

**R357. Governor, Economic Development.**

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

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

(1) Subsection 63N-8-104(1) 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 below are in addition to or serve to clarify the definitions found in Utah Code Section 63N-8-102.

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

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

(3) "Crew" means those involved in the production of a film who are not defined as cast or extras.

(4) "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.

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

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

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

(8) "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.

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

(10) "Rural Utah" means all counties outside of Davis County, Salt Lake County, Utah County, and Weber County.

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

(a) For productions that have less than \$500,000 dollars left in state: that at least 85% of the cast and crew are Utah residents excluding extras.

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

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

(a) approved by the office and ratified by the Governor's Office of Economic Development Board; and

(b) all or a portion of the production is produced in the state.

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

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

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

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

(17) "Utah Resident" means a person who has lived in Utah for the entire year (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 State of 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 all of the following requirements are met in addition to those listed throughout 63N-8:

(a) the motion picture company is producing all or a portion of a motion picture in the state of 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 screen shot 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 (e) for the life of the contract with the State;

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

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

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

(3) In order to receive state approval for an incentive application, a production must, in the State's sole discretion, reflect positively on the image of state of Utah.

(a) In determining whether or not a production reflects positively on the image of the state of Utah, the Office and Board may take into consideration:

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

(ii) general standards of decency and respect for the diverse

beliefs and values of Utahns; and

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

(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, but are not limited to:

(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;

(E) new state revenue that the film contributes in the State of 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 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 prior to 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) All film incentives are subject to and contingent upon the amount of available funding and/or tax credit allocation available in the Motion Picture Restricted account;

(10) Lack of state approval shall 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 statute 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 R357-5-105.

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

- (a) all 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 percent 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% the dollars left in state, unless a higher cap is awarded pursuant to subsection (c).

(b) Incentives will only be awarded if the motion picture company meets criteria listed in statute, 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) 75% of cast and crew are Utah residents excluding extras and five principal cast members, or

(iii) 75% of production days occur in rural Utah

(2) Community Film Incentive Program

(a) The Community Film Incentive Program will provide a maximum of a 20% post-performance cash rebate or tax incentive for dollars left in state by a community film production.

(b) Community Film Incentive Program incentives will only be awarded if the motion picture company meets criteria listed in statute, R357-5-103, has a maximum budget of under \$500,000, and meets the criteria found on the Utah Film Commission Website.

(c) Applications for the Community Film Incentive Program will be reviewed monthly.

(d) Awards will be made to motion picture companies based upon the criteria outlined in the Community Film Incentive Program application provided by UFC.

(3) For applications made under either (1) or (2), the motion picture company must provide all information and documentation to show measureable outcomes as outlined in the application for any incentive listed in R357-5-105.

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

(1) A motion picture company may qualify for issuance of either a Post-Performance Refundable Tax Credit or Post-Performance Cash award based on the method outlined in their contract if all of the following requirements are met in addition to those listed throughout 63N-8:

(a) The motion picture company adheres to the Agreed-Upon Procedures version 1.0 dated November 1, 2019 which will be posted on the Utah Film Commission Website and hereby adopted and incorporated by reference.

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

(1) Post-performance refundable tax credits are nontransferable 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) All 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**

**Date of Enactment or Last Substantive Amendment: January 1, 2020**

**Notice of Continuation: June 9, 2016**

**Authorizing, and Implemented or Interpreted Law: 63N-8-104**