

Alaska Statutes – Film Office & Incentive Program

Title 43. REVENUE AND TAXATION - Chapter 98. MISCELLANEOUS PROVISIONS

Film Production Incentive

Sec. 43.98.030. Film production tax credit.

- (a) The department shall provide a transferable film production tax credit to a producer, as defined in AS 44.25.190, for qualified production expenditures under AS 44.25.100 - 44.25.190. The department shall publish the name and contact information for each person provided a transferable tax credit certificate under this subsection.
- (b) A tax credit certificate provided under (a) of this section may be sold, assigned, exchanged, conveyed, or otherwise transferred in whole or in part.
- (c) A taxpayer acquiring a transferable tax credit certificate may use the credit or a portion of the credit to offset taxes imposed under AS 21.09.210, AS 21.66.110, AS 43.20, AS 43.55, AS 43.56, AS 43.65, AS 43.75, and AS 43.77. Except as provided in (e) of this section, any portion of the credit not used may be used at a later period or transferred under (b) of this section.
- (d) The department shall adopt regulations necessary for the administration of this section.
- (e) A credit provided under (a) of this section, whether sold, assigned, exchanged, conveyed, or otherwise transferred, in whole or in part, must be used within six years after being provided by the department.
- (f) The total amount of tax credits provided in the aggregate under this section may not exceed
 - (1) \$100,000,000 for productions qualified under former AS 44.33.234 before July 1, 2013; and
 - (2) \$200,000,000 for productions qualified under AS 44.25.120 after June 30, 2013, and before July 1, 2023.

- (g) A person acquiring two or more film production tax credit certificates provided under (a) of this section may combine the unused amounts of the credits for sale, assignment, exchange, conveyance, or other transfer. At the request of a person holding a film production tax credit, the department shall replace a certificate that represents the full amount of tax credit available with multiple certificates that each represent a portion of the total tax credit available for the purpose of sale, assignment, exchange, conveyance, or other transfer under this subsection or, on request, shall provide one tax credit certificate that represents the combined value of multiple tax credit certificates. A tax credit certificate provided by the department under this subsection must state the expiration date and the amount of each credit that is included in the certificate. Combining or splitting unused amounts of credits under this subsection does not change or extend the time period in which each credit that is included in the combination or split must be used.
- (h) Subject to appropriation, the department may purchase a transferable film production tax credit certificate for 75 percent of the amount of each credit that is included in the certificate.

Article 03. FILM OFFICE

Sec. 44.25.100. Film office.

The film office is created in the Department of Revenue. The film office shall administer the Alaska film production incentive program.

Sec. 44.25.105. Duties.

(a) The film office shall make available to the legislature, within 30 days after the start of each regular session, a report of the activities conducted by the film office under AS 44.25.100 - 44.25.190. The report must include

- (1) the number of applications received under AS 44.25.120 ;
- (2) the number of applications approved by the film office;
- (3) the number of, and amount of, tax credits disbursed under AS 44.25.110;
- (4) the total amount of expenditures that were paid by productions qualifying for the film production tax credit that were not qualified expenditures;

(5) the total amount of qualified expenditures that were paid by productions qualifying for the film production tax credit to Alaska businesses;

(6) the total amount of qualified expenditures that were paid by productions qualifying for the film production tax credit to Alaska residents as wages;

(7) the total amount of qualified expenditures that were paid by productions qualifying for the film production tax credit for wages paid to individuals who were not residents;

(8) the total number of residents employed by productions qualifying for the film production tax credit;

(9) the total number of individuals employed by productions qualifying for the film production tax credit who were not residents;

(10) the number of productions qualifying for the film production tax credit that used a third party to sell, assign, exchange, convey, or otherwise transfer, in whole or in part, a tax credit certificate received by the production; in this paragraph, "third party" means a person other than the producer or an employee of the producer of the production qualifying for the film production tax credit; and

(11) the number of purchases of transferable film production tax credit certificates under AS 43.98.030 (h) and the total amount of film production tax credits shown on the certificates purchased by the Department of Revenue.

(b) The film office shall design a logo that represents the film office and must be included in a film qualifying for a film production tax credit under AS 44.25.100 - 44.25.190.

(c) The film office shall provide an on-site liaison to a film production that is subject to the maximum application fee under AS 44.25.120(d). The liaison shall assist the producer in meeting the requirements of AS 44.25.100 - 44.25.190 and ensure that the production is in the best interests of the state as described in the application filed under AS 44.25.120 and approved under AS 44.25.150 .

Sec. 44.25.110. Alaska film production incentive program.

Subject to appropriations for the purpose, the film office shall administer the Alaska film production incentive program to provide a tax credit under AS 43.98.030 for certain film production expenditures incurred in the state.

Sec. 44.25.115. Eligibility.

(a) A film production is eligible for a tax credit under AS 43.98.030, if the

(1) producer has \$75,000 or more in qualified expenditures in a consecutive 36-month period under AS 44.25.130 ;

(2) Alaska Film Incentive Review Commission determines that the production is not contrary to the best interests of the state; and

(3) production is approved by the film office.

(b) In determining under (a) of this section whether a production is not contrary to the best interests of the state, the Alaska Film Incentive Review Commission shall consider the effect of the production on

(1) both the immediate and long-term prospects for the film industry in the state;

(2) both the immediate and long-term prospects for the employment of Alaska residents;

(3) both the immediate and long-term prospects for the economy of the state;

(4) the public perception of state policy on the utilization and development of the natural resources of the state; and

(5) the immediate and long-term prospects for the fiscal health of the state.

(c) The following productions are not eligible, regardless of the production costs:

(1) news, weather, or current events programming;

(2) a production produced primarily for industrial, corporate, or institutional purposes, and for internal use;

(3) an advertisement, infomercial, or any other production that solicits funds, except for a commercial television advertisement produced for national distribution;

(4) a political advertisement; or

(5) a production that is determined by the film office to contain sexually explicit conduct as defined in 18 U.S.C. 2256.

Sec. 44.25.120. Qualification for film production tax credit.

(a) A film producer may apply for the film production tax credit under AS 43.98.030 by submitting an application to the film office on a form provided by the film office. The application must include

(1) a script or synopsis of the production;

(2) the names of the producer, director, and proposed cast;

(3) estimated start, completion, and filming dates; and

(4) other information the film office may require to determine the producer's qualification for a credit and the estimated amount of the credit.

(b) If the Alaska Film Incentive Review Commission approves an application submitted under (a) of this section, the film office shall issue a notice of qualification to the producer. The notice of qualification must include a determination by the film office of the estimated film production tax credit for which the production qualifies.

(c) Information submitted in an application under (a) of this section is confidential and is not subject to inspection or copying under AS 40.25.110 - 40.25.125.

(d) At the time an application is submitted under (a) of this section, a film producer shall submit an application fee equal to 0.2 percent of the estimated total qualified expenditures to be incurred in the state, except that the application fee may not be less than \$200 or more than \$5,000. The application fee is not subject to refund.

Sec. 44.25.125. Award of film production tax credit.

(a) Subject to AS 43.98.030 (f) and to (i) of this section, the film office shall determine the amount of the tax credit under AS 43.98.030 available to a producer who has obtained a notice of qualification under AS 44.25.120 (b), based on the qualified expenditures of the production under AS 44.25.130 . After the film office determines the amount of the tax credit, the tax credit shall be submitted to the Alaska Film Incentive Review Commission for approval.

(b) Except as provided in (k) of this section, the base amount of a tax credit awarded under this section is equal to 30 percent of the qualified expenditures of a production.

(c) In determining the amount of the tax credit and subject to approval by the Alaska Film Incentive Review Commission, the applicable percentage provided by (b) of this section shall be increased by the film office based on the following criteria:

(1) an additional 20 percent of qualified expenditures that are wages paid to Alaska residents;

(2) an additional six percent of qualified expenditures made in a rural area; and

(3) an additional two percent of qualified expenditures made in the state between October 1 and March 30.

(d) After completion of the production, the producer shall provide the film office with a production cost report detailing the qualified expenditures of the production, with verification by an independent certified public accountant, licensed in the state and approved by the film office, that the costs claimed in the report are qualified expenditures under AS 44.25.130 and that there is no outstanding balance for a qualified expenditure that is due to a person in the state. The independent certified public accountant providing verification under this subsection may not engage in the sale, assignment, exchange, conveyance, or other transfer of a tax credit certificate that includes a credit based on the qualified expenditures that are verified by that independent certified public accountant. If the independent certified public accountant providing verification under this subsection subsequently engages in the sale, assignment, exchange, conveyance, or other transfer of a credit for which a qualified expenditure was verified by that independent certified public accountant, the film office may require the producer providing the production cost report to have the qualified expenditures verified by an independent certified public accountant licensed in the state that is not engaged in the sale, assignment, exchange, conveyance, or other transfer related to a credit for the qualified expenditures.

(e) Subject to (g) of this section, the film office shall determine the amount of the tax credit based on the information provided by the producer under (d) of this section and, after approval by the Alaska Film Incentive Review Commission, shall award a tax credit under AS 43.98.030 if the producer has satisfied all requirements under AS 44.25.100 - 44.25.190.

(f) The award of a tax credit under this section is conditioned on the producer's and the production's full compliance with all applicable state laws and regulations. At the request of the film office, a producer shall provide any information necessary for the film office to determine the producer's and production's compliance with this subsection.

(g) In determining the amount of a tax credit awarded under this section, the film office shall reduce the amount of the tax credit by any amount the film office considers necessary to allow the state, or a political subdivision of the state, to recover the cost of any damages caused by any act or omission of the producer or production.

(h) The film office may withhold the award of a tax credit under this section if the office determines that there are filed, but unresolved, legal actions in the state involving the producer or production.

(i) To qualify for the tax credit under AS 43.98.030 , a producer shall include,

(1) in the end credits of each qualified film, the film office logo designed under AS 44.25.105 (b) and the words, "Filmed in Alaska with the Support of the State of Alaska"; or

(2) on each DVD or other media produced for distribution, a short Alaska promotional video or advertisement approved by the Alaska Film Incentive Review Commission.

(j) The Department of Revenue may not provide a tax credit certificate under AS 43.98.030 to a producer that fails to meet the requirements in (i) of this section.

(k) In place of the 30 percent credit applicable to qualified expenditures under (a) of this section, the tax credit for expenditures for services performed in the state, including all salaries, wages, compensation, and related benefits, by producers, directors, writers, and principal actors that fail to meet the eligibility requirements for a permanent fund dividend in AS 43.23.005 (a)(2) - (7), and all entities representing producers, directors, writers, and principal actors that fail to meet the eligibility requirements for a permanent fund dividend in AS 43.23.005 (a)(2) - (7), is five percent. The amount of the five percent credit may be increased by adding an amount equal to 50 percent of the qualified expenditures paid to residents of the state under AS 44.25.130(a)(10) and 50 percent of the qualified expenditures paid under AS 44.25.130 (a)(11) - (13) and (15). In this subsection, "principal actors" means the five highest compensated actors or entities representing the five highest compensated actors in the production.

Sec. 44.25.130. Determination of qualified expenditures.

(a) Expenditures made by a production company licensed to do business in the state in connection with a film production approved by the film office that shall be considered qualified expenditures must be directly related to the production and be incurred in the state. Only expenditures that are ordinary, reasonable, and not in excess of fair market value and that are for real or tangible property, fees, services, or state or municipal taxes shall be considered. Expenditures may include

(1) costs of set construction and operation;

- (2) costs of wardrobes, make-up, accessories, and related services;
- (3) costs associated with photography and sound synchronization;
- (4) costs of lighting and related services and materials;
- (5) costs of editing and related services;
- (6) rental of facilities and equipment;
- (7) leasing of vehicles;
- (8) costs of food and lodging;
- (9) costs of digital or tape editing, film processing, transfer of film to tape or digital format, transfer of digital media to film or tape, sound mixing, and special and visual effects;
- (10) the total aggregate expenditures for services performed in the state, including all salaries, wages, compensation, and related benefits provided to producers, directors, writers, actors, and other personnel that are directly attributable to services performed in the state;
- (11) the costs of the use of an Alaska business for processing qualified payroll and related expenditures;
- (12) costs of music, if performed, composed, or recorded by an Alaska musician, or released or published by an Alaska business;
- (13) costs of intrastate travel, if provided by an Alaska business;
- (14) costs relating to the design, construction, improvement, or repair of a film, video, television, or digital production or postproduction facility or related property, infrastructure, or equipment, except commercial exhibition facilities, as determined by the film office;
- (15) costs of state or municipal taxes levied in Alaska on the lease or rental of passenger or recreational vehicles or the rental of rooms or other lodging; or
- (16) other similar production expenditures as determined by the film office.

(b) Production costs that may not be considered qualified expenditures include

- (1) costs related to the acquisition, determination, transfer, or use of a film production tax credit under AS 43.98.030 ;

- (2) postproduction expenditures for marketing and distribution;
- (3) production financing, depreciation, and amortization costs, and other costs that are not cash or cash equivalent expenditures directly attributable to production costs incurred in the state;
- (4) amounts that are later reimbursed or reasonably anticipated to be reimbursed, resulting in a reduction in production costs;
- (5) amounts that are reasonably anticipated to be recovered through subsequent sale or other realization of value by disposal of an asset that has been claimed as a qualified expenditure;
- (6) amounts that are paid to a person or entity as a result of participation in profits from the exploitation of the production;
- (7) costs incurred in the purchase of real or tangible property for which a qualified expenditure has, at any time, been claimed.

Sec. 44.25.135. Recovery of film production tax credit.

(a) The film office may review, audit, and bring legal proceedings to recover any amount of a tax credit awarded under AS 44.25.125 from a producer or production to which a credit was awarded if the film office determines that the film producer or production is liable for damages to the state, or any political subdivision of the state.

(b) Legal proceedings may not be brought under (a) of this section more than six years after the date the tax credit was awarded under AS 44.25.125 .

Sec. 44.25.140. Regulations.

The film office may adopt procedures and regulations to carry out its functions under AS 44.25.100 - 44.25.190.

Sec. 44.25.145. Alaska Film Incentive Review Commission.

(a) The Alaska Film Incentive Review Commission is created in the Department of Revenue.

(b) The membership of the commission consists of the

(1) commissioner of commerce, community, and economic development;

(2) commissioner of natural resources;

(3) commissioner of revenue;

(4) commissioner of labor and workforce development.

(c) A majority of the commission constitutes a quorum. Approval of an application for qualification under AS 44.25.120 and 44.25.150 and the award of film production tax credits under AS 44.25.120 and 44.25.150 require an affirmative vote by three members of the commission.

(d) The commission shall employ an executive director and additional staff to support the work of the commission, oversee the film office, and carry out the duties of the film office under AS 44.25.100 - 44.25.190. The commission shall provide general direction to the executive director and staff for the operation of the film office.

(e) The commission may consult with individuals knowledgeable about film production and accounting as necessary to perform the duties of the commission.

Sec. 44.25.150. Review of qualifications and award of film production tax credits.

(a) The executive director shall review each application submitted to the film office under AS 44.25.120 and each production cost report submitted to the film office under AS 44.25.125 .

(b) After finding that an application submitted under AS 44.25.120 is complete, the executive director shall review the application and submit the application for approval to the commission along with a recommendation to approve or reject the application. After reviewing the application, the recommendation of the executive director, and additional information an applicant may provide or the commission may request, the commission shall make a decision as to whether the production proposed in the application and the estimated amount of the film production tax credit are in the best interest of the state. The commission may not approve an application for a film production that the commission finds is contrary to the natural resource development policy of the state. The commission shall issue a decision either approving or rejecting the application and qualification of the applicant. A decision of the commission on the qualification of an applicant is in the discretion of the commission and is not subject to appeal except on the issue of whether the decision of the commission is arbitrary or capricious. If appealed, the appeal is subject to AS 44.62 (Administrative Procedure Act).

(c) After reviewing the production cost report submitted by a producer under AS 44.25.125 , the executive director shall review and verify the information included on the production cost report. The executive director shall determine the amount of the credit for which the producer may qualify and make a recommendation to the commission as to the amount of the credit to be awarded. The commission may approve the credit amount recommended by the executive director, adjust the amount of the credit, deny all or part of the credit, or return the production cost report to the executive director for additional review. The denial of a film production tax credit under this section is subject to appeal under AS 44.62 (Administrative Procedure Act).

Sec. 44.25.190. Definitions.

In AS 44.25.100 - 44.25.190,

(1) "Alaska business" means

(A) a person who holds a current Alaska business license;

(B) a person who provides goods or services under the name as appearing on the person's current Alaska business license;

(C) a person who has maintained a place of business within the state staffed by the person or an employee of the person for a period of six months immediately preceding the date the goods or services were provided;

(D) a person who is

(i) incorporated or qualified to do business under the laws of the state;

(ii) a sole proprietorship, and the proprietor is a resident of the state;

(iii) a limited liability company organized under AS 10.50, and all members are residents of the state; or

(iv) a partnership under former AS 32.05, AS 32.06, or AS 32.11, and all partners are residents of the state; and

(E) if the business is a joint venture, a joint venture composed entirely of ventures that qualify under (A) - (D) of this paragraph;

(2) "film" includes television, commercials, and videos;

(3) "film office" means the film office created under AS 44.25.100 ;

(4) "producer" means a person who arranges financing for or supervises the production of a film, video, commercial, or television production or pilot;

(5) "rural area" means a community in the state with a population of 1,500 or less or a community with a population of 10,000 or less that is not connected by road or rail to Anchorage or Fairbanks.

* Sec. 29. AS 44.33.231 is repealed and reenacted to read: Sec. 44.33.231. Film production promotion program.

Sec. 44.33.231. Film production promotion program.

- (a) The film production promotion program is established in the Department of Commerce, Community, and Economic Development.
- (b) The purpose of the film production promotion program is to
 - (1) work with organizations in the private sector for the expansion and development of film production industries in the state;
 - (2) promote Alaska as an appropriate location for film production;
 - (3) provide production assistance through connecting film directors, makers, and producers with Alaska location scouts and contractors, including contractors providing assistance with permit applications; and
 - (4) certify Alaska film production internship training programs and promote the employment of program interns by eligible productions.
- (c) On request, the Department of Commerce, Community, and Economic Development, through the film production promotion program, shall assist the Department of Revenue in the administration of the Alaska film production incentive program (AS 44.25.110).

* Sec. 35. The uncodified law of the State of Alaska is amended by adding a new section to read: INCENTIVE CREDIT FOR FIRST EPISODIC SCRIPTED TELEVISION PRODUCTION IN THE STATE.

(a) Subject to appropriation, the first episodic scripted television production produced after the effective date of this section is entitled to an additional film production tax credit of six percent of the total qualified expenditures incurred in the state. The production is eligible for the film production tax credit in this section after 16 episodes have been completed and are ready for television broadcast.

(b) The credit in this section shall be administered in the same manner as the film production tax credit under AS 44.25.100 - 44.25.190.

(c) In this section, "episodic scripted television production" means a production for television broadcast that is based on a script written before production; "episodic scripted television production" does not include what is commonly referred to as reality television, for which actors in the production do not perform using previously scripted dialogue or actions.

* Sec. 36. The uncodified law of the State of Alaska is amended by adding a new section to read: TRANSITION.

(a) The employee or employees in the film office in the Department of Commerce, Community, and Economic Development shall be transferred to the Department of Revenue on the effective date of this section and shall be the staff authorized for the Alaska Film Incentive Review Commission established by AS 44.25.145, enacted by sec. 28 of this Act. The Alaska Film Incentive Review Commission shall designate an executive director as soon as practicable after the effective date of this section.

(b) Subject to AS 43.98.030(f), as amended by sec. 26 of this Act, secs. 31 and 32 of this Act do not prohibit the film office from determining a film production's qualified expenditures, awarding a tax credit, or reviewing a tax credit under the provisions repealed by secs. 31 and 32 of this Act that has received a notice of qualification under AS 44.25.120(b), enacted by sec. 28 of this Act, before July 1, 2023.

(c) A film production tax credit may be used to offset taxes imposed under the provisions identified in AS 43.98.030(c), as amended by sec. 24 of this Act, or sold or exchanged for a transferable tax credit certificate under AS 43.98.030(a), as amended by sec. 22 of this Act, within three years after being provided by the Department of Revenue, notwithstanding the repeal of AS 43.98.030 in sec. 31 of this Act. (d) A film production tax credit that is being withheld under AS 44.25.125(h), enacted by sec. 28 of this Act, may continue to be withheld by the film office, notwithstanding the repeal of AS 44.25.125 in sec. 31 of this Act.

* Sec. 37. The uncodified law of the State of Alaska is amended by adding a new section to read: NOTIFICATION.

When the amount of tax credits provided under AS 43.98.030(f), as amended by sec. 26 of this Act, in the aggregate and the estimated amount of tax credits that could be claimed based on notices of qualification issued by the film office under AS 44.33.234, repealed by sec. 30 of this Act, together equal \$100,000,000 before July 1, 2013, or under AS 44.25.120, enacted by sec. 28 of this Act, together equal \$200,000,000 after June 30, 2013, and before July 1, 2023, the commissioner of revenue shall notify the presiding officers of each house of the legislature and the revisor of statutes in writing.