

## Chapter 09 Motion Picture Production Tax Incentive

### 100 Definitions

101 A motion picture production company (MPPC) is one that produces a nationally distributed motion picture, video, DVD, television program or series, commercial, or computer or video game. This includes a company engaged in the business of making such productions using animation, interactive media, preproduction and postproduction 3D applications, video game cinematics, virtual production, visual effects, and motion capture within the fields of feature film, television, commercials and games. The production of news or athletic events do not qualify, nor does any project that contains any material or performance deemed obscene as defined in Miss. Code Ann. Section 97-29-103. The company cannot have defaulted on any state loan or have declared bankruptcy where a state obligation had been discharged because of the bankruptcy.

102 A Mississippi vendor is a business that either owns an office building in Mississippi or has signed a lease for office space in Mississippi for at least a year, has at least one employee stationed full time at the Mississippi office, is registered with the Secretary of State, is known in the trade as a vendor active in the relevant line of business and advertises as a Mississippi vendor.

103 An employee is defined as an individual directly involved in the physical production and/or post-production of a motion picture produced in this state and who is employed by a MPPC, personal service corporation or loan out company.

104 Payroll is defined as salary, wages or other compensation including related benefits paid to Mississippi resident employees upon which Mississippi income tax is due and has been withheld.

105 Fringes means costs paid by a MPPC for Mississippi resident employee benefits that are not subject to state income tax. Fringes may include, but are not limited to, payments by an employer for unemployment insurance, Federal Insurance Contribution Act (FICA), workers' compensation insurance, pension and welfare benefits and health insurance premiums.

106 A Mississippi resident is defined as a person domiciled in Mississippi or who has maintained a permanent home in this state and spends in the aggregate more than six (6) months each year within the state. Proof of domicile or maintenance of a permanent home includes valid Mississippi driver's license, Mississippi voter registration, valid Mississippi car tag, or homestead exemption.

107 (Reserved)

### 200 General

201 The Motion Picture Production Tax rebate is based on the amount of the base investment made in Mississippi and Mississippi resident payroll and fringes as defined in Miss. Code Ann. Section 57-89-3. The rebate is available for a MPPC that expends at least \$50,000 in

base investment, payroll and/or fringes, in this state on a production certified by the Mississippi Development Authority. The amount of the rebate is twenty-five percent (25%) of the base investment made and expended in this state. Payroll and fringes for a Mississippi resident is eligible for a thirty percent (30%) rebate. An additional five percent (5%) rebate is available for payroll of honorably discharged veterans. Purchases made before the MDA approval date are not included in the rebate. Only eligible expenses purchased by the MPPC associated with the MDA certified project will be allowed for the rebate.

202 The total amount of rebates authorized for a motion picture production will not exceed \$10,000,000 in the aggregate and the total amount of rebates authorized in any fiscal year will not exceed \$20,000,000 in the aggregate.

203 The MPPC is responsible for registering with the proper state authorities to legally conduct business within this state. This includes the Mississippi Department of Employment Security, Mississippi Worker's Compensation Commission, Mississippi Secretary of State, etc.

204 The MPPC is responsible for registering for a withholding tax account and reporting any withholding tax due on this account.

205 (Reserved)

300 Base Investment

301 Base investment includes purchases of goods and services from Mississippi vendors, as defined above, housing, housing allowances, food, rental of equipment, dry cleaning, per diem and anything else that the MPPC spends in Mississippi that is related to the production.

302 Purchases of services and tangible personal property must be made from a Mississippi Vendor, as defined above, to qualify for the rebate. Payments made to out of state independent contractors or vendors for tangible personal property and services do not qualify for the rebate. Purchases of services from a vendor must satisfy the following five criteria to be eligible for the rebate:

1. The vendor must qualify as a Mississippi vendor;
2. The service must be wholly performed in this state;
3. The payment may not be for a qualified personnel expenditure;
4. The service must be directly attributable to the production; and
5. The transaction must be subject to taxation in this state.

303 Items that do not qualify as base investment:

1. Online purchases, regardless if Mississippi sales tax is charged
2. Postage
3. Mileage
4. Bank fees
5. Credit Card fees
6. Taxes
7. Personal Expenditures
8. Out of state expenses billed through a Mississippi pass through company.
9. Any other items that do not meet the definition of base investment.

304 Airline tickets must be purchased through a Mississippi travel agent and the sales invoice

must indicate the airports in which the flight departed and arrived. Airports located in Mississippi or one of the following cities are eligible for the rebate:

1. Memphis, TN
2. New Orleans, LA
3. Baton Rouge, LA
4. Mobile, AL

- 305 Location rentals for housing or a set should include the Vendor/Owner name, address of the rental property, description of use, dates used, and a copy of payment.
- 306 Items purchased during production that are sold in Mississippi at the end of production must be decreased by the sales price of the item before being included in the rebate.
- 307 Contract labor paid to a Mississippi resident is eligible for a twenty-five percent (25%) rebate, while non-resident contract labor is not eligible for the rebate. A rebate request for contract labor should include the name of the individual, city of residence, social security number, copy of payment and a link to an image of Form 1099, if applicable, journals and any other supporting documentation.
- 308 Purchases of property or services from a local vendor who has acquired the property or services from out of state may qualify for the rebate if:
1. The Mississippi vendor is regularly engaged in the business of providing that same type of good or service.
  2. The Mississippi vendor is a permanent business enterprise; and
  3. The Mississippi vendor's sales to the motion picture production company are at an arm's length basis as evidenced by an added markup that is consistent with industry norms. The MPPC must not provide any assistance to the local vendor in providing the services or tangible personal property.
- 309 The use of a local production company to provide goods and services may also qualify for the rebate if the local production company meets the requirements in Paragraph 308 above and the company was not established specifically for the needs of any one production.
- 310 Petty cash and reimbursement expenses may qualify for the rebate if the documentation provided in the rebate request includes a reconciliation of the expenses allowed by the MPPC (e.g., Petty Cash top sheet or reimbursement/check purchase order), copies of invoices or receipts, and payment information. Examples of expenses that may qualify for the rebate include meals, gas, office supplies, set design, art department expenses and other similar production related expenses.
- 311 In the case of a motion picture production company, or its owner, principal, member, production partner, independent contractor director or producer, or subsidiary company that (i) is designated and pre-qualified by the Mississippi Development Authority as Mississippi-based or a Mississippi resident; (ii) has filed income taxes in the State of Mississippi during each of the previous three (3) years; and (iii) has engaged in activities related to the production of at least two (2) motion pictures in Mississippi during the past ten (10) years, base investment may include payroll and fringes paid for any employee who is not a resident and whose wages are subject to the Mississippi Income Tax Withholding Law of 1968, if so requested by the motion picture production company. A motion picture production company must submit such a request to the Mississippi Development Authority at the time the company applies for approval as a state-certified production. If base investment includes payroll and

fringes, and the payroll and fringes paid for an employee exceeds Five Million Dollars (\$5,000,000.00), then only the first Five Million Dollars (\$5,000,000.00) of such payroll and fringes may be included in base investment.

312 (Reserved)

400 Payroll

401 If the eligible production has physical production or postproduction activities both inside and outside the state, the rebate will only be allowed on a prorated amount of the eligible payroll based on the percentage of activities performed in Mississippi. Source documentation should include a journal indicating time worked between states.

402 An individual who is hired through a loan out company or a temporary staffing company will be considered an employee if the loan out company or temporary staffing company is withholding Mississippi tax, otherwise, the individual will be treated as a contract employee. Loan out companies will be able to claim the withholding as an estimated payment on their Mississippi income tax return. Loan out companies must contact the MDOR before filing the return to ensure that there will not be a delay or problem in regard to the withholding being claimed as an estimated payment.

403 Payments made to personal service corporations may qualify for the rebate if Mississippi income tax has been withheld and remitted.

404 Payroll fees paid to Mississippi payroll companies qualify for the rebate.

405 If the payroll and fringes paid for an employee exceeds \$5,000,000, then the rebate is only authorized for the first \$5,000,000 of the single employee's payroll and fringes.

406 The production company may receive an additional 5% of the wages payroll and fringes paid for an employee who is an honorably discharged veteran of the United States Armed Forces upon which Mississippi income tax is due and has been withheld. A copy of Federal Form DD 214 Proof of Military Service is required to qualify for the additional 5%.

407 (Reserved)

500 Audit by MDOR

501 To claim the rebate by submitting the request to the MDOR, the motion picture company must submit an electronic Excel spreadsheet upon completion of the project containing a detailed accounting of the base investment and the employee payroll to the MDOR in the proper format. The base investment tab must include a listing of purchase invoices showing the name and address of the vendor, date, description of items purchased, and the amount of expenditures made to those vendors. Proper documentation to prove payment by the MPPC that was certified for the rebate is also required. This includes copies of bank statements, credit card statements and any other form of payment used to purchase items eligible for the rebate. Include at what stage of production the purchase was made: Preproduction, Production or Postproduction. Each location should be grouped together by date for productions that take place in more than one location.

- 502 The payroll tab should list residents of Mississippi, including social security numbers, names, addresses, W-2s, a breakdown of the amount of wages paid to and withheld from those individuals, employee benefits and employer fringes. The payroll documentation should include a payroll detail with a breakdown of wages, employee benefits and employer fringes by employee.
- 503 All tabs of the spreadsheet must contain links to the PDF files of all source documentation contained in the rebate request. All source documentation must be kept for verification and additional documentation may be requested. The MDOR conducts a line-by-line review of the spreadsheet submission. The rebate request (in the form of an Excel spreadsheet) and PDF files are to be submitted to the MDOR on an USB Flash Drive (USB) and mailed to: Mississippi Department of Revenue, Office of Tax Policy, P.O. Box 22828, Jackson, MS 39215.
- 504 Maintain a copy of the USB submission in case a USB is lost or damaged in the mail. In addition, due to the agency's data security policies, any USB received by the Department cannot be returned to its original sender or the representatives of the production company. It is recommended that the USB be password protected due to the sensitive information contained within and that the password be emailed to the Department rather than being enclosed with the USB on a letter or written note.
- 505 When the rebate request is received the MDOR will determine if the submission is in the proper format to perform the review. If the request is not in the proper format, it will be sent back with an explanation containing the formatting requirements that were not met. The rebate request will be denied if a suitable submission is not received within six (6) months. A rebate request that is submitted in the proper format will be reviewed and the review will be sent to the MPPC. The MPPC must respond to the MDOR review or any subsequent reviews within six (6) months. If there is no response in the form of additional documentation or agreement to the rebate amount, then the qualifying rebate amount will be paid out and the remaining request will be denied. When a rebate request is denied the MPPC should review their appeal rights located at [www.dor.ms.gov](http://www.dor.ms.gov). The MDOR will review any additional information provided by the MPPC for a period of one year from the denial date.
- 506 After reviewing and approving the rebate request, the MDOR will issue the rebate check to the certified production company. The rebate check is not transferrable.
- 507 (Reserved)
- 600 Audit by CPA
- 601 The MPPC may also claim the rebate by engaging a CPA. The CPA will need to perform the audit of the MPPC's production expenditures, and such CPA shall verify each base investment, payroll, and fringes expenditure.
- 602 Requirements for a CPA engaged to perform a Motion Picture Incentive Submission Audit:
1. Contact the Mississippi Department of Revenue (MDOR) at 601-923-7440 once the audit is agreed to. The MDOR will provide a document containing language to be included in the audit submission.
  2. Read the Motion Picture Production Incentive section of the most current Mississippi Tax Incentives, Exemptions and Credits Book at <https://www.dor.ms.gov/Pages/Business-Incentive.aspx>.

3. Both the verifying and reviewing CPAs must attest to conducting two (2) levels of review either within the CPA firm or as a cooperative endeavor for the review of the audit.
4. Supply notarized statements confirming that the CPAs are independent from any other activities related to the film project audited.
5. Provide a copy of both CPAs' licenses.
6. Provide a copy of the CPA firms' permits.
7. Both the verifying and reviewing CPAs must attest to completing twenty (20) hours of CPE each reporting cycle.
8. Verify supporting documentation for each individual expenditure claimed by the MPPC.
9. Work with the production company to resolve exceptions or discrepancies prior to submission to the Mississippi Department of Revenue (DOR).
10. Attest that all amounts on the rebate submission request are properly calculated and documented.
11. Find that the MPPC expended at least fifty thousand dollars (\$50,000) in base investment, payroll and/or fringes in the State of Mississippi.
12. Find that no one employee exceeds five million dollars (\$5,000,000) in payroll and fringes.
13. Verify that only eligible expenses incurred and paid for after the Mississippi Development Authority (MDA) certification date are included in the rebate amount.
14. Verify that only eligible expenses purchased by the MPPC certified for the incentive are allowed for the rebate.
15. Supply to the DOR an electronic copy of the submission showing the rebate calculation and the line items that were approved/denied. The audit must be submitted to Incentives@dor.ms.gov.

603 The MPPC shall provide the CPA performing the audit with, at a minimum, the following information:

1. A copy of the Motion Picture Incentive Certificate from MDA.
2. A list of all expenditures claimed by line item in electronic format.
3. Payroll expense reports which identify, trace, and reconcile payroll costs for each employee to a final payroll register, identify on which payments and in what amounts withholdings of Mississippi income tax have been made and document that appropriate corresponding payments and filings have been made to the State of Mississippi.
4. Copies of all paid invoices and receipts relating to each expenditure claimed as base investment.
5. A completed crew list.
6. A completed cast list.
7. MS Driver's license, voter registration, car tag or homestead exemption to confirm the residency of employees/contract labor.
8. Copies of issued W-2s and 1099s relating to all activities within the State of Mississippi on the state certified production. If the production company has not issued any W-2s or 1099s prior to completion of the submission, then it shall provide other comparable documentation to verify payment.
9. Documentation or other verification that purchases of services and tangible personal property are made from a Mississippi vendor and purchases of services satisfy the five criteria to be eligible for the rebate. Please see paragraph 302 of this regulation.
10. Documentation showing that the MPPC has registered to do business with the Mississippi Secretary of State.
11. Any other documentation needed to confirm base investment, payroll, and fringes expenditures during the audit.

- 604 The CPA shall specifically identify the amount of the base investment, payroll, and fringes expenditures eligible for the rebate.
- 605 The CPA performing the audit may not include an expenditure in the rebate amount unless the MPPC has provided a receipt of payment or other evidence that the expenditure has been paid by the MPPC and was expended in Mississippi. Please see the most current Mississippi Tax Incentives, Exemptions and Credit Book at <https://www.dor.ms.gov/Pages/Business-Incentive.aspx>.
- 606 The CPA must verify that any property or services purchased through a Mississippi vendor that has acquired the property or services from out of state meets the requirements in paragraph 308 of this regulation.
- 607 The CPA must include the language in the “Requirements for CPAs Auditing Motion Picture Production Rebate Submissions” instructions when submitting the audit. The language must be on the CPAs letterhead.
- 608 The DOR will review the audit using a sample in lieu of a one hundred percent (100%) line item review. Upon receipt of the CPA’s audit the DOR will request samples of supporting documentation to be submitted in electronic format if it is not provided. The sample will not exceed ten percent (10%) of the line items.
- 609 The CPA must provide the supporting documentation to the DOR within ten (10) days of the request, or the submission will be denied.
- 610 The DOR will apply the rate of misstatement of the exceptions identified in the sample, if any, to the respective populations tested. The rate of misstatement will be calculated by the total value of the exceptions identified, divided by the total dollar value tested, and multiplied by the respective populations tested. The total of all calculated misstatements for each population tested will be deducted from the original submission to arrive at a revised rebate amount.
- 611 Any adjusted amounts per the sample will be presented to the CPA. Additional information may be provided to the DOR for the transaction in the sample. Keep in mind that the DOR will have thirty (30) days after receipt of the original audit submission by the CPA to approve or deny a request. A rebate check will be issued to the MPPC and is not transferrable.
- 612 The State of Mississippi shall not be liable for or otherwise responsible for any actions of a qualified accountant.
- 613 (Reserved)

*35.X.09 revised effective June 24, 2021.*