



LAWS OF ALASKA

2008

Source

HCS CSSSSB 230(FIN)

Chapter No.

AN ACT

Establishing the film office in the Department of Commerce, Community, and Economic Development; creating a transferable tax credit applicable to certain film production expenditures incurred in the state; and providing for an effective date.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

THE ACT FOLLOWS ON PAGE 1

AN ACT

1 Establishing the film office in the Department of Commerce, Community, and Economic
2 Development; creating a transferable tax credit applicable to certain film production
3 expenditures incurred in the state; and providing for an effective date.

4 _____
5 * **Section 1.** AS 43.98 is amended by adding a new section to read:

6 **Sec. 43.98.030. Film production tax credit.** (a) In cooperation with the film
7 office in the Department of Commerce, Community, and Economic Development, the
8 department shall provide a transferable film production tax credit to a producer, as
9 defined in AS 44.33.239, for qualified production expenditures under AS 44.33.231 -
10 44.33.239.

11 (b) A tax credit provided under (a) of this section may be sold, assigned,
12 exchanged, conveyed, or otherwise transferred in whole or in part.

13 (c) A taxpayer acquiring a transferable credit may use the credit or a portion of
14 the credit to offset taxes imposed under AS 43.20 (Alaska Net Income Tax Act). Any
15 portion of the credit not used may be used at a later period or transferred under (b) of

1 this section.

2 (d) The department shall adopt regulations necessary for the administration of
3 this section.

4 (e) A credit provided under (a) of this section, whether sold, assigned,
5 exchanged, conveyed, or otherwise transferred, in whole or in part, must be used
6 within three years after being provided by the department.

7 (f) The number of tax credits provided in the aggregate under this section may
8 not exceed \$100,000,000.

9 * **Sec. 2.** AS 44.33 is amended by adding new sections to read:

10 **Article 2A. Film Office.**

11 **Sec. 44.33.231. Duties.** (a) There is created a film office in the Department of
12 Commerce, Community, and Economic Development. The film office shall

13 (1) cooperate with organizations in the private sector for the expansion
14 and development of film production industries in the state;

15 (2) promote Alaska as an appropriate location for film production;

16 (3) provide production assistance through connecting film directors,
17 makers, and producers with Alaska location scouts and contractors, including
18 contractors providing assistance with permit applications;

19 (4) certify Alaska film production internship training programs and
20 promote the employment of program interns by eligible productions; and

21 (5) in cooperation with the Department of Revenue, administer the
22 Alaska film production incentive program.

23 (b) The film office shall make available to the legislature, within 30 days after
24 the start of each regular session, a report of the activities conducted by the film office
25 under AS 43.33.231 - 43.33.239. The report must include

26 (1) the number of applications received under AS 44.33.234;

27 (2) the number of applications approved by the film office; and

28 (3) the number of, and amount of, tax credits disbursed under
29 AS 44.33.232.

30 (c) The commissioner shall appoint a director to oversee the film office and
31 carry out its duties under AS 44.43.231 - 44.43.239.

1 **Sec. 44.33.232. Alaska film production incentive program.** Subject to
2 appropriations for the purpose, the film office shall administer in cooperation with the
3 Department of Revenue the Alaska film production incentive program to provide a tax
4 credit under AS 43.98.030 for certain film production expenditures incurred in the
5 state.

6 **Sec. 44.33.233. Eligibility.** (a) A film production is eligible for a tax credit
7 under AS 43.98.030, if the

8 (1) producer has \$100,000 or more in qualified expenditures in a
9 consecutive 24-month period under AS 44.33.236;

10 (2) film office determines that the production is not contrary to the best
11 interests of the state; and

12 (3) production is approved by the film office.

13 (b) In determining under (a) of this section whether a production is not
14 contrary to the best interests of the state, the film office may consider

15 (1) the effect of the production on both the immediate and long-term
16 prospects for the film industry in Alaska;

17 (2) the effect of the production on the employment of Alaska residents;
18 and

19 (3) the effect of the production on the economy of the state.

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

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

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

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

28 (4) a political advertisement; or

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

31 **Sec. 44.33.234. Qualification for film production tax credit.** (a) A film

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

- 4 (1) a script or synopsis of the production;
- 5 (2) the names of the producer, director, and proposed cast;
- 6 (3) estimated start, completion, and filming dates; and
- 7 (4) other information the film office may require to determine the
8 producer's eligibility for a credit and the estimated amount of the credit.

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

13 **Sec. 44.33.235. Award of film production tax credit.** (a) Subject to
14 AS 43.98.030(f), the film office, in cooperation with the Department of Revenue, shall
15 determine the amount of the tax credit under AS 43.98.030 available to a producer
16 who has obtained a notice of qualification under AS 43.33.234(b), based on the
17 qualified expenditures of the production under AS 44.33.236.

18 (b) The base amount of a tax credit awarded under this section is equal to 30
19 percent of the qualified expenditures of the production.

20 (c) In determining the amount of the tax credit, the percentage provided by (b)
21 of this section shall be increased by the film office based on the following criteria:

- 22 (1) an additional 10 percent of qualified expenditures that are wages
23 paid to Alaska residents;
- 24 (2) an additional two percent of qualified expenditures made in a rural
25 area; and
- 26 (3) an additional two percent of qualified expenditures made in the
27 state between October 1 and March 30.

28 (d) After completion of the production, the producer shall provide the film
29 office with a production cost report detailing the qualified expenditures of the
30 production, with verification by an independent certified public accountant approved
31 by the film office that the costs claimed in the report are qualified expenditures under

1 AS 44.33.236.

2 (e) Subject to (g) of this section, the film office, in cooperation with the
3 Department of Revenue, shall determine the amount of the tax credit based on the
4 information provided by the producer under (d) of this section and shall award a tax
5 credit in cooperation with the Department of Revenue under AS 43.98.030 if the
6 producer has satisfied all requirements under AS 44.33.231 - 44.33.239.

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

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

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

20 **Sec. 44.33.236. Determination of qualified expenditures.** (a) Expenditures
21 made by a production company in connection with a film production approved by the
22 film office that shall be considered qualified expenditures must be directly related to
23 the production and be incurred in the state. Only expenditures that are ordinary,
24 reasonable, and not in excess of fair market value and that are for real or tangible
25 property, fees, services, or state or municipal taxes shall be considered. Expenditures
26 may include

- 27 (1) costs of set construction and operation;
28 (2) costs of wardrobes, make-up, accessories, and related services;
29 (3) costs associated with photography and sound synchronization;
30 (4) costs of lighting and related services and materials;
31 (5) costs of editing and related services;

1 (6) rental of facilities and equipment;
2 (7) leasing of vehicles;
3 (8) costs of food and lodging;
4 (9) costs of digital or tape editing, film processing, transfer of film to
5 tape or digital format, sound mixing, and special and visual effects;
6 (10) the total aggregate payroll for services performed in Alaska,
7 including all salaries, wages, compensation, and related benefits provided to
8 producers, directors, writers, actors, and other personnel that are directly attributable
9 to services performed in Alaska;
10 (11) the costs of the use of an Alaska business for processing qualified
11 payroll and related expenditures;
12 (12) costs of music, if performed, composed, or recorded by an Alaska
13 musician, or released or published by an Alaska business;
14 (13) costs of intrastate travel, if provided by an Alaska business;
15 (14) costs relating to the design, construction, improvement, or repair
16 of a film, video, television, or digital production or postproduction facility or related
17 property, infrastructure, or equipment, except commercial exhibition facilities, as
18 determined by the film office;
19 (15) costs of state or municipal taxes levied in Alaska on the lease or
20 rental of passenger or recreational vehicles or the rental of rooms or other lodging; or
21 (16) other similar production expenditures as determined by the film
22 office in cooperation with the Department of Revenue.
23 (b) Production costs that may not be considered qualified expenditures include
24 (1) costs related to the acquisition, determination, transfer, or use of a
25 film production tax credit under AS 43.98.030;
26 (2) postproduction expenditures for marketing and distribution;
27 (3) production financing, depreciation, and amortization costs, and
28 other costs that are not cash or cash equivalent expenditures directly attributable to
29 production costs incurred in the state;
30 (4) amounts that are later reimbursed or reasonably anticipated to be
31 reimbursed, resulting in a reduction in production costs;

1 (5) amounts that are reasonably anticipated to be recovered through
2 subsequent sale or other realization of value by disposal of an asset that has been
3 claimed as a qualified expenditure;

4 (6) amounts that are paid to a person or entity as a result of
5 participation in profits from the exploitation of the production;

6 (7) costs incurred in the purchase of real or tangible property for which
7 a qualified expenditure has, at any time, been claimed.

8 **Sec. 44.33.237. Recovery of film production tax credit.** (a) The film office,
9 in cooperation with the Department of Revenue, may review, audit, and bring legal
10 proceedings to recover any amount of a tax credit awarded under AS 44.33.235 from a
11 producer or production to which a credit was awarded if the film office determines
12 that the film producer or production is liable for damages to the state, or any political
13 subdivision of the state.

14 (b) Legal proceedings may not be brought under (a) of this section more than
15 one year after the date the tax credit was awarded under AS 44.33.235.

16 **Sec. 44.33.238. Regulations.** The film office, in cooperation with the
17 Department of Revenue, may adopt procedures and regulations to carry out its
18 functions under AS 44.33.231 - 44.33.239.

19 **Sec. 44.33.239. Definitions.** In AS 44.33.231 - 44.33.239,

20 (1) "Alaska business" means

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

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

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

27 (D) a person who is

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

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

1 (iii) a limited liability company organized under
 2 AS 10.50, and all members are residents of the state; or
 3 (iv) a partnership under former AS 32.05, AS 32.06, or
 4 AS 32.11, and all partners are residents of the state; and
 5 (E) if the business is a joint venture, a joint venture composed
 6 entirely of ventures that qualify under (A) - (D) of this subsection;
 7 (2) "commissioner" means the commissioner of commerce,
 8 community, and economic development;
 9 (3) "department" means the Department of Commerce, Community,
 10 and Economic Development;
 11 (4) "film" includes television, commercials, and videos;
 12 (5) "film office" means the film office created under AS 44.33.231;
 13 (6) "producer" means a person who arranges financing for or
 14 supervises the production of a film, video, commercial, or television production or
 15 pilot;
 16 (7) "rural area" means a community with a population of 1,500 or less
 17 or a community with a population of 5,500 or less that is not connected by road or rail
 18 to Anchorage or Fairbanks.
 19 * **Sec. 3.** AS 43.98.030; AS 44.33.231(a)(5), 44.33.231(b), 44.33.232, 44.33.233, 44.33.234,
 20 44.33.235, 44.33.236, and 44.33.239(7) are repealed.
 21 * **Sec. 4.** AS 44.33.237 is repealed.
 22 * **Sec. 5.** The uncodified law of the State of Alaska is amended by adding a new section to
 23 read:
 24 **TRANSITION.** (a) Subject to AS 43.98.030(f), enacted by sec. 1 of this Act, secs. 3
 25 and 7 of this Act do not prevent the film office from determining a film production's qualified
 26 expenditures, awarding a tax credit, or reviewing a tax credit under the provisions repealed by
 27 secs. 3 and 4 of this Act to a film production that has received a notice of qualification under
 28 AS 44.33.234(b), enacted by sec. 2 of this Act, before July 1, 2013.
 29 (b) A film production tax credit may be used to offset taxes imposed under AS 43.20
 30 (Alaska Net Income Tax Act) or sold, assigned, exchanged, conveyed, or otherwise
 31 transferred, in whole or in part, within three years after being provided by the Department of

1 Revenue under AS 43.98.030, enacted by sec. 1 of this Act, notwithstanding the repeal of
2 AS 43.98.030 in sec. 3 of this Act.

3 (c) A film production tax credit that is being withheld by the film office in
4 cooperation with the Department of Revenue under AS 44.33.235(h) may continue to be
5 withheld by the office, notwithstanding the repeal of AS 44.33.235 in sec. 3 of this Act.

6 * **Sec. 6.** The uncodified law of the State of Alaska is amended by adding a new section to
7 read:

8 NOTIFICATION. When the number of tax credits provided under AS 43.98.030(f),
9 enacted by sec. 1 of this Act, in the aggregate and the estimated amount of tax credits that
10 could be claimed based on notices of qualification issued by the film office under
11 AS 44.33.234(b), together equal \$100,000,000, the commissioner shall notify the presiding
12 officers of each house of the legislature and the revisor of statutes in writing.

13 * **Sec. 7.** Section 3 of this Act takes effect on the earlier of the following:

14 (1) July 1, 2013; or

15 (2) the date of the commissioner of revenue's notification to the presiding
16 officers of each house of the legislature and to the revisor of statutes under sec. 6 of this Act.

17 * **Sec. 8.** Section 4 of this Act takes effect on the earlier of the following:

18 (1) July 1, 2014; or

19 (2) one year after the date of the commissioner of revenue's notification to the
20 legislature and to the revisor of statutes under sec. 6 of this Act.