**R357. Governor, Economic Opportunity.**

**R357-5. Motion Picture Incentive Rule.**

**R357-5-101. Authority.**

Section 63N-8-104 requires the Office to make rules establishing the standards that a motion picture company and digital media company must meet to qualify for a motion picture incentive and the criteria for determining the amount of the motion picture incentive.

**R357-5-102. Definitions.**

The definitions in this rule are in addition to or serve to clarify the definitions found in Section 63N-8-102.

(1) "Above-The-Line" (ATL) means creative talent that are attached to a production as the director, producers, stunt performers, screenwriters, storyboard artists or casting directors.

(2) "Cast" means performers appearing in a particular film with featured or speaking roles.

(3) "Community Film Incentive Program" means a production where a motion picture company has a minimum budget of $100,000 and a maximum budget of under $500,000.

(4) "Crew" means those involved in the production of a film who are not defined as cast, above-the-line or extras.

(5) "Deferred Payment" means, tax credits in amounts over $2,000,000 paid in installments over a specified number of years but not to exceed three years.

(6) "Extras" means an extra or background actor is a performer in a production, who appears in a non-speaking or non-singing capacity, usually in the background.

(7) "Independent Utah CPA" means a Certified Public Accountant holding an active license in the state that is independent of the production and production activities.

(8) "Made-For-Television" means feature length motion pictures specifically made-for-television or streaming platforms.

(9) "Motion Pictures" means a production that is originally intended for commercial distribution and does not include:

(a) news;

(b) commercials;

(c) live broadcasts;

(d) digital media products;

(e) live sporting events;

(f) live coverage of theatrical or entertainment events; or

(g) programs that solicit funds.

(10) "Principal photography," "Producing" or "Production" means the filming of major and significant portions of a film that involves the lead actors and actresses.

(11) "Rural county" means a county of the third, fourth, fifth, or sixth class.

(12) "Significant Percentage of cast and crew from Utah" means:

(a) For productions that have total budgets of less than $500,000: that at least 85% of the cast and crew are Utah residents excluding extras, above-the-line and three principal cast members;

(b) For productions that have more than $500,000 left in state: that at least 75% of the cast and crew are Utah residents excluding extras, above-the-line and five principal cast members.

(13) "State-approved production" means a production that is:

(a) approved by the Office and ratified by the Utah Board of Tourism Development; and

(b) any of the production is produced in the state.

(14) "Total budget for the project" means the total budget for dollars left in state of pre-production, production, and post-production.

(15) "Television series" means a group of episodes of a production released on television or streaming platforms.

(16) "Treatment" means: A written description of the production.

(17) "UFC" means: the Utah Film Commission, a sub-entity of the Utah Governor's Office of Economic Opportunity.

(18) "Utah Resident" means a person who has lived in Utah for at least 183 days even if temporarily outside of Utah for an extended length of time, maintains a permanent home in Utah, and is subject to Utah personal income tax.

**R357-5-103. Motion Picture Incentive Applications: Procedures and Minimum Requirements for a Motion Picture Company.**

(1) A motion picture company's application may be approved for a motion picture incentive award only if each of the following requirements are met in addition to those listed throughout Title 63N, Motion Picture Incentives:

(a) the motion picture company is producing any of a motion picture in Utah;

(b) the motion picture is a state-approved production;

(c) the motion picture company guarantees UFC access to production's behind the scenes footage, interviews and still photography or allow the Office to produce its own;

(d) the motion picture company guarantees the production will display the Utah logo as outlined in the incentive agreement and provide a screenshot of the logo as it appears in the credits;

(e) the motion picture company has obtained financing for 100% of the anticipated dollars left in state for the project, and the applicant provides proof of financing in a form specified in the application documents;

(f) the motion picture company must retain financing as set forth in Subsection (1)(e) for the life of the contract with the state;

(g) the motion picture company intends to report at least $500,000 left in state if applying for a film incentive under Subsection R357-5-5(1) or a maximum of under $500,000 if applying for an incentive under Subsection R357-5-5(2); and

(h) if a production has initiated principal photography before the Office's receipt of a completed application or will not start principal photography for more than 90 days from date of application, the application for incentive may be denied.

(2) The motion picture incentive application may not be construed as a property right and neither the Office nor the Board is required to approve an application.

(3) To receive state approval for an incentive application, a production must, in the state's sole discretion, reflect positively on the image of Utah. In determining whether or not a production reflects positively on the image of the state, the Office and Board may take into consideration:

(a) whether and to what extent the motion picture promotes Utah as a tourist destination;

(b) general standards of decency and respect for the diverse beliefs and values of Utahns; and

(c) any other factors related to the production or the motion picture company that may reasonably affect the image of the state.

(4) The Office and Board may consider the relative merit of applications, and the need to reserve its allocations for future applications.

(a) Factors that contribute to the relative merit include:

(i) the overall strength and viability of the script of the production;

(ii) the industry reputation of the production or motion picture company;

(iii) the record of the motion picture company in matters of safety and responsible filmmaking;

(iv) the existence of any legal action or the likelihood of any legal action in relation to either the production or the motion picture company; and

(v) anticipated:

(A) number of jobs in Utah;

(B) number of production days in Utah;

(C) dollars left in state;

(D) local cast and crew wages; and

(E) new state revenue that the film contributes in Utah.

(b) Applications shall be made in the form prescribed by the Office, including required attachments or additional information.

(i) Incomplete applications will not be considered received until the application is deemed complete by the UFC.

(ii) A script is required as part of the application.

(iii) A treatment may only be submitted where a script for a project type is not possible, for example when the project is a documentary. The Utah Film Commission will determine in its sole discretion if a treatment can be substituted for a script.

(5) A production company may file more than one application if it has more than one production in the state, but a separate application must be filed for each production.

(6) Applications will be subject to submission deadlines, which will be posted on the Utah Film Commission Website and are available in other formats upon request.

(7) If the applicant fails to submit a completed application before the submission deadline, the application may be considered with the next round of submissions.

(8) Submitting an application does not guarantee approval of a film incentive.

(9) Film incentives are subject to and contingent upon the amount of available funding and tax credit allocation available in the Motion Picture Restricted account.

(10) Lack of state approval may not be construed as prohibiting a production or prohibiting a motion picture company from filming in Utah.

(11) A production's eligibility for an incentive ends upon approval or denial by the Office. A production may reapply, subject to compliance with program statutes and rules.

**R357-5-104. Motion Picture Incentive Applications: Award for a Motion Picture Production.**

(1) Upon receipt of a completed application, the Office will align each project into incentive categories as set forth in Section R357-5-105.

(2) In calculating dollars left in the state, the Office may limit the following expenditures:

(a) salary above $500,000 for one individual;

(b) marketing and distributions expenditures;

(c) any value beyond the depreciated amount for capital expenditures, rentals, and any purchases made where the item is used for only a portion of its useful life; and

(d) any per diem value beyond 100% of the current federal rate for the area.

**R357-5-105. Film Categories and Conditions.**

(1) Utah Motion Picture Incentive Program.

(a) The Utah Motion Picture Incentive Program will have an incentive cap of 20% of the dollars left in state, unless a higher cap is awarded pursuant to Subsection (1)(c).

(i) Unscripted programs, including reality television and documentaries, qualify for a 10% baseline with a potential increase if additional criteria are met, not to exceed 20%.

(b) Incentives will only be awarded if the motion picture company meets criteria listed in Section R357-5-103.

(c) An additional cap of up to 5% may be granted if the motion picture company:

(i) Motion picture company has at least $1,000,000 in qualified dollars left in state; and

(ii) Significant Percentage of cast and crew from Utah; or

(A) 75% of production days occur in rural county.

(2) Community Film Incentive Program:

(a) will provide a maximum of a 20% post-performance cash rebate or tax credit for dollars left in state;

(b) will only be awarded if the motion picture company meets criteria listed in Section R357-5-103;

(c) applications will be reviewed monthly; and

(d) awards will be made to motion picture companies based upon the criteria outlined in the application provided by UFC.

(3) For applications made under Subsection (1) or (2), the motion picture company must provide any information and documentation to show measurable outcomes as outlined in the application for any incentive listed in this section.

**R357-5-106. Funding -- Post-Performance Compliance.**

A motion picture company may qualify for issuance of either a Post-Performance Refundable Tax Credit or Post-Performance Cash award:

(1) based on the method outlined in their contract; and

(2) the motion picture company adheres to the Agreed-Upon Procedures version 2.0 dated May13, 2022 posted on the Utah Film Commission Website which is incorporated by reference.

**R357-5-107. Funding -- Post-Performance Refundable Tax Credit.**

(1) Post-performance refundable tax credits are non - transferable and can only be issued to the state-approved motion picture that submits the motion picture incentive application and is approved by the Office with advice from the Board.

(2) Post-performance refundable tax credits in amounts over $2,000,000 may be paid in deferred payments over multiple years as authorized by the Office within the approved Board motion for the tax credit.

(a) Deferred payments for tax credits over $2,000,000 are subject to available tax credit allocation as authorized by the Legislature.

(b) Each annual installment of the deferred payment amount shall be outlined in the tax credit agreement.

(c) A deferred payment plan cannot exceed three years.

**R357-5-108. Request for Incentive Amendment.**

(1) A motion picture company may request an incentive amendment only under the conditions prescribed by the Office.

(2) Amendments will be reviewed and approved by the UFC on a case by case basis with a written explanation for the approval or denial provided to the applicant.

**KEY: economic development, motion picture, digital media, new state revenue**

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