

Guidelines:

Kentucky Entertainment Incentive Program

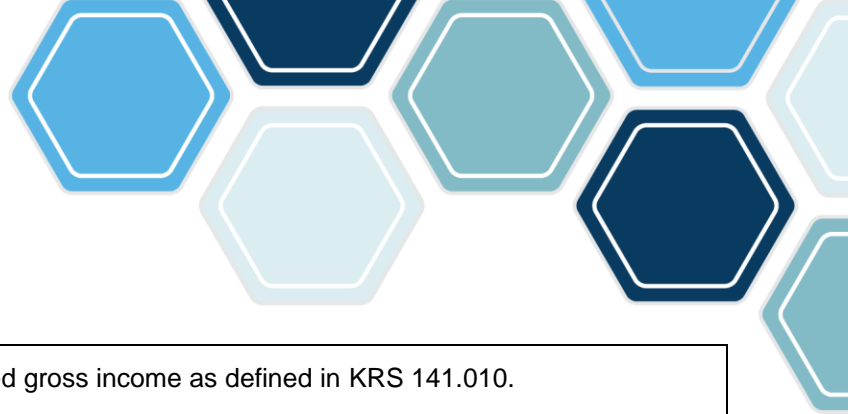
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These Guidelines provide an overview of the Kentucky Entertainment Incentive Program (the “KEI Program”). For a full discussion of the KEI Program requirements, refer to KRS 154.61. As with many state administered tax incentive programs, any inducements offered under the KEI Program are negotiated by Cabinet for Economic Development officials and subject to approval by the Kentucky Economic Development Finance Authority (“KEDFA”).

The purpose of the KEI Program is to encourage:


- The film and entertainment industry to choose locations in the Commonwealth for the filming and production of motion picture or entertainment productions;
- The development of a film and entertainment industry in Kentucky;
- Increased employment opportunities for the citizens of the Commonwealth within the film and entertainment industry; and
- The development of a production and postproduction infrastructure in the Commonwealth for film production and touring Broadway show production facilities containing state-of-the-art technologies.

Key Definitions	
Above-the-line Production Crew	Employees involved with the production of a Motion Picture or Entertainment Production whose salaries are negotiated prior to commencement of production, such as actors, directors, producers, and writers.
Animated Production	A nationally distributed Feature-length Film created with the rapid display of a sequence of images using 2-D or 3-D graphics of artwork or model positions to create an illusion of movement.
Approved Company	An Eligible Company approved for incentives under the KEI Program.
Below-the-line Production Crew	Employees involved with the production of a Motion Picture or Entertainment Production except Above-the-line Production Crew. "Below-the-line Production Crew" includes, but is not limited to: <ul style="list-style-type: none">• Casting assistants;• Costume design;• Extras;• Gaffers;• Grips;• Location managers;• Production assistants;• Set construction staff; and• Set design staff



Compensation	Compensation included in adjusted gross income as defined in KRS 141.010.
Continuous Film Production	<p>A motion picture or entertainment production that:</p> <ul style="list-style-type: none"> • Has a projected budget of a minimum of \$10,000,000 per calendar year for qualifying expenditures and qualifying payroll expenditures allocated to all qualifying motion picture or entertainment productions to be filmed or produced in Kentucky, with a minimum of \$1,500,000 per production in Kentucky; • Has a minimum of 50% of the funds available and the ability to raise the remaining funds necessary to complete the filming and production. • Has a distribution contract for each motion or entertainment production • Films and produces a minimum of twelve (12) or more days per production in Kentucky • Maintains an apprenticeship project or on-the-job training program as defined in KRS 343.010 or partners with a film studies program with an accredited institution of postsecondary education in Kentucky.
Documentary	A production based upon factual information and not subjective interjections.
Eligible Company	Any person or entity that intends to film or produce a Motion Picture or Entertainment Production in the Commonwealth and meets the eligibility requirements of the KEI Program.
Employee	As defined in KRS 141.010, and may also include the employees or independent contractors of an approved company or the employees of a loan-out entity engaged by an approved company if they meet the requirements of KRS 141.310.
Feature-length Film	A live-action or Animated Production that is more than thirty (30) minutes in length and produced for distribution in theaters or via digital format, including but not limited to DVD, internet, or mobile electronic devices.
Industrial Film	A business-to-business film that may be viewed by the public, including but not limited to videos used for training or for viewing at a trade show.
Kentucky-Based Company	A business with its principal place of business in Kentucky or no less than fifty percent (50%) of its property and payroll located in Kentucky.

Loan-out entity	A corporation, partnership, limited liability company, or other entity through which an artist or other person is loaned out to perform services for the approved company. A loan-out entity shall be registered with the Kentucky Secretary of State. The business organization, the loan-out entity and all employees performing services for the loan-out entity shall be subject to all applicable provisions of the Kentucky personal income tax and any applicable payroll or other tax provisions.
Motion Picture or Entertainment Production	<p>Any of the following if filmed in whole or in part, or produced in whole or in part, in the Commonwealth:</p> <ul style="list-style-type: none"> • Feature-length Film; • Television Program; • Industrial Film; or • Documentary <p>A national touring production of a Broadway show produced in Kentucky</p> <p>"Motion Picture or Entertainment Production" does not include the filming or production of obscene material or television coverage of news or athletic events.</p>
Obscene	<p>Meets all of the following criteria:</p> <ul style="list-style-type: none"> • To the average person, applying contemporary community standards, the predominant appeal of the matter, taken as a whole, is to prurient interest in sexual conduct; and • The matter depicts or describes the sexual conduct in a patently offensive way; and • The matter, taken as a whole, lacks serious literary, artistic, political, or scientific value.
Qualifying Expenditure	<p>Expenditures made in the Commonwealth for the following if directly used in or for a motion picture or entertainment production:</p> <ul style="list-style-type: none"> • The production script and synopsis • Set construction and operations, wardrobe, accessories, and related services • Lease or rental of real property in Kentucky as a set location • Photography, sound synchronization, lighting, and related services • Editing and related services • Rental of facilities and equipment • Vehicle leases • Food • Accommodations <p>"Qualifying expenditure" does not include Kentucky sales and use tax paid by the Approved Company on the Qualifying Expenditure. Qualifying expenditures must be incurred with businesses located in the Commonwealth and used only for the Motion Picture or Entertainment Production filmed or produced in the Commonwealth.</p>



Qualifying Payroll Expenditure	Compensation paid to Above-the-line Crew, Below-the-line Crew, Contractors and Loan Out Entities while working on a Motion Picture or Entertainment Production in the Commonwealth if the compensation is for services performed in the Commonwealth. Qualifying payroll expenditures will be verified for proper remittance of withholding by the Approved Company, payroll service, or loan-out entity.
Television Program	Any live-action or Animated Production or documentary, including but not limited to an episodic series, miniseries, television movie, or television pilot, that is produced for distribution on television via broadcast, cable, or any digital format, including but not limited to cable, satellite, internet, or mobile electronic devices.

Qualifying for the Entertainment Incentive

To qualify for tax incentives, the Approved Company shall incur the following minimum combined total of Qualifying Expenditures and Qualifying Payroll Expenditures in Kentucky based on the type of Motion Picture or Entertainment Production:

	Kentucky-Based Company	Out of State Company
Feature-length Film, Television Program, or Industrial Film, filmed in whole or in part, in the Commonwealth	\$125,000	\$250,000
Documentary, filmed or produced in whole or in part, in the Commonwealth	\$10,000	\$20,000
A national touring production of a Broadway show, produced in whole or in part, in the Commonwealth	\$20,000	\$20,000
Production Start Date	Filming or production must begin within six (6) months of KEDFA approval.	
Production Completion Date	Filming or production must be completed within two (2) years of the Production Start Date.	

Motion Picture or Entertainment Productions containing visual or implied scenes that are Obscene or negatively impact the economy or tourism industry of the Commonwealth will not qualify for the KEI program.

The Approved Company will be required to certify that if not for the incentive offered it would not film or produce the Motion Picture or Entertainment Production in the Commonwealth.

Incentives

Tax incentives awarded through the KEI Program are refundable and nontransferable and may be claimed against the Approved Company's Kentucky corporate, limited liability or individual income tax. The credit may be claimed for the taxable year in which the credit is certified. The credit is certified after the detailed cost report is submitted and reviewed by Cabinet and Department of Revenue staff, and the Cabinet notifies the Approved Company of the amount of the certified tax credit available. Unused credits may not be carried forward.

Incentive amounts are determined based on the Kentucky county where the Qualifying Expenditures and Qualifying Payroll Expenditures occur. Projects incurring eligible costs in enhanced incentive counties may be eligible for an increased tax credit, as explained in the table below.

A map and listing of Kentucky's enhanced incentive counties can be found at https://cedky.com/cdn/1740_KBIEnhancedCounties.pdf.

Tax incentive agreements for Approved Companies under the KEI program will include a listing of the Enhanced Incentive Counties as of the date of KEDFA approval of the project. Once a company enters into a tax incentive agreement, the counties maintain the enhanced benefits for the term of the agreement regardless of any change in the county's status.

The Approved Company shall track the requisite expenditures by county. If the Approved Company can demonstrate to the satisfaction of the Cabinet that it is not practical to use a separate accounting method to determine the expenditures by county, the Approved Company shall determine the correct expenditures by county using an alternative method approved by the Cabinet.

	Enhanced Incentive County	County not Designated as Enhanced Incentive County
Eligible Incentive Amount	<p>35% of the Approved Company's:</p> <ul style="list-style-type: none"> Qualifying Expenditures; Qualifying Payroll Expenditures paid to Below-the-line Production Crew; and Qualifying Payroll Expenditures paid to Above-the-line Production Crew not to exceed \$1,000,000 in payroll expenditures per person 	<p>30% of the Approved Company's:</p> <ul style="list-style-type: none"> Qualifying Expenditures; Qualifying Payroll Expenditures paid to Below-the-line Production Crew that are not Kentucky residents; and Qualifying Payroll Expenditures paid to Above-the-line Production Crew that are not Kentucky residents, not to exceed \$1,000,000 in payroll expenditures per person <p>35% of the Approved Company's:</p> <ul style="list-style-type: none"> Qualifying Payroll Expenditures paid to Below-the-line Production Crew that are Kentucky residents; and Qualifying Payroll Expenditures paid to Above-the-line Production Crew that are Kentucky residents, not to exceed \$1,000,000 in payroll expenditures per person

To the extent the Approved Company films or produces a Motion Picture or Entertainment Production in part in an Enhanced Incentive County and in part a County not Designated as an Enhanced Incentive County, the Approved Company shall be eligible to receive the incentives for those expenditures incurred in the Enhanced Incentive County and all other expenditures shall be subject to the incentives available in a County not Designated as an Enhanced Incentive County. The Approved Company shall track the requisite expenditures by county. If the Approved Company can demonstrate to the satisfaction of the Cabinet that it is not practical to use a separate accounting method to determine the expenditures by county, the Approved Company shall determine the correct expenditures by county using an alternative method approved by the Cabinet.

Entertainment Incentive Cap

KEDFA may award an overall total maximum incentive of \$75,000,000 per calendar year for the KEI Program. Because of the annual incentive limitation, some otherwise eligible applications may not be considered for approval for tax incentives. Qualified applications will be processed in the order in which they are received until all available incentives have been awarded.

The maximum incentive approved for a project in a calendar year will be \$10,000,000, and only four applications/projects may be approved for the maximum incentive per calendar year.

Beginning with calendar year 2024, \$25,000,000 shall be allocated for all approved companies with a continuous film production. On the first day of July of each calendar year, any unused balance allocated for continuous film productions, shall be made available for all approved companies within a motion picture or entertainment production.

Application Process

Kentucky Entertainment Incentive Application Process	
Pre-Application 45 days prior to KEDFA meeting	Cabinet staff is contacted to discuss project eligibility, proposed structure and any other terms of the project. If the project is eligible, Cabinet staff will share an application with the project for completion and submission.
Application Submission 30 days prior to KEDFA meeting	Applicant completes and submits application with required attachments to Cabinet staff, including, but not limited to <ul style="list-style-type: none"> the preliminary script (or a detailed synopsis of the script) the locations where filming or production will occur the anticipated date on which filming or production will begin in Kentucky the anticipated date on which production will be completed in Kentucky the total anticipated Qualifying Expenditures the total anticipated Qualifying Payroll Expenditures for resident and nonresident Above-the-line Crew by county the total anticipated Qualifying Payroll Expenditures for resident and nonresident Below-the-line Crew by county the address of a Kentucky location at which records of the production will be kept an affirmation that if not for the incentive offered under the KEI Program, the company would not film or produce the Motion Picture of Entertainment Production in the Commonwealth



	<ul style="list-style-type: none"> • proof of funding for the project • application fee
Pre-KEDFA Meeting	<p>Cabinet staff review application and supporting documentation for eligibility, completeness and accuracy.</p> <p>Upon completion of staff's review and subject to incentive availability, a draft KEDFA Board Report indicating project description, recommended incentive amount, terms, conditions and any other requirements will be prepared and sent to the company for review and acceptance.</p> <p>Once the draft KEDFA Board Report is accepted, the Cabinet's legal counsel will be engaged to draft the tax incentive agreement. The applicant will be responsible for legal fees, including expenses of counsel to KEDFA, necessary for the preparation of the tax incentive agreement. The tax incentive agreement will be provided to the applicant for review. Upon receipt of the executed tax incentive agreement from the applicant and the administrative fee, the project will be included on the agenda of the next monthly KEDFA meeting.</p>
KEDFA Meeting Date Last Thursday of month, except November and December	<p>The proposed project is presented to KEDFA for approval at its monthly meeting. KEDFA approval obligates the Commonwealth to the incentive as long as the Approved Company performs and complies with the provisions of the tax incentive agreement. A fully executed agreement is provided to the company after KEDFA approval occurs.</p> <p><u>The Approved Company may begin its investment after KEDFA approval occurs.</u></p> <p>Filming or production must begin within 6 months of KEDFA approval date and must be completed within 2 years of the Production Start Date.</p> <p><i>KEDFA is a public meeting. Company name, project description, proposed Qualifying Expenditures and Qualifying Payroll Expenditures will be disclosed at the meeting. All other information is confidential and not subject to open records.</i></p>

<p>Completing the Project and Claiming the Entertainment Incentive</p> <p>Production Completion Date within 2 years of Production Start Date</p> <p>One-time submission within 180 days of Production Completion Date</p>	<p>The Approved Company will be required to certify the Production Start Date and Production Completion Date with the Cabinet.</p> <p>Within 180 days of the Production Completion Date, the Approved Company shall submit the latest version of the script, a certified, detailed cost report of the Qualifying Expenditures and Qualifying Payroll Expenditures along with documentation that the approved company or the loan-out entity has withheld income tax as required by KRS 141, to the Cabinet.</p> <p>Upon confirmation that all requirements of the tax incentive agreement have been met, Cabinet staff will forward the detailed cost report to the Department of Revenue for calculation of the refundable tax credit. The Department of Revenue will notify Cabinet staff of the total amount of refundable tax credit available to the Approved Company. Cabinet staff will send a notice to the Approved Company of the amount of the certified tax credit available.</p>
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Fees

A non-refundable application fee is payable upon submission of the KEI Program application equal to the following:

Total Amount of Qualifying Expenditures and Qualifying Payroll Expenditures	Application Fee
< \$50,000	\$250
= > \$50,000 and < \$100,000	\$500
= > \$100,000	\$1,000

Prior to approval, the company will be required to pay an administrative fee equal to one-half of one percent (0.5%) of the estimated amount of tax incentive sought or five hundred dollars (\$500), whichever is greater. In addition, the company will pay all legal fees, including expenses of counsel to KEDFA, necessary for the preparation of the tax incentive agreement.

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