CHAPTER 62

South Carolina Motion Picture Incentive Act

**SECTION 12‑62‑10.** Citation of chapter.

 This chapter may be cited as the “South Carolina Motion Picture Incentive Act”.

HISTORY: 2004 Act No. 299, Section 2, eff July 1, 2004; 2005 Act No. 56, Section 1, eff May 9, 2005, applicable to taxable years beginning July 1, 2004; 2008 Act No. 313, Section 7, eff June 12, 2008; 2008 Act No. 359, Section 4, eff July 1, 2008.

**SECTION 12‑62‑20.** Definitions.

 For purposes of this chapter:

 (1) “Company” means a corporation, partnership, limited liability company, or other business entity.

 (2) “Department” means the Department of Parks, Recreation and Tourism.

 (3) “Motion picture” means a feature‑length film, video, television series, or commercial made in whole or in part in South Carolina, and intended for national theatrical or television viewing or as a television pilot produced by a motion picture production company. The term “motion picture” does not include the production of television coverage of news and athletic events or a production produced by a motion picture production company if records, as required by 18 U.S.C. 2257, are to be maintained by that motion picture production company with respect to any performer portrayed in that single media or multimedia program.

 (4) “Motion picture production company” means a company engaged in the business of producing motion pictures intended for a national theatrical release or for television viewing. “Motion picture production company” does not mean or include a company owned, affiliated, or controlled, in whole or in part, by a company or person that is in default on a loan made by the State or a loan guaranteed by the State.

 (5) “Payroll” means salary, wages, or other compensation subject to South Carolina income tax withholdings.

 (6) “Director” means the director of the Department of Parks, Recreation and Tourism, or his designee.

HISTORY: 2004 Act No. 299, Section 2, eff July 1, 2004; 2005 Act No. 56, Section 1, eff May 9, 2005, applicable to taxable years beginning July 1, 2004; 2008 Act No. 313, Section 7, eff June 12, 2008; 2008 Act No. 359, Section 4, eff July 1, 2008.

**SECTION 12‑62‑30.** Exemption from state and local sales and use taxes.

 A motion picture production company that intends to expend in the aggregate two hundred fifty thousand dollars or more in connection with the filming or production of one or more motion pictures in the State of South Carolina within a consecutive twelve‑month period, upon making application for, meeting the requirements of, and receiving written certification of that designation from the department as provided in this chapter, shall be relieved from the payment of state and local sales and use taxes administered and collected by the Department of Revenue on funds expended in South Carolina in connection with the filming or production of a motion picture or pictures. The production of television coverage of news and athletic events is specifically excluded from the provisions of this chapter.

HISTORY: 2004 Act No. 299, Section 2, eff July 1, 2004; 2005 Act No. 56, Section 1, eff May 9, 2005, applicable to taxable years beginning July 1, 2004; 2008 Act No. 313, Section 7, eff June 12, 2008; 2008 Act No. 359, Section 4, eff July 1, 2008.

Library References

Taxation 2540, 3637, 3688.

Westlaw Topic No. 371.

C.J.S. Taxation Sections 615, 638 to 640, 2166, 2189.

**SECTION 12‑62‑40.** Certification of exemption; reporting expenditures; failure to expend requisite amount.

 (A) A motion picture production company that intends to film all or parts of a motion picture in South Carolina and desires to be relieved from the payment of the state and local sales and use taxes, administered and collected by the Department of Revenue, as provided in this chapter shall provide an estimate of total expenditures expected to be made in South Carolina in connection with the filming or production of the motion picture. The estimate of expenditures must be filed with the department before the commencement of filming in South Carolina.

 (B) At the time the motion picture production company provides the estimate of expenditures to the department, it also shall designate a member or representative of the motion picture production company to work with the department and the Department of Revenue on reporting of expenditures and other information necessary to take advantage of the tax relief afforded by this chapter.

 (C)(1) An application for the tax relief provided by this chapter must be accepted only from those motion picture production companies that report anticipated expenditures in the State in the aggregate equal to or exceeding two hundred fifty thousand dollars in connection with the filming or production of one or more motion pictures in the State within a consecutive twelve‑month period.

 (2) The application must be approved by the director.

 (3) Once the application is approved by the director, the Department of Revenue shall issue a sales and use tax exemption certificate to the motion picture production company as evidence of the exemption. The exemption is effective on the date the application is approved by the director.

 (D) A motion picture production company that is approved and receives a sales and use tax exemption certificate but fails to expend two hundred fifty thousand dollars within a consecutive twelve‑month period is liable for the sales and use taxes that would have been paid had the approval not been granted; except, that the motion picture production company must be given a sixty‑day period in which to pay the sales and use taxes without incurring penalties. The sales and use taxes are considered due as of the date the tangible personal property was purchased in or brought into South Carolina for use, storage, or consumption.

 (E) Upon completion of the motion picture, the motion picture production company must return the sales and use tax exemption certificate to the Department of Revenue and submit a report to the department of the actual expenditures made in South Carolina in connection with the filming or production of the motion picture.

HISTORY: 2004 Act No. 299, Section 2, eff July 1, 2004; 2005 Act No. 56, Section 1, eff May 9, 2005, applicable to taxable years beginning July 1, 2004; 2008 Act No. 313, Section 7, eff June 12, 2008; 2008 Act No. 359, Section 4, eff July 1, 2008.

**SECTION 12‑62‑50.** Tax rebate for employment of persons subject to South Carolina income tax withholdings.

 (A)(1) The South Carolina Film Commission may rebate to a motion picture production company a portion of the South Carolina payroll of the employment of persons subject to South Carolina income tax withholdings in connection with production of a motion picture. The rebate may not exceed twenty percent of the total aggregate South Carolina payroll for persons subject to South Carolina income tax withholdings, and may not exceed twenty‑five percent for South Carolina residents, for persons employed in connection with the production when total production costs in South Carolina equal or exceed one million dollars during the taxable year. The rebates in total may not annually exceed ten million dollars and shall come from the state’s general fund. For purposes of this section, “total aggregate payroll” does not include the salary of an employee whose salary is equal to or greater than one million dollars for each motion picture.

 (2)(a) For purposes of this section, an employee is an individual directly involved in the filming or post‑production of a motion picture in South Carolina and who is an employee of a:

 (i) motion picture production company that is directly involved in the filming or post‑production of a motion picture in South Carolina; or

 (ii) personal service corporation retained by a motion picture production company to provide persons used directly in the filming or post‑production of a motion picture in South Carolina; or

 (iii) payroll services or loan out company that is retained by a motion picture production company to provide employees who work directly in the filming or post‑production of a motion picture in South Carolina.

 (b) For his wages to qualify for the rebate, the employee must be certified by the department as a qualifying employee and the employee must have had South Carolina income tax withholding withheld and remitted to the Department of Revenue by a company described in item (2)(a).

 (3) The rebate applies with respect to an employee described in subsection (A)(2)(a)(ii) or (iii) only if, before commencement of filming in South Carolina, the personal services corporation, payroll services company, or loan out company is approved and certified by the department, and makes an irrevocable assignment of its rebate to the motion picture production company that produced the motion picture. The assignment must be made on a form provided by the Department of Revenue, which must include a waiver of confidentiality pursuant to Section 12‑54‑240. Upon assignment, the rebate may be paid only to the motion picture production company.

 (B)(1) The rebate provided in subsection (A) is available to the motion picture production company at the end of all filming in South Carolina in connection with the motion picture. The motion picture production company producing the motion picture must apply to the department for a certificate of completion once filming in South Carolina is complete. The motion picture production company must provide the information the department considers necessary to determine if the one million dollar expenditure requirement has been met.

 (2) A motion picture production company may claim the rebate by filing a request for rebate with the department once the certificate of completion is obtained. The request for rebate must be filed by the last day of February of the year following the year in which the certificate of completion is obtained. To claim the rebate, the motion picture production company and all companies described in subsection (A)(2)(a)(ii) or (iii) must be current with respect to all taxes due and owing the State at the time of filing the request for rebate. If the motion picture production company or a company described in subsection (A)(2)(a)(ii) or (iii) is not current with respect to all taxes due and owing the State, the motion picture production company is permanently barred from claiming the rebate.

 (3) The motion picture production company must attach to its request for rebate a copy of the certificate of completion and a copy of all assignments of the rebate, if applicable.

 (C) A motion picture production company claiming a rebate pursuant to this section, and all companies described in subsection (A)(2)(a)(ii) or (iii), must make payroll books and records available for inspection to the commission and the department at the times requested by the commission or the department. Each motion picture production company claiming the rebate, at the time of filing, must provide a report to both the commission and the department that includes the project’s name, the name of each employee that worked on the motion picture, the social security number for each employee, the dates employed, the dates the employee worked on the motion picture, a job description for each employee, the total gross wages for each employee, the South Carolina taxable wages subject to withholding for each employee, the amount of rebate attributable to that employee, and other information considered necessary by the commission or the department. The report also must contain the total amount of withholding attributable to all employees that worked on the motion picture in South Carolina.

 (D) For purposes of this section, and as an exception to Section 12‑54‑240, a motion picture production company and a company described in subsection (A)(2)(a)(ii) or (iii) agree that the commission and the department may share or provide information concerning the request for rebate and the certificate of completion among the respective taxpayers and the respective agencies.

HISTORY: 2004 Act No. 299, Section 2, eff July 1, 2004; 2005 Act No. 56, Section 1, eff May 9, 2005, applicable to taxable years beginning July 1, 2004 [subsection (A)(l) eff July 1, 2005]; 2008 Act No. 313, Section 7, eff June 12, 2008; 2008 Act No. 359, Section 4, eff July 1, 2008; 2013 Act No. 26, Section 1, eff May 8, 2013.

Editor’s Note

2005 Act No. 56, Section 4, provides as follows:

This act takes effect upon approval by the Governor and applies to taxable years beginning July 1, 2004, except that Sections 12‑62‑50(A)(1) and 12‑62‑60(A)(1) are effective July 1, 2005.

Effect of Amendment

The 2013 amendment, in the second sentence of subsection (A)(1), substituted “twenty percent” for “fifteen percent” before “of the total aggregate South Carolina payroll “, and inserted “, and may not exceed twenty‑five percent for South Carolina residents, for persons “.

Library References

Taxation 3555.

Westlaw Topic No. 371.

C.J.S. Taxation Section 1910.

**SECTION 12‑62‑55.** Assignment of rebate payments to designated trustee; election form; time for filing for assignment.

 At the time the motion picture production company is certified by the department, it may make an irrevocable assignment of future payments attributable to the rebates made pursuant to Section 12‑62‑40 or 12‑62‑50 to a designated trustee. For purposes of this chapter, “designated trustee” means the single financier or financial institution designated by the council to receive all assignments of payments made pursuant to this chapter and to the terms of an agreement entered into by the qualifying motion picture production company. If a qualifying motion picture production company elects to assign payments to the designated trustee, the election must be made on a form provided by the department, including a waiver of confidentiality pursuant to Section 12‑54‑240, and the payments may be paid only to the designated trustee. The qualifying motion picture production company must file an application for the assignment with the director no later than thirty days after filming begins in South Carolina.

HISTORY: 2005 Act No. 56, Section 1, eff May 9, 2005, applicable to taxable years beginning July 1, 2004; 2008 Act No. 313, Section 7, eff June 12, 2008; 2008 Act No. 359, Section 4, eff July 1, 2008.

**SECTION 12‑62‑60.** Distribution of admissions taxes; rebates to motion picture production companies; promotion of collaborative efforts between institutions of higher learning and motion picture related entities.

 (A)(1) An amount equal to twenty‑six percent of the general fund portion of admissions tax collected by the State of South Carolina for the previous fiscal year must be funded annually by September first to the department for the exclusive use of the South Carolina Film Commission. The department may rebate to a motion picture production company up to thirty percent of the expenditures made by the motion picture production company in the State if the motion picture production company has a minimum in‑state expenditure of one million dollars. The distribution of rebates may not exceed the amount annually funded to the department for the South Carolina Film Commission from the admissions tax collected by the State.

 (2) This subsection does not apply to payroll paid for motion picture production employees subject to Section 12‑62‑50 or money paid to the companies described in Section 12‑62‑50(A)(2)(a)(ii) or (iii). Unexpended funds from this source may be carried over to the next and succeeding fiscal years.

 (B) Up to seven percent of the amount provided to the department in subsection (A) may be used exclusively for marketing and special events.

 (C) The allocations to motion picture production companies contemplated by this chapter must be made by the department. The department may adopt rules and promulgate regulations for the application for and award of the rebate.

 (D) One percent of the general fund portion of admissions tax collected by the State of South Carolina must be funded to the department for the exclusive use of the South Carolina Film Commission for the promotion of collaborative production and educational efforts between institutions of higher learning in South Carolina and motion picture related entities. The department, in conjunction with the South Carolina Film Commission, shall adopt rules and promulgate regulations necessary to administer this section. Unexpended funds from this source may be carried over to the next and succeeding fiscal years.

 (E) The department shall report annually to the chairman of the Senate Finance Committee and the chairman of the House Ways and Means Committee on the use of all funds pursuant to this section. The report is a public record pursuant to the Freedom of Information Act, Chapter 4 of Title 30, and must be posted annually on the commission’s web site by January first.

HISTORY: 2004 Act No. 299, Section 2, eff July 1, 2004; 2005 Act No. 56, Section 1, eff May 9, 2005, applicable to taxable years beginning July 1, 2004 [subsection (A)(1) eff July 1, 2005]; 2008 Act No. 313, Section 7, eff June 12, 2008; 2008 Act No. 359, Section 4, eff July 1, 2008; 2013 Act No. 26, Section 2, eff May 8, 2013.

Editor’s Note

2005 Act No. 56, Section 4, provides as follows:

This act takes effect upon approval by the Governor and applies to taxable years beginning July 1, 2004, except that Sections 12‑62‑50(A)(1) and 12‑62‑60(A)(1) are effective July 1, 2005.

Effect of Amendment

The 2013 amendment, in subsection (A)(1), substituted “thirty percent” for “fifteen percent” before “of the expenditures made by the motion picture production company”.

**SECTION 12‑62‑70.** Temporary use of underutilized state property by motion picture production company; use of state property for less than seven days.

 (A)(1) Upon a determination by the director of the Office of General Services Division of the Department of Administration of the underutilization of state property by a state agency, the department may negotiate below‑market rates for temporary use, no more than twelve months, of space for the underutilized property. The negotiations and temporary use are exempt from the provisions of the State Consolidated Procurement Code. The motion picture production company shall reimburse costs at normal and customary rates incurred by the state agency to the state agency, including costs required to repair any damage caused by the motion picture production company to real or personal property of the State.

 (2) The state agency or local political subdivision that owns the property determined to be underutilized may appeal that determination of underutilization to the Department of Administration.

 (B) The State or its political subdivisions may not charge a location or facility fee for properties they own if the properties are used for seven or fewer days as a location or facility in the production of a motion picture. A property may be used for a total of only twenty‑one days without location or facility fees in a calendar year. The motion picture production company may be on site no longer than seven days within a thirty‑day period without a location or facility fee charge. State‑owned or political subdivision‑owned properties may recoup all costs they expend on behalf and at the direction of the motion picture production company. State‑owned or political subdivision‑owned properties also may recoup a location or facility fee, after the first seven days, not to exceed two thousand five hundred dollars a day. State‑owned or political subdivision‑owned properties also may recoup costs required to repair damage caused by the motion picture production company to real or personal property of the state agency or political subdivision. The motion picture production company shall reimburse all costs, at the property’s normal and customary rates, to the state agency or political subdivisions incurring the costs within twenty‑one calendar days of completion of production activities on site. The motion picture production company may use the publicly owned property only on the days agreed to and approved by the state agency or political subdivision.

HISTORY: 2004 Act No. 299, Section 2, eff July 1, 2004; 2005 Act No. 56, Section 1, eff May 9, 2005, applicable to taxable years beginning July 1, 2004; 2008 Act No. 313, Section 7, eff June 12, 2008; 2008 Act No. 359, Section 4, eff July 1, 2008.

Code Commissioner’s Note

At the direction of the Code Commissioner, references in this section to the offices of the former State Budget and Control Board, Office of the Governor, or other agencies, were changed to reflect the transfer of them to the Department of Administration or other entities, pursuant to the directive of the South Carolina Restructuring Act, 2014 Act No. 121, Section 5(D)(1), effective July 1, 2015.

**SECTION 12‑62‑80.** South Carolina Film Foundation.

 The department may form a South Carolina Film Foundation to solicit donations for the recruitment of motion pictures in furtherance of the purposes of this chapter.

HISTORY: 2004 Act No. 299, Section 2, eff July 1, 2004; 2005 Act No. 56, Section 1, eff May 9, 2005, applicable to taxable years beginning July 1, 2004; 2008 Act No. 313, Section 7, eff June 12, 2008; 2008 Act No. 359, Section 4, eff July 1, 2008.

**SECTION 12‑62‑90.** Credit roll statement; right to refuse credit.

 The end credit roll of a motion picture that utilizes a South Carolina tax credit or rebate must recognize the State of South Carolina with the following statement: “Filmed in South Carolina pursuant to the South Carolina Motion Picture Incentive Act”, except that the State of South Carolina reserves the right to refuse the use of South Carolina’s name in the credits of a motion picture filmed or produced in the State.

HISTORY: 2004 Act No. 299, Section 2, eff July 1, 2004; 2005 Act No. 56, Section 1, eff May 9, 2005, applicable to taxable years beginning July 1, 2004; 2008 Act No. 313, Section 7, eff June 12, 2008; 2008 Act No. 359, Section 4, eff July 1, 2008.

**SECTION 12‑62‑95.** Inapplicability of chapter for works appealing to the prurient interest.

 The provisions of this chapter do not apply if the motion picture or television production that is made in whole or in part in South Carolina is found to contain scenes the average person, applying contemporary state community standards would find that the work, taken as a whole, appeals to the prurient interest, whether the work depicts or describes, in a patently offensive way, sexual conduct, and whether the work, taken as a whole, lacks serious literary, artistic, political, or scientific value. The department and the South Carolina Film Commission may not award any benefit offered by this chapter to a motion picture production company producing such motion picture.

HISTORY: 2013 Act No. 26, Section 3, eff May 8, 2013.

**SECTION 12‑62‑100.** Rules and regulations.

 To the extent not already provided, the department may adopt rules and promulgate regulations to carry out the intent and purposes of this chapter.

HISTORY: 2004 Act No. 299, Section 2, eff July 1, 2004; 2005 Act No. 56, Section 1, eff May 9, 2005, applicable to taxable years beginning July 1, 2004; 2008 Act No. 313, Section 7, eff June 12, 2008; 2008 Act No. 359, Section 4, eff July 1, 2008.