

ENROLLED HOUSE
BILL NO. 2792

By: Miller (Doug), Sherrer,
Hilliard and Morgan (Danny)
of the House

and

Bass of the Senate

An Act relating to film and music; amending 68 O.S. 2001, Sections 3623, as amended by Section 1, Chapter 203, O.S.L. 2002 and 3624, as last amended by Section 15, Chapter 381, O.S.L. 2005 (68 O.S. Supp. 2005, Sections 3623 and 3624), which relate to the Compete with Canada Film Act; adding a definition; modifying definitions; modifying requirements for calculating rebate for certain production companies; modifying eligibility requirements; amending Section 37, Chapter 363, O.S.L. 2005 (74 O.S. Supp. 2005, Section 2236), which relates to the Office of the Oklahoma Film and Music Commission; requiring the Office of the Oklahoma Film and Music Commission to establish a film production registration program; prohibiting fees for registration; stating purpose of the program; providing an effective date; and declaring an emergency.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY 68 O.S. 2001, Section 3623, as amended by Section 1, Chapter 203, O.S.L. 2002 (68 O.S. Supp. 2005, Section 3623), is amended to read as follows:

Section 3623. As used in the Compete with Canada Film Act:

1. "Crew" means any person who works on preproduction, principal photography, and postproduction, with the exception of producers, principal cast, and the director;

2. "Expenditure" or "production cost" includes but is not limited to:

- a. wages or salaries of persons who are residents of this state and who have earned income from working on a film in this state, including payments to personal services corporations with respect to the services of qualified performing artists, as determined under Section 62(a)(A) of the Internal Revenue Code,

- b. the cost of construction and operations, wardrobe, accessories and related services,
- c. the cost of photography, sound synchronization, lighting and related services,
- d. the cost of editing and related services,
- e. rental of facilities and equipment, ~~and~~
- f. other direct costs of producing a film, and
- g. the wages and salaries of persons who are defined and registered as an Oklahoma Expatriate by the Office of the Oklahoma Film and Music Commission;

~~2.~~ 3. "Film" means a professional single media, multimedia program or feature, which is not child pornography as defined in subsection A of Section 1024.1 of Title 21 of the Oklahoma Statutes or obscene material as defined in paragraph 1 of subsection B of Section 1024.1 of Title 21 of the Oklahoma Statutes, including but not limited to, national advertising messages that are broadcast on a national affiliate or cable network, fixed on film or digital video, which can be viewed or reproduced and which is exhibited in theaters, licensed for exhibition by individual television stations, groups of stations, networks, cable television stations or other means or licensed for home viewing markets; and

~~3.~~ 4. "Production company" means a person or company who produces film for exhibition in theaters, on television or elsewhere.

SECTION 2. AMENDATORY 68 O.S. 2001, Section 3624, as last amended by Section 15, Chapter 381, O.S.L. 2005 (68 O.S. Supp. 2005, Section 3624), is amended to read as follows:

Section 3624. A. There is hereby created the Oklahoma Film Enhancement Rebate Program. A rebate in the amount of up to fifteen percent (15%) of documented expenditures made in Oklahoma directly attributable to the production of a film, television production, or television commercial, as defined in Section 3623 of this title, in this state, may be paid to the production company responsible for the production if the Office of the Oklahoma Film and Music Commission determines that the proposed project has a reasonable chance of economic success.

B. 1. The amount of rebate paid to the production company as provided for in subsection A of this section shall be determined as follows:

~~1.~~ Fifteen

- a. fifteen percent (15%) if fifty percent (50%) or more of the crew are residents of Oklahoma and are employed in this state~~+~~,

~~2.~~ Ten

- b. ten percent (10%) if twenty-five percent (25%) to forty-nine percent (49%) of the crew are residents of Oklahoma and are employed in this state, and

~~3. Five~~

- c. five percent (5%) if less than twenty-five percent (25%) of the crew are residents of Oklahoma and are employed in this state.

2. For a production company with a minimum budget for a film of Thirty Million Dollars (\$30,000,000.00) or more, the amount of rebate paid as provided for in subsection A of this section shall be fifteen percent (15%). The Oklahoma crew requirements set forth in paragraph 1 of this subsection shall not apply to production companies that meet the minimum budget requirements of this paragraph.

C. The rebate program shall be administered by the Office of the Oklahoma Film and Music Commission and the Oklahoma Tax Commission, as provided in the Compete with Canada Film Act.

D. To be eligible for a rebate payment:

1. The production company responsible for a film, television production, or television commercial, as defined in Section 3623 of this title, made in this state shall submit documentation to the Office of the Oklahoma Film and Music Commission of the amount of wages paid for employment in this state to residents of this state directly relating to the production and the amount of other production costs incurred in this state directly relating to the production;

2. The production company shall also file an Oklahoma income tax return;

3. ~~The~~ Except major studio productions, the production company shall provide the name of the completion guarantor, and a copy of the bond guaranteeing the completion date, and a copy of the contract between the production company and the principal actors or equivalent proof of completion to ensure a mechanism for the compensation of local vendors of the project or if a film has not secured a completion bond, the production company shall provide evidence that all Oklahoma crew and local vendors have been paid and there are no liens against the production company pending in the state;

4. The minimum budget for the film shall be Two Million Dollars (\$2,000,000.00) of which not less than One Million Two Hundred Fifty Thousand Dollars (\$1,250,000.00) shall be expended in this state. The minimum budget requirements of this paragraph shall be met by any film, television, or commercial production company that produces multiple film, television, or commercial projects within one (1) year, if each project meets a minimum budget of Three Hundred Thousand Dollars (\$300,000.00) and the total budget of all projects in one (1) year is not less than Two Million Dollars (\$2,000,000.00) of which not less than One Million Two Hundred Fifty Thousand Dollars (\$1,250,000.00) shall be expended in this state;

5. The production company shall provide evidence of a recognizable domestic or foreign distribution agreement within one (1) year from the end of principal photography; ~~and~~

6. The production company shall provide evidence of complete financing for production prior to the commencement of principal photography; and

7. The production company shall provide evidence of a certificate of general liability insurance with a minimum coverage of One Million Dollars (\$1,000,000.00) and a workers' compensation policy pursuant to state law, which shall include coverage of employer's liability.

E. A production company shall not be eligible to receive both a rebate payment pursuant to the provisions of this act and an exemption from sales taxes pursuant to the provisions of paragraph 21 of Section 1357 of this title. If a production company has received such an exemption from sales taxes and submits a claim for rebate pursuant to the provisions of the Compete with Canada Film Act, the company shall be required to fully repay the amount of the exemption to the Tax Commission. A claim for a rebate shall include documentation from the Tax Commission that repayment has been made as required herein or shall include an affidavit from the production company that the company has not received an exemption from sales taxes pursuant to the provisions of paragraph 21 of Section 1357 of this title.

F. The Office shall approve or disapprove all claims for rebate and shall notify the Tax Commission. The Tax Commission shall issue payment for all approved claims from funds in the Oklahoma Film Enhancement Rebate Program Revolving Fund created in Section 3625 of this title on or after July 1, 2006, and on or after each July 1 thereafter following the fiscal year in which the documented expenditures were made. The amount of payments in any single fiscal year shall not exceed Five Million Dollars (\$5,000,000.00). If the amount of approved claims exceeds the amount specified in this subsection in a fiscal year, payments shall be made in the order in which the claims are approved by the Office. If an approved claim is not paid in whole or in part, the unpaid claim or unpaid portion may be paid in the following fiscal year subject to the limitations specified in this subsection.

SECTION 3. AMENDATORY Section 37, Chapter 363, O.S.L. 2005 (74 O.S. Supp. 2005, Section 2236), is amended to read as follows:

Section 2236. A. There is hereby created within the Department, the Office of the Oklahoma Film and Music Commission. The Office shall have the primary responsibility in state government for promoting the state as a location for producing motion pictures, television programs, videos and recording or performing music. The Office shall assist the motion picture, television and video film and music industries by providing production contacts in the state, suggesting possible filming, performing, publishing, and recording locations, and other activities that may be required to promote the state as a filming and music center. The Office shall develop resource guides, a database, and a web site. The Office shall develop listings of music festivals and music events being held in Oklahoma.

B. 1. There is hereby established within the Department, the Oklahoma Film and Music Commission which shall consist of the Lieutenant Governor, who shall serve as an ex officio member and as chair of the Commission, and eleven (11) members appointed by the Director of the Department. Appointed members shall serve two-year terms. Five appointed members shall have experience in the development and implementation of economic development programs. Three appointed members shall possess a broad working knowledge of the film industry. Three appointed members shall possess a broad working knowledge of the music industry.

2. The Oklahoma Film and Music Commission shall have the following responsibilities:

- a. focus the film-and-music-industry-related activities and functions of the Office of the Oklahoma Film and Music Commission to provide the maximum economic development impact to the State of Oklahoma,
- b. promote the film and music industries to local communities,
- c. solicit input annually from a cross section of the public including industry, business, and community leaders,
- d. along with the Oklahoma Music Hall of Fame, serve as a clearinghouse for the Oklahoma music industry using databases which it develops and maintains,
- e. along with the Oklahoma Music Hall of Fame, promote Oklahoma music and musicians to a national and international audience,
- f. assist the Office of the Oklahoma Film and Music Commission in developing a marketing plan and a production manual, and
- g. assist the Office of the Oklahoma Film and Music Commission in the preparation of the annual report.

C. The Office of the Oklahoma Film and Music Commission shall cooperate with other state and local offices as required to promote the film and music industries in this state.

D. The Office of the Oklahoma Film and Music Commission shall establish a film production registration program. Under the program, film production companies shall be required to register with the Office prior to starting production on a film located in the state. The Office shall not require production companies to pay a fee for registration. The purpose of the program shall be to allow the Office to accurately track the number of filming productions occurring in the state and the economic impact of those productions.

E. The Office of the Oklahoma Film and Music Commission shall submit an annual report to the Governor, the Speaker of the House of Representatives, and the President Pro Tempore of the Senate prior to July 1 of each year regarding the activities of the Office. The

report shall state the number of filming productions that the Office has helped bring to the state and the economic impact of those productions, and provide similar information concerning the efforts of the Office to promote the music industry in this state.

SECTION 4. This act shall become effective July 1, 2006.

SECTION 5. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

Passed the House of Representatives the 27th day of February,
2006.

Presiding Officer of the House of
Representatives

Passed the Senate the 5th day of April, 2006.

Presiding Officer of the Senate