

THE HOUSE OF REPRESENTATIVES
Thursday, March 6, 2008

Committee Substitute for
House Bill No. 2583

COMMITTEE SUBSTITUTE FOR HOUSE BILL NO. 2583 - By: HYMAN of the House and BASS of the Senate.

(Revenue and taxation - Oklahoma Tourism Development Act - film and music production - Compete with Canada Film Act - effective date – emergency)

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

- 1 SECTION 1. AMENDATORY 68 O.S. 2001, Section 2357.35, as amended by
2 Section 1, Chapter 429, O.S.L. 2005 (68 O.S. Supp. 2007, Section 2357.35), is amended to
3 read as follows:
- 4 Section 2357.35 The Legislature hereby finds:
- 5 1. That the general welfare and material well-being of the citizens of the State of
6 Oklahoma depend, in large measure, upon the development of tourism attractions and
7 film, digital media or music production facilities in this state;
- 8 2. That it is in the best interests of the citizens of this state to induce the creation
9 of new or the expansion of existing tourism attractions and film, digital media or music
10 production facilities within this state in order to advance the public purposes of relieving
11 unemployment by preserving and creating jobs that would not exist if not for the

1 inducements to be offered by this state to approved companies, and by preserving and
2 creating sources of tax revenues for the support of public services provided by this state;

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

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

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

13 Section 2357.36 As used in the Oklahoma Tourism Development Act:

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

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

22 3. "Approved costs" means:

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

1 e. all costs required to be paid under the terms of any contract for the
2 acquisition, construction, equipping and installation of a tourism
3 attraction project or film, digital media or music production and
4 development facility project,

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

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

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

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

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

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

9 8. “Inducements” means the income tax credit or sales tax credit as prescribed in
10 Section 2357.40 of this title;

11 9. “Preliminary approval” means the action taken by the Director conditioned upon
12 final approval by the Director upon satisfaction by the eligible company of the
13 requirements of the Oklahoma Tourism Development Act;

14 10. a. “Tourism attraction” means:

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

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- b. A tourism attraction shall not include:
 - (1) lodging facilities, unless the facilities constitute a portion of a tourism attraction project and represent less than fifty percent (50%) of the total approved costs of the tourism attraction project,
 - (2) facilities that are primarily devoted to the retail sale of goods, unless the goods are created at the site of the tourism attraction project or if the sale of goods is incidental to the tourism attraction project,
 - (3) facilities that are not open to the general public,
 - (4) facilities that do not serve as a likely destination where individuals who are not residents of this state would remain overnight in commercial lodging at or near the tourism attraction project,
 - (5) facilities owned by the State of Oklahoma or a political subdivision of this state, or
 - (6) facilities established for the purpose of conducting legalized gambling. However, a facility regulated under Section 200 et seq. of Title 3A of the Oklahoma Statutes shall be a tourism attraction for purposes of the Oklahoma Tourism Development Act for any approved project as outlined in subparagraph a of this paragraph or for an approved project relating to pari-

UNDERLINED language denotes Amendments to present Statutes.
BOLD FACE CAPITALIZED language denotes Committee Amendments.
~~Strike thru~~ language denotes deletion from present Statutes.

1 mutuel racing at the facility and not for establishing a casino or
2 for offering casino-style gambling; and

3 11. “Tourism attraction project”, “film, digital media or music production and
4 development facility project” or “project” means:

5 a. the acquisition, including the acquisition of real estate by leasehold
6 interest with a minimum term of ten (10) years, construction, and
7 equipping of a tourism attraction or film, digital media or music
8 production and development facility, and

9 b. the construction and installation of improvements to facilities
10 necessary or desirable for the acquisition, construction, and
11 installation of a tourism attraction or film, digital media or music
12 production and development facility, including, but not limited to:

13 (1) surveys, and

14 (2) installation of utilities, which may include:

15 (a) water, sewer, sewage treatment, gas, electricity,
16 communications, and similar facilities, and

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

19 all of which are to be used to improve the economic situation of the
20 approved company in a manner that shall allow the approved company
21 to attract tourists.

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

4 Section 2357.37 A. The Director of the Oklahoma Tourism and Recreation
5 Department, with approval of the Oklahoma Tourism and Recreation Commission, shall
6 establish standards for the making of applications for inducements to eligible companies
7 and their tourism attraction projects, or film, digital media and music production and
8 development facility projects by the promulgation of rules in accordance with the
9 Administrative Procedures Act.

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

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

17 2. A description and location of the project;

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

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

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

3 6. The anticipated revenues and expenses generated by the project.

4 Based upon a review of these materials, if the Director determines that the eligible
5 company and the tourism attraction or film, digital media and music production and
6 development facility project may reasonably be expected to satisfy the criteria for final
7 approval in subsection C of this section, then the Director may consider granting a
8 preliminary approval of the eligible company and the tourism attraction project pursuant
9 to subsection B of Section 2357.38 of this title.

10 C. 1. For a tourism attraction project, after granting a preliminary approval, the
11 Director shall engage the services of a competent consulting firm which shall submit to
12 the Director a report analyzing the data made available by the eligible company and
13 which shall collect and analyze additional information necessary to determine that, in
14 the independent judgment of the consultant, the tourism attraction project will:

- 15 a. attract at least twenty-five percent (25%) of its visitors from among
16 persons who are not residents of this state;
- 17 b. have costs in excess of Five Hundred Thousand Dollars (\$500,000.00);
- 18 c. have a significant and positive economic impact on this state
19 considering, among other factors, the extent to which the tourism
20 attraction project will compete directly with existing tourism
21 attractions in this state, and the amount by which increased tax
22 revenues from the tourism attraction project will exceed the sales tax

1 credit or income tax credit allowed pursuant to Section 2357.40 of this
2 title;

3 d. produce sufficient revenues and public demand to be operating and
4 open to the public on a regular and persistent basis; and

5 e. not adversely affect existing employment in this state.

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

12 a. for music production and postproduction facilities have costs in excess
13 of ~~Five Hundred Thousand Dollars (\$500,000.00)~~ One Hundred
14 Thousand Dollars (\$100,000.00), for film and digital media production
15 and postproduction facilities have costs in excess of Three Hundred
16 Fifty Thousand Dollars (\$350,000.00);

17 b. have a significant and positive economic impact on this state
18 considering, among other factors, the extent to which the film, digital
19 media or music production and development facility will compete
20 directly with existing facilities in this state, and the amount by which
21 increased tax revenues from the facility will exceed the sales tax credit

1 or income tax credit allowed pursuant to Section 2357.40 of this title;
2 and
3 c. not adversely affect existing employment in this state.

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

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

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

15 B. The Director may give preliminary approval by designating an eligible company
16 as a preliminarily approved company and preliminarily authorizing the undertaking of
17 the tourism attraction project or film, digital media or music production and development
18 facility project.

19 C. The Director shall review the report of the consultant prepared pursuant to
20 subsection C of Section 2357.37 of this title and other information that has been made
21 available to the Director in order to assist the Director in determining whether the

1 tourism attraction project or film, digital media and music production and development
2 facility project will further the purposes of the Oklahoma Tourism Development Act.

3 D. The criteria for final approval of eligible companies and tourism attraction
4 projects or film, digital media and music production and development facility projects
5 shall include, but shall not be limited to, the criteria set forth in subsection C of Section
6 2357.37 of this title.

7 E. After a review of the relevant materials, the consultant's report, other
8 information made available to the Director, and completion of other inquiries, the
9 Director may give final approval to the eligible company's application for a tourism
10 attraction project or film, digital media and music production and development facility
11 project and may grant to the eligible company the status of an approved company. The
12 decision reached by the Director may be appealed by the eligible company to the
13 Oklahoma Tourism and Recreation Commission. The decision of the Oklahoma Tourism
14 and Recreation Commission shall constitute the final administrative decision of the
15 Oklahoma Tourism and Recreation Department.

16 SECTION 5. AMENDATORY 68 O.S. 2001, Section 2357.39, as last amended
17 by Section 5, Chapter 429, O.S.L. 2005 (68 O.S. Supp. 2007, Section 2357.39), is amended
18 to read as follows:

19 Section 2357.39 A. Upon granting final approval, the Director of the Oklahoma
20 Tourism and Recreation Department may enter into an agreement with an approved
21 company with respect to its tourism attraction project or film, digital media and music

1 production and development facility project. The terms and provisions of each agreement
2 shall include, but shall not be limited to:

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

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

10 3. The following provisions:

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

12 (1) the date of the final approval of the tourism attraction project or
13 film, digital media and music production and development
14 facility project, or

15 (2) the completion date specified in the agreement, if the completion
16 date is within two (2) years of the date of the final approval of
17 the tourism attraction project or film, digital media and music
18 production and development facility project. However, the term
19 of the agreement may be extended for up to two (2) additional
20 years by the Director, with the advice and consent of the
21 Oklahoma Tax Commission, if the Director determines that the
22 failure to complete the tourism attraction project or film, digital

1 media and music production and development facility project
2 within two (2) years resulted from:

3 (a) unanticipated and unavoidable delay in the construction
4 of the tourism attraction project or film, digital media and
5 music production and development facility project,

6 (b) an original completion date for the tourism attraction
7 project or film, digital media and music production and
8 development facility project, as originally planned, which
9 will be more than two (2) years from the date construction
10 began, or

11 (c) a change in business ownership or business structure
12 resulting from a merger or acquisition,

13 b. in any tax year during which an agreement is in effect, if the amount of
14 income tax due from the approved company exceeds the state income
15 tax credit available to the approved company, then the approved
16 company shall pay the excess to this state as income tax, and if in any
17 tax year during which an agreement is in effect, if the amount of sales
18 tax to be remitted by the approved company exceeds the sales tax
19 credit available to the approved company, then the approved company
20 shall pay the excess to this state as sales tax,

21 c. within forty-five (45) days after the end of each calendar year, the
22 approved company shall supply the Director with such reports and

1 certifications as the Director may request demonstrating to the
2 satisfaction of the Director that the approved company is in compliance
3 with the provisions of the Oklahoma Tourism Development Act, and
4 d. the approved company shall not receive an inducement with respect to
5 any calendar year if:

6 (1) for a tourism attraction project:

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

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

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

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

21 C. If the approved company utilizes inducements which are subsequently
22 disallowed, then the approved company will be liable for the payment to the Tax

1 Commission of all taxes resulting from the disallowance of the inducements plus
2 applicable penalties and interest.

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

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

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

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

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

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

20 The Tax Commission may require proof of expenditures. Additional credit
21 memoranda may be issued as the approved company certifies additional expenditures of
22 approved costs.

1 No tax credit memorandum shall be issued for any approved costs expended after
2 the expiration of two (2) years from the date the agreement was signed by the Director
3 and the approved company. However, the Director, with the advice and consent of the
4 Tax Commission, may authorize tax credits for approved costs expended up to four (4)
5 years from the date the agreement was signed if the Director determines that the failure
6 to complete the tourism attraction project within two (2) years resulted from:

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

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

12 3. A change in business ownership or business structure resulting from a merger or
13 acquisition.

14 C. 1. An income tax credit allowed pursuant to the provisions of this section shall
15 be applied to the amount of income taxes due from the approved company. If the amount
16 of an income tax credit allowed pursuant to the provisions of this section exceeds the
17 amount of income taxes due for the year in which the credit is granted, the amount of the
18 credit not used may be carried forward for a period not to exceed ten (10) years.

19 2. A sales tax credit allowed pursuant to the provisions of this section may be used
20 to offset a portion of the reported state sales tax liability of the approved company for all
21 sales tax reporting periods following the issuance of the credit memorandum subject to
22 the following limitations:

- 1 a. only increased state sales tax liability may be offset by the issued
2 credit,
- 3 b. an approved company whose agreement provides that it shall expend
4 approved costs in excess of One Million Dollars (\$1,000,000.00) shall be
5 entitled to use only ten percent (10%) of the amount of each issued
6 credit to offset increased state sales tax liability during each calendar
7 year, plus the amount of any unused credit carried forward from a
8 prior calendar year, and an approved company whose agreement
9 provides that it shall expend approved costs of more than ~~Five~~
10 ~~Hundred Thousand Dollars (\$500,000.00)~~ the minimum amount for
11 each project as listed in this subsection but less than One Million
12 Dollars (\$1,000,000.00) shall be entitled to use only twenty percent
13 (20%) of the amount of each issued credit to offset increased state sales
14 tax liability during each calendar year, plus the amount of any unused
15 credit carried forward from a prior calendar year, and
- 16 c. all issued credit memoranda shall expire at the end of the month
17 following the expiration of the agreement as provided in Section
18 2357.39 of this title.

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

21 D. The Tax Commission shall promulgate rules as are necessary for the proper
22 administration of the Oklahoma Tourism Development Act. The Tax Commission may

1 also develop forms and instructions as necessary for an approved company to claim the
2 income tax credit provided by the Oklahoma Tourism Development Act.

3 E. The Tax Commission shall have the authority to obtain any information
4 necessary from the approved company and the Director to verify that approved
5 companies have received the proper amounts of tax credits as authorized by the
6 Oklahoma Tourism Development Act. The Oklahoma Tax Commission shall demand the
7 repayment of any credits taken in excess of the credit allowed by the Oklahoma Tourism
8 Development Act.

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

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

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

- 1 2. “Expenditure” or “production cost” includes but is not limited to:
- 2 a. wages or salaries of persons who are residents of this state
- 3 and who have earned income from working on a film in this
- 4 state, including payments to personal services corporations
- 5 with respect to the services of qualified performing artists,
- 6 as determined under Section 62(a)(A) of the Internal
- 7 Revenue Code,
- 8 b. the cost of construction and operations, wardrobe,
- 9 accessories and related services,
- 10 c. the cost of photography, sound synchronization, lighting
- 11 and related services,
- 12 d. the cost of editing and related services,
- 13 e. rental of facilities and equipment,
- 14 f. other direct costs of producing a film, and
- 15 g. the wages and salaries of persons who are defined and
- 16 registered as an Oklahoma Expatriate by the Office of the
- 17 Oklahoma Film and Music Commission;

18 3. “Film” means a professional single media, multimedia program or feature, which

19 is not child pornography as defined in subsection A of Section 1024.1 of Title 21 of the

20 Oklahoma Statutes or obscene material as defined in paragraph 1 of subsection B of

21 Section 1024.1 of Title 21 of the Oklahoma Statutes, including, but not limited to,

22 national advertising messages that are broadcast on a national affiliate or cable network,

1 fixed on film or digital video, which can be viewed or reproduced and which is exhibited
2 in theaters, licensed for exhibition by individual television stations, groups of stations,
3 networks, cable television stations or other means or licensed for home viewing markets;
4 and

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

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

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

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

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

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BOLD FACE CAPITALIZED language denotes Committee Amendments.
~~Strike thru~~ language denotes deletion from present Statutes.

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

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

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

16 ~~3.~~ 4. The Oklahoma crew requirements set forth in paragraph 1 of this subsection
17 shall not apply if it is determined there is a lack of available Oklahoma personnel to
18 serve as crew. The lack of available Oklahoma personnel to serve as crew shall be
19 verified in writing by the Office of the Oklahoma Film and Music Commission. The
20 amount of rebate paid as provided for in subsection A of this section to a production
21 company where the Oklahoma crew requirements have been waived pursuant to this
22 paragraph shall be fifteen percent (15%).

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

4 D. To be eligible for a rebate payment:

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

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

12 3. Except major studio productions, the production company shall provide the name
13 of the completion guarantor and a copy of the bond guaranteeing the completion of the
14 project or if a film has not secured a completion bond, the production company shall
15 provide evidence that all Oklahoma crew and local vendors have been paid and there are
16 no liens against the production company pending in the state;

17 4. The minimum budget for the film shall be Five Hundred Thousand Dollars
18 (\$500,000.00) of which not less than Three Hundred Thousand Dollars (\$300,000.00)
19 shall be expended in this state. The minimum budget requirements of this paragraph
20 shall be met by any film, television, or commercial production company that produces
21 multiple film, television, or commercial projects within one (1) year, if each project meets
22 a minimum budget of Two Hundred Fifty Thousand Dollars (\$250,000.00) and the total

1 budget of all projects in one (1) year is not less than Five Hundred Thousand Dollars
2 (\$500,000.00) of which not less than Three Hundred Thousand Dollars (\$300,000.00)
3 shall be expended in this state;

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

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

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

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

1 required herein or shall include an affidavit from the production company that the
2 company has not received an exemption from sales taxes pursuant to the provisions of
3 paragraph 21 of Section 1357 of this title.

4 F. The Office shall approve or disapprove all claims for rebate and shall notify the
5 Tax Commission. The Tax Commission shall issue payment for all approved claims from
6 funds in the Oklahoma Film Enhancement Rebate Program Revolving Fund created in
7 Section 3625 of this title on or after July 1, 2006, and on or after each July 1 thereafter
8 following the fiscal year in which the documented expenditures were made. The amount
9 of payments in any single fiscal year shall not exceed Five Million Dollars
10 (\$5,000,000.00). If the amount of approved claims exceeds the amount specified in this
11 subsection in a fiscal year, payments shall be made in the order in which the claims are
12 approved by the Office. If an approved claim is not paid in whole or in part, the unpaid
13 claim or unpaid portion may be paid in the following fiscal year subject to the limitations
14 specified in this subsection.

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

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

19 COMMITTEE REPORT BY: COMMITTEE ON APPROPRIATIONS AND BUDGET,
20 dated 03-05-08 - DO PASS, As Amended and Coauthored.