

EHB 2583

THE STATE SENATE
Thursday, April 03, 2008

ENGROSSED

House Bill No. 2583

As Amended

ENGROSSED 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:~~

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

Section 2357.35 The Legislature hereby finds:

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

2. That it is in the best interests of the citizens of this state to induce the creation of new or the expansion of existing tourism attractions and film, digital media or music production facilities within this state in order to advance the public purposes of relieving unemployment by preserving and creating jobs that would

1 not exist if not for the inducements to be offered by this state to
2 approved companies, and by preserving and creating sources of tax
3 revenues for the support of public services provided by this state;

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

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

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

16 Section 2357.36 As used in the Oklahoma Tourism Development
17 Act:

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

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

5 3. "Approved costs" means:

6 a. obligations incurred for labor and to vendors,
7 contractors, subcontractors, builders and suppliers in
8 connection with the acquisition, construction,
9 equipping and installation of a tourism attraction
10 project or film, digital media or music production and
11 development facility project,

12 b. the costs of acquiring real property or rights in real
13 property in connection with a tourism attraction
14 project or film, digital media or music production and
15 development facility project, and any costs incidental
16 thereto,

17 c. the costs of contract bonds and of insurance of all
18 kinds that may be required or necessary during the
19 course of the acquisition, construction, equipping and
20 installation of a tourism attraction project or film,
21 digital media or music production and development
22 facility project which is not paid by the vendor,
23 supplier, contractor, or otherwise provided,

- 1 d. all costs of architectural and engineering services
2 including, but not limited to, estimates, plans and
3 specifications, preliminary investigations, and
4 supervision of construction and installation, as well
5 as for the performance of all the duties required by
6 or consequent to the acquisition, construction,
7 equipping and installation of a tourism attraction
8 project or film, digital media or music production and
9 development facility project,
- 10 e. all costs required to be paid under the terms of any
11 contract for the acquisition, construction, equipping
12 and installation of a tourism attraction project or
13 film, digital media or music production and
14 development facility project,
- 15 f. all costs required for the installation of utilities
16 in connection with a tourism attraction project or
17 film, digital media or music production and
18 development facility project including, but not
19 limited to, water, sewer, sewage treatment, gas,
20 electricity and communications, and including off-site
21 construction of utility extensions paid for by the
22 approved company, and

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

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

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

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

15 7. "Increased state sales tax liability" means that portion of
16 an approved company's reported state sales tax liability resulting
17 from taxable sales of goods and services to its customers at the
18 tourist attraction or for purposes of a film, digital media or music
19 production and development facility project for any monthly sales
20 tax reporting period after the approved company provides the
21 certification required by subsection B of Section 2357.40 of this
22 title, which exceeds the reported state sales tax liability for

1 sales to its customers for the same month in the calendar year
2 immediately preceding the certification;

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

5 9. "Preliminary approval" means the action taken by the
6 Director conditioned upon final approval by the Director upon
7 satisfaction by the eligible company of the requirements of the
8 Oklahoma Tourism Development Act;

9 10. a. "Tourism attraction" means:

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

18 b. A tourism attraction shall not include:

- 19 (1) lodging facilities, unless the facilities
20 constitute a portion of a tourism attraction
21 project and represent less than fifty percent
22 (50%) of the total approved costs of the tourism
23 attraction project,

- 1 (2) facilities that are primarily devoted to the
2 retail sale of goods, unless the goods are
3 created at the site of the tourism attraction
4 project or if the sale of goods is incidental to
5 the tourism attraction project,
- 6 (3) facilities that are not open to the general
7 public,
- 8 (4) facilities that do not serve as a likely
9 destination where individuals who are not
10 residents of this state would remain overnight in
11 commercial lodging at or near the tourism
12 attraction project,
- 13 (5) facilities owned by the State of Oklahoma or a
14 political subdivision of this state, or
- 15 (6) facilities established for the purpose of
16 conducting legalized gambling. However, a
17 facility regulated under Section 200 et seq. of
18 Title 3A of the Oklahoma Statutes shall be a
19 tourism attraction for purposes of the Oklahoma
20 Tourism Development Act for any approved project
21 as outlined in subparagraph a of this paragraph
22 or for an approved project relating to pari-
23 mutuel racing at the facility and not for

1 establishing a casino or for offering casino-
2 style gambling; and

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

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

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

15 (1) surveys, and

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

17 (a) water, sewer, sewage treatment, gas,
18 electricity, communications, and similar
19 facilities, and

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

1 all of which are to be used to improve the economic
2 situation of the approved company in a manner that
3 shall allow the approved company to attract tourists.

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

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

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

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

22 2. A description and location of the project;

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

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

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

11 6. The anticipated revenues and expenses generated by the
12 project.

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

21 C. 1. For a tourism attraction project, after granting a
22 preliminary approval, the Director shall engage the services of a
23 competent consulting firm which shall submit to the Director a

1 report analyzing the data made available by the eligible company and
2 which shall collect and analyze additional information necessary to
3 determine that, in the independent judgment of the consultant, the
4 tourism attraction project will:

- 5 a. attract at least twenty-five percent (25%) of its
6 visitors from among persons who are not residents of
7 this state;
- 8 b. have costs in excess of Five Hundred Thousand Dollars
9 (\$500,000.00);
- 10 c. have a significant and positive economic impact on
11 this state considering, among other factors, the
12 extent to which the tourism attraction project will
13 compete directly with existing tourism attractions in
14 this state, and the amount by which increased tax
15 revenues from the tourism attraction project will
16 exceed the sales tax credit or income tax credit
17 allowed pursuant to Section 2357.40 of this title;
- 18 d. produce sufficient revenues and public demand to be
19 operating and open to the public on a regular and
20 persistent basis; and
- 21 e. not adversely affect existing employment in this
22 state.

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

- 9 a. for music production and postproduction facilities
10 have costs in excess of ~~Five Hundred Thousand Dollars~~
11 ~~(\$500,000.00)~~ One Hundred Thousand Dollars
12 (\$100,000.00), for film and digital media production
13 and postproduction facilities have costs in excess of
14 Three Hundred Fifty Thousand Dollars (\$350,000.00);
15 b. have a significant and positive economic impact on
16 this state considering, among other factors, the
17 extent to which the film, digital media or music
18 production and development facility will compete
19 directly with existing facilities in this state, and
20 the amount by which increased tax revenues from the
21 facility will exceed the sales tax credit or income
22 tax credit allowed pursuant to Section 2357.40 of this
23 title; and

1 c. not adversely affect existing employment in this
2 state.

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

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

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

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

21 C. The Director shall review the report of the consultant
22 prepared pursuant to subsection C of Section 2357.37 of this title
23 and other information that has been made available to the Director

1 in order to assist the Director in determining whether the tourism
2 attraction project or film, digital media and music production and
3 development facility project will further the purposes of the
4 Oklahoma Tourism Development Act.

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

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

21 SECTION 5. AMENDATORY 68 O.S. 2001, Section 2357.39, as
22 last amended by Section 5, Chapter 429, O.S.L. 2005 (68 O.S. Supp.
23 2007, Section 2357.39), is amended to read as follows:

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

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

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

16 3. The following provisions:

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

19 (1) the date of the final approval of the tourism
20 attraction project or film, digital media and
21 music production and development facility
22 project, or

1 (2) the completion date specified in the agreement,
2 if the completion date is within two (2) years of
3 the date of the final approval of the tourism
4 attraction project or film, digital media and
5 music production and development facility
6 project. However, the term of the agreement may
7 be extended for up to two (2) additional years by
8 the Director, with the advice and consent of the
9 Oklahoma Tax Commission, if the Director
10 determines that the failure to complete the
11 tourism attraction project or film, digital media
12 and music production and development facility
13 project within two (2) years resulted from:
14 (a) unanticipated and unavoidable delay in the
15 construction of the tourism attraction
16 project or film, digital media and music
17 production and development facility project,
18 (b) an original completion date for the tourism
19 attraction project or film, digital media
20 and music production and development
21 facility project, as originally planned,
22 which will be more than two (2) years from
23 the date construction began, or

- 1 (c) a change in business ownership or business
2 structure resulting from a merger or
3 acquisition,
- 4 b. in any tax year during which an agreement is in
5 effect, if the amount of income tax due from the
6 approved company exceeds the state income tax credit
7 available to the approved company, then the approved
8 company shall pay the excess to this state as income
9 tax, and if in any tax year during which an agreement
10 is in effect, if the amount of sales tax to be
11 remitted by the approved company exceeds the sales tax
12 credit available to the approved company, then the
13 approved company shall pay the excess to this state as
14 sales tax,
- 15 c. within forty-five (45) days after the end of each
16 calendar year, the approved company shall supply the
17 Director with such reports and certifications as the
18 Director may request demonstrating to the satisfaction
19 of the Director that the approved company is in
20 compliance with the provisions of the Oklahoma Tourism
21 Development Act, and
- 22 d. the approved company shall not receive an inducement
23 with respect to any calendar year if:

1 (1) for a tourism attraction project:

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

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

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

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

20 C. If the approved company utilizes inducements which are
21 subsequently disallowed, then the approved company will be liable
22 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

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

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

1 company granting an income tax credit or sales tax credit in the
2 amount of twenty-five percent (25%) of the approved costs. The
3 credit on all subsequent additional certified approved costs shall
4 be in the amount of twenty-five percent (25%) of the costs.

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

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

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

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

1 3. A change in business ownership or business structure
2 resulting from a merger or acquisition.

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

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

- 15 a. only increased state sales tax liability may be offset
16 by the issued credit,
- 17 b. an approved company whose agreement provides that it
18 shall expend approved costs in excess of One Million
19 Dollars (\$1,000,000.00) shall be entitled to use only
20 ten percent (10%) of the amount of each issued credit
21 to offset increased state sales tax liability during
22 each calendar year, plus the amount of any unused
23 credit carried forward from a prior calendar year, and

1 an approved company whose agreement provides that it
2 shall expend approved costs of more than ~~Five Hundred~~
3 ~~Thousand Dollars (\$500,000.00)~~ the minimum amount for
4 each project as listed in this subsection but less
5 than One Million Dollars (\$1,000,000.00) shall be
6 entitled to use only twenty percent (20%) of the
7 amount of each issued credit to offset increased state
8 sales tax liability during each calendar year, plus
9 the amount of any unused credit carried forward from a
10 prior calendar year, and

11 c. all issued credit memoranda shall expire at the end of
12 the month following the expiration of the agreement as
13 provided in Section 2357.39 of this title.

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

17 D. The Tax Commission shall promulgate rules as are necessary
18 for the proper administration of the Oklahoma Tourism Development
19 Act. The Tax Commission may also develop forms and instructions as
20 necessary for an approved company to claim the income tax credit
21 provided by the Oklahoma Tourism Development Act.

22 E. The Tax Commission shall have the authority to obtain any
23 information necessary from the approved company and the Director to

1 verify that approved companies have received the proper amounts of
2 tax credits as authorized by the Oklahoma Tourism Development Act.
3 The Oklahoma Tax Commission shall demand the repayment of any
4 credits taken in excess of the credit allowed by the Oklahoma
5 Tourism Development Act.

6 **F. No income or sales tax credit authorized by this section**
7 **shall be granted on or after January 1, 2013.**

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

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

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

1 individual with an Oklahoma income tax ~~or corporate tax liability~~
2 requirement;

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

- 5 a. wages or salaries of persons who are
6 residents of this state and who have earned
7 income from working on a film in this state,
8 including payments to personal services
9 corporations with respect to the services of
10 qualified performing artists, as determined
11 under Section 62(a)(A) of the Internal
12 Revenue Code,
- 13 b. the cost of construction and operations,
14 wardrobe, accessories and related services,
- 15 c. the cost of photography, sound
16 synchronization, lighting and related
17 services,
- 18 d. the cost of editing and related services,
- 19 e. rental of facilities and equipment,
- 20 f. other direct costs of producing a film, and
21 g. the wages and salaries of persons who are
22 defined and registered as an Oklahoma

1 Expatriate by the Office of the Oklahoma Film
2 and Music Commission;

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

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

16 SECTION 8. AMENDATORY 68 O.S. 2001, Section 3624, as
17 last amended by Section 2, Chapter 341, O.S.L. 2007 (68 O.S. Supp.
18 2007, Section 3624), is amended to read as follows:

19 Section 3624. A. There is hereby created the Oklahoma Film
20 Enhancement Rebate Program. **A Before January 1, 2013, a rebate in**
21 the amount of up to ~~fifteen percent (15%)~~ seventeen percent (17%) of
22 documented expenditures made in Oklahoma directly attributable to
23 the production of a film, television production, or television

1 commercial, as defined in Section 3623 of this title, in this state,
2 may be paid to the production company responsible for the production
3 if the Office of the Oklahoma Film and Music Commission determines
4 that the proposed project has a reasonable chance of economic
5 success.

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

- 9 a. fifteen percent (15%) if fifty percent (50%) or more
10 of the crew are residents of Oklahoma and are employed
11 in this state,
12 b. ten percent (10%) if twenty-five percent (25%) to
13 forty-nine percent (49%) of the crew are residents of
14 Oklahoma and are employed in this state, and
15 c. five percent (5%) if less than twenty-five percent
16 (25%) of the crew are residents of Oklahoma and are
17 employed in this state.

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

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

8 ~~3-~~ 4. The Oklahoma crew requirements set forth in paragraph 1
9 of this subsection shall not apply if it is determined there is a
10 lack of available Oklahoma personnel to serve as crew. The lack of
11 available Oklahoma personnel to serve as crew shall be verified in
12 writing by the Office of the Oklahoma Film and Music Commission.
13 The amount of rebate paid as provided for in subsection A of this
14 section to a production company where the Oklahoma crew requirements
15 have been waived pursuant to this paragraph shall be fifteen percent
16 (15%).

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

20 D. To be eligible for a rebate payment:

21 1. The production company responsible for a film, television
22 production, or television commercial, as defined in Section 3623 of
23 this title, made in this state shall submit documentation to the

1 Office of the Oklahoma Film and Music Commission of the amount of
2 wages paid for employment in this state to residents of this state
3 directly relating to the production and the amount of other
4 production costs incurred in this state directly relating to the
5 production;

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

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

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

1 (\$500,000.00) of which not less than Three Hundred Thousand Dollars
2 (\$300,000.00) shall be expended in this state;

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

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

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

19 E. A production company shall not be eligible to receive both a
20 rebate payment pursuant to the provisions of this act and an
21 exemption from sales taxes pursuant to the provisions of paragraph
22 21 of Section 1357 of this title. If a production company has
23 received such an exemption from sales taxes and submits a claim for

1 rebate pursuant to the provisions of the Compete with Canada Film
2 Act, the company shall be required to fully repay the amount of the
3 exemption to the Tax Commission. A claim for a rebate shall include
4 documentation from the Tax Commission that repayment has been made
5 as required herein or shall include an affidavit from the production
6 company that the company has not received an exemption from sales
7 taxes pursuant to the provisions of paragraph 21 of Section 1357 of
8 this title.

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

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

1 SECTION 10. It being immediately necessary for the preservation
2 of the public peace, health and safety, an emergency is hereby
3 declared to exist, by reason whereof this act shall take effect and
4 be in full force from and after its passage and approval.
5 COMMITTEE REPORT BY: COMMITTEE ON FINANCE, dated 4-1-08 - DO PASS,
6 As Amended.