

1 STATE OF OKLAHOMA

2 2nd Session of the 51st Legislature (2008)

3 SUBCOMMITTEE RECOMMENDATION
4 FOR

5 HOUSE BILL NO. 2583

6 By: Hyman

7 SUBCOMMITTEE RECOMMENDATION

8 An Act relating to revenue and taxation; amending 68
9 O.S. 2001, Sections 2357.35, as amended by Section 1,
10 Chapter 429, O.S.L. 2005, 2357.36, as amended by
11 Section 2, Chapter 429, O.S.L. 2005, 2357.37, as
12 amended by Section 3, Chapter 429, O.S.L. 2005,
13 2357.38, as amended by Section 4, Chapter 429, O.S.L.
14 2005, 2357.39, as last amended by Section 5, Chapter
15 429, O.S.L. 2005 and 2357.40, as amended by Section
16 6, Chapter 429, O.S.L. 2005 (68 O.S. Supp. 2007,
17 Sections 2357.35, 2357.36, 2357.37, 2357.38, 2357.39
18 and 2357.40), which relate to the Oklahoma Tourism
19 Development Act; expanding tax credit to digital
20 media; changing minimum required costs for film and
21 music production facilities projects; amending 68
22 O.S. 2001, Sections 3623, as last amended by Section
23 1, Chapter 341, O.S.L. 2007 and 3624, as last amended
24 by Section 2, Chapter 341, O.S.L. 2007 (68 O.S. Supp.
2007, Sections 3623 and 3624), which relate to the
Compete with Canada Film Act; modifying certain
definition; providing an additional rebate for
production companies using Oklahoma-based music or
recording music in Oklahoma; expanding certain
eligibility requirement; providing an effective date;
and declaring an emergency.

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

1 SECTION 1. AMENDATORY 68 O.S. 2001, Section 2357.35, as
2 amended by Section 1, Chapter 429, O.S.L. 2005 (68 O.S. Supp. 2007,
3 Section 2357.35), is amended to read as follows:

4 Section 2357.35 The Legislature hereby finds:

5 1. That the general welfare and material well-being of the
6 citizens of the State of Oklahoma depend, in large measure, upon the
7 development of tourism attractions and film, digital media or music
8 production facilities in this state;

9 2. That it is in the best interests of the citizens of this
10 state to induce the creation of new or the expansion of existing
11 tourism attractions and film, digital media or music production
12 facilities within this state in order to advance the public purposes
13 of relieving unemployment by preserving and creating jobs that would
14 not exist if not for the inducements to be offered by this state to
15 approved companies, and by preserving and creating sources of tax
16 revenues for the support of public services provided by this state;

17 3. That the authority prescribed by this act, and the purposes
18 to be accomplished under the provisions of this act, are proper
19 governmental and public purposes for which public funds may be
20 expended; and

21 4. That the inducement of the creation or expansion of tourism
22 attraction projects and film, digital media or music production
23 facility projects is of paramount importance, mandating that the
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1 provisions of this act be liberally construed and applied in order
2 to advance public purposes.

3 SECTION 2. AMENDATORY 68 O.S. 2001, Section 2357.36, as
4 amended by Section 2, Chapter 429, O.S.L. 2005 (68 O.S. Supp. 2007,
5 Section 2357.36), is amended to read as follows:

6 Section 2357.36 As used in the Oklahoma Tourism Development
7 Act:

8 1. "Agreement" means an agreement entered into pursuant to
9 Section 2357.39 of this title, by and between the Director of the
10 Oklahoma Tourism and Recreation Department and an approved company,
11 with respect to a tourism attraction project or film, digital media
12 or music production and development facility project;

13 2. "Approved company" means any eligible company that is
14 seeking to undertake a tourism attraction or film, digital media or
15 music production and development facility project and is approved by
16 the Director pursuant to Sections 2357.38 and 2357.39 of this title;

17 3. "Approved costs" means:

18 a. obligations incurred for labor and to vendors,
19 contractors, subcontractors, builders and suppliers in
20 connection with the acquisition, construction,
21 equipping and installation of a tourism attraction
22 project or film, digital media or music production and
23 development facility project,

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- 1 b. the costs of acquiring real property or rights in real
2 property in connection with a tourism attraction
3 project or film, digital media or music production and
4 development facility project, and any costs incidental
5 thereto,
- 6 c. the costs of contract bonds and of insurance of all
7 kinds that may be required or necessary during the
8 course of the acquisition, construction, equipping and
9 installation of a tourism attraction project or film,
10 digital media or music production and development
11 facility project which is not paid by the vendor,
12 supplier, contractor, or otherwise provided,
- 13 d. all costs of architectural and engineering services
14 including, but not limited to, estimates, plans and
15 specifications, preliminary investigations, and
16 supervision of construction and installation, as well
17 as for the performance of all the duties required by
18 or consequent to the acquisition, construction,
19 equipping and installation of a tourism attraction
20 project or film, digital media or music production and
21 development facility project,
- 22 e. all costs required to be paid under the terms of any
23 contract for the acquisition, construction, equipping
24 and installation of a tourism attraction project or

1 film, digital media or music production and
2 development facility project,

3 f. all costs required for the installation of utilities
4 in connection with a tourism attraction project or
5 film, digital media or music production and
6 development facility project including, but not
7 limited to, water, sewer, sewage treatment, gas,
8 electricity and communications, and including off-site
9 construction of utility extensions paid for by the
10 approved company, and

11 g. all other costs comparable with those described in
12 this paragraph;

13 4. "Director" means the Director of the Oklahoma Tourism and
14 Recreation Department or the Director's designated representative;

15 5. "Eligible company" means any corporation, limited liability
16 company, partnership, sole proprietorship, business trust or any
17 other entity, operating or intending to operate a tourism attraction
18 project or undertake film, digital media or music production and
19 development facility project, whether owned or leased, within this
20 state that meets the standards promulgated by the Director pursuant
21 to Section 2357.37 of this title;

22 6. "Final approval" means the action taken by the Director
23 authorizing the eligible company to receive inducements under
24 Section 2357.40 of this title;

1 7. "Increased state sales tax liability" means that portion of
2 an approved company's reported state sales tax liability resulting
3 from taxable sales of goods and services to its customers at the
4 tourist attraction or for purposes of a film, digital media or music
5 production and development facility project for any monthly sales
6 tax reporting period after the approved company provides the
7 certification required by subsection B of Section 2357.40 of this
8 title, which exceeds the reported state sales tax liability for
9 sales to its customers for the same month in the calendar year
10 immediately preceding the certification;

11 8. "Inducements" means the income tax credit or sales tax
12 credit as prescribed in Section 2357.40 of this title;

13 9. "Preliminary approval" means the action taken by the
14 Director conditioned upon final approval by the Director upon
15 satisfaction by the eligible company of the requirements of the
16 Oklahoma Tourism Development Act;

17 10. a. "Tourism attraction" means:

- 18 (1) a cultural or historical site,
- 19 (2) a recreational or entertainment facility,
- 20 (3) an area of natural phenomenon or scenic beauty,
- 21 (4) a theme park,
- 22 (5) an amusement or entertainment park,
- 23 (6) an indoor or outdoor play or music show,
- 24 (7) a botanical garden, or

1 (8) a cultural or educational center.

2 b. A tourism attraction shall not include:

3 (1) lodging facilities, unless the facilities
4 constitute a portion of a tourism attraction
5 project and represent less than fifty percent
6 (50%) of the total approved costs of the tourism
7 attraction project,

8 (2) facilities that are primarily devoted to the
9 retail sale of goods, unless the goods are
10 created at the site of the tourism attraction
11 project or if the sale of goods is incidental to
12 the tourism attraction project,

13 (3) facilities that are not open to the general
14 public,

15 (4) facilities that do not serve as a likely
16 destination where individuals who are not
17 residents of this state would remain overnight in
18 commercial lodging at or near the tourism
19 attraction project,

20 (5) facilities owned by the State of Oklahoma or a
21 political subdivision of this state, or

22 (6) facilities established for the purpose of
23 conducting legalized gambling. However, a
24 facility regulated under Section 200 et seq. of

1 Title 3A of the Oklahoma Statutes shall be a
2 tourism attraction for purposes of the Oklahoma
3 Tourism Development Act for any approved project
4 as outlined in subparagraph a of this paragraph
5 or for an approved project relating to pari-
6 mutuel racing at the facility and not for
7 establishing a casino or for offering casino-
8 style gambling; and

9 11. "Tourism attraction project", "film, digital media or music
10 production and development facility project" or "project" means:

- 11 a. the acquisition, including the acquisition of real
12 estate by leasehold interest with a minimum term of
13 ten (10) years, construction, and equipping of a
14 tourism attraction or film, digital media or music
15 production and development facility, and
- 16 b. the construction and installation of improvements to
17 facilities necessary or desirable for the acquisition,
18 construction, and installation of a tourism attraction
19 or film, digital media or music production and
20 development facility, including, but not limited to:
- 21 (1) surveys, and
- 22 (2) installation of utilities, which may include:
- 23
- 24

1 (a) water, sewer, sewage treatment, gas,
2 electricity, communications, and similar
3 facilities, and

4 (b) off-site construction of utility extensions
5 to the boundaries of the real estate on
6 which the facilities are located,

7 all of which are to be used to improve the economic
8 situation of the approved company in a manner that
9 shall allow the approved company to attract tourists.

10 SECTION 3. AMENDATORY 68 O.S. 2001, Section 2357.37, as
11 amended by Section 3, Chapter 429, O.S.L. 2005 (68 O.S. Supp. 2007,
12 Section 2357.37), is amended to read as follows:

13 Section 2357.37 A. The Director of the Oklahoma Tourism and
14 Recreation Department, with approval of the Oklahoma Tourism and
15 Recreation Commission, shall establish standards for the making of
16 applications for inducements to eligible companies and their tourism
17 attraction projects, or film, digital media and music production and
18 development facility projects by the promulgation of rules in
19 accordance with the Administrative Procedures Act.

20 B. With respect to each eligible company making an application
21 to the Director for inducements, and with respect to the tourism
22 attraction or film, digital media and music production and
23 development facility project described in the application, the
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1 Director shall make inquiries and request materials of the applicant
2 that shall include, but shall not be limited to:

3 1. Marketing plans for the project that target individuals who
4 are not residents of this state;

5 2. A description and location of the project;

6 3. Capital and other anticipated expenditures for the project
7 that indicate that the total cost of the project shall exceed ~~Five~~
8 ~~Hundred Thousand Dollars (\$500,000.00)~~ the minimum amount set forth
9 in subsection C of this section and the anticipated sources of
10 funding therefor;

11 4. The anticipated employment and wages to be paid at the
12 project;

13 5. Business plans which indicate the average number of days in
14 a year in which the project will be in operation and open to the
15 public, if applicable; and

16 6. The anticipated revenues and expenses generated by the
17 project.

18 Based upon a review of these materials, if the Director determines
19 that the eligible company and the tourism attraction or film,
20 digital media and music production and development facility project
21 may reasonably be expected to satisfy the criteria for final
22 approval in subsection C of this section, then the Director may
23 consider granting a preliminary approval of the eligible company and
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1 the tourism attraction project pursuant to subsection B of Section
2 2357.38 of this title.

3 C. 1. For a tourism attraction project, after granting a
4 preliminary approval, the Director shall engage the services of a
5 competent consulting firm which shall submit to the Director a
6 report analyzing the data made available by the eligible company and
7 which shall collect and analyze additional information necessary to
8 determine that, in the independent judgment of the consultant, the
9 tourism attraction project will:

10 a. attract at least twenty-five percent (25%) of its
11 visitors from among persons who are not residents of
12 this state;

13 b. have costs in excess of Five Hundred Thousand Dollars
14 (\$500,000.00);

15 c. have a significant and positive economic impact on
16 this state considering, among other factors, the
17 extent to which the tourism attraction project will
18 compete directly with existing tourism attractions in
19 this state, and the amount by which increased tax
20 revenues from the tourism attraction project will
21 exceed the sales tax credit or income tax credit
22 allowed pursuant to Section 2357.40 of this title;

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- 1 d. produce sufficient revenues and public demand to be
2 operating and open to the public on a regular and
3 persistent basis; and
- 4 e. not adversely affect existing employment in this
5 state.

6 2. For a film, digital media or music production and
7 development facility project, after granting a preliminary approval,
8 the Director shall engage the services of a competent consulting
9 firm which shall submit to the Director a report analyzing the data
10 made available by the eligible company and which shall collect and
11 analyze additional information necessary to determine that, in the
12 independent judgment of the consultant, the film, digital media or
13 music production and development facility will:

- 14 a. for music production and postproduction facilities
15 have costs in excess of ~~Five Hundred Thousand Dollars~~
16 ~~(\$500,000.00)~~ One Hundred Thousand Dollars
17 (\$100,000.00), for film and digital media production
18 and postproduction facilities have costs in excess of
19 Three Hundred Fifty Thousand Dollars (\$350,000.00);
- 20 b. have a significant and positive economic impact on
21 this state considering, among other factors, the
22 extent to which the film, digital media or music
23 production and development facility will compete
24 directly with existing facilities in this state, and

1 the amount by which increased tax revenues from the
2 facility will exceed the sales tax credit or income
3 tax credit allowed pursuant to Section 2357.40 of this
4 title; and

5 c. not adversely affect existing employment in this
6 state.

7 D. The eligible company shall pay for the cost of the
8 consultant's report and shall cooperate with the consultant and
9 provide all of the data that the consultant deems necessary to make
10 a determination of this section.

11 SECTION 4. AMENDATORY 68 O.S. 2001, Section 2357.38, as
12 amended by Section 4, Chapter 429, O.S.L. 2005 (68 O.S. Supp. 2007,
13 Section 2357.38), is amended to read as follows:

14 Section 2357.38 A. The Director of the Oklahoma Tourism and
15 Recreation Department, with the approval of the Oklahoma Tourism and
16 Recreation Commission, shall establish standards for preliminary
17 approval and final approval of eligible companies and their projects
18 by the promulgation of rules in accordance with the Administrative
19 Procedures Act.

20 B. The Director may give preliminary approval by designating an
21 eligible company as a preliminarily approved company and
22 preliminarily authorizing the undertaking of the tourism attraction
23 project or film, digital media or music production and development
24 facility project.

1 C. The Director shall review the report of the consultant
2 prepared pursuant to subsection C of Section 2357.37 of this title
3 and other information that has been made available to the Director
4 in order to assist the Director in determining whether the tourism
5 attraction project or film, digital media and music production and
6 development facility project will further the purposes of the
7 Oklahoma Tourism Development Act.

8 D. The criteria for final approval of eligible companies and
9 tourism attraction projects or film, digital media and music
10 production and development facility projects shall include, but
11 shall not be limited to, the criteria set forth in subsection C of
12 Section 2357.37 of this title.

13 E. After a review of the relevant materials, the consultant's
14 report, other information made available to the Director, and
15 completion of other inquiries, the Director may give final approval
16 to the eligible company's application for a tourism attraction
17 project or film, digital media and music production and development
18 facility project and may grant to the eligible company the status of
19 an approved company. The decision reached by the Director may be
20 appealed by the eligible company to the Oklahoma Tourism and
21 Recreation Commission. The decision of the Oklahoma Tourism and
22 Recreation Commission shall constitute the final administrative
23 decision of the Oklahoma Tourism and Recreation Department.
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1 SECTION 5. AMENDATORY 68 O.S. 2001, Section 2357.39, as
2 last amended by Section 5, Chapter 429, O.S.L. 2005 (68 O.S. Supp.
3 2007, Section 2357.39), is amended to read as follows:

4 Section 2357.39 A. Upon granting final approval, the Director
5 of the Oklahoma Tourism and Recreation Department may enter into an
6 agreement with an approved company with respect to its tourism
7 attraction project or film, digital media and music production and
8 development facility project. The terms and provisions of each
9 agreement shall include, but shall not be limited to:

10 1. The amount of approved costs, which shall be determined by
11 negotiations between the Director and the approved company;

12 2. A date certain by which the approved company shall have
13 completed the tourism attraction project or film, digital media and
14 music production and development facility project. Within three (3)
15 months of the completion date, the approved company shall document
16 the actual cost of the project through a certification of the costs
17 by an independent certified public accountant acceptable to the
18 Director; and

19 3. The following provisions:

20 a. the term of the agreement shall be ten (10) years from
21 the later of:

22 (1) the date of the final approval of the tourism
23 attraction project or film, digital media and
24

1 music production and development facility
2 project, or

3 (2) the completion date specified in the agreement,
4 if the completion date is within two (2) years of
5 the date of the final approval of the tourism
6 attraction project or film, digital media and
7 music production and development facility
8 project. However, the term of the agreement may
9 be extended for up to two (2) additional years by
10 the Director, with the advice and consent of the
11 Oklahoma Tax Commission, if the Director
12 determines that the failure to complete the
13 tourism attraction project or film, digital media
14 and music production and development facility
15 project within two (2) years resulted from:

- 16 (a) unanticipated and unavoidable delay in the
17 construction of the tourism attraction
18 project or film, digital media and music
19 production and development facility project,
20 (b) an original completion date for the tourism
21 attraction project or film, digital media
22 and music production and development
23 facility project, as originally planned,
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1 which will be more than two (2) years from
2 the date construction began, or

3 (c) a change in business ownership or business
4 structure resulting from a merger or
5 acquisition,

6 b. in any tax year during which an agreement is in
7 effect, if the amount of income tax due from the
8 approved company exceeds the state income tax credit
9 available to the approved company, then the approved
10 company shall pay the excess to this state as income
11 tax, and if in any tax year during which an agreement
12 is in effect, if the amount of sales tax to be
13 remitted by the approved company exceeds the sales tax
14 credit available to the approved company, then the
15 approved company shall pay the excess to this state as
16 sales tax,

17 c. within forty-five (45) days after the end of each
18 calendar year, the approved company shall supply the
19 Director with such reports and certifications as the
20 Director may request demonstrating to the satisfaction
21 of the Director that the approved company is in
22 compliance with the provisions of the Oklahoma Tourism
23 Development Act, and

1 d. the approved company shall not receive an inducement
2 with respect to any calendar year if:

3 (1) for a tourism attraction project:

4 (a) in any calendar year following the fourth
5 year of the agreement, the tourism
6 attraction project fails to attract at least
7 fifteen percent (15%) of its visitors from
8 among persons who are not residents of this
9 state, or

10 (b) in any calendar year following the first
11 year of the agreement, the tourism
12 attraction project is not operating and open
13 to the public on a regular and consistent
14 basis, or

15 (2) for a film, digital media or music production and
16 development facility project, in any calendar
17 year following the fourth year of the agreement,
18 the facility fails to have a significant and
19 positive impact on the state.

20 B. The agreement shall not be transferable or assignable by the
21 approved company without the written consent of the Director.

22 C. If the approved company utilizes inducements which are
23 subsequently disallowed, then the approved company will be liable
24 for the payment to the Tax Commission of all taxes resulting from

1 the disallowance of the inducements plus applicable penalties and
2 interest.

3 D. The Director shall provide a copy of each agreement entered
4 into with an approved company to the Tax Commission.

5 SECTION 6. AMENDATORY 68 O.S. 2001, Section 2357.40, as
6 amended by Section 6, Chapter 429, O.S.L. 2005 (68 O.S. Supp. 2007,
7 Section 2357.40), is amended to read as follows:

8 Section 2357.40 A. Upon receiving notification from the
9 Director of the Oklahoma Tourism and Recreation Department that an
10 approved company has entered into a tourism project agreement or a
11 film, digital media and music production and development facility
12 project agreement and is entitled to the inducements provided by the
13 Oklahoma Tourism Development Act, the Oklahoma Tax Commission shall
14 provide the approved company with forms and instructions as
15 necessary to claim those inducements.

16 B. An approved company whose agreement provides that it shall
17 expend approved costs of more than One Hundred Thousand Dollars
18 (\$100,000.00) for music production and postproduction facilities,
19 Three Hundred Fifty Thousand Dollars (\$350,000.00) for film and
20 digital media production and postproduction facilities, and more
21 than Five Hundred Thousand Dollars (\$500,000.00) for a tourism
22 attraction project but less than One Million Dollars (\$1,000,000.00)
23 shall be entitled to an income tax credit or a sales tax credit if
24 the company certifies to the Tax Commission that it has expended at

1 least ~~Five Hundred Thousand Dollars (\$500,000.00)~~ the minimum amount
2 in approved costs, and the Director certifies that the approved
3 company is in compliance with the Oklahoma Tourism Development Act.
4 The Tax Commission shall then issue a tax credit memorandum to the
5 approved company granting an income tax credit or sales tax credit
6 in the amount of ten percent (10%) of the approved costs.
7 Subsequent requests for credit for additional certified approved
8 costs in excess of ~~Five Hundred Thousand Dollars (\$500,000.00)~~ the
9 minimum amount for each project as listed in this subsection but
10 less than One Million Dollars (\$1,000,000.00) shall result in an
11 income tax credit or sales tax credit in the amount of ten percent
12 (10%) of the approved costs. Income tax credits or sales tax
13 credits allowed pursuant to the provisions of the Oklahoma Tourism
14 Development Act shall not be transferable or assignable.

15 An approved company whose agreement provides that it shall
16 expend approved costs in excess of One Million Dollars
17 (\$1,000,000.00) shall be entitled to an income tax credit or sales
18 tax credit if the company certifies to the Tax Commission that it
19 has expended at least One Million Dollars (\$1,000,000.00) in
20 approved costs and the Director certifies that the approved company
21 is in compliance with the Oklahoma Tourism Development Act. The Tax
22 Commission shall then issue a tax credit memorandum to the approved
23 company granting an income tax credit or sales tax credit in the
24 amount of twenty-five percent (25%) of the approved costs. The

1 credit on all subsequent additional certified approved costs shall
2 be in the amount of twenty-five percent (25%) of the costs.

3 The Tax Commission may require proof of expenditures.
4 Additional credit memoranda may be issued as the approved company
5 certifies additional expenditures of approved costs.

6 No tax credit memorandum shall be issued for any approved costs
7 expended after the expiration of two (2) years from the date the
8 agreement was signed by the Director and the approved company.

9 However, the Director, with the advice and consent of the Tax
10 Commission, may authorize tax credits for approved costs expended up
11 to four (4) years from the date the agreement was signed if the
12 Director determines that the failure to complete the tourism
13 attraction project within two (2) years resulted from:

14 1. Unanticipated and unavoidable delay in the construction of
15 the tourism attraction or film, digital media and music production
16 and development facility project;

17 2. An original completion date for the tourism attraction or
18 film, digital media and music production and development facility
19 project, as originally planned, which will be more than two (2)
20 years from the date construction began; or

21 3. A change in business ownership or business structure
22 resulting from a merger or acquisition.

23 C. 1. An income tax credit allowed pursuant to the provisions
24 of this section shall be applied to the amount of income taxes due

1 from the approved company. If the amount of an income tax credit
2 allowed pursuant to the provisions of this section exceeds the
3 amount of income taxes due for the year in which the credit is
4 granted, the amount of the credit not used may be carried forward
5 for a period not to exceed ten (10) years.

6 2. A sales tax credit allowed pursuant to the provisions of
7 this section may be used to offset a portion of the reported state
8 sales tax liability of the approved company for all sales tax
9 reporting periods following the issuance of the credit memorandum
10 subject to the following limitations:

- 11 a. only increased state sales tax liability may be offset
12 by the issued credit,
- 13 b. an approved company whose agreement provides that it
14 shall expend approved costs in excess of One Million
15 Dollars (\$1,000,000.00) shall be entitled to use only
16 ten percent (10%) of the amount of each issued credit
17 to offset increased state sales tax liability during
18 each calendar year, plus the amount of any unused
19 credit carried forward from a prior calendar year, and
20 an approved company whose agreement provides that it
21 shall expend approved costs of more than ~~Five Hundred~~
22 ~~Thousand Dollars (\$500,000.00)~~ the minimum amount for
23 each project as listed in this subsection but less
24 than One Million Dollars (\$1,000,000.00) shall be

1 entitled to use only twenty percent (20%) of the
2 amount of each issued credit to offset increased state
3 sales tax liability during each calendar year, plus
4 the amount of any unused credit carried forward from a
5 prior calendar year, and

6 c. all issued credit memoranda shall expire at the end of
7 the month following the expiration of the agreement as
8 provided in Section 2357.39 of this title.

9 The approved company shall have no obligation to refund or
10 otherwise return any amount of this credit to the person from whom
11 the sales tax was collected.

12 D. The Tax Commission shall promulgate rules as are necessary
13 for the proper administration of the Oklahoma Tourism Development
14 Act. The Tax Commission may also develop forms and instructions as
15 necessary for an approved company to claim the income tax credit
16 provided by the Oklahoma Tourism Development Act.

17 E. The Tax Commission shall have the authority to obtain any
18 information necessary from the approved company and the Director to
19 verify that approved companies have received the proper amounts of
20 tax credits as authorized by the Oklahoma Tourism Development Act.
21 The Oklahoma Tax Commission shall demand the repayment of any
22 credits taken in excess of the credit allowed by the Oklahoma
23 Tourism Development Act.

1 SECTION 7. AMENDATORY 68 O.S. 2001, Section 3623, as
2 last amended by Section 1, Chapter 341, O.S.L. 2007 (68 O.S. Supp.
3 2007, Section 3623), is amended to read as follows:

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

5 1. "Crew" means any person who works on preproduction,
6 principal photography, and postproduction, with the exception of
7 producers, principal cast, screenwriters, and the director. The
8 qualifying salary of producers, principal cast, screenwriters, and
9 the director, also known as "above-the-line personnel", may be
10 included as crew if the salaries are paid to loan-out corporations
11 and limited liability companies registered to do business in the
12 State of Oklahoma or the salaries are paid to Oklahoma-based above-
13 the-line personnel. The qualifying salary of above-the-line
14 personnel shall not comprise more than twenty-five percent (25%) of
15 total expenditures as defined in paragraph 2 of this section. For
16 purposes of this paragraph, "Oklahoma-based" means a company or
17 individual with an Oklahoma income tax ~~or corporate tax liability~~
18 requirement;

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

21 a. wages or salaries of persons who are
22 residents of this state and who have earned
23 income from working on a film in this state,
24 including payments to personal services

1 corporations with respect to the services of
2 qualified performing artists, as determined
3 under Section 62(a) (A) of the Internal
4 Revenue Code,

5 b. the cost of construction and operations,
6 wardrobe, accessories and related services,

7 c. the cost of photography, sound
8 synchronization, lighting and related
9 services,

10 d. the cost of editing and related services,

11 e. rental of facilities and equipment,

12 f. other direct costs of producing a film, and

13 g. the wages and salaries of persons who are
14 defined and registered as an Oklahoma
15 Expatriate by the Office of the Oklahoma Film
16 and Music Commission;

17 3. "Film" means a professional single media, multimedia program
18 or feature, which is not child pornography as defined in subsection
19 A of Section 1024.1 of Title 21 of the Oklahoma Statutes or obscene
20 material as defined in paragraph 1 of subsection B of Section 1024.1
21 of Title 21 of the Oklahoma Statutes, including, but not limited to,
22 national advertising messages that are broadcast on a national
23 affiliate or cable network, fixed on film or digital video, which
24 can be viewed or reproduced and which is exhibited in theaters,

1 licensed for exhibition by individual television stations, groups of
2 stations, networks, cable television stations or other means or
3 licensed for home viewing markets; and

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

6 SECTION 8. AMENDATORY 68 O.S. 2001, Section 3624, as
7 last amended by Section 2, Chapter 341, O.S.L. 2007 (68 O.S. Supp.
8 2007, Section 3624), is amended to read as follows:

9 Section 3624. A. There is hereby created the Oklahoma Film
10 Enhancement Rebate Program. A rebate in the amount of up to ~~fifteen~~
11 ~~percent (15%)~~ seventeen percent (17%) of documented expenditures
12 made in Oklahoma directly attributable to the production of a film,
13 television production, or television commercial, as defined in
14 Section 3623 of this title, in this state, may be paid to the
15 production company responsible for the production if the Office of
16 the Oklahoma Film and Music Commission determines that the proposed
17 project has a reasonable chance of economic success.

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

21 a. fifteen percent (15%) if fifty percent (50%) or more
22 of the crew are residents of Oklahoma and are employed
23 in this state,
24

- 1 b. ten percent (10%) if twenty-five percent (25%) to
2 forty-nine percent (49%) of the crew are residents of
3 Oklahoma and are employed in this state, and
4 c. five percent (5%) if less than twenty-five percent
5 (25%) of the crew are residents of Oklahoma and are
6 employed in this state.

7 2. For a production company that spends at least Twenty
8 Thousand Dollars (\$20,000.00) for the use of music created by an
9 Oklahoma resident that is recorded in Oklahoma or for the cost of
10 recording songs or music in Oklahoma for use in the production, a
11 two-percent rebate shall be paid which shall be in addition to the
12 rebate paid as provided for in paragraph 1 of this subsection.

13 3. For a production company with a minimum budget for a film of
14 Five Million Dollars (\$5,000,000.00) or more, the amount of rebate
15 paid as provided for in subsection A of this section shall be
16 fifteen percent (15%). The Oklahoma crew requirements set forth in
17 paragraph 1 of this subsection shall not apply to production
18 companies that meet the minimum budget requirements of this
19 paragraph.

20 ~~3.~~ 4. The Oklahoma crew requirements set forth in paragraph 1
21 of this subsection shall not apply if it is determined there is a
22 lack of available Oklahoma personnel to serve as crew. The lack of
23 available Oklahoma personnel to serve as crew shall be verified in
24 writing by the Office of the Oklahoma Film and Music Commission.

1 The amount of rebate paid as provided for in subsection A of this
2 section to a production company where the Oklahoma crew requirements
3 have been waived pursuant to this paragraph shall be fifteen percent
4 (15%).

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

8 D. To be eligible for a rebate payment:

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

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

19 3. Except major studio productions, the production company
20 shall provide the name of the completion guarantor and a copy of the
21 bond guaranteeing the completion of the project or if a film has not
22 secured a completion bond, the production company shall provide
23 evidence that all Oklahoma crew and local vendors have been paid and
24

1 there are no liens against the production company pending in the
2 state;

3 4. The minimum budget for the film shall be Five Hundred
4 Thousand Dollars (\$500,000.00) of which not less than Three Hundred
5 Thousand Dollars (\$300,000.00) shall be expended in this state. The
6 minimum budget requirements of this paragraph shall be met by any
7 film, television, or commercial production company that produces
8 multiple film, television, or commercial projects within one (1)
9 year, if each project meets a minimum budget of Two Hundred Fifty
10 Thousand Dollars (\$250,000.00) and the total budget of all projects
11 in one (1) year is not less than Five Hundred Thousand Dollars
12 (\$500,000.00) of which not less than Three Hundred Thousand Dollars
13 (\$300,000.00) shall be expended in this state;

14 5. The production company shall provide evidence of a
15 recognizable domestic or foreign distribution agreement, provide
16 evidence of being selected as a pilot for a nationally recognized
17 network or cable television outlet, or provide evidence of being
18 accepted to at least one of the top fifteen film festivals or two or
19 more of the top thirty film festivals in the United States as
20 determined by the Office of the Oklahoma Film and Music Commission
21 within one (1) year from the end of principal photography;

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

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

6 E. A production company shall not be eligible to receive both a
7 rebate payment pursuant to the provisions of this act and an
8 exemption from sales taxes pursuant to the provisions of paragraph
9 21 of Section 1357 of this title. If a production company has
10 received such an exemption from sales taxes and submits a claim for
11 rebate pursuant to the provisions of the Compete with Canada Film
12 Act, the company shall be required to fully repay the amount of the
13 exemption to the Tax Commission. A claim for a rebate shall include
14 documentation from the Tax Commission that repayment has been made
15 as required herein or shall include an affidavit from the production
16 company that the company has not received an exemption from sales
17 taxes pursuant to the provisions of paragraph 21 of Section 1357 of
18 this title.

19 F. The Office shall approve or disapprove all claims for rebate
20 and shall notify the Tax Commission. The Tax Commission shall issue
21 payment for all approved claims from funds in the Oklahoma Film
22 Enhancement Rebate Program Revolving Fund created in Section 3625 of
23 this title on or after July 1, 2006, and on or after each July 1
24 thereafter following the fiscal year in which the documented

1 expenditures were made. The amount of payments in any single fiscal
2 year shall not exceed Five Million Dollars (\$5,000,000.00). If the
3 amount of approved claims exceeds the amount specified in this
4 subsection in a fiscal year, payments shall be made in the order in
5 which the claims are approved by the Office. If an approved claim
6 is not paid in whole or in part, the unpaid claim or unpaid portion
7 may be paid in the following fiscal year subject to the limitations
8 specified in this subsection.

9 SECTION 9. This act shall become effective July 1, 2008.

10 SECTION 10. It being immediately necessary for the preservation
11 of the public peace, health and safety, an emergency is hereby
12 declared to exist, by reason whereof this act shall take effect and
13 be in full force from and after its passage and approval.

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