

1 STATE OF OKLAHOMA

2 1st Session of the 52nd Legislature (2009)

3 SENATE BILL 644

By: Sykes

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5
6 AS INTRODUCED

7 An Act relating to revenue and taxation; amending 68
8 O.S. 2001, Sections 3623 and 3624, as last amended by
9 Sections 14 and 15, Chapter 436, O.S.L. 2008 (68 O.S.
10 Supp. 2008, Sections 3623 and 3624), which relate to
11 income tax rebates; modifying definition; defining
12 term; expanding rebate program to include video game
13 production and development; conforming language; and
14 providing an effective date.

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

16 SECTION 1. AMENDATORY 68 O.S. 2001, Section 3623, as
17 last amended by Section 14, Chapter 436, O.S.L. 2008 (68 O.S. Supp.
18 2008, Section 3623), is amended to read as follows:

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

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

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

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

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

1 g. the wages and salaries of persons who are
2 defined and registered as an Oklahoma
3 Expatriate by the Office of the Oklahoma Film
4 and Music Commission;

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

16 4. "Production company" means a person or company who produces
17 film for exhibition in theaters, on television or elsewhere or a
18 person or company who produces video games for commercial use or
19 distribution; and

20 5. "Video games" mean products that are intended for commercial
21 use or are produced for distribution on electronic media and which
22 include an appreciable quantity of at least three (3) of the
23 following types of data: text, sound, fixed images, animated images
24 and 3D geometry and which are rated or will be rated by the

1 Entertainment Software Rating Board with the ratings of Early
2 Childhood, Everyone, Everyone 10+ and Teen.

3 SECTION 2. AMENDATORY 68 O.S. 2001, Section 3624, as
4 last amended by Section 15, Chapter 436, O.S.L. 2008 (68 O.S. Supp.
5 2008, Section 3624), is amended to read as follows:

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

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

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

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

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

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

18 4. The Oklahoma crew requirements set forth in paragraph 1 of
19 this subsection shall not apply if it is determined there is a lack
20 of available Oklahoma personnel to serve as crew. The lack of
21 available Oklahoma personnel to serve as crew shall be verified in
22 writing by the Office of the Oklahoma Film and Music Commission.
23 The amount of rebate paid as provided for in subsection A of this
24 section to a production company where the Oklahoma crew requirements

1 have been waived pursuant to this paragraph shall be fifteen percent
2 (15%).

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

6 D. To be eligible for a rebate payment:

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

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

17 3. Except major studio productions, the production company
18 shall provide the name of the completion guarantor and a copy of the
19 bond guaranteeing the completion of the project or if a film or
20 video game production has not secured a completion bond, the
21 production company shall provide evidence that all Oklahoma crew and
22 local vendors have been paid and there are no liens against the
23 production company pending in the state;

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

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

22 6. The production company shall provide evidence of complete
23 financing for production prior to the commencement of principal
24 photography or development; 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 3. This act shall become effective November 1, 2009.

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