

APA1  
07/04

**TRANSMITTAL SHEET FOR  
NOTICE OF INTENDED ACTION**

Control No. 891 Department or Agency Alabama Tourism Department / Alabama Film Office

Rule No. 891-X-1

Rule Title: Alabama Film Office Incentives

         New   X   Amend          Repeal          Adopt by Reference

Would the absence of the proposed rule significantly harm or endanger the public health, welfare, or safety?         NO        

Is there a reasonable relationship between the state's police power and the protection of the public health, safety, or welfare?         NO        

Is there another, less restrictive method of regulation available that could adequately protect the public?         NO        

Does the proposed rule have the effect of directly or indirectly increasing the costs of any goods or services involved and, if so, to what degree?         NO        

Is the increase in cost, if any, more harmful to the public than the harm that might result from the absence of the proposed rule?         N/A        

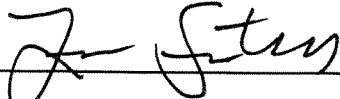
Are all facets of the rulemaking process designed solely for the purpose of, and so they have, as their primary effect, the protection of the public?         YES        

Does the proposed rule have an economic impact?         YES        

If the proposed rule has an economic impact, the proposed rule is required to be accompanied by a fiscal note prepared in accordance with subsection (f) of Section 412223, Code of Alabama 1975.

Certification of Authorized Official

I certify that the attached proposed rule has been proposed in full compliance with the requirements of Chapter 22, Title 41, Code of Alabama 1975, and that it conforms to all applicable filing requirements of the Administrative Procedure Division of the Legislative Reference Service.

Signature of certifying officer 

Date Sept. 26, 2011

APA2  
07/04

Alabama Tourism Agency  
Alabama Film Office

**NOTICE OF INTENDED ACTION**

**RULE NO. & TITLE:** 891-X-1 Alabama Film Office Incentives

891-X-1-.02 Definitions

891-X-1-.03 General Requirements

891-X-1-.07 Payment Of The Rebate And Failure To Meet Qualifications

**INTENDED ACTION:** Amend existing rules.

**SUBSTANCE OF PROPOSED ACTION:** The agency proposes to amend existing rules to provide for Regulations and Guidelines in compliance with Act No. 2011-695, relating to the Entertainment Industry Incentive Act of 2009.

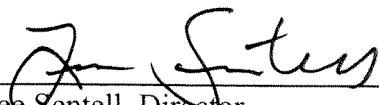
**TIME PLACE, MANNER OF PRESENTING VIEWS:** All interested parties may submit their views in writing to the Alabama Film Office, 401 Adams Avenue, Suite 170, Montgomery, AL 36130, at any time during the thirty-five (35) day period following the publication of the notice.

**FINAL DATE FOR COMMENT AND COMPLETION OF NOTICE:**

December 5, 2011

**CONTACT PERSON AT AGENCY:**

Brenda Hobbie  
Alabama Film Office  
401 Adams Avenue  
Montgomery, AL 36130  
(334) 242-4195

  
\_\_\_\_\_  
Lee Sentell, Director  
Alabama Tourism Department

APA6  
07/04

**ECONOMIC IMPACT STATEMENT  
FOR APA RULE  
(Section 412223(f))**

Control No. 891 Department or Agency Alabama Tourism Department – Alabama Film Office

Rule No: 891-X-1

Rule Title: Alabama Film Office Incentives

New  Amend  Repeal  Adopt by Reference

This rule has no economic impact.

This rule has an economic impact, as explained below:

1. **NEED/EXPECTED BENEFIT OF RULE:**  
**These Rules are designed to allow the Alabama Film Office to administer the film incentives provided under the Entertainment Industry Incentive Act of 2009 (the "Act"), which was intended to assist in recruiting the entertainment industry (including, but not limited to, film and television) to the State of Alabama, thereby creating jobs and increasing the amount of money spend in the State related thereto.**
2. **COSTS/BENEFITS OF RULE AND WHY RULE IS THE MOST EFFECTIVE, EFFICIENT, AND FEASIBLE MEANS FOR ALLOCATING RESOURCES AND ACHIEVING THE STATED PURPOSE:**  
**The aggregate cap of film incentives provided under the act shall not exceed \$10,000,000. Ultimately, these incentives could reduce funding for the Education Trust fund by an unknown amount, depending on the number of projects approved for incentives, the number of projects that are produced, in whole or in part, within Alabama, and the amount of expenditures incurred by sure productions. However, it is anticipated that the implementation of theses rules will ultimately create jobs and additional spending in the State by assisting in the recruitment of the entertainment industry.**
3. **EFFECT OF THIS RULE ON COMPETITION:**  
**N/A**
4. **EFFECT OF THIS RULE ON COST-OF-LIVING AND DOING BUSINESS IN THE GEOGRAPHICAL AREA WHERE THE RULE IS TO BE IMPLEMENTED:**  
**N/A**

5. EFFECT OF THIS RULE ON EMPLOYMENT IN THE GEOGRAPHICAL AREA WHERE THE RULE IS TO BE IMPLEMENTED:  
**As entertainment projects locate in Alabama, additional jobs and tax revenues will be generated.**
6. SOURCE OF REVENUE TO BE USED FOR IMPLEMENTING AND ENFORCING THIS RULE:  
**N/A**
7. THE SHORT TERM/LONG TERM ECONOMIC IMPACT OF THIS RULE ON AFFECTED PERSONS, INCLUDING ANALYSIS OF PERSONS WHO WILL BEAR THE COSTS AND THOSE WHO WILL BENEFIT FROM THE RULE:  
**The incentives administered by these rules should, in the short term, create jobs and increase spending in the state. In the long term, the incentives administered by these rules should cause the entertainment industry to do business in the state, thus impacting not only the specific regions where production takes place, but also the state as a whole.**
8. UNCERTAINTIES ASSOCIATED WITH THE ESTIMATED BENEFITS AND BURDENS OF THE RULE INCLUDING QUALITATIVE / QUANTITATIVE BENEFITS AND BURDEN COMPARISON:  
**It is unknown how many projects will be produced in Alabama.**
9. THE EFFECT OF THIS RULE ON THE ENVIRONMENT AND PUBLIC HEALTH:  
**N/A**
10. DETRIMENTAL EFFECT ON THE ENVIRONMENT AND PUBLIC HEALTH IF THE RULE IS NOT IMPLEMENTED:  
**N/A**

**\*\*Additional pages may be used if needed.**

# ALABAMA FILM OFFICE INCENTIVES

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### 891-X-1-.02 Definitions.

- (1) The following definitions apply for purposes of the rules promulgated under Acts of Alabama, 2009-144, known as the Entertainment Industry Incentive Act of 2009:
  - (a) **ACT.** Acts of Alabama 2009-144, known as the Entertainment Industry Incentive Act of 2009.
  - (b) **ADVISORY BOARD.** Group of individuals to advise the Office in matters related to the administration of the Act.
  - (c) **ALABAMA-BASED COMPANY.** Any Company registered to do business in the State of Alabama.
  - (d) **APPLICANT.** A Company, intending to produce a Qualified Production that applies for Incentives.
  - (e) **APPLICATION.** Form to be completed by an Applicant requesting Incentives and submitted to the Office for approval by the Office.
  - (f) **CHART OF PRODUCTION EXPENDITURES.** A list of examples of expense items and whether they constitute Production Expenditures if Expended in Alabama by a Qualified Production Company on a State-Certified Production.
  - (g) **COMPANY.** A corporation, partnership, limited liability company, or any other business entity.
  - (h) **CPA.** A certified public accountant, having passed the uniform certified public accountant examination, who is licensed to practice accountancy by a state board of public accountancy, or its designee, and is in good standing with said state board of public accountancy, or its designee.

- (i) **DEPARTMENT.** The Alabama Department of Revenue.
- (j) **END CREDIT.** A statement displayed at the end of the credits, where applicable, of a State-Certified Production proclaiming “FILMED ON LOCATION IN ALABAMA,” or other comparable form of acknowledgement.
- (k) **ENTERTAINMENT INDUSTRY.** Those persons or entities engaged in the production of entertainment content as herein defined under Paragraph (1)(s).
- (l) **EXPENDED IN ALABAMA.** In the case of tangible property, property which is acquired or leased from a source within the State of Alabama; in the case of services, services performed in the State of Alabama for a Qualified Production project.
- (m) **FINAL INCENTIVE AUDIT.** An audit, by a CPA, of the books and records of a Qualified Production Company performed upon completion of the production activities in the State of Alabama associated with a State-Certified Production. Such audit shall verify each Production Expenditure claimed by a Qualified Production Company.
- (n) **INCENTIVES.** The Rebate and exemptions from the state portion, but not the local portion, of any sales, use, and lodgings taxes available to certain Qualified Production Companies for Production Expenditures under the Act.
- (o) **LOAN-OUT COMPANY.** A Company, owned in whole or in part by a person performing services for a Qualified Production Company with respect to a State-Certified Production, which a Qualified Production Company contracts with and pays for the performance of such services by said person.
- (p) **OFFICE.** The Alabama Film Office.
- (q) **PAYROLL.** All salary, wages, and other compensation, including specifically, but not limited to, compensation and benefits, related benefits, and any corresponding state and federal income, unemployment, or other payroll tax obligation, and workers compensation provided to resident and non-resident producers, directors, writers, actors, and other personnel involved in qualified production projects in Alabama.
- (r) **PRODUCTION EXPENDITURES.**
  - 1. Preproduction, production, and postproduction expenditures incurred in the State of Alabama subsequent to the approval by the Office as a State-Certified Production, except as provided in Ala. Admin. Code r. 891-X-1-.04(1)(g), that are directly used in a State-Certified Production, including, but not limited to, the following: set construction and operation, wardrobe, makeup, set accessories, and related services; costs associated with photography and sound synchronization, lighting, and related services and materials; editing and related services; rental of facilities and equipment leasing of vehicles; costs of

food and lodging; cost of catering; digital or tape editing, film processing, transfer of film to tape or digital format; transfer direct to DVD, cable, or satellite for distribution; sound mixing, special and visual effects including duplication, film processing digital, DVD, music composition, and satellite distribution; total aggregate payroll; music; airfare; insurance costs of bonding; and or other similar production expenditures.

2. The term includes financial contributions or educational or workforce development in partnership with related educational institutions, or local industry organizations, or both, contributed toward the furtherance of the local entertainment media industries.
3. The term does not include postproduction expenditures for marketing or any amounts that are paid to persons or entities as a result of their participation in profits from the exploitation of a motion picture production.

**(s) QUALIFIED PRODUCTION.**

1. The term means entertainment content created in whole or in part within the state, including motion pictures; soundtracks for motion pictures; documentaries; long- form, specials, miniseries, series, sound recordings, videos and music videos, and interstitials television programming; interactive television; interactive games; video games; commercials; infomercials; any format of digital media, including an interactive website that is intended for national or international distribution or exhibition to the general public; and any trailer, pilot, video teaser, or demo created primarily to stimulate the sale, marketing, promotion, or exploitation or future investment in either a product or a qualified production via any means and media in any digital media format, film, or videotape, provided such program meets all the underlying criteria of a qualified production.
2. The term does not include any ongoing television program created primarily as news, weather, or financial market reports, a production featuring current events, sporting events, an awards show or other gala event, a production whose sole purpose is fund-raising, a long-form production that primarily markets a product or service, a production used for corporate training or in-house corporate advertising or other similar productions; nor does the term include any production for which records are required to be maintained under 18 U.S.C. §2257 with respect to sexually explicit content; nor does the term mean or include any form of gambling, gaming, wagering, or pari-mutuel wagering activity or enterprise.

**(t) QUALIFIED PRODUCTION COMPANY.**

1. A Company engaged in the business of producing a Qualified Production.

2. The term does not mean or include any Company owned, affiliated, or controlled, in whole or in part, by any Company or person which is in default on a loan.
- (u) **REBATE.** Incentive available to a Qualified Production Company equal to 25% of its Production Expenditures, excluding payroll paid to Residents of Alabama, on a State-Certified Production plus 35% of all payroll paid to Residents of Alabama for the State-Certified Production that may be used to offset any Alabama income tax liability of the Qualified Production Company for the tax year during which ~~such expenditures were paid or incurred~~ production activity in Alabama on the State-Certified Production concludes, with the excess by which the Rebate exceeds the Qualified Production Company's Alabama income tax liability being refunded to the Qualified Production Company; provided that such amount shall not exceed the amount of total Incentives available to a Qualified Production Company less the amount of any state, but not local, sales, use, and lodgings taxes that would have been paid but for the exemption from the same.
- (v) **RELATED PARTY.** A person or Company that bears a relationship to a Qualified Production Company described in 26 U.S.C. §§ 267(b), (c), or (e), as amended.
- (w) **REPORT.** Statement of a CPA issued upon the completion of the Final Incentive Audit that provides a summary of the Production Expenditures Expended in Alabama by a Qualified Production Company during the production of the State-Certified Production on a form provided by the Office.
- (x) **RESIDENT OF ALABAMA.** A natural person and, for the purpose of determining eligibility for the Incentives provided by the Act, any person domiciled in the State of Alabama and any other person who maintains a permanent place of abode within the State and spends in the aggregate more than 6 months of each year within the State of Alabama.
- (y) **STATE-CERTIFIED PRODUCTION.** A Qualified Production approved by the Office, produced by a Qualified Production Company.

**Author:** Alabama Film Office

**Statutory Authority:** Code of Ala. 1975, §§ 41-7A-40 through -48.

**History: New Rule:** Filed February 19, 2010.

**Amendment:** Filed October 1, 2011.



**891-X-1-.03 General Requirements.**

- (1) Effective January 1, 2009, a Qualified Production Company may be entitled to receive a Rebate for certain Production Expenditures, and also may be entitled to receive an exemption from state, but not local, sales, use, and lodgings taxes.
- (a) To receive a Rebate equal to 25% of the State-Certified Production's Production Expenditures, excluding payroll paid to Residents of Alabama, plus a Rebate equal to 35% of all payroll paid to Residents of Alabama for the State-Certified Production, a Qualified Production Company must incur total Production Expenditures of at least \$500,000, but no Rebate shall be available for Production Expenditures ~~in excess of~~ incurred after the first \$10,000,000 of Production Expenditures Expended in Alabama on a State-Certified Production; however, if such project is limited only to the production of a soundtrack used in a motion picture or documentary, such project may qualify provided that the Production Expenditures for the soundtrack project equal or exceed \$50,000, but no Rebate shall be available for Production Expenditures ~~in excess of~~ incurred after the first \$300,000 of Production Expenditures Expended in Alabama on a State-Certified Production. In addition, if such project is limited only to the production of a music video, such project may qualify provided that the Production Expenditures for the soundtrack project equal or exceed \$50,000, but no Rebate shall be available for Production Expenditures incurred after the first \$200,000 of Production Expenditures Expended in Alabama on a State-Certified Production.
- (b) A single commercial may be considered a Qualified Production, however, for purposes of Paragraph (1)(a) above, in determining the total Production Expenditures incurred by a Qualified Production Company on a Qualified Production, the total Production Expenditures of a series of commercials to be filmed within a period of 12 consecutive months, each of which separately and independently meets the definition of a Qualified Production, may be aggregated to meet the monetary requirements of Paragraph (1)(a) above, as long as each individual commercial within the series pertains to the same subject as the other commercials in the series and was planned as part of a series of commercials to be filmed within a period of 12 consecutive months at the time the Applicant applied for Incentives, provided however that the amount of Incentives granted shall be consistent with the provisions of Ala. Admin. Code r. 891-X-1-.04(1)(d).
1. Example. During calendar year 2011, a Qualified Production Company is scheduled to film a series of 5 commercials, all of which relate to the same subject. The Qualified Production Company incurs Production Expenditures of \$100,000 on each commercial. The Production Expenditures for each individual commercial would not independently satisfy the minimum Production Expenditure requirements of Paragraph (1)(a), above. However, for purposes of determining whether the Qualified Production Company has incurred Production Expenditures of at least \$500,000, the Production Expenditures of each commercial in the series may be aggregated. Therefore,

the Qualified Production Company's aggregate Production Expenditures for the series of commercials would be \$500,000, and would meet the minimum Production Expenditure requirement set forth in Paragraph (1)(a) above.

- (c) ~~Each individual~~ A single episode in a television series or miniseries, shall may be considered a single Qualified Production for purposes of determining the total Production Expenditures incurred by a Qualified Production Company on a Qualified Production for purposes of Paragraph (1)(a) above. However, in determining the total Production Expenditures incurred by a Qualified Production Company on a Qualified Production, the total Production Expenditures of a television series or miniseries, whether a single or multiple seasons thereof, to be filmed within a period of 12 consecutive months, each individual episode of which separately and independently meets the definition of a Qualified Production, may be aggregated to meet the monetary requirements of Paragraph (1)(a) above, as long as each individual episode within the series pertains to the same subject as the other episodes in which such item appears or is used the same series. The Production Expenditures incurred with respect to each individual episode in a television series shall not be aggregated with the Production Expenditures of any other episode in that series, provided however, that certain costs relating to items that appear, or are used, in multiple episodes (e.g., recurring sets, or reusable equipment) shall be prorated equally over the number of episodes in which such item appears or is used. The Office may, at its discretion, grant Incentives to a Qualified Production Company for multiple episodes of a television series at one time, provided however that the amount of Incentives granted shall be consistent with the provisions of Ala. Admin. Code r. 891-X-1-.04(1)(d).
- (d) The Qualified Production Company must meet the requirements of any Incentives applied for, and must receive written certification acknowledging its approval for any Incentives from the Office.
- (e) To be exempt from state sales, use, and lodgings taxes, a Qualified Production Company must spend, in the aggregate, \$150,000 or more in connection with ~~one or more~~ a State-Certified Productions in Alabama within a consecutive 12 month period. The exemption from state sales, use, and lodgings taxes provided by Ala. Code § 41-7A-45 shall not be available for Production Expenditures incurred by a Qualified Production Company after the first \$10,000,000 of Production Expenditures Expended in Alabama on a State-Certified Production.

**Author:** Alabama Film Office

**Statutory Authority:** Code of Ala. 1975, §§ 41-7A-40 through -48.

**History:** **New Rule:** Filed February 19, 2010.

**Amendment:** Filed October 1, 2011.

**891-X-1-.07 Payment Of The Rebate And Failure To Meet Qualifications.**

- (1) To the extent that the Qualified Production Company has been approved for Incentives in an amount exceeding the actual amount of state sales, use, and lodgings taxes that would have been paid had the exemption from the same such taxes not been granted, the Qualified Production Company shall be entitled to a Rebate in an amount equal to the excess Incentives for which it was approved by the Office; provided that the Production Expenditures actually incurred on the State-Certified Production when multiplied by the appropriate percentage (i.e., 25% or 35%) for each type of Production Expenditure equal or exceed the amount of Rebate for which the Qualified Production Company was approved.
- (2) Upon receipt of the Report, the Office shall review the Report and determine the amount of the Rebate, if any, to be paid. Within 45 days from the date upon which the Office determines the amount of the Rebate available to the Qualified Production Company, the Office shall notify the Department of the amount of any Rebate available to the Qualified Production Company.
- (3) A Qualified Production Company shall claim its Rebate by filing its annual Alabama income tax return for the tax year(s) during which production took place. The Rebate may be used to offset any Alabama income tax liability of the Qualified Production Company, as determined pursuant to Title 40, Chapter 18 of the Code of Alabama 1975, for the tax year(s) during which such expenditures were paid or incurred, with the excess by which the Rebate exceeds the Qualified Production Company's Alabama income tax liability being refunded by the Department to the Qualified Production Company.
- (4) The Rebate may be claimed by the Qualified Production Company pursuant to the rules promulgated by the Department pursuant to the Act.
- (5) If the Qualified Production Company, which is producing a State-Certified Production other than a music video or a soundtrack to be used in a motion picture or documentary, incurs Production Expenditures in excess of \$500,000, but less than the amount of Production Expenditures estimated in its Application, then the Office may adjust the amount of the Rebate available to the Qualified Production Company, such that the total amount of the Rebate granted by the Office is reduced by the difference between the total estimated Production Expenditures and the actual Production Expenditures multiplied by the appropriate percentage (i.e., 25% or 35%) for each type of Production Expenditure.
- (6) If the Qualified Production Company, which is producing a State-Certified Production other than a music video or a soundtrack to be used in a motion picture or documentary, incurs Production Expenditures in excess of \$150,000, but less than \$500,000, then the Qualified Production Company shall not be liable for the state sales, use, and lodgings taxes that would have been paid had the exemption from the same such taxes not been granted, but the Qualified Production Company shall not be entitled to any Rebate otherwise awarded to and/or set aside for the Qualified Production Company.

- (7) If the Qualified Production Company, which is producing a State-Certified Production other than a music video or a soundtrack to be used in a motion picture or documentary, incurs Production Expenditures in an amount less than \$150,000, then the Qualified Production Company shall be liable for the state sales, use, and lodgings taxes that would have been paid had the exemption from the same such taxes not been granted; provided, however, that if the Qualified Production Company pays the state sales, use, and lodgings taxes due within 60 days of date the Report was submitted, the Qualified Production Company shall incur no penalties. In addition, the Qualified Production Company shall not be entitled to any Rebate otherwise awarded to and/or set aside for the Qualified Production Company.
- (8) In the event the State-Certified Production is a music video or a soundtrack to be used in a motion picture or documentary, and the Qualified Production Company incurs Production Expenditures in excess of \$50,000, but less than \$150,000, then the Qualified Production Company shall be liable for the state sales, use, and lodgings taxes that would have been paid had the exemption from the same such taxes not been granted, but the Qualified Production Company shall be entitled to any Rebate otherwise awarded to and/or set aside for the Qualified Production Company subject to an adjustment as set forth in Paragraph (5) above if the Qualified Production Company incurs Production Expenditures in an amount less than the amount of Production Expenditures estimated in its Application.
- (9) In the event the State-Certified Production is a music video or a soundtrack to be used in a motion picture or documentary, and the Qualified Production Company incurs Production Expenditures in an amount less than \$50,000, then the Qualified Production Company shall be liable for the state sales, use, and lodgings taxes that would have been paid had the exemption from the same such taxes not been granted; provided, however, that if the Qualified Production Company pays the state sales, use, and lodgings taxes due within 60 days of date the Report was submitted, the Qualified Production Company shall incur no penalties. In addition, the Qualified Production Company shall not be entitled to any Rebate otherwise awarded to and/or set aside for the Qualified Production Company.

**Author:** Alabama Film Office

**Statutory Authority:** Code of Ala. 1975, §§ 41-7A-40 through -48.

**History: New Rule:** Filed February 19, 2010.

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