

1 STATE OF OKLAHOMA

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

3 HOUSE BILL 2583

By: Hyman

4
5
6 AS INTRODUCE

7 An Act relating to revenue and taxation; amending 68
8 O.S. 2001, Sections 3623, as last amended by Section
9 1, Chapter 341, O.S.L. 2007 and 3624, as last amended
10 by Section 2, Chapter 341, O.S.L. 2007 (68 O.S. Supp.
11 2007, Sections 3623 and 3624), which relate to the
12 Compete with Canada Film Act; modifying certain
13 definition; providing an additional rebate for
14 production companies using Oklahoma-based music or
15 recording music in Oklahoma; providing an effective
16 date; and declaring an emergency.

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

18 SECTION 1. AMENDATORY 68 O.S. 2001, Section 3623, as
19 last amended by Section 1, Chapter 341, O.S.L. 2007 (68 O.S. Supp.
20 2007, Section 3623), is amended to read as follows:

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

22 1. "Crew" means any person who works on preproduction,
23 principal photography, and postproduction, with the exception of
24 producers, principal cast, screenwriters, and the director. The
qualifying salary of producers, principal cast, screenwriters, and
the director, also known as "above-the-line personnel", may be
included as crew if the salaries are paid to loan-out corporations

1 and limited liability companies registered to do business in the
2 State of Oklahoma or the salaries are paid to Oklahoma-based above-
3 the-line personnel. The qualifying salary of above-the-line
4 personnel shall not comprise more than twenty-five percent (25%) of
5 total expenditures as defined in paragraph 2 of this section. For
6 purposes of this paragraph, "Oklahoma-based" means a company or
7 individual with an Oklahoma income tax ~~or corporate tax liability~~
8 requirement;

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

- 11 a. wages or salaries of persons who are
12 residents of this state and who have earned
13 income from working on a film in this state,
14 including payments to personal services
15 corporations with respect to the services of
16 qualified performing artists, as determined
17 under Section 62(a)(A) of the Internal
18 Revenue Code,
- 19 b. the cost of construction and operations,
20 wardrobe, accessories and related services,
- 21 c. the cost of photography, sound
22 synchronization, lighting and related
23 services,
- 24 d. the cost of editing and related services,

- e. rental of facilities and equipment,
- f. other direct costs of producing a film, and
- g. the wages and salaries of persons who are defined and registered as an Oklahoma Expatriate by the Office of the Oklahoma Film and Music Commission;

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

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

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

Section 3624. A. There is hereby created the Oklahoma Film Enhancement Rebate Program. A rebate in the amount of up to ~~fifteen~~

1 ~~percent (15%)~~ seventeen percent (17%) of documented expenditures
2 made in Oklahoma directly attributable to the production of a film,
3 television production, or television commercial, as defined in
4 Section 3623 of this title, in this state, may be paid to the
5 production company responsible for the production if the Office of
6 the Oklahoma Film and Music Commission determines that the proposed
7 project has a reasonable chance of economic success.

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

- 11 a. fifteen percent (15%) if fifty percent (50%) or more
12 of the crew are residents of Oklahoma and are employed
13 in this state,
- 14 b. ten percent (10%) if twenty-five percent (25%) to
15 forty-nine percent (49%) of the crew are residents of
16 Oklahoma and are employed in this state, and
- 17 c. five percent (5%) if less than twenty-five percent
18 (25%) of the crew are residents of Oklahoma and are
19 employed in this state.

20 2. For a production company that spends at least Twenty
21 Thousand Dollars (\$20,000.00) for the use of music created by an
22 Oklahoma resident that is recorded in Oklahoma or for the cost of
23 recording songs or music in Oklahoma for use in the production, a
24

1 two-percent rebate shall be paid which shall be in addition to the
2 rebate paid as provided for in paragraph 1 of this subsection.

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

10 ~~3.~~ 4. The Oklahoma crew requirements set forth in paragraph 1
11 of this subsection shall not apply if it is determined there is a
12 lack of available Oklahoma personnel to serve as crew. The lack of
13 available Oklahoma personnel to serve as crew shall be verified in
14 writing by the Office of the Oklahoma Film and Music Commission.
15 The amount of rebate paid as provided for in subsection A of this
16 section to a production company where the Oklahoma crew requirements
17 have been waived pursuant to this paragraph shall be fifteen percent
18 (15%).

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

22 D. To be eligible for a rebate payment:

23 1. The production company responsible for a film, television
24 production, or television commercial, as defined in Section 3623 of

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

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

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

16 4. The minimum budget for the film shall be Five Hundred
17 Thousand Dollars (\$500,000.00) of which not less than Three Hundred
18 Thousand Dollars (\$300,000.00) shall be expended in this state. The
19 minimum budget requirements of this paragraph shall be met by any
20 film, television, or commercial production company that produces
21 multiple film, television, or commercial projects within one (1)
22 year, if each project meets a minimum budget of Two Hundred Fifty
23 Thousand Dollars (\$250,000.00) and the total budget of all projects
24 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 or evidence
5 of being accepted to at least one of the top fifteen film festivals
6 or two or more of the top thirty film festivals in the United States
7 as determined by the Office of the Oklahoma Film and Music
8 Commission within one (1) year from the end of principal
9 photography;

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

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

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

1 exemption to the Tax Commission. A claim for a rebate shall include
2 documentation from the Tax Commission that repayment has been made
3 as required herein or shall include an affidavit from the production
4 company that the company has not received an exemption from sales
5 taxes pursuant to the provisions of paragraph 21 of Section 1357 of
6 this title.

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

21 SECTION 3. This act shall become effective July 1, 2008.

22 SECTION 4. It being immediately necessary for the preservation
23 of the public peace, health and safety, an emergency is hereby
24

1 declared to exist, by reason whereof this act shall take effect and
2 be in full force from and after its passage and approval.

3

4 51-2-8680 KB 01/13/08

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24