IS VOID AND THE AMOUNT OF THE
7 PREAPPROVED INCENTIVES DOES NOT APPLY AGAINST THE DOLLAR LIMIT PRESCRIBED BY
8 SUBSECTION K OF THIS SECTION IF, WITHIN FOUR MONTHS AFTER THE DEPARTMENT
9 PREAPPROVES THE COMPANY, THE COMPANY FAILS TO PROVIDE DOCUMENTATION OF
10 EITHER:

11 1. EXPENDITURE OF AT LEAST:

12 (a) TEN PER CENT OF THE ESTIMATED TOTAL BUDGET OF THE PRODUCTION IF
13 THE ESTIMATED TOTAL BUDGET IS MORE THAN ONE MILLION DOLLARS.

14 (b) FIVE PER CENT OF THE ESTIMATED TOTAL BUDGET OF THE PRODUCTION IF
15 THE ESTIMATED TOTAL BUDGET IS ONE MILLION DOLLARS OR LESS.

16 2. A COMPLETION BOND FOR THE PRODUCTION OF THE MOTION PICTURE FOR
17 WHICH THE COMPANY WAS PREAPPROVED.

18 H. THE PREAPPROVED AMOUNT APPLIES AGAINST THE DOLLAR LIMIT PRESCRIBED
19 BY SUBSECTION K OF THIS SECTION FOR THE YEAR IN WHICH THE APPLICATION WAS
20 SUBMITTED REGARDLESS OF WHETHER THE INITIAL PREAPPROVAL OR REQUALIFICATION
21 PERIOD EXTENDS INTO THE FOLLOWING YEAR OR YEARS. BEFORE THE EXPIRATION OF
22 THE INITIAL PREAPPROVAL OR REQUALIFICATION PERIOD, A COMPANY MAY VOLUNTARILY
23 RELINQUISH UNUSED CREDIT AMOUNTS.

24 I. THE DEPARTMENT OF COMMERCE SHALL REALLOCATE THE AMOUNT OF CREDITS
25 THAT IS VOLUNTARILY RELINQUISHED UNDER SUBSECTION H OF THIS SECTION, THAT
26 LAPSE UNDER SUBSECTION G OF THIS SECTION OR THAT LAPSE UNDER SUBSECTION Q OF
27 THIS SECTION. THE REALLOCATION SHALL BE TO OTHER MOTION PICTURE PRODUCTION
28 COMPANIES THAT APPLIED IN THE ORIGINAL CREDIT YEAR BASED ON PRIORITY
29 PLACEMENT. THE AMOUNT OF THE REALLOCATED CREDITS SHALL CONTINUE TO APPLY
30 AGAINST THE DOLLAR LIMIT OF THE ORIGINAL CREDIT YEAR REGARDLESS OF THE YEAR
31 IN WHICH THE REALLOCATION OCCURS.

32 J. BEGINNING WITH THE TAX CREDITS ALLOCATED FOR 2006 PURSUANT TO
33 SUBSECTION K OF THIS SECTION, A PREAPPROVED CREDIT OFFSETS TAX LIABILITY FOR
34 THE TAXABLE YEAR FOR WHICH THE CREDIT WAS ORIGINALLY ALLOCATED OR ANY
35 SUBSEQUENT TAXABLE YEAR WITHIN THE APPLICABLE CARRY FORWARD PERIOD PURSUANT
36 TO SECTION 43-1075, SUBSECTION G OR SECTION 43-1163, SUBSECTION G. THE
37 CREDITS MUST BE CLAIMED ON A TIMELY FILED ORIGINAL INCOME TAX RETURN,
38 INCLUDING EXTENSIONS.

39 ~~E.~~ K. SUBJECT TO THE REQUIREMENTS OF SUBSECTION L OF THIS SECTION,
40 the department OF COMMERCE shall not preapprove income tax credits exceeding
41 a total of:

42 1. Thirty million dollars ~~++~~ FOR 2006.

43 2. Forty million dollars ~~++~~ FOR 2007.

44 3. Fifty million dollars ~~++~~ FOR 2008.

45 4. Sixty million dollars ~~++~~ FOR 2009.

1 5. From and after December 31, 2009, seventy million dollars ~~+~~ FOR a
2 single year.

3 6. Five million dollars for an individual motion picture application.

4 L. BEGINNING IN 2008, THE FOLLOWING PROVISIONS APPLY WITH RESPECT TO
5 COMMERCIAL ADVERTISEMENT AND MUSIC VIDEO PRODUCTION:

6 1. FIVE PER CENT OF THE MAXIMUM DOLLAR AMOUNT OF INCOME TAX CREDITS
7 PRESCRIBED FOR ANY YEAR BY SUBSECTION K OF THIS SECTION IS RESERVED FOR USE
8 WITH RESPECT TO COMMERCIAL ADVERTISEMENT AND MUSIC VIDEO PRODUCTION.

9 2. A COMMERCIAL ADVERTISEMENT OR MUSIC VIDEO PRODUCTION COMPANY MAY
10 APPLY FOR QUALIFICATION UNDER SUBSECTION C OF THIS SECTION BEFORE THE COMPANY
11 REACHES THE MINIMUM EXPENDITURE THRESHOLD REQUIREMENTS OF SUBSECTION A,
12 PARAGRAPH 1 OF THIS SECTION.

13 3. IN LIEU OF A SCRIPT UNDER SUBSECTION C, PARAGRAPH 9 OF THIS
14 SECTION, THE APPLICANT MUST SUBMIT A SYNOPSIS OR STORYBOARD THAT:

15 (a) IDENTIFIES THE PRODUCT, SERVICE, PERSON OR EVENT FOR A COMMERCIAL
16 ADVERTISEMENT OR THE ARTIST AND SONG FOR A MUSIC VIDEO.

17 (b) DESCRIBES THE GENERAL CONTENT OR MESSAGE TO BE CONVEYED.

18 (c) DESCRIBES THE LOCATION OR LOCATIONS.

19 (d) DESCRIBES THE SETS.

20 (e) DESCRIBES THE INTENDED DISTRIBUTION OR BROADCAST MEDIUM AND
21 SPECIFIC CHANNELS, IF KNOWN.

22 4. THE DEPARTMENT MUST REVIEW THE APPLICATION WITHIN SEVEN BUSINESS
23 DAYS.

24 5. THE DEPARTMENT SHALL ALLOCATE THE INCOME TAX CREDIT INCENTIVES
25 BASED ON PRIORITY PLACEMENT ESTABLISHED BY THE DATE THAT THE COMPANY FILES
26 ITS APPLICATION AND BASED ON THE PERCENTAGE OF ESTIMATED TOTAL EXPENDITURES
27 IN THIS STATE ALLOWED AS A CREDIT UNDER SECTION 43-1075 OR 43-1163.

28 6. IF THE COMPANY DOES NOT HAVE A DELINQUENT TAX BALANCE OWING TO THE
29 DEPARTMENT OF REVENUE UNDER TITLE 42, OR 43, WITHIN TEN DAYS AFTER THE
30 DEPARTMENT PREAPPROVES THE PRODUCTION, THE COMPANY IS ENTITLED TO THE
31 DEDUCTIONS FOR TRANSACTION PRIVILEGE AND USE TAXES LISTED IN SECTION 42-5009,
32 SUBSECTION H EVEN IF THE INITIAL PREAPPROVED PRODUCTION DOES NOT REACH THE
33 MINIMUM EXPENDITURE THRESHOLD PRESCRIBED BY SUBSECTION A, PARAGRAPH 1 OF THIS
34 SECTION. IF ALL PRODUCTIONS BY THE COMPANY IN A CALENDAR YEAR FAIL TO MEET
35 THAT THRESHOLD, THE AMOUNT OF DEDUCTIONS FROM TAXATION REALIZED IN THAT YEAR
36 ARE SUBJECT TO RECAPTURE AS PROVIDED BY SECTION 42-5009, SUBSECTION H.

37 7. WITHIN SIXTY DAYS AFTER APPLYING WITH THE DEPARTMENT UNDER
38 SUBSECTION C OF THIS SECTION, A COMPANY THAT IS PREAPPROVED FOR A SPECIFIC
39 PRODUCTION MUST CERTIFY TO THE DEPARTMENT THE TOTAL AMOUNT OF ELIGIBLE
40 PRODUCTION COSTS ASSOCIATED WITH THE PRODUCTION AS PROVIDED BY SUBSECTION Q
41 OF THIS SECTION.

42 8. THE COMPANY IS NOT ELIGIBLE FOR INCOME TAX CREDIT INCENTIVES UNTIL
43 THE COMPANY'S ELIGIBLE PRODUCTION COSTS REACH THE MINIMUM EXPENDITURE
44 THRESHOLD PRESCRIBED BY SUBSECTION A, PARAGRAPH 1 OF THIS SECTION. WHEN THE
45 COMPANY REACHES THAT THRESHOLD, THE COMPANY MAY APPLY TO THE DEPARTMENT FOR

1 APPROVAL OF THE INCOME TAX CREDIT INCENTIVES PURSUANT TO SUBSECTION Q OF THIS
2 SECTION. APPLICATIONS FOR APPROVAL OF INCOME TAX CREDIT INCENTIVES MAY NOT
3 BE SUBMITTED BY THE SAME COMPANY MORE FREQUENTLY THAN ONCE A CALENDAR MONTH.

4 9. NOTWITHSTANDING ANY OTHER PROVISION OF THIS SECTION, THE DEPARTMENT
5 OF COMMERCE SHALL PRESCRIBE DISTINCT RULES CONSISTENT WITH THIS SUBSECTION
6 FOR QUALIFYING COMMERCIAL ADVERTISEMENT AND MUSIC VIDEO PRODUCTIONS FOR TAX
7 INCENTIVES AND CERTIFYING THE AMOUNT OF ELIGIBLE PRODUCTION COSTS TO THE
8 DEPARTMENT OF REVENUE.

9 ~~F.~~ M. After October 31 of each year, if the department has
10 preapproved the maximum calendar year tax credit amount pursuant to
11 subsection ~~E~~ K of this section, the department may accept initial
12 applications for the next calendar year. The preapproval of any application
13 pursuant to this subsection shall not be effective prior to the first
14 business day of the following calendar year.

15 ~~G.~~ N. The department of commerce shall deny an application submitted
16 pursuant to subsection ~~B~~ ~~or~~ ~~I~~ Q of this section if it determines that:

17 1. The motion picture production company does not meet all of the
18 established criteria provided in subsection A of this section.

19 2. The production would constitute an obscene motion picture film or
20 obscene pictorial publication under title 12, chapter 7, article 1.1.

21 3. The production depicts sexual activity as defined in title 13,
22 chapter 35.

23 4. The production would constitute sexual exploitation of a minor or
24 commercial sexual exploitation of a minor under title 13, chapter 35.1.

25 ~~H.~~ O. On a determination by the department of commerce that a motion
26 picture production company qualifies for motion picture production tax
27 incentives, the department shall issue the company a written letter of
28 qualification and transmit a copy of the letter to the department of revenue.
29 A letter of qualification is effective for twelve consecutive months as
30 stated in the letter.

31 ~~I.~~ P. A motion picture production company that applies for
32 requalification must continue to meet all of the eligibility criteria
33 provided under subsection A of this section and must provide the department
34 of commerce with updated information on the location, ownership and
35 operations of the business. For purposes of efficiency and reducing
36 duplicative or redundant reporting duties, the department may establish a
37 streamlined process for requalification.

38 ~~J.~~ Q. Upon completion of the motion picture production, a motion
39 picture production company that qualifies for the motion picture tax
40 incentives shall ~~certify~~ APPLY to the department **IN WRITING FOR APPROVAL OF**
41 **INCOME TAX CREDITS AND CERTIFY** the total amount of eligible production costs
42 associated with the project incurred from and after December 31, 2005. From
43 and after June 30, 2006, the department shall provide approval to a motion
44 picture production company that it has met the eligibility requirements of
45 this section and shall notify the department of revenue that ~~a~~ THE motion

1 picture production company may claim the tax credits pursuant to sections
2 43-1075 and 43-1163. If the eligible production costs actually incurred are
3 less than the amount preapproved for income tax credits, the preapproved
4 amount not incurred lapses and does not apply ~~to~~ AGAINST the dollar limit
5 prescribed by subsection ~~E~~- K of this section for that year.

6 R. A MOTION PICTURE PRODUCTION COMPANY MAY APPLY FOR APPROVAL OF THE
7 PRODUCTION BEFORE A VIEWABLE COPY OF THE PRODUCTION IS AVAILABLE. TO DO SO,
8 THE COMPANY MUST SUBMIT WITH ITS APPLICATION A LETTER OF CREDIT, PAYABLE TO
9 THE DEPARTMENT OF REVENUE, PROVIDING THAT WITHIN TWO BUSINESS DAYS AFTER THE
10 ISSUER RECEIVES A WRITTEN DETERMINATION FROM THE DEPARTMENT OF COMMERCE THAT
11 THE PRODUCTION FAILS TO QUALIFY FOR THE TAX CREDITS FOR REASONS DESCRIBED IN
12 SUBSECTION N OF THIS SECTION THE ISSUER WILL PAY TO THE DEPARTMENT OF REVENUE
13 THE FULL FACE VALUE OF THE INCOME TAX CREDITS IN THE APPLICATION. IF THE
14 DEPARTMENT OF REVENUE DRAWS ON THE LETTER OF CREDIT, THE MONIES SHALL BE
15 TRANSFERRED TO AND HELD IN AN INTEREST BEARING ACCOUNT PENDING THE FINAL
16 OUTCOME OF AN APPEAL, IF ANY. THE LETTER OF CREDIT MAY BE RELEASED ON THE
17 DETERMINATION BY THE DEPARTMENT OF COMMERCE THAT THE COMPLETED PRODUCTION
18 COMPLIES WITH SUBSECTION N OF THIS SECTION.

19 S. IF A MOTION PICTURE PRODUCTION COMPANY RECEIVES INCOME TAX CREDITS
20 PURSUANT TO THIS SECTION AND SUBSEQUENTLY ADDS SUBJECT MATTER THAT VIOLATES
21 THE PROHIBITIONS IN SUBSECTION N OF THIS SECTION, THE COMPANY AND ALL PERSONS
22 SIGNING THE APPLICATION FOR PREAPPROVAL ARE DISQUALIFIED FROM RECEIVING OR
23 PARTICIPATING IN ANY MOTION PICTURE PRODUCTION COMPANY THAT APPLIES FOR OR
24 RECEIVES TAX INCENTIVES PURSUANT TO THIS SECTION FOR THREE YEARS AFTER THE
25 VIOLATION IS DISCOVERED BY OR REPORTED TO THE DEPARTMENT OF COMMERCE, IN
26 ADDITION TO THE REMEDIES PROVIDED BY SECTION 43-1075, SUBSECTION H, PARAGRAPH
27 4 OR SECTION 43-1163, SUBSECTION H, PARAGRAPH 4.

28 T. IF THE DEPARTMENT OF COMMERCE DENIES OR DISQUALIFIES A PRODUCTION
29 PURSUANT TO SUBSECTION N OF THIS SECTION, THE DEPARTMENT SHALL PUBLISH AND
30 MAKE KNOWN THE REASON FOR DISQUALIFICATION AND STATE, WITH REASONABLE DETAIL,
31 WHAT ELEMENTS OF THE PRODUCTION VIOLATED SUBSECTION N OF THIS SECTION.

32 U. IF A PREAPPROVED MOTION PICTURE PRODUCTION COMPANY FAILS TO
33 UNDERTAKE PRODUCTION, AS DESCRIBED IN SUBSECTION G OF THIS SECTION, AND ALSO
34 FAILS TO VOLUNTARILY RELINQUISH THE UNUSED CREDIT AMOUNTS FOR REALLOCATION BY
35 THE DEPARTMENT AS PROVIDED BY SUBSECTION H OF THIS SECTION WITHIN THE FOUR
36 MONTH PERIOD, THE COMPANY AND ALL PERSONS SIGNING THE APPLICATION FOR
37 PREAPPROVAL ARE DISQUALIFIED FROM RECEIVING, OR PARTICIPATING IN ANY MOTION
38 PICTURE PRODUCTION COMPANY THAT APPLIES FOR, OR RECEIVES, TAX INCENTIVES
39 PURSUANT TO THIS SECTION FOR THREE YEARS AFTER THE ORIGINAL APPLICATION.

40 ~~K~~ V. The department of commerce, with the cooperation of the
41 department of revenue, shall adopt rules and publish and prescribe forms and
42 procedures as necessary to effectuate the purposes of this section.

43 ~~L~~ W. Any information gathered from motion picture production
44 companies for the purposes of this section shall be considered confidential
45 taxpayer information and shall be disclosed only as provided in section

1 42-2003, subsection B, paragraph 12, EXCEPT THAT THE DEPARTMENT SHALL PUBLISH
2 THE FOLLOWING INFORMATION:

3 1. THE NAME OF EACH MOTION PICTURE PRODUCTION COMPANY AND THE AMOUNT
4 OF INCOME TAX CREDITS PREAPPROVED FOR EACH PRODUCTION.

5 2. THE NAMES AND ADDRESSES OF EACH COMPANY AND INDIVIDUAL DISQUALIFIED
6 UNDER SUBSECTION S OR U OF THIS SECTION.

7 3. THE AMOUNT OF CREDITS APPROVED WITH RESPECT TO EACH PRODUCTION.

8 ~~M.~~ X. The department of commerce shall:

9 1. Keep annual records of the information provided on applications for
10 motion picture production tax incentives. These records shall reflect a
11 percentage comparison of the annual amount of monies exempted or credited to
12 qualifying motion picture production companies to the estimated amount of
13 monies spent on in-state production costs by motion picture production
14 companies.

15 2. Maintain annual data on growth in Arizona-based motion picture
16 industry companies and motion picture industry employment and wages.

17 3. Not later than December 1 of each year, prepare and publish a
18 report summarizing the information collected pursuant to this subsection.
19 The department shall make copies of the annual report available to the public
20 on request.

21 ~~N.~~ Y. For the purposes of this section:

22 1. "COMMERCIAL ADVERTISEMENT" MEANS AN ADVERTISING MESSAGE DESIGNED
23 FOR DELIVERY THROUGH A FILM OR VIDEO MEDIUM TO ATTRACT THE ATTENTION OF
24 CONSUMERS OR INFLUENCE CONSUMERS' FEELINGS TOWARD A PARTICULAR PRODUCT,
25 SERVICE, EVENT OR CAUSE.

26 ~~1.~~ 2. "Motion picture" means a single medium or multimedia program,
27 including a commercial ~~advertising message~~ ADVERTISEMENT, MUSIC VIDEO OR
28 TELEVISION SERIES, that:

29 (a) Is created by production activities conducted in whole or in part
30 in this state.

31 (b) Can be viewed or reproduced.

32 (c) Is intended for commercial distribution or licensing in the
33 delivery medium used.

34 ~~2.~~ 3. "Motion picture production company" OR "PRODUCTION COMPANY"
35 means any person primarily engaged in the business of producing motion
36 pictures and that has a physical business office and bank account in this
37 state.

38 ~~3.~~ 4. "Motion picture production tax incentives" means the tax
39 deductions for transaction privilege and use taxes listed in section 42-5009,
40 subsection H and the credit against income taxes provided under section
41 43-1075 or 43-1163.

42 5. "MUSIC VIDEO" MEANS A FILMED OR VIDEOTAPED RENDITION OF A SONG OR
43 SONGS, PORTRAYING MUSICIANS PERFORMING THE SONG OR OTHER VISUAL IMAGES SET TO
44 THE LYRICS OF THE SONG.

1 6. "TELEVISION SERIES" MEANS A GROUP OF PRODUCTIONS CREATED OR ADAPTED
2 FOR TELEVISION BROADCAST WITH A COMMON SERIES TITLE, RELATED TO EACH OTHER IN
3 SUBJECT OR THEME, WHICH IS PRODUCED SEASONALLY FOR APPEARING AT SCHEDULED
4 INTERVALS, BUT SUBJECT TO DISCRETIONARY PROGRAMMING AND SCHEDULING DECISIONS,
5 AND WITH OR WITHOUT A PREDETERMINED NUMBER OF EPISODES.

6 Sec. 2. Section 42-2003, Arizona Revised Statutes, is amended to read:
7 42-2003. Authorized disclosure of confidential information

8 A. Confidential information relating to:

9 1. A taxpayer may be disclosed to the taxpayer, its successor in
10 interest or a designee of the taxpayer who is authorized in writing by the
11 taxpayer. A principal corporate officer of a parent corporation may execute
12 a written authorization for a controlled subsidiary.

13 2. A corporate taxpayer may be disclosed to any principal officer, any
14 person designated by a principal officer or any person designated in a
15 resolution by the corporate board of directors or other similar governing
16 body.

17 3. A partnership may be disclosed to any partner of the partnership.
18 This exception does not include disclosure of confidential information of a
19 particular partner unless otherwise authorized.

20 4. An estate may be disclosed to the personal representative of the
21 estate and to any heir, next of kin or beneficiary under the will of the
22 decedent if the department finds that the heir, next of kin or beneficiary
23 has a material interest which will be affected by the confidential
24 information.

25 5. A trust may be disclosed to the trustee or trustees, jointly or
26 separately, and to the grantor or any beneficiary of the trust if the
27 department finds that the grantor or beneficiary has a material interest
28 which will be affected by the confidential information.

29 6. Any taxpayer may be disclosed if the taxpayer has waived any rights
30 to confidentiality either in writing or on the record in any administrative
31 or judicial proceeding.

32 7. The name and taxpayer identification numbers of persons issued
33 direct payment permits may be publicly disclosed.

34 B. Confidential information may be disclosed to:

35 1. Any employee of the department whose official duties involve tax
36 administration.

37 2. The office of the attorney general solely for its use in
38 preparation for, or in an investigation which may result in, any proceeding
39 involving tax administration before the department or any other agency or
40 board of this state, or before any grand jury or any state or federal court.

41 3. The department of liquor licenses and control for its use in
42 determining whether a spirituous liquor licensee has paid all transaction
43 privilege taxes and affiliated excise taxes incurred as a result of the sale
44 of spirituous liquor, as defined in section 4-101, at the licensed

1 establishment and imposed on the licensed establishments by this state and
2 its political subdivisions.

3 4. Other state tax officials whose official duties require the
4 disclosure for proper tax administration purposes if the information is
5 sought in connection with an investigation or any other proceeding conducted
6 by the official. Any disclosure is limited to information of a taxpayer who
7 is being investigated or who is a party to a proceeding conducted by the
8 official.

9 5. The following agencies, officials and organizations, if they grant
10 substantially similar privileges to the department for the type of
11 information being sought, pursuant to statute and a written agreement between
12 the department and the foreign country, agency, state, Indian tribe or
13 organization:

14 (a) The United States internal revenue service, alcohol and tobacco
15 tax and trade bureau of the United States treasury, United States bureau of
16 alcohol, tobacco, firearms and explosives of the United States department of
17 justice, United States drug enforcement agency and federal bureau of
18 investigation.

19 (b) A state tax official of another state.

20 (c) An organization of states, federation of tax administrators or
21 multistate tax commission that operates an information exchange for tax
22 administration purposes.

23 (d) An agency, official or organization of a foreign country with
24 responsibilities that are comparable to those listed in subdivision (a), (b)
25 or (c) of this paragraph.

26 (e) An agency, official or organization of an Indian tribal government
27 with responsibilities comparable to the responsibilities of the agencies,
28 officials or organizations identified in subdivision (a), (b) or (c) of this
29 paragraph.

30 6. The auditor general, in connection with any audit of the department
31 subject to the restrictions in section 42-2002, subsection D.

32 7. Any person to the extent necessary for effective tax administration
33 in connection with:

34 (a) The processing, storage, transmission, destruction and
35 reproduction of the information.

36 (b) The programming, maintenance, repair, testing and procurement of
37 equipment for purposes of tax administration.

38 8. The office of administrative hearings relating to taxes
39 administered by the department pursuant to section 42-1101, but the
40 department shall not disclose any confidential information:

41 (a) Regarding income tax, withholding tax or estate tax.

42 (b) On any tax issue relating to information associated with the
43 reporting of income tax, withholding tax or estate tax.

44 9. The United States treasury inspector general for tax administration
45 for the purpose of reporting a violation of internal revenue code section

1 7213A (26 United States Code section 7213A), unauthorized inspection of
2 returns or return information.

3 10. The financial management service of the United States treasury
4 department for use in the treasury offset program.

5 11. The United States treasury department or its authorized agent for
6 use in the state income tax levy program and in the electronic federal tax
7 payment system.

8 12. The department of commerce for its use in both:

9 (a) Qualifying motion picture production companies for the tax
10 incentives provided for motion picture production under chapter 5 of this
11 title and sections 43-1075 and 43-1163.

12 (b) Fulfilling its annual reporting responsibility pursuant to section
13 41-1517, subsection ~~X~~ X.

14 C. Confidential information may be disclosed in any state or federal
15 judicial or administrative proceeding pertaining to tax administration
16 pursuant to the following conditions:

17 1. One or more of the following circumstances must apply:

18 (a) The taxpayer is a party to the proceeding.

19 (b) The proceeding arose out of, or in connection with, determining
20 the taxpayer's civil or criminal liability, or the collection of the
21 taxpayer's civil liability, with respect to any tax imposed under this title
22 or title 43.

23 (c) The treatment of an item reflected on the taxpayer's return is
24 directly related to the resolution of an issue in the proceeding.

25 (d) Return information directly relates to a transactional
26 relationship between a person who is a party to the proceeding and the
27 taxpayer and directly affects the resolution of an issue in the proceeding.

28 2. Confidential information may not be disclosed under this subsection
29 if the disclosure is prohibited by section 42-2002, subsection C or D.

30 D. Identity information may be disclosed for purposes of notifying
31 persons entitled to tax refunds if the department is unable to locate the
32 persons after reasonable effort.

33 E. The department, upon the request of any person, shall provide the
34 names and addresses of bingo licensees as defined in section 5-401, verify
35 whether or not a person has a privilege license and number, a distributor's
36 license and number or a withholding license and number or disclose the
37 information to be posted on the department's web site or otherwise publicly
38 accessible pursuant to ~~sections~~ SECTION 42-1124, subsection F and SECTION
39 42-3201, subsection A.

40 F. A department employee, in connection with the official duties
41 relating to any audit, collection activity or civil or criminal
42 investigation, may disclose return information to the extent that disclosure
43 is necessary to obtain information which is not otherwise reasonably
44 available. These official duties include the correct determination of and

1 liability for tax, the amount to be collected or the enforcement of other
2 state tax revenue laws.

3 G. If an organization is exempt from this state's income tax as
4 provided in section 43-1201 for any taxable year, the name and address of the
5 organization and the application filed by the organization upon which the
6 department made its determination for exemption together with any papers
7 submitted in support of the application and any letter or document issued by
8 the department concerning the application are open to public inspection.

9 H. Confidential information relating to transaction privilege tax, use
10 tax, severance tax, jet fuel excise and use tax and rental occupancy tax may
11 be disclosed to any county, city or town tax official if the information
12 relates to a taxpayer who is or may be taxable by the county, city or town.
13 Any taxpayer information released by the department to the county, city or
14 town:

15 1. May only be used for internal purposes.

16 2. May not be disclosed to the public in any manner that does not
17 comply with confidentiality standards established by the department. The
18 county, city or town shall agree in writing with the department that any
19 release of confidential information that violates the confidentiality
20 standards adopted by the department will result in the immediate suspension
21 of any rights of the county, city or town to receive taxpayer information
22 under this subsection.

23 I. The department may disclose statistical information gathered from
24 confidential information if it does not disclose confidential information
25 attributable to any one taxpayer. In order to comply with the requirements
26 of section 42-5029, subsection A, paragraph 3, the department may disclose to
27 the state treasurer statistical information gathered from confidential
28 information, even if it discloses confidential information attributable to a
29 taxpayer.

30 J. The department may disclose the aggregate amounts of any tax
31 credit, tax deduction or tax exemption enacted after January 1, 1994.
32 Information subject to disclosure under this subsection shall not be
33 disclosed if a taxpayer demonstrates to the department that such information
34 would give an unfair advantage to competitors.

35 K. Except as provided in section 42-2002, subsection C, confidential
36 information, described in section 42-2001, paragraph 2, subdivision (a), item
37 (iii), may be disclosed to law enforcement agencies for law enforcement
38 purposes.

39 L. The department may provide transaction privilege tax license
40 information to property tax officials in a county for the purpose of
41 identification and verification of the tax status of commercial property.

42 M. The department may provide transaction privilege tax, luxury tax,
43 use tax, property tax and severance tax information to the ombudsman-citizens
44 aide pursuant to title 41, chapter 8, article 5.

1 N. Except as provided in section 42-2002, subsection D, a court may
2 order the department to disclose confidential information pertaining to a
3 party to an action. An order shall be made only upon a showing of good cause
4 and that the party seeking the information has made demand upon the taxpayer
5 for the information.

6 O. This section does not prohibit the disclosure by the department of
7 any information or documents submitted to the department by a bingo licensee.
8 Before disclosing the information the department shall obtain the name and
9 address of the person requesting the information.

10 P. If the department is required or permitted to disclose confidential
11 information, it may charge the person or agency requesting the information
12 for the reasonable cost of its services.

13 Q. Except as provided in section 42-2002, subsection D, the department
14 of revenue shall release confidential information as requested by the
15 department of economic security pursuant to section 42-1122 or 46-291.
16 Information disclosed under this subsection is limited to the same type of
17 information that the United States internal revenue service is authorized to
18 disclose under section 6103(1)(6) of the internal revenue code.

19 R. Except as provided in section 42-2002, subsection D, the department
20 of revenue shall release confidential information as requested by the courts
21 and clerks of the court pursuant to section 42-1122.

22 S. To comply with the requirements of section 42-5031, the department
23 may disclose to the state treasurer, to the county stadium district board of
24 directors and to any city or town tax official that is part of the county
25 stadium district confidential information attributable to a taxpayer's
26 business activity conducted in the county stadium district.

27 T. The department shall release confidential information as requested
28 by the attorney general for purposes of determining compliance with and
29 enforcing section 44-7101, the master settlement agreement referred to
30 therein and subsequent agreements to which the state is a party that amend or
31 implement the master settlement agreement. Information disclosed under this
32 subsection is limited to luxury tax information relating to tobacco
33 manufacturers, distributors, wholesalers and retailers and information
34 collected by the department pursuant to section 44-7101(2)(j).

35 U. For proceedings before the department, the office of administrative
36 hearings, the board of tax appeals or any state or federal court involving
37 penalties that were assessed against a return preparer or electronic return
38 preparer pursuant to section 42-1103.02 or 42-1125.01, confidential
39 information may be disclosed only before the judge or administrative law
40 judge adjudicating the proceeding, the parties to the proceeding and the
41 parties' representatives in the proceeding prior to its introduction into
42 evidence in the proceeding. The confidential information may be introduced
43 as evidence in the proceeding only if the taxpayer's name, the names of any
44 dependents listed on the return, all social security numbers, the taxpayer's

1 address, the taxpayer's signature and any attachments containing any of the
2 foregoing information are redacted and if either:

3 1. The treatment of an item reflected on such return is or may be
4 related to the resolution of an issue in the proceeding.

5 2. Such return or return information relates or may relate to a
6 transactional relationship between a person who is a party to the proceeding
7 and the taxpayer which directly affects the resolution of an issue in the
8 proceeding.

9 V. The department may disclose to the attorney general confidential
10 information received under section 44-7111 and requested by the attorney
11 general for purposes of determining compliance with and enforcing section
12 44-7111. The department and attorney general shall share with each other the
13 information received under section 44-7111, and may share the information
14 with other federal, state or local agencies only for the purposes of
15 enforcement of section 44-7101, section 44-7111 or corresponding laws of
16 other states.

17 Sec. 3. Section 43-1075, Arizona Revised Statutes, is amended to read:
18 43-1075. Credit for motion picture production costs;
19 definitions

20 A. Beginning from and after December 31, 2005 through December 31,
21 2010, a credit is allowed against the taxes imposed by this title for motion
22 picture production costs paid by a motion picture production company in this
23 state that are directly attributable to the production of one or more motion
24 pictures in this state. The amount of the credit **WITH RESPECT TO:**

25 1. **COMMERCIAL ADVERTISEMENTS AND MUSIC VIDEOS IS FIFTEEN PER CENT OF**
26 **PRODUCTION COSTS PAID IN THIS STATE.**

27 2. **ALL OTHER MOTION PICTURES** is equal to a percentage of the amount of
28 motion picture production costs paid in this state as follows:

<u>Production costs</u>	<u>Percentage credit</u>
\$250,000 - \$1,000,000	10%
\$1,000,001 - \$3,000,000	15%
More than \$3,000,000	20%

33 B. The department shall not allow in any year tax credits that exceed
34 the aggregate amount prescribed in section 41-1517.

35 C. The department shall not allow a credit under this section to a
36 taxpayer who has a delinquent tax balance owing to the department under this
37 title or title 42.

38 D. To qualify for a credit under this section, the motion picture
39 production company must:

40 1. Employ residents of this state in production as follows:

41 (a) In 2006, twenty-five per cent of full-time employees working in
42 this state must be residents of this state.

43 (b) In 2007, thirty-five per cent of full-time employees working in
44 this state must be residents of this state.

1 (c) In 2008 and every subsequent taxable year, fifty per cent of
2 full-time employees working in this state must be residents of this state.

3 2. Include in the production credits for each commercial motion
4 picture, other than a commercial advertisement OR MUSIC VIDEO, an
5 acknowledgement that the production was filmed in Arizona.

6 3. Receive preapproval and postapproval from the department of
7 commerce pursuant to section 41-1517.

8 E. BEGINNING WITH TAX CREDITS ALLOCATED FOR 2006 PURSUANT TO SECTION
9 41-1517, SUBSECTION K, A MOTION PICTURE PRODUCTION COMPANY, AT ITS EXPENSE,
10 MAY VOLUNTARILY ENTER INTO A LIMITED MANAGED AUDIT AGREEMENT PURSUANT TO
11 TITLE 42, CHAPTER 2, ARTICLE 7 THAT INCLUDES AN AUDIT OF ITS PRODUCTION COSTS
12 AND OTHER REQUIREMENTS PRESCRIBED BY SECTION 41-1517 AND BY THIS SECTION TO
13 CONFIRM THE AMOUNT OF ANY CREDIT UNDER THIS SECTION. THE REQUEST TO ENTER
14 INTO THE AUDIT MUST BE MADE IN CONJUNCTION WITH THE CERTIFICATION OF
15 PRODUCTION COSTS TO THE DEPARTMENT OF COMMERCE PURSUANT TO SECTION 41-1517,
16 SUBSECTION K. THE AUDIT MUST BE CONDUCTED BY THE TAXPAYER'S AUTHORIZED
17 REPRESENTATIVE, AS DEFINED BY SECTION 42-2301, WHO IS AN INDEPENDENT
18 CERTIFIED PUBLIC ACCOUNTANT LICENSED IN THIS STATE. NEITHER THE CERTIFIED
19 PUBLIC ACCOUNTANT NOR THE FIRM THE CERTIFIED PUBLIC ACCOUNTANT IS AFFILIATED
20 WITH MAY REGULARLY PERFORM SERVICES FOR THE MOTION PICTURE PRODUCTION COMPANY
21 OR ITS AFFILIATES. IF THE DIRECTOR ACCEPTS THE FINDINGS OF THE AUDIT AND
22 ISSUES A NOTICE OF DETERMINATION PURSUANT TO SECTION 42-2303 AND THE TAXPAYER
23 TIMELY FILES ITS INCOME TAX RETURN WITH THE APPROPRIATE CREDIT CLAIM FORMS,
24 THE CREDIT AMOUNT ACCEPTED IS NOT SUBJECT TO RECAPTURE, DISALLOWANCE,
25 REDUCTION OR DENIAL WITH RESPECT TO EITHER THE MOTION PICTURE PRODUCTION
26 COMPANY OR ANY SUBSEQUENT TRANSFEREE OF THE CREDIT, AND SUBSECTION H,
27 PARAGRAPH 4 OF THIS SECTION DOES NOT APPLY. THE DIRECTOR'S NOTICE OF
28 DETERMINATION SHALL INCLUDE A WRITTEN CERTIFICATE TO THE TAXPAYER STATING THE
29 AMOUNT OF THE CREDIT AND THAT THE CREDIT IS NOT SUBJECT TO RECAPTURE FROM A
30 TRANSFEREE. THIS SUBSECTION DOES NOT PREVENT THE RECAPTURE OF A CREDIT FROM
31 A MOTION PICTURE PRODUCTION COMPANY IF THE COMPANY FAILED TO DISCLOSE
32 MATERIAL INFORMATION DURING THE AUDIT OR FALSIFIED ITS BOOKS OR RECORDS OR
33 OTHERWISE ENGAGED IN AN ACTION THAT PREVENTED AN ACCURATE AUDIT.

34 ~~E.~~ F. Co-owners of a motion picture production company, including
35 partners in a partnership, members of a limited liability company and
36 shareholders of an S corporation as defined in section 1361 of the internal
37 revenue code, may allocate the credit allowed under this section among the
38 co-owners on any basis without regard to their proportional ownership
39 interest. The total of the credits allowed all such owners of the motion
40 picture production company may not exceed the amount that would have been
41 allowed for a sole owner of the company.

42 ~~F.~~ G. If the allowable tax credit for a taxpayer exceeds the taxes
43 otherwise due under this title on the claimant's income, or if there are no
44 taxes due under this title, the taxpayer may carry the amount of the claim

1 not used to offset the taxes under this title forward for not more than five
2 consecutive taxable years' income tax liability.

3 ~~G.~~ H. All or part of any unclaimed amount of credit under this
4 section may be sold or otherwise transferred under the following conditions:

5 1. A single sale or transfer may involve one or more transferees, and
6 a transferee may in turn resell or transfer the credit subject to the same
7 conditions of this subsection.

8 2. Both the transferor and transferee must submit a written notice of
9 the transfer to the department within thirty days after the sale or transfer.
10 The transferee's notice shall include a processing fee equal to one per cent
11 of the transferee's tax credit balance or two hundred dollars, whichever is
12 less. The notice shall include:

13 (a) The name of the motion picture production company.

14 (b) The date of the transfer.

15 (c) The amount of the transfer.

16 (d) The transferor's tax credit balance before the transfer and the
17 remaining balance after the transfer.

18 (e) All tax identification numbers for both transferor and transferee.

19 (f) Any other information required by rule.

20 3. A sale or transfer of the credit does not extend the time in which
21 the credit can be used. The carryforward period of time under subsection ~~F~~
22 G of this section for a credit that is sold or transferred begins on the date
23 the credit was originally earned.

24 4. EXCEPT AS PROVIDED BY SUBSECTION E OF THIS SECTION, if a transferor
25 was not qualified or was disqualified from using the credit at the time of
26 the transfer, the department shall either disallow the credit claimed by a
27 transferee or recapture the credit from the transferee through any authorized
28 collection method. The transferee's recourse is against the transferor.

29 5. In the case of any failure to comply with this subsection, the
30 department shall disallow the tax credit until the taxpayer is in full
31 compliance.

32 ~~H.~~ I. The department shall maintain annual data on the total amount
33 of monies credited pursuant to this section, and shall provide those data to
34 the department of commerce on request.

35 ~~I.~~ J. The department, with the cooperation of the department of
36 commerce, shall adopt rules and publish and prescribe forms and procedures as
37 necessary to effectuate the purposes of this section.

38 ~~J.~~ K. The credit allowed by this section is in lieu of any allowance
39 for state tax purposes of a deduction of those expenses allowed by the
40 internal revenue code.

41 ~~K.~~ L. For the purposes of this section, "COMMERCIAL ADVERTISEMENT",
42 "motion picture", ~~and~~ "motion picture production company" AND "MUSIC VIDEO"
43 have the same meanings prescribed in section 41-1517."

1 CERTIFIED PUBLIC ACCOUNTANT LICENSED IN THIS STATE. NEITHER THE CERTIFIED
2 PUBLIC ACCOUNTANT NOR THE FIRM THE CERTIFIED PUBLIC ACCOUNTANT IS AFFILIATED
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