

1 ENGROSSED SENATE
2 BILL NO. 391

By: Jolley of the Senate

and

Hickman of the House

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6 [tax incentives - Compete with Canada Film Act -
7 clarifying eligibility for certain rebate payment -
8 increasing limitation on total amount of payments -
9 effective date]

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

11 SECTION 1. AMENDATORY 68 O.S. 2001, Section 3623, as
12 last amended by Section 14, Chapter 436, O.S.L. 2008 (68 O.S. Supp.
13 2010, Section 3623), is amended to read as follows:

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

15 1. "Crew" means any person who works on preproduction,
16 principal photography, and postproduction, with the exception of
17 producers, Screen Actors Guild Schedule F (or contract performer)
18 principal cast, screenwriters, and the director. ~~The qualifying~~
19 ~~salary of producers, principal cast, screenwriters, and the~~
20 ~~director, also known as "above the line personnel", may be included~~
21 ~~as crew if the salaries are paid to loan-out corporations and~~
22 ~~limited liability companies registered to do business in the State~~
23 ~~of Oklahoma or the salaries are paid to Oklahoma-based above-the-~~
24 ~~line personnel. The qualifying salary of above the line personnel~~

1 ~~shall not comprise more than twenty five percent (25%) of total~~
2 ~~expenditures as defined in paragraph 2 of this section. For~~
3 ~~purposes of this paragraph, "Oklahoma based" means a company or~~
4 ~~individual with an Oklahoma income tax requirement;~~

5 2. "Expenditure" or "production cost" includes but is not
6 limited to:

- 7 a. wages or salaries of persons who are
8 residents of this state and who have earned
9 income from working on a film in this state,
10 including payments to personal services
11 corporations with respect to the services of
12 qualified performing artists, as determined
13 under Section 62(a) (A) of the Internal
14 Revenue Code,
- 15 b. the cost of construction and operations,
16 wardrobe, accessories and related services,
- 17 c. the cost of photography, sound
18 synchronization, lighting and related
19 services,
- 20 d. the cost of editing and related services,
- 21 e. rental of facilities and equipment,
- 22 f. other direct costs of producing a film, and
- 23 g. the wages and salaries of persons who are
24 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. "Non-resident above-the-line personnel" means any non-
15 Oklahoma resident producer, Screen Actors Guild Schedule F (or
16 contract performer) principal cast, screenwriter, and director, who
17 may be included as crew if the payments are paid to loan-out
18 corporations and limited liability companies registered to do
19 business in the state of Oklahoma and whose qualifying salary shall
20 not comprise more than twenty-five percent (25%) of the aggregate
21 total expenditures as defined in paragraph 2 of this section.

22 5. "Production company" means a person or company who produces
23 film for exhibition in theaters, on television or elsewhere.
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1 6. "Resident above-the-line personnel" means any resident
2 Oklahoma-based producer, Screen Actors Guild Schedule F (or contract
3 performer) principal cast, screenwriter, and director, who may be
4 included as crew and whose qualifying salary shall not comprise more
5 than twenty-five percent (25%) of the aggregate total expenditures
6 as defined in paragraph 2 of this section. For purposes of this
7 paragraph, "Oklahoma-based" means a company or individual with an
8 Oklahoma income tax requirement.

9 SECTION 2. AMENDATORY 68 O.S. 2001, Section 3624, as
10 last amended by Section 14, Chapter 426, O.S.L. 2009 (68 O.S. Supp.
11 2010, Section 3624), is amended to read as follows:

12 Section 3624. A. There is hereby created the Oklahoma Film
13 Enhancement Rebate Program. ~~A~~ Except as provided in subsection B of
14 this section, a rebate in the amount of up to ~~seventeen percent~~
15 ~~(17%)~~ thirty-five percent (35%) of documented expenditures made
16 after July 1, 2009, in Oklahoma directly attributable to the
17 production of a film, television production, or television
18 commercial, as defined in Section 3623 of this title, in this state,
19 may be paid to the production company responsible for the
20 production. ~~Provided, for documented expenditures made after July~~
21 ~~1, 2009, the rebate amount shall be thirty-five percent (35%),~~
22 ~~except as provided in subsection B of this section.~~

23 B. The amount of rebate paid to the production company as
24 provided for in subsection A of this section shall be increased by

1 an additional two percent (2%) of documented expenditures if a
2 production company spends at least Twenty Thousand Dollars
3 (\$20,000.00) for the use of music created by an Oklahoma resident
4 that is recorded in Oklahoma or for the cost of recording songs or
5 music in Oklahoma for use in the production.

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

9 D. To be eligible for a rebate payment:

10 1. The production company responsible for a film, television
11 production, or television commercial, as defined in Section 3623 of
12 this title, made in this state shall submit documentation to the
13 Office of the Oklahoma Film and Music Commission of the amount of
14 wages paid for employment in this state to residents of this state
15 who are employed as crew or resident above-the-line personnel and
16 non-resident above-the-line personnel, as defined in Section 3623 of
17 this title, directly relating to the production and the amount of
18 other production costs incurred in this state directly relating to
19 the production;

20 2. The production company has filed or will file any Oklahoma
21 tax return or tax document which may be required by law;

22 3. Except major studio productions, the production company
23 shall provide the name of the completion guarantor and a copy of the
24 bond guaranteeing the completion of the project or if a film has not

1 secured a completion bond, the production company shall provide
2 evidence that all Oklahoma crew and local vendors have been paid and
3 there are no liens against the production company pending in the
4 state;

5 4. The minimum budget for the film shall be Fifty Thousand
6 Dollars (\$50,000.00) of which not less than Twenty-five Thousand
7 Dollars (\$25,000.00) shall be expended in this state;

8 5. The production company shall provide evidence of financing
9 for production prior to the commencement of principal photography;
10 and

11 6. The production company shall provide evidence of a
12 certificate of general liability insurance with a minimum coverage
13 of One Million Dollars (\$1,000,000.00) and a workers' compensation
14 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
17 rebate payment pursuant to the provisions of ~~this act~~ Section 3621
18 et seq. of this title and an exemption from sales taxes pursuant to
19 the provisions of paragraph 21 of Section 1357 of this title. If a
20 production company has received such an exemption from sales taxes
21 and submits a claim for rebate pursuant to the provisions of the
22 Compete with Canada Film Act, the company shall be required to fully
23 repay the amount of the exemption to the Tax Commission. A claim
24 for a rebate shall include documentation from the Tax Commission

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

5 F. The Office shall approve or disapprove all claims for rebate
6 and shall notify the Tax Commission. The Tax Commission shall, upon
7 notification of approval from the Office of the Film and Music
8 Commission, issue payment for all approved claims from funds in the
9 Oklahoma Film Enhancement Rebate Program Revolving Fund created in
10 Section 3625 of this title. ~~Provided, no claims for rebate for~~
11 ~~expenditures made on or after July 1, 2009, shall be paid prior to~~
12 ~~July 1, 2010.~~ The amount of payments in any single fiscal year
13 shall not exceed ~~Five Million Dollars (\$5,000,000.00)~~ Ten Million
14 Dollars (\$10,000,000.00). If the amount of approved claims exceeds
15 the amount specified in this subsection in a fiscal year, payments
16 shall be made in the order in which the claims are approved by the
17 Office. If an approved claim is not paid in whole or in part, the
18 unpaid claim or unpaid portion may be paid in the following fiscal
19 year subject to the limitations specified in this subsection.

20 SECTION 3. This act shall become effective November 1, 2011.
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1 Passed the Senate the 14th day of March, 2011.

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4 Presiding Officer of the Senate

5 Passed the House of Representatives the ____ day of _____,
6 2011.

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9 Presiding Officer of the House
10 of Representatives