
A State-by-State Guide to Business Incentives for Your Interactive Entertainment Production

by Sean Kane

In light of the boom in video game sales over the last few years, and the industry as a whole having weathered the economic downturn better than most entertainment media, more than a few states have begun to offer incentives in hopes of attracting successful businesses and possibly becoming the “Hollywood” of the video game industry.

For motion picture companies, the decision of where to shoot a particular project is often equally based on the required aesthetics of the story and the jurisdiction that offers the most favorable business incentives for filming in that particular location. In some circumstances these business incentives can be the defining factor as to whether a film is produced. While the nature and applicability requirements of these benefits differ, some can be quite significant (e.g., 15-20% tax reductions). As the international market witnesses the continued paradigm shift of consumer spending habits from movies to video games, more locales are offering similar incentives for the development of video games and interactive media.

While considerable attention has been focused on incentives offered in places like Texas and Georgia, these are only two of a number of locations that offer governmental incentives to spur the development of video games and interactive entertainment. In the United States approximately 20 such programs exist in various forms.

Understanding the nature and requirements of these potentially substantial financial benefits is valuable to both established game companies and new development teams. Whether a decision involves where to locate a new video game production start-up or where an established company should base a new development team, it may be of paramount importance to know if there are incentive programs in the proposed locale which might be beneficial.

With that in mind, this guide intends to give readers an overview of the terms and requirements of the programs offered in various jurisdictions throughout the United States.

Table of Contents

Alabama	3
Arizona	4
Arkansas.....	5
Colorado	6
Connecticut.....	7
Florida.....	8
Georgia.....	9
Hawaii.....	10
Indiana.....	11
Kentucky.....	12
Louisiana	13
Maine.....	14
Michigan	15
New Jersey.....	16
New Mexico.....	17
North Carolina	18
Ohio.....	19
Rhode Island	20
Texas.....	21
Virginia.....	23
Wisconsin	24
Conclusion.....	25

Alabama

In order to develop its potential in terms of attracting the entertainment industry, Alabama recently enacted the Entertainment Industry Incentive Act of 2009 (“Alabama Rebate”). The Alabama Rebate, which specifically includes interactive games and video games among other entertainment media covered, offers companies up to 25% of qualifying expenditures, excluding payroll expenses. Additionally, the Alabama Rebate will offer up to 35% of all payroll paid to state residents. In order for a video game production to qualify for the Alabama Rebate, expenditures must be more than \$500,000 but not more than \$10 million. The rebate will be first applied to any income tax liability the company incurs and any excess amounts will be paid directly to the company. The rebate is fairly inclusive with regard to what expenses qualify. Almost all video game production expenses paid in the state of Alabama qualify, including most preproduction, production and postproduction costs, payroll expenses, music, equipment and facilities costs. However, postproduction marketing costs are not included in the definition of covered expenses. Additionally, a qualifying company intending to spend more than \$150,000 in a year may apply to be exempted from state sales, use and lodging taxes for funds expended in Alabama.

To take advantage of the Alabama Rebate the video game company is not required to be an Alabama corporation, only a corporation, partnership, limited liability company or other business entity that is a qualified production company under the act. The Alabama Rebate is administered by the Alabama Film Office, and as is often the case with state-sponsored programs, any video game which includes content that is sexually explicit, or involves gambling or wagering, does not qualify for this benefit. Obtaining the Alabama Rebate involves applying to the Alabama Film Office to be considered a qualified production at least 30 days prior to the commencement of the production activities on the project.

For further information, the Alabama Film Office can be contacted at the following:

Alabama Film Office
Alabama Center for Commerce
401 Adams Avenue
Suite 640
Montgomery, AL 36104
Phone: (334) 242-4195
Fax: (334) 242-2077

Brenda Hobbie, Incentives Coordinator
Email: brenda.hobbie@tourism.alabama.gov

Further information on the Entertainment Industry Incentive Act of 2009 is available online at the following web address:

<http://www.alabamafilm.org/2010/index2.shtml>.

The enacting legislation for the Entertainment Industry Incentive Act of 2009 is available online at the following web address:

<http://www.alabamafilm.org/Act2009-144-2.pdf>.

Arizona

Arizona's Entertainment Tax Credit ("Arizona Tax Credit") offers development companies a transferable nonrefundable tax credit against business taxes of up to 30% of qualifying expenditures over \$1 million (20% for expenditures between \$250,000 and \$1 million) made over the course of producing a game. If the expenditures are less than \$250,000 the project does not qualify for an Arizona Tax Credit. Additionally, at least 50% of the full-time employees on the development project must be Arizona residents. Expenses that qualify for purposes of meeting the \$250,000 mark include salary compensation and rental of facilities or equipment, among other direct in-state costs. Even the purchase or optioning of intellectual property on which to base one's game qualifies under certain circumstances. Notwithstanding, any video game which includes content that is obscene, as defined in the applicable state statute, depicts material harmful to minors or that sexually exploits a minor does not qualify for this benefit.

To take advantage of the Arizona Tax Credit the video game company must have an in-state office and bank account. To qualify the development company must first complete an application and submit it to the Arizona Film Office. Within 30 days after receipt of the application the Department of Commerce will determine if the production qualifies for the Arizona Tax Credit. After the production has been pre-qualified, (within 90 days) the development company must provide evidence that the project has commenced. Finally, 30 days after the expiration of a 12-month certification period, or at the completion of the project, the development company must submit a Completion Report and may then make use of the awarded tax credits.

For further information, the Arizona Film Office can be contacted at the following:

Arizona Film Office
1700 W. Washington, Suite 220
Phoenix, Arizona 85007
Phone: (602) 771-1116
Fax: (602) 771-1211

Email: AZFilmOffice@AZcommerce.com

Further information on the Arizona Tax Credit is available online at the following web address:
<http://www.azcommerce.com/Film/Incentives/>

The enacting legislation for the Arizona Tax Credit is available online at the following web address:
<http://www.azleg.state.az.us/FormatDocument.asp?inDoc=/ars/41/01517.htm&Title=41&DocType=ARS>

Arkansas

Arkansas recently replaced its Motion Picture Incentive Act of 1997 by enacting the Digital Product and Motion Picture Industry Development Act of 2009 (“Arkansas Rebate”). The Arkansas Rebate, which specifically includes interactive games and video games among the entertainment media it is intended to support, offers development companies a non-transferable rebate against qualified production costs of up to 15%, so long as said expenditures add up to more than \$50,000 within a six-month period. Additionally, the Arkansas Rebate will offer an additional 10% of payroll paid to certain types of employees who are full-time state residents. Almost all expenses incurred in Arkansas which are directly related to the preproduction, production or postproduction of a video game qualify, including developer compensation (for salaries under \$500,000). Even the purchase or optioning of intellectual property relating to the development of the game will generally qualify. However, most marketing, media and public relations costs are not considered to be qualified production costs.

To take advantage of the Arkansas Rebate the video game company is required to be a corporation, partnership, LLC or other entity principally engaged in a qualifying production which is registered with the Arkansas Secretary of State to engage in business within the state. The tax credit is administered by the Arkansas Film Office, which is part of the Arkansas Economic Development Commission. Obtaining the Arkansas Rebate involves first applying to the Arkansas Film Office for approval prior to incurring any production expense and then later certifying the total costs of the production (within 90 days after the last production expense is incurred in the state). The commission will then review the supporting documentation and prepare and send a recommendation for rebate to the Arkansas Revenue Division of the Department of Finance and Administration. Within 90 days the Revenue Division will certify the amount of rebate due to the production company and issue the rebate (within an additional 10-day period).

For further information, the Arkansas Film Commission can be contacted at the following:

Arkansas Economic Development Commission
900 West Capital Avenue
Little Rock, Arkansas 72201
Phone: (501) 682-1121
Fax: (501) 682-7394
Email: INFO@arkansasedc.com

Further information on the Digital Product and Motion Picture Industry Development Act of 2009 is available online at the following web address:

[http://arkansasedc.com/media/10023/digital_product_motionpicture_final_rules_2009\[1\].pdf](http://arkansasedc.com/media/10023/digital_product_motionpicture_final_rules_2009[1].pdf).

The enacting legislation for the Digital Product and Motion Picture Industry Development Act of 2009 is available online at the following web address:

<http://www.arkleg.state.ar.us/assembly/2009/R/Acts/Act816.pdf>.

Colorado

In 2009 the Colorado Film Incentives program was enacted (“Colorado Rebate”). The Colorado Rebate, which specifically includes video games in its definition, offers development companies a non-transferable rebate against up to 10% of qualifying expenditures in the state of Colorado, so long as said expenditures add up to more than \$100,000 for a Colorado company or \$250,000 for an out-of-state company. In addition, at least 25% of the workforce on the project must be residents of Colorado. Essentially all expenses paid in the state of Colorado that directly related to the production of a video game will qualify, including developer compensation (up to \$3 million per employee). Even the purchase or optioning of intellectual property to be used in the game qualifies.

To take advantage of the Colorado Rebate the video game company is not required to be a Colorado corporation, only a corporation, partnership, LLC or other entity principally engaged in a qualifying production. However, an out-of-state company must register with the Secretary of State as a “foreign entity.” The rebate is administered by the Colorado Office of Film, Television and Media. Obtaining the Colorado Rebate involves submitting a “Statement of Intent” with the Office of Film, Television and Media for approval prior to the commencement of the project. Once a “Notice of Conditional Approval” has been received by the developer, the State of Colorado will thereafter enter into a formal contract. When the development company has finished the project it must submit “Proof of Performance” within 90 days and, upon approval by the Office of Film, Television and Media, a rebate check will be issued within 30 days.

For further information, the Colorado Office of Film, Television and Media can be contacted at the following:

The Colorado Office of Film, Television and Media
1625 Broadway
Ste. 2700
Denver, CO 80202
Phone: (303) 592-4065

Kevin Shand
Phone: (303) 592-4065
Email: kevin.shand@state.co.us

Further information on the Colorado Film Incentives program is available online at the following web address:

<http://iponly204491.tempwebpage.com/incentives.html>.

The enacting legislation for the Colorado Film Incentives program is available online at the following web address:

http://www.state.co.us/gov_dir/leg_dir/olls/sl2009a/sl_419.htm.

Connecticut

In order to promote the production of video games and other digital media within its borders, Connecticut enacted the Connecticut Digital Media and Motion Picture Tax Credit in 2006 (“Connecticut Tax Credit”). The Connecticut Tax Credit, which specifically includes video games among the entertainment media it is intended to support, offers development companies a transferable nonrefundable tax credit against business taxes of up to 30% of qualifying expenditures made over the course of producing a game, so long as said expenditures add up to more than \$50,000. The credit is also quite lenient with regard to what expenses qualify for purposes of meeting the \$50,000 mark. Essentially all expenses paid in the state of Connecticut that the developer can demonstrate were directly related to the production of a video game will qualify, including developer compensation, design and reproduction costs, development equipment and software, and certain postproduction and marketing costs. Even the purchase or optioning of intellectual property on which to base one’s game qualifies under certain circumstances.

To take advantage of the Connecticut Tax Credit the video game company is not required to be a Connecticut corporation, only a corporation, partnership, LLC or other entity principally engaged in a qualifying production. To qualify the development company must also register with the Connecticut Secretary of State. The tax credit is administered by the Digital Media and Motion Picture Division of the Connecticut Commission on Culture and Tourism, and as is often the case with state-sponsored programs, any video game which includes content that is obscene, as defined in the applicable state statute, does not qualify for this benefit. Obtaining the Connecticut Tax Credit involves applying to the Digital Media and Motion Picture Division of the Connecticut Commission on Culture and Tourism for an eligibility certificate (within 90 days after the first qualified production expense or cost is incurred) and then applying for a tax credit certificate (within 90 days after the last production expense is incurred in the state). No credits may be claimed before the production tax credit certificate is issued.

For further information, the Digital Media and Motion Picture Division of the Connecticut Commission on Culture and Tourism can be contacted at the following:

Film Division
One Constitution Plaza, 2nd Floor
Hartford, Connecticut 06103
Phone: (860) 256-2800
Fax: (860) 256-2811

George Norfleet, Division Director
Phone: (860) 256-2728
Email: george.norfleet@ct.gov

Further information on the Connecticut Digital Media and Motion Picture Tax Credit is available online at the following web address: <http://www.ct.gov/ecd/cwp/view.asp?a=3880&q=454828>

The enacting legislation for the Connecticut Digital Media and Motion Picture Tax Credit is available online at the following web address:
<http://www.cultureandtourism.org/cct/lib/cct/TaxCreditLegislation.pdf>.

Florida

In order “to develop and sustain the [in-state] workforce and infrastructure for film and entertainment production,” including video games and interactive media, the Florida legislature has earmarked millions of dollars in tax credits to be dispersed to Florida producers of video games and interactive entertainment. Under Florida’s plan at least 75% of the employees on the project must be in-state residents. Moreover, video game development companies that demonstrate expenditures of at least \$625,000 in expenses, wages and salaries on a single video game project within a year qualify to be reimbursed by the State for 20% of those expenditures in the form of a tax credit. Additionally, smaller productions may be able to qualify for tax credits under the “Independent and Emerging Media” definition if they have expenditures of at least \$100,000.

While it is important to note that the Florida Entertainment Industry Financial Incentive Program (“Florida Program”) excludes from eligibility those video games which contain obscene content as defined by state law (mostly a restriction on content of a sexual nature) the Florida Program does include a bonus for productions with less objectionable content. An otherwise eligible project which is determined by the Florida Commissioner of Film and Entertainment (with advice of the Florida Film and Entertainment Advisory Council) to be “family friendly,” based on several subjective criteria, is eligible for an additional 5% cash reimbursement, raising the available cash rebate to a possible 25% of qualifying expenditures.

To take advantage of the Florida tax credit the video game company must submit a program application to the Florida Commissioner of Film and Entertainment for an eligibility certificate (within 180 days prior to the first qualified production expense or cost is incurred) and then the office will notify the applicant concerning certification of the production (within 20 days). At the end of the production, the applicant must submit an audited version of the amount of actual qualified expenditures. Thereafter, the Florida Commissioner of Film and Entertainment will notify the applicant of the final tax credit award.

For further information, the Florida Governor’s Office of Film & Entertainment can be contacted at the following:

Florida Governor’s Office of Film & Entertainment
The Capitol Building
400 South Monroe Street, Suite 2001
Tallahassee, FL 32399-0001
Phone: (850) 410-4765
Toll Free: 877-FLA-FILM
Fax: (850) 410-4770
Email: Film.Incentive@MyFlorida.com

Herb Miller, Incentives Administrator
Email: Herb.Miller@MyFlorida.com

Further information for the Florida Entertainment Industry Financial Incentive Program for Digital Media Projects is available using the links in the blue box of the webpage at the following address:
<http://www.filminflorida.com/ifi/incentives.asp#financial>

The statute authorizing the Florida Entertainment Industry Financial Incentive Program for Digital Media Projects is available at the following web address:
http://www.flsenate.gov/statutes/index.cfm?mode=View%20Statutes&SubMenu=1&App_mode=Display_Statute&Search_String=288.1254&URL=CH0288/Sec1254.HTM

Georgia

Using the slogan “If You Could Create a Virtual World for Your Business Georgia Is What It Would Be Like,” Georgia has sought to position itself as a fertile ground for game development. To demonstrate its support of game development within its borders Georgia passed the Entertainment Industry Investment Act in the spring of 2008 (“Georgia Act”), offering producers of qualifying video games a transferable non-refundable tax credit of 20% of in-state expenditures against Georgia tax liability. In addition, game production companies can increase their available tax credit by an additional 10% by including a Georgia promotional logo in all units sold and imbedded in all online promotions, raising the available tax credit for Georgia game companies to 30%. To be eligible for tax credits, production companies must first be certified by the Georgia Film, Music & Digital Entertainment Office, which is a fairly quick process generally taking only a few days. Additionally, companies may also qualify to obtain a Georgia sales tax exemption.

To qualify for the tax credit, game developers do not have to be incorporated in Georgia, they only have to spend a minimum of \$500,000 within the state on one project or across several projects in the course of a single year. For purposes of calculating the \$500,000 in expenditures, game developers can include all expenses paid within the state for materials, services and labor “directly used” in the video game production. Under the Georgia Act, “directly used” is expansive, including rental of facilities and equipment, leasing of vehicles, food and lodging costs, and even airfare expenses if purchased through a Georgia-based travel agency or travel company. For calculating labor expenditures, game developers can include payments made to both resident and out-of-state employees working in Georgia. However, monies spent on marketing and distribution will not be included as qualifying expenditures.

For further information, administrators of the incentives offered under Georgia’s Entertainment Industry Investment Act can be contacted at the following:

Georgia Film, Music & Digital Entertainment Office
Georgia Department of Economic Development
75 Fifth St., N.W.
Suite 1200
Atlanta, GA 30308
Phone: (404) 962-4052
Fax: (404) 962-4053
Email: film@georgia.org

Further information on incentives offered under Georgia’s Entertainment Industry Investment Act is available at the following web address:

<http://www.georgia.org/Business/Entertainment+Industry+Investment+Act>

The full text of Georgia’s Entertainment Industry Investment Act (2008) is available online at the following web address:

http://www.legis.state.ga.us/legis/2007_08/versions/hb1100_HB_1100_AP_8.htm

Hawaii

In July of 2006, Hawaii passed the Motion Picture, Digital Media, and Film Production Income Tax Credit ("Hawaii Tax Credit"), ostensibly to promote local development of entertainment productions and offer incentives for the hiring of local talent for said productions. Administered by the Hawaii Film Office and the Hawaii Department of Taxation, the Hawaii Tax Credit offers video game developers with a minimum of \$200,000 in qualified production expenditures a refundable tax credit for 15% of those costs (the amount may be raised to 20% for productions located in certain less-populated counties). Unlike the nonrefundable tax credits already discussed, a refundable tax credit will be applied to reduce tax payments due, but in the event that the incentive is greater than any tax liability, a direct cash payment will be made to the development company by the Hawaii Department of Taxation. Qualified expenditures under the Hawaii Tax Credit include both resident and non-resident compensation for the time that the employee is physically working in Hawaii and subject to Hawaii income tax. Other qualifying expenditures must be subject to Hawaii's general excise or income tax and can include travel and shipping costs both between islands and from Hawaii to the mainland.

In addition to including Hawaii among the production credits of the final product, game development companies that wish to take advantage of the Hawaii tax credit must make reasonable efforts to hire Hawaiian employees and also make a financial or in-kind contribution to education or the interactive media workforce in Hawaii. Contributions have specific requirements but may generally include hardware or software donations to Hawaii public schools, offering on-site internships to public school students, or planning or participating in seminars or educational programs that benefit local unions and industry members.

For further information, the Hawaii Film Office can be contacted at the following:

Hawaii Film Office
State of Hawaii, Department of Business, Economic Development and Tourism
250 South Hotel St., 5th Floor
Honolulu, Hawaii 96813

Mailing Address:
P.O. Box 2359
Honolulu, Hawaii 96804
Phone: (808) 586-2570
Fax: (808) 586-2572
Email: info@hawaiifilmoffice.com

Further information on Hawaii's Motion Picture, Digital Media, and Film Production Income Tax Credit is available at the following web address:

<http://www.hawaiifilmoffice.com/film/incentives-tax-credits>

The full text of Hawaii's Motion Picture, Digital Media, and Film Production Income Tax Credit is available online at the following web address:

http://www.capitol.hawaii.gov/hrscurrent/Vol04_Ch0201-0257/HRS0235/HRS_0235-0017.htm

Indiana

In 2008 Indiana enacted the Media Production Expenditure Tax Credit (“Indiana Tax Credit”). The Indiana Tax Credit, which specifically includes digital media, offers a non-transferable but refundable tax credit against business taxes of up to 15% of qualifying expenditures made in Indiana, so long as said expenditures add up to more than \$50,000. Essentially all expenses paid in the state of Indiana which the developer can demonstrate were directly related to the production of a video game will qualify, including developer compensation, legal costs, development equipment and software, certain postproduction and marketing costs. Even the purchase or optioning of intellectual property on which to base one’s game qualifies under certain circumstances.

To take advantage of the Indiana Tax Credit the video game company is not required to be an Indiana corporation, only a corporation, partnership, LLC or other entity principally engaged in a qualifying production in Indiana. The tax credit is administered by the Indiana Economic Development Commission, and as is often the case with state-sponsored programs, any video game which includes content that is obscene, as defined in the applicable state statute, does not qualify for this benefit. Obtaining the Indiana Tax Credit involves applying to the Indiana Economic Development Commission for approval (prior to the first qualified production expense or cost being incurred). If approved, the Indiana Economic Development Commission will then enter into a formal agreement specifying the terms and obligations for claiming the Indiana Tax Credit. Thereafter, upon completion of the qualified production, the applicant must submit proof of all claimed qualifying expenditures and the Indiana Economic Development Commission shall issue a letter indicating the amount of the authorized Indiana Tax Credit.

For further information, the Indiana Economic Development Commission can be contacted at the following:

Indiana Economic Development Commission
Business Development-FilmIndiana
One North Capitol, Suite 700
Indianapolis, IN 46204
Email: filminfo@iedc.in.gov
Phone: (317) 234-2087
Fax: (317) 232-4146

Further information on the Media Production Expenditure Tax Credit is available online at the following web address:

<http://iedc.in.gov/tax-credits-exemptions/tax-credits/media-production-expenditure-tax-credit>.

The enacting legislation for the Media Production Expenditure Tax Credit is available online at the following web address:

<http://www.in.gov/legislative/ic/code/title6/ar3.1/ch32.html>.

Kentucky

In order to promote increased production activity in Kentucky, the Kentucky Film Office Tax Credit ("Kentucky Tax Credit") was enacted. The Kentucky Tax Credit offers development companies a refundable tax credit against business taxes of up to 20% of qualifying expenditures, so long as said expenditures add up to more than \$500,000. While the enacting legislation does not mention video game productions, the application for the Kentucky Film Office Tax Credit lists video games as a covered production category. The Kentucky Tax Credit is somewhat more limited than other jurisdictions in identifying which expenses paid in the state of Kentucky will qualify. Specifically, compensation (not to exceed \$100,000 per employee), rental of space or equipment, and certain other costs are defined as qualified expenses. In addition to the Kentucky Tax Credit, companies may also qualify to obtain a Kentucky sales tax rebate.

The tax credit is administered by the Kentucky Film Office, and as is the case with many of the other programs discussed, any video game which includes content that is obscene, as defined in the applicable state statute, does not qualify for this benefit. Obtaining the Kentucky Film Office Tax Credit involves applying to the Kentucky Film Office at least 30 days before the first qualified production expense or cost is incurred. The Kentucky Film Office will notify the applicant of its status (within 30 days thereafter) and, if the application is approved, will enter into a formal tax incentive agreement. Upon completion of the video game production (or within 180 days thereafter) the qualified company must submit a detailed cost report. After full review of the cost report the applicant will be notified of the total amount of refundable credit awarded to the production.

For further information, the Kentucky Film Office can be contacted at the following:

Kentucky Film Office
500 Mero Street
2400 Capital Plaza Tower
Frankfort, KY 40601
Phone: (502) 564-3456
Fax: (502) 564-7588

Todd Cassidy, Director
Phone: (800) 345-6591
Fax: (502) 564-1512
Email: todd.cassidy@ky.gov

Further information on the Kentucky Film Office Tax Credit is available online at the following web address:
<http://www.kyfilmoffice.com/incentives.htm>.

The enacting legislation for the Kentucky Film Office Tax Credit is available online at the following web address:
<http://www.lrc.ky.gov/record/09SS/HB3.htm>.

Louisiana

With the stated objective of encouraging “development in Louisiana of a strong capital base for the production of digital interactive media,” the state of Louisiana passed The Louisiana Digital Media Act (“Louisiana Act”). The Louisiana Act offers the developer a transferable but nonrefundable tax credit on funds invested in the production and expended within the state of Louisiana on production-related costs. The enacting legislation of the Louisiana Act contemplates both video games designed to be sold through regular marketing channels and projects involving virtual worlds and online games with long-term producer involvement. The tax credit offered by the Louisiana Act is equal to 25% of the investments made in those years, with no minimum spending requirements. Additionally, an additional 10% may be awarded based on labor costs paid to Louisiana residents. In the event that the tax liability of the game producer is less than the tax credit earned by the producer in any given year, the credit may be carried forward and applied to tax liability accrued in the future for a period of up to 10 years.

To receive the benefits offered under the Louisiana Act a video game or other digital interactive media production must first submit an application to the Louisiana Department of Economic Development with details about the production, including the budget, anticipated employment, schedule, and the intended distribution plan for the finished product. The Louisiana Department of Economic Development shall review the application and provide an initial certification if applicable. Prior to final certification the developer must submit an audited cost report of production expenditures and the Louisiana Department of Economic Development will make its final tax credit certification based thereon.

For further information, the Louisiana Department of Economic Development can be contacted at the following:

Louisiana Economic Development
1051 North Third Street
Baton Rouge, Louisiana 70802-5239
Phone: (225) 342-3000
Fax: (225) 342-9095

Elliott Adams, Director Digital Media Industry
Entertainment Division of the Louisiana Department of Economic Development
Phone: (225) 342-5403
Fax: (225) 342-5554
Email: eadams@la.gov

Further information on incentives offered under The Louisiana Digital Media Act is available at the following web address:

<http://www.louisianaeconomicdevelopment.com/opportunities/incentives--programs/digital-media-incentive.aspx>

The full text of The Louisiana Digital Media Act is available online at the following web address:

<http://www.legis.state.la.us/billdata/streamdocument.asp?did=665706>

Maine

Adopted in 2006, the Maine Attraction Film Incentive program (“Maine Incentive”) includes two incentives available to qualified companies that develop video games intended for a national audience: the Certified Media Production Credit and the Certified Media Wage Reimbursement. To qualify for the dual benefits of the Maine Incentive, a video game developer must spend a minimum of \$75,000 in Maine over the course of one year on one or more video game productions which have been certified by the Maine Film Office, a division of Maine’s Department of Economic and Community Development (the “Film Office”). To get a video game production certified, the game developer must apply for and receive a media production certificate from the Film Office prior to beginning work on a video game production. After completion of each certified video game production the development company must then request from the Film Office a Tax Reimbursement and Credit Certificate.

The Certified Media Production Credit is a non-refundable, non-transferrable credit equal to 5% of a developer’s visual media production expense related to the production of a certified video game. The Certified Media Wage Reimbursement portion of the Maine Program consists of a partial reimbursement to qualifying game developers for compensation paid for work done within Maine on certified video game productions. Qualifying game developers are generally reimbursed in an amount equal to 12% of total wages and salaries paid to Maine residents and 10% for total wages and salaries paid to non-residents. The Certified Media Wage Reimbursement must be applied for from Maine Revenue Services separately from the income tax credit.

For further information, the Maine Film Office of the Department of Economic and Community Development can be contacted at the following:

Maine Film Office
59 State House Station
Augusta, ME 04333
Phone: 207-624-7631

Lea Girardin, Director
Phone: 207-624-9828
Email: lea.girardin@maine.gov

Maine Revenue Services can be contacted at the following:

Maine Revenue Services
24 State House Station
Augusta, ME 04333-0024
Phone: 207-626-8475
Fax: 207-287-5855

Further information on the Maine Attraction Film Incentive program is available at the following web address:

<http://www.filminmaine.com/incentives/default.aspx>

The full text of the legislation creating the benefits available under the Maine Attraction Film Incentive program is available at the following web address:

http://www.filminmaine.com/files/part_gg.pdf

Michigan

Taking effect in April of 2008, the Film Production Incentive (“Michigan Incentive”) offered by the Michigan Film Office and the State Treasurer specifically includes “interactive games, video games [and] interactive website[s]” within the definition of productions which qualify for a refundable tax credit. The Michigan Incentive is available to producers of video games and other interactive media that have a minimum of \$50,000 in qualified expenditures and who have entered into an agreement with the Michigan Film Office certifying the particular video game or interactive media production. Developers enter into an agreement with the Michigan Film Office after they have applied for the Michigan Incentive and the details of their production have been approved by the Michigan Film Office.

The Michigan Incentive consists of a refundable and transferable tax credit equal to 40% of qualified expenditures (an additional 2% is available if development occurs in a “Core Community”), in this case, Michigan expenses directly attributable to the production or distribution of a video game, including all in-state payments for wages and compensation, production software and equipment, facilities rental, purchase or optioning of intellectual property, insurance coverage, postproduction advertising (including the creation of trailers and commercials), and even commercial airfare for travel to and from the state if purchased through an in-state travel agent. Employee compensation for credit calculation purposes is capped at \$2 million and it should also be noted that development companies will receive only a 30% credit on wages and compensation for employees who have lived in Michigan for less than 60 days prior to state certification of the video game production.

An interactive game, video game or interactive website can not qualify for the Michigan Incentive, even if it meets all of the other requirements as described by the Michigan Film Office, if it contains “obscene matter or obscene performance” as described by the applicable Michigan statute.

For further information, the Michigan Film Office can be contacted at the following:

Michigan Film Office
300 North Washington Square 4th Floor
Lansing, MI 48913

Janet Lockwood, Director
Toll-Free: (800) 477-3456
Phone: (517) 373-3456
Fax: (517) 241-0867
Email: mfo@michigan.org

Further information on the production incentives offered by the Michigan Film Office is available at the following web address:

<http://www.michiganfilmoffice.org/For-Producers/Incentives/Default.aspx>

The Michigan legislation creating and altering the incentives offered by the Michigan Film Office may be viewed via the following web address:

[http://www.legislature.mi.gov/\(S\(s4kmp2nqhf04kkawaclji4ud\)\)/mileg.aspx?page=GetObject&objectname=mcl-208-1455](http://www.legislature.mi.gov/(S(s4kmp2nqhf04kkawaclji4ud))/mileg.aspx?page=GetObject&objectname=mcl-208-1455)

New Jersey¹

New Jersey offers a transferable, nonrefundable Digital Media Tax Credit (“New Jersey Tax Credit”) to development companies against business taxes of up to 20% of qualifying digital media expenditures made over the course of producing a game. At least \$2 million of the total digital media content production expenses of the developer must be incurred for services performed and goods used or consumed in New Jersey, with 50% of these expenses being associated with wages and salaries paid to one or more new full-time employees in New Jersey. The vast majority of expenses paid in the state of New Jersey which were directly related to the production, including wages, computer software and hardware, are considered qualified expenses. However, any project which includes content that is obscene, as defined in the applicable state statute, does not qualify for this benefit.

The New Jersey Tax Credit is administered by the Division of Taxation in the Department of the Treasury and the New Jersey Economic Development Authority. Obtaining the New Jersey Tax Credit involves submitting an application to the New Jersey Economic Development Authority prior to commencement of the project. If approved, the Division of Taxation in the Department of the Treasury and the New Jersey Economic Development Authority shall issue the developer notice of the full tax credits awarded.

¹ Because of New Jersey budget constraints, the Fiscal Year 2011 budget (July 1, 2010 to June 30, 2011) enacted a temporary suspension of the credit program by effectively reducing the existing annual tax credit caps from \$5 million per year for digital media content to \$0 for digital media content in State Fiscal Year 2011. Therefore, no such credits can be utilized to reduce tax liability for any return which is due between June 30, 2010 and July 1, 2011.

For further information, the Division of Taxation in the Department of the Treasury and the New Jersey Economic Development Authority can be contacted at the following:

New Jersey Division of Taxation
Business Assistance Clearance Section
50 Barrack Street – 9th Floor
PO Box 272
Trenton, NJ 08695-0272
Phone: (609) 292-6400

New Jersey Economic Development Authority
36 West State Street
Trenton, NJ 08625
Phone: (866) 534-7789
Email: njeda@njeda.com

Further information on the New Jersey Tax Credit is available online at the following web address:
http://www.njeda.com/web/Aspx_pg/Templates/Npic_Text.aspx?Doc_Id=811&menuid=1218&topid=718&levelid=6&midid=1175.

The enacting legislation for the New Jersey Tax Credit is available online at the following web address:
<http://law.onecle.com/new-jersey/54-taxation/10a-5.39.html>.

New Mexico

Despite “tax” being included in the name of the program, New Mexico’s 25% Film Production Tax Rebate (“New Mexico Rebate”) is actually a non-transferable reimbursement of the total cost of all direct production expenditures on qualifying media productions, including video games. As an added benefit for small to mid-size video game productions, unlike incentive programs in other states that require minimum in-state expenditures of tens and sometimes hundreds of thousands of dollars, the New Mexico program has no minimum in-state spending requirement. A developer’s rebate begins to accrue upon their first expenditure directly attributable to the video game production after they have sent in the required form agreement and company registration forms to the New Mexico Film Office.

The New Mexico Rebate, jointly administered by the New Mexico Film Office and the State of New Mexico Taxation & Revenue Department, does place a few limits on what expenditures are eligible for receiving a 25% reimbursement. While most of the in-state expenditures contemplated by programs already discussed qualify for the New Mexico Rebate, a video game development company will not be reimbursed for any portion of compensation for employees who are not residents of New Mexico, nor will they receive a rebate on expenses for advertising, marketing, distribution, or expenditures which were not subject to New Mexico taxation, which includes purchases made over the Internet from non-New Mexico companies, purchases made on tribal lands, and purchases of intellectual property from non-residents. Also, for a video game producer to be reimbursed for expenditures made on a video game, the game’s script must not contain obscene material.

For further information, the New Mexico Film Office can be contacted at the following:

New Mexico Film Office
Santa Fe University of Art and Design
1600 Saint Michael’s Drive
Santa Fe, New Mexico 87505
Toll-free: (800) 545-9871
Phone: (505) 476-5600
Fax: (505) 476-5601
Email: info@nmfilm.com

Jennifer Schwalenberg, Deputy Director
New Mexico Film Office
Phone: (505) 476-5610
Email: jennifer@nmfilm.com

Further detailed information on the New Mexico Film Production Tax Rebate can be found in the document at the following web address:

<http://www.nmfilm.com/filming/downloads/nm25PercentTaxRebate.pdf>

The enacting statute of the New Mexico Film Production Tax Rebate is available at the following web address:

http://www.tax.state.nm.us/regs/Film_Production_Tax_Credit_Act.pdf

North Carolina

North Carolina recently enacted a tax credit for the development of interactive digital media (“North Carolina Tax Credit”) which will become effective January 1, 2011. The North Carolina Tax Credit, which specifically includes a rather broad definition of interactive digital media that covers video games and related products, offers development companies a non-transferable tax credit of up to 15% of wage and compensation expenditures (20% if expenses are paid to a qualifying community college or research university). The North Carolina Tax Credit is only available to producers of interactive digital media who have a minimum of \$50,000 in qualified expenditures and will not cover any interactive digital media product that includes obscene content, as defined in the applicable state statute, or is a gambling or casino game.

The North Carolina Tax Credit is expected to be administered by the North Carolina Department of Commerce. However, since it is not effective yet, it is unclear what the final application and certification requirements will be.

For further information, the enacting legislation for the North Carolina Interactive Digital Media tax credit is available online at the following web address:

<http://www.ncga.state.nc.us/Sessions/2009/Bills/House/HTML/H1973v8.html>.

Ohio

For the purpose of "encouraging and developing a strong film industry," in 2009 Ohio enacted its Motion Picture Tax Incentive ("Ohio Tax Credit"). The Ohio Tax Credit, which specifically includes interactive games and video games within the definition of a "motion picture," offers development companies a non-transferable but refundable tax credit against business taxes of up to 25% of qualifying expenditures (not including in-state wages) made over the course of producing a game, so long as said expenditures add up to more than \$300,000. An additional 35% tax credit may be awarded against expenditures for Ohio resident wages. Eligible production expenditures to qualify for the \$300,000 mark include most goods and services purchased and consumed in Ohio, including wages, facilities and equipment. The Ohio Tax Credit will not cover any product which depicts digital images of actual sexually explicit conduct, as defined in the applicable federal statute.

To take advantage of the Ohio Tax Credit the video game company must first register and file an application to be considered a tax credit-eligible production. Once the development company has been certified, it may apply for a credit against its state tax. Within 90 days after certification as a tax credit-eligible production, and at any time thereafter at the Ohio Film Office's request, the development company must submit sufficient evidence of the progress of the project. Upon completion of the project an audited report of the developer's expenses must be submitted for review. Once the report is approved the Ohio Office of Film shall issue a tax credit certificate to the development company.

For further information, the Ohio Department of Development Ohio Film Office can be contacted at the following:

Ohio Department of Development Ohio Film Office
77 South High Street, Floor 29
P.O. Box 1001
Columbus, Ohio 43216
Phone: (614) 644-5156
Email: askohiofilm@development.ohio.gov

Further information on the Ohio Motion Picture Tax Incentive is available online at the following web address:

<http://www.ohiofilmoffice.com/Incentives.html>.

The enacting legislation for the Ohio Motion Picture Tax Credit is available online at the following web address:

http://image.exct.net/lib/fefa1772756c0c/d/1/Pages%20from%20128_HB_1_EN_N.pdf.

Rhode Island

Rhode Island's Motion Picture Production Company Tax Credit, created in 2006 and administered by the Rhode Island Film and Television Office, was created for the express purpose of promoting and encouraging production of entertainment media within the state of Rhode Island, including video games ("Rhode Island Credit"). The Rhode Island Credit offers a transferable but non-refundable tax credit to qualifying production companies equal to 25% of expenditures directly attributable to certified video game productions within the state. Rhode Island expenditures which may be counted towards a production's tax credit are expansive, including wages and other compensation to both residents and non-residents (so long as the work is done in Rhode Island), rental of facilities and equipment, leasing of vehicles, and even airfare expenses if incurred to bring an employed person to Rhode Island. Notable expenditures for which the game developer cannot receive a tax credit include travel expenses for persons departing Rhode Island and any costs associated with the postproduction promotion or marketing of the video game. Moreover, the Rhode Island Credit will not cover any product containing actual sexually explicit conduct, as defined in the applicable federal statute.

To qualify for the Rhode Island Credit, a video game production must first be certified by the Rhode Island Film and Television Office, which requires a budget that includes a minimum of \$300,000 of in-state expenditures directly attributable to the video game production. The video game production company must also be incorporated or organized under the laws of Rhode Island to qualify for the Rhode Island Credit. Benefits received under the Rhode Island program can only be applied for in the year in which the production is completed, but can thereafter be transferred, sold or carried forward for up to three years.

For Further Information, the Rhode Island Film & Television Office can be contacted at the following:

Rhode Island Film and Television Office
One Capitol Hill
Providence, Rhode Island 02908

Steven Feinberg, Executive Director
Phone: (401) 222-3456
Fax: (401) 222-3018
Email: steven@arts.ri.gov

Some further information on Rhode Island's Motion Picture Production Company Tax Credit is available at the following web address:

<http://www.film.ri.gov/taxcreditapp.html>

The legislation enacting Rhode Island's Motion Picture Production Company Tax Credit may be viewed via the following web address:

<http://www.film.ri.gov/H7839A42006.pdf>

Texas

The Texas Film Commission offers two incentive programs that are specifically applicable to video game development: a rebate on eligible in-state spending under the Moving Image Industry Program, and a tax exemption for the purchase or lease of qualifying items and services used in the development and manufacture of a finished video game.

Under the Moving Image Industry Program, a video game production can qualify for a cash rebate equal to 5% of all eligible in-state spending so long as a minimum of 60% of the production days are completed in Texas, at least 70% of the development team are Texas residents, and the development company spends a minimum of \$100,000 in Texas on the game's development. Video game productions can also receive an additional 2.5% rebate on all qualifying expenditures across the entire span of the production if at least 25% of the production days are spent in an underused area (generally defined as locations outside of Dallas or Austin). Expenditures which qualify for the rebate and may be counted towards the \$100,000 minimum in-state spending include wages and compensation to in-state residents (within limits), payments to Texas companies for goods and services directly attributable to the production of the video game, shipping within Texas, and air travel to or from Texas on a Texas-based airline. Some preproduction expenses may also qualify, but cannot exceed 30% of the project's combined Texas expenditures.

Expenditures which will not count towards the \$100,000 minimum in-state spending requirement and on which the game developer will not receive a 5% rebate include all wages and compensation paid to non-Texas residents and any lease or mortgage payments on facilities that are part of an ongoing business. The maximum incentive amount available to Texas game developers on a single video game production under the Moving Image Industry Program is \$250,000. It is also worthy of note that rebates are unavailable or will be denied for video games directly used for gambling or which "contain inappropriate content or content that portrays Texas or Texans in a negative fashion."

Developers of computer and video games also qualify as software manufacturers under Texas law and as such are eligible for a tax exemption on items or services the use or consumption of which are "necessary and essential" to production of the completed game. These items include software that will be used in game production and computers or other equipment used solely for game development. Services which would rise to the level of necessary and essential include repairs to qualifying items, sound recording, and motion capture. By claiming the tax exemption, the game developer is stating under risk of future tax penalties that the items or services will be used directly and exclusively in development of the video game.

As recently as the E3 2008 Expo, Texas Governor Rick Perry has also expressed his intention to utilize monies from the Texas Enterprise Fund to support further growth of the game industry within Texas. The Texas Enterprise Fund includes a \$200 million "deal closing fund" from which the governor can offer grants to applicant companies that will bring new jobs to Texas.

For further information, the Texas Film Commission can be contacted at the following:

Texas Film Commission
P.O. Box 13246
Austin, TX 78711

Texas Film Commission
1100 San Jacinto, Suite 3.410
Austin, TX 78701

Phone: (512) 463-9200

Fax: (512) 463-4114

Email: film@governor.state.tx.us

Further information on the Texas Moving Image Industry Incentive Program is available at the following web address: <http://www.governor.state.tx.us/film/incentives/miip/>

Further information on the sales tax exemptions available to game developers in Texas is available at the following web address:

http://governor.state.tx.us/film/incentives/sales_tax_exemptions

Further information on the Texas Enterprise Fund is available at the following web address:

http://governor.state.tx.us/priorities/economy/investing_for_growth/texas_enterprise_fund/

Virginia

Virginia recently enacted a tax credit ("Virginia Tax Credit") which will become effective January 1, 2013. The Virginia Tax Credit, administered by the Virginia Film Office, was created in part for the purpose of promoting and encouraging digital interactive media production. The Virginia Tax Credit offers a non-transferable but refundable tax credit to qualifying production companies equal to 15% of expenditures (20% if development occurs in economically distressed area) directly attributable to certified digital interactive media productions within the state during the specific tax year. Virginia expenditures which may be counted towards a production's tax credit are expansive, including goods and services leased or purchased and compensation and wages (for employees earning less than \$1 million). A development company may be allowed an additional 10% tax credit of the total aggregate payroll for Virginia residents for projects costing between \$250,000 and \$1 million and 20% for projects over \$1 million. Developers may also be eligible for an exemption to Virginia's state sales tax.

To qualify for the Virginia Tax Credit, a video game production must incur a minimum of \$250,000 of in-state expenditures directly attributable to the video game production. The Virginia Tax Credit will not cover any product containing obscene material. Since it is not effective yet, it is unclear what the final application and certification requirements will be. At a minimum an applicant will likely have to enter into a memorandum of understanding with the Virginia Film Office. Once the requirements of the memorandum have been satisfied or the development project is completed the applicant may claim the applicable tax credit amount.

For further information, the Virginia Film Office can be contacted at the following:

Virginia Film Office
901 East Byrd Street
Richmond, Virginia 23219-4048
Phone: (804) 545-5530
Fax: (804) 545-5531
Email: vafilm@virginia.org

Some further information on Virginia's Digital Interactive Media Tax Credit is available at the following web address:

<http://film.virginia.org/>

The legislation enacting Virginia's Digital Interactive Media Tax Credit may be viewed via the following web address:

<http://leg1.state.va.us/cgi-bin/legp504.exe?101+ful+SB257ER>

Wisconsin

The Wisconsin Department of Commerce, working with the Wisconsin Department of Revenue, offers a mix of refundable and nonrefundable tax credits to video game developers who either engage in video game production or make investments to start a video game company in the state of Wisconsin. The Film Production Services Credit is the umbrella program under which three separate tax credits are offered to video game companies: a nonrefundable credit equal to 25% of wages and compensation paid to Wisconsin residents for Wisconsin work done on an accredited video game (up to a maximum credit of \$25,000 per employee), a refundable but nontransferable tax credit equal to 25% of eligible expenditures paid by the game developer in producing an accredited video game (excludes expenditures for marketing and distribution), and a nonrefundable credit equal to the 5% sales tax paid by the game developer on taxable purchases of items and services that were used directly in producing an accredited video game in Wisconsin, including preproduction, production and postproduction expenditures.

To be eligible for any of the benefits available under the Film Production Services Credit a video game production must not contain digital images of actual sexually explicit conduct, as defined by federal statute, and must be approved by the Department of Commerce and have a minimum in annual employee salaries and wages of \$50,000 included in production costs for the first 36 months of production. In addition, the video game developer must either own the copyright in the video game being produced or have contracted directly with the owner of said copyright and have a viable plan for the commercial distribution of the finished video game.

In addition to the Film Production Services Credit, Wisconsin also offers the Film Production Company Investment Credit. For the first three years that a game developer produces electronic games in Wisconsin the Film Production Company Investment Credit provides a 15% nonrefundable income tax credit for all capital investments made in the business, including expenditures on depreciable personal property and business equipment (so long as at least 50% of the use will be for the purchaser's business as a game developer) and amounts spent on purchasing, constructing or repairing real property for use by the game development company. To be eligible for the Film Production Company Investment Credit one must of course be a company located and doing business in Wisconsin.

For further information, the Wisconsin Film Office can be contacted at the following:

FILM WISCONSIN

648 N. Plankinton Ave - Suite 425

Milwaukee, WI 53203

Phone: (414) 287.6235

Email: info@filmwisconsin.net

Further information on the tax credits available through Wisconsin's Film Production Services Credit program and Wisconsin's Company Investment Credit is available at the following web address:
<http://www.commerce.state.wi.us/bd/BD-FilmProductionServices.html>

The legislation enacting Wisconsin's Film Production Services Credit may be viewed via the following web address:

<http://legis.wisconsin.gov/2009/data/acts/09Act28.pdf>

Conclusion

From Alabama to Florida and from Texas to Wisconsin nearly half of the states in the U.S. provide some form of incentive for the production of video games, interactive entertainment and/or digital media. Currently, there are 21 such programs. These incentives run the gamut from the non-refundable variety to credits that can be used, sold to third parties or held for many years. The requirements and application processes differ, in some cases significantly; however, their benefits usually far outweigh the effort expended to claim them.

While considerable attention has previously been focused on incentives offered to the film industry, many locations have realized the value of incentives to spur the development and growth of video games and interactive entertainment within state borders or just to protect the current businesses from relocating elsewhere. Therefore, states across the country have either revised their film incentive programs to include video games or they have enacted completely new digital media incentive programs. Whether you are a video game start-up or an established company, these potentially substantial financial benefits may be the difference between your game being made or not. They may also allow an increased level of profitability on a project since large percentages of the cost incurred may be refunded by the state. Alternatively, the extra funds that these incentives can free up may allow more time and effort to be spent on a particular title without the need for investment of additional third-party money. Therefore, if you are deciding where to acquire or locate a new development studio, it should be of utmost importance to know what incentive programs are available in the proposed locale and whether the proposed development would comply with the terms and requirements offered in the various jurisdictions.

If you have any questions about the content of this publication, please contact the Pillsbury attorney with whom you regularly work, or the author:

Sean Kane ([bio](#))
New York, NY
+1.212.858.1453
sean.kane@pillsburylaw.com

This publication is issued periodically to keep Pillsbury Winthrop Shaw Pittman LLP clients and other interested parties informed of current legal developments that may affect or otherwise be of interest to them. The comments contained herein do not constitute legal opinion and should not be regarded as a substitute for legal advice.

© 2010 Pillsbury Winthrop Shaw Pittman LLP. All Rights Reserved.