

**KENTUCKY FILM LEADERSHIP COUNCIL**  
**ADVISORY MEMORANDUM 001**

**Adopted Policies**

**Policy on Per Diem:**

Approved Companies may qualify per diem as Qualifying Payroll Expenditures to the extent the Approved Company remits Kentucky state payroll tax for those per diem.

**Policy on Fringe Benefits:**

Taxes, contributions to pension, health, and welfare, workers' compensation insurance, and state unemployment insurance payments made by Approved Companies cannot qualify as Qualifying Payroll Expenditures, as Kentucky law limits those Qualifying Payroll Expenditures to employees' adjusted gross income and those items are specifically excluded. Payroll Handling Fees can potentially qualify as Qualifying Expenditures, not Qualifying Payroll Expenditures, where those expenditures are made to a Kentucky vendor and are related to a qualifying category of expenditures as set forth in KRS 154.61-010(21)(a) (i.e., set, wardrobe, accessories, photography, sound synchronization, lighting, editing, and related services).

**Background**

During the August 28, 2025 meeting of the Kentucky Film Leadership Council (the "Council"), the Council considered a comment made by the Motion Picture Association ("MPA") related to the Kentucky Entertainment Incentive Program's applicable regulation. The MPA's comment requested the Council consider fringe benefits and per diem as an eligible expense within the Program. The Council then moved to adopt this recommendation, and the Council's Guidelines Subcommittee was thereafter tasked with creating a framework around fringe and per diem.

The Guidelines Subcommittee met on September 22, 2025, to consider the details of including fringe benefits and per diem within the incentive structure of the Kentucky Entertainment Incentive Program, as well as an applicable framework to apply to applicants seeking incentivization on these bases.

The basis for these Policies is set forth below:

**Per Diem**

Regarding per diem, the MPA requested the Council "[i]nclude per diem expenses up to the amount permitted by the U.S. General Services Administration (GSA). Include any per diem paid in excess of the GSA amount as long as such excess is included in the adjusted gross income of the film worker for services verified as performed in Kentucky."

The Kentucky Entertainment Incentive Program's controlling statutes, KRS Chapter 154.61, allows for incentivization of "Qualifying Expenditures" and "Qualifying Payroll Expenditures." A "Qualifying Payroll Expenditure" is defined as "compensation paid to above-the-line crew and below-the line crew while working on a motion picture or entertainment production in the Commonwealth if the compensation is for services performed in the Commonwealth." KRS 154.61-010(22). "Compensation" is defined as "compensation included in adjusted gross income as defined in KRS 141.010."

Adjusted gross income is further defined from KRS 141.010(1) to mean the amount calculated in KRS 141.019, which identifies that adjusted gross income is "calculated by subtracting from the gross income of those taxpayers the deductions allowed individuals by Section 62 of the Internal Revenue Code" and then further excluding seventeen (17) additional categories of income/money. Section 62 of the Internal Revenue Code, and related regulations, permit employees to exclude certain amounts of per diem from their adjusted gross income.

Understanding this, per diem may still be treated by an Approved Company, in whole or in part, as part of an employee's adjusted gross income for purposes of Kentucky state withholding. In the event an Approved Company treats per diem as taxable income to the employee, thereby withholding the applicable individual rate of 4%, that amount of per diem can be incentivized as a "Qualifying Payroll Expenditure."

Following this analysis, the Guidelines Subcommittee recommended to the full Council that this be the formalized policy adopted to allow applications to include these kinds of per diems as "Qualifying Payroll Expenditures." The Guidelines Subcommittee additionally discussed the understanding that per diem would be self-policing, insofar as per diem is functionally equivalent to salary that is then committed to the purpose of Kentucky-based spend. As a policy, an Approved Company identifying per diem within their Qualifying Payroll Expenditures should be prepared to provide documentation supporting the expenditures.

### **Fringe Benefits**

The MPA provided additional materials to the Guidelines Subcommittee, identifying the following as Fringe Benefits it recommended to be included within the Program:

1. FICA (*Social Security, Medicare*) FUTA (*federal unemployment tax*) and SUI (*state unemployment insurance*);
2. Workers' compensation insurance;
3. Union & Guild Contributions (*Pension, Health, & Welfare*); and
4. Payroll Handling Fees.

In support, the MPA also identified twelve other states that permit some form of per diem and fringes within their film incentives. In the states permitting these fringe benefits, however, those fringes have been specifically included within the statutory framework. In contrast, Kentucky's statute, as defined above, limits "Qualifying Payroll Expenditure" to mean adjusted gross income.

Of the categories listed above, the first (taxes and state unemployment insurance), is specifically excluded from adjusted gross income. The second (Workers' compensation insurance), is statutorily required and not part of an employee's adjusted gross income. The third, contributions for pension, health and welfare, are likewise either specifically excluded or not included within an employee's adjusted gross income. Therefore, no amounts paid by an Approved Company within those categories of expenses could qualify as "Qualifying Payroll Expenditures" as the law currently permits. To include them would require a statutory change.

The fourth (Payroll Handling Fees) are likewise not part of an employee's adjusted gross income; however, these fees may potentially be eligible as "Qualifying Expenditures," provided they meet all the requirements in KRS 154.61-010(21) and the Program's corresponding regulation, 307 KAR 1:080. KRS 154.61-010(21) identifies nine categories of expenditures that can be considered, provided they are made in the Commonwealth and are directly used in or for a motion picture or entertainment production, including:

- Set construction and operations, wardrobe, accessories, and related services;
- Photography, sound synchronization, lighting, and related services; and
- Editing and related services.

307 KAR 1:080 further requires Qualifying Expenditures be made to an entity or individual qualifying as a "Kentucky vendor." Kentucky vendors must: (1) perform their services or sell their property within Kentucky; (2) have a physical location in Kentucky with one or more employees; (3) register with the Kentucky Department of Revenue for collection of sales and use tax; (4) have a local business license, where required by law; and (5) have supporting documentation that services rendered are within the Commonwealth.

On this basis, if an Approved Company is making an expenditure in the Commonwealth to a Kentucky vendor (i.e., Kentucky-based payroll service handler) that is directly used in or for a motion picture or entertainment production related to one of those categories of services, these amounts could be qualified as "Qualifying Expenditures."

Following this analysis, the Guidelines Subcommittee is prepared to recommend to the full Council that treatment of expenditures made to Kentucky-based Payroll Service Handler related to one or more of the categories listed as a "Qualifying Expenditure" be treated the same as any other "Qualifying Expenditure" made to a Kentucky vendor.