

1 STATE OF OKLAHOMA

2 1st Session of the 53rd Legislature (2011)

3 HOUSE BILL 1037

By: Sears

4
5
6 AS INTRODUCED

7 An Act relating to revenue and taxation; amending 68
8 O.S. 2001, Section 3623, as last amended by Section
9 14, Chapter 436, O.S.L. 2008 (68 O.S. Supp. 2010,
10 Section 3623), which relates to the Oklahoma Film
11 Enhancement Rebate Program; defining terms; amending
12 68 O.S. 2001, Section 3624, as last amended by
13 Section 14, Chapter 426, O.S.L. 2009 (68 O.S. Supp.
2010, Section 3624), which relates to the Oklahoma
14 Film Enhancement Rebate Program; deleting obsolete
15 language; requiring additional documentation of
16 certain wages; increasing limit on total credits
17 allowed per fiscal year; providing an effective date;
18 and declaring an emergency.

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

20 SECTION 1. AMENDATORY 68 O.S. 2001, Section 3623, as
21 last amended by Section 14, Chapter 436, O.S.L. 2008 (68 O.S. Supp.
22 2010, Section 3623), is amended to read as follows:

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

24 1. "Crew" means any person who works on preproduction,
principal photography, and postproduction, with the exception of
producers, Screen Actors Guild Schedule F (or Contract Performer)
principal cast, screenwriters, and the director. ~~The qualifying~~

1 ~~salary of producers, principal cast, screenwriters, and the~~
2 ~~director, also known as "above the line personnel", may be included~~
3 ~~as crew if the salaries are paid to loan-out corporations and~~
4 ~~limited liability companies registered to do business in the State~~
5 ~~of Oklahoma or the salaries are paid to Oklahoma-based above-the-~~
6 ~~line personnel. The qualifying salary of above the line personnel~~
7 ~~shall not comprise more than twenty-five percent (25%) of total~~
8 ~~expenditures as defined in paragraph 2 of this section. For~~
9 ~~purposes of this paragraph, "Oklahoma-based" means a company or~~
10 ~~individual with an Oklahoma income tax requirement;~~

11 2. "Expenditure" or "production cost" includes but is not
12 limited to:

13 a. wages or salaries of persons who are
14 residents of this state and who have earned
15 income from working on a film in this state,
16 including payments to personal services
17 corporations with respect to the services of
18 qualified performing artists, as determined
19 under Section 62(a)(A) of the Internal
20 Revenue Code,

21 b. the cost of construction and operations,
22 wardrobe, accessories and related services,
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- 1 c. the cost of photography, sound
2 synchronization, lighting and related
3 services,
4 d. the cost of editing and related services,
5 e. rental of facilities and equipment,
6 f. other direct costs of producing a film, and
7 g. the wages and salaries of persons who are
8 defined and registered as an Oklahoma
9 Expatriate by the Office of the Oklahoma Film
10 and Music Commission;

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

22 4. "Nonresident above-the-line personnel" means any non-
23 Oklahoma resident producers, Screen Actors Guild Schedule F (or
24 Contract Performer) principal cast, screenwriters, and director, who

1 may be included as "crew" if the salaries are paid to loan-out
2 corporations and limited liability companies registered to do
3 business in the State of Oklahoma and whose qualifying salary shall
4 not comprise more than twenty-five percent (25%) of total
5 expenditures as defined in paragraph 2 of this section;

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

8 6. "Resident above-the-line personnel" means any resident
9 Oklahoma-based producer, Screen Actors Guild Schedule F (or Contract
10 Performer) principal cast, screenwriter, and director, who may be
11 included as "crew" and whose qualifying salary shall not comprise
12 more than twenty-five percent (25%) of total expenditures as defined
13 in paragraph 2 of this section. For purposes of this paragraph,
14 "Oklahoma-based" means a company or individual with an Oklahoma
15 income tax requirement.

16 SECTION 2. AMENDATORY 68 O.S. 2001, Section 3624, as
17 last amended by Section 14, Chapter 426, O.S.L. 2009 (68 O.S. Supp.
18 2010, Section 3624), is amended to read as follows:

19 Section 3624. A. There is hereby created the Oklahoma Film
20 Enhancement Rebate Program. A rebate in the amount of up to
21 ~~seventeen percent (17%)~~ thirty-five percent (35%) of documented
22 expenditures made in Oklahoma directly attributable to the
23 production of a film, television production, or television
24 commercial, as defined in Section 3623 of this title, in this state,

1 may be paid to the production company responsible for the
2 production. ~~Provided, for documented expenditures made after July~~
3 ~~1, 2009, the rebate amount shall be thirty five percent (35%),~~
4 ~~except as provided in subsection B of this section.~~

5 B. The amount of rebate paid to the production company as
6 provided for in subsection A of this section shall be increased by
7 an additional two percent (2%) of documented expenditures if a
8 production company spends at least Twenty Thousand Dollars
9 (\$20,000.00) for the use of music created by an Oklahoma resident
10 that is recorded in Oklahoma or for the cost of recording songs or
11 music in Oklahoma for use in the production.

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

15 D. To be eligible for a rebate payment:

16 1. The production company responsible for a film, television
17 production, or television commercial, as defined in Section 3623 of
18 this title, made in this state shall submit documentation to the
19 Office of the Oklahoma Film and Music Commission of the amount of
20 wages paid for employment in this state to ~~residents~~ resident crew
21 and resident above-the-line personnel of this state and nonresident
22 above-the-line personnel as defined in Section 3623 of this title
23 directly relating to the production and the amount of other
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1 production costs incurred in this state directly relating to the
2 production;

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

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

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

15 5. The production company shall provide evidence of financing
16 for production prior to the commencement of principal photography;
17 and

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

23 E. A production company shall not be eligible to receive both a
24 rebate payment pursuant to the provisions of this act and an

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

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

1 unpaid claim or unpaid portion may be paid in the following fiscal
2 year subject to the limitations specified in this subsection.

3 SECTION 3. This act shall become effective July 1, 2011.

4 SECTION 4. It being immediately necessary for the preservation
5 of the public peace, health and safety, an emergency is hereby
6 declared to exist, by reason whereof this act shall take effect and
7 be in full force from and after its passage and approval.

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