

**SENATE FLOOR VERSION**

February 28, 2011

As Amended

SENATE BILL NO. 391

By: Jolley of the Senate

and

## Hickman of the House

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

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

SECTION 1. AMENDATORY 68 O.S. 2001, Section 3623, as

last amended by Section 14, Chapter 436, O.S.L. 2008 (68 O.S. Supp. 2010, Section 3623), is amended to read as follows:

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

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 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 and limited liability companies registered to do business in the State

1 ~~of Oklahoma or the salaries are paid to Oklahoma based above the~~  
2 ~~line personnel. The qualifying salary of above the line personnel~~  
3 ~~shall not comprise more than twenty five percent (25%) of total~~  
4 ~~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

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;

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

"Non-resident above-the-line personnel" means any non-resident producer, Screen Actors Guild Schedule F (or performer) principal cast, screenwriter, and director, who is included as crew if the payments are paid to loan-out ions and limited liability companies registered to do in the state of Oklahoma and whose qualifying salary shall rise more than twenty-five percent (25%) of the aggregate expenditures as defined in paragraph 2 of this section.

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

11       SECTION 2.       AMENDATORY       68 O.S. 2001, Section 3624, as  
12       last amended by Section 14, Chapter 426, O.S.L. 2009 (68 O.S. Supp.  
13       2010, Section 3624), is amended to read as follows:

14       Section 3624. A. There is hereby created the Oklahoma Film  
15       Enhancement Rebate Program. A Except as provided in subsection B of  
16       this section, a rebate in the amount of up to seventeen percent  
17       (17%) thirty-five percent (35%) of documented expenditures made  
18       after July 1, 2009, in Oklahoma directly attributable to the  
19       production of a film, television production, or television  
20       commercial, as defined in Section 3623 of this title, in this state,  
21       may be paid to the production company responsible for the  
22       production. Provided, for documented expenditures made after July  
23       1, 2009, the rebate amount shall be thirty-five percent (35%),  
24       except as provided in subsection B of this section.

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

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

11       D. To be eligible for a rebate payment:

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

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

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

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

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

14       6. 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~~ Section 3621  
21 et seq. of this title and an exemption from sales taxes pursuant to  
22 the provisions of paragraph 21 of Section 1357 of this title. If a  
23 production company has received such an exemption from sales taxes  
24 and submits a claim for rebate pursuant to the provisions of the

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

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

23 SECTION 3. This act shall become effective November 1, 2011.  
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1 COMMITTEE REPORT BY: COMMITTEE ON FINANCE, dated 2-22-11 - DO PASS,  
As Amended and Coauthored.

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