

STATE OF OKLAHOMA

2nd Session of the 57th Legislature (2020)

COMMITTEE SUBSTITUTE  
FOR

HOUSE BILL NO. 3921

By: Dunnington

COMMITTEE SUBSTITUTE

[ revenue and taxation - income tax - insurance  
premium tax - qualifying entertainment production  
expenses - base credit amount - additional credit  
amounts - maximum credits available - annual cap -  
administration of cap - Compete with Canada Film  
Act - renaming Compete with Canada Film Act to  
Oklahoma Film and Television Production Incentive  
Program - effective date -  
emergency ]

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

SECTION 1. NEW LAW A new section of law to be codified  
in the Oklahoma Statutes as Section 2357.1001 of Title 68, unless  
there is created a duplication in numbering, reads as follows:

A. As used in this section:

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

12        2. "Qualified entertainment industry expenditure" means either  
13 a film production project or television episode production project  
14 with a projected budget amount in excess of Five Million Dollars  
15 (\$5,000,000.00) and for which expenditures of the following type are  
16 made within the state during the production process:

17            a. wages or salaries of persons:

18                    (1) with respect to the credit percentage authorized  
19                    by subsection C of this section who are residents  
20                    of this state and who have earned income from  
21                    working on a film production project or a  
22                    television episode production project in this  
23                    state, including payments to personal services  
24                    corporations with respect to the services of

1                   qualified performing artists, as determined under  
2                   Section 62(a) (A) of the Internal Revenue Code, or  
3           (2) with respect to the credit percentage authorized  
4                   by subsection E of this section who are  
5                   nonresidents of this state and who have earned  
6                   income from working on a film production project  
7                   or a television episode production project in  
8                   this state, including payments to personal  
9                   services corporations with respect to the  
10                  services of qualified performing artists, as  
11                  determined under Section 62(a) (A) of the Internal  
12                  Revenue Code,

- 13           b.    the cost of construction and operations, wardrobe,  
14                  accessories and related services,
- 15           c.    the cost of photography, sound synchronization,  
16                  lighting and related services,
- 17           d.    the cost of editing and related services,
- 18           e.    rental of facilities and equipment,
- 19           f.    other direct costs of producing a film or television  
20                  episode, and
- 21           g.    the wages and salaries of persons who are defined and  
22                  registered as an Oklahoma Expatriate by the Office of  
23                  the Oklahoma Film and Music Commission; and  
24

1        3. "Television episode production project" means a coherent  
2 narrative unit within a larger dramatic work and which is not  
3 defined as a "film production project" pursuant to paragraph 1 of  
4 this subsection and the final content of which is intended for  
5 broadcast by conventional television stations, by cable television  
6 or through a streaming service by use of the Internet or similar  
7 technology.

8        B. Subject to the limitations imposed pursuant to subsections  
9 G, H, I, J, K and L of this section, for qualifying expenditures  
10 made on or after July 1, 2020, and ending not later than June 30,  
11 2030, there shall be allowed as a credit against the tax imposed  
12 pursuant to Section 2355 of Title 68 of the Oklahoma Statutes or the  
13 tax imposed pursuant to Section 624 or 628 of Title 36 of the  
14 Oklahoma Statutes for qualified entertainment industry project  
15 expenditures.

16        C. There shall be a base credit amount equal to twenty-five  
17 percent (25%) of the qualifying entertainment industry expenditure.

18        D. Subject to the limitations prescribed by subsections G, H,  
19 I, J, K and L of this section, in addition to the credit amount  
20 authorized by subsection C of this section, there shall be allowed  
21 an additional credit equal to:

22        1. One percent (1%) for a qualifying music expenditure equal to  
23 or greater than Fifteen Thousand Dollars (\$15,000.00);  
24

1        2. One percent (1%) for a qualifying audio post-production,  
2 visual post-production and visual effects expenditure equal to or  
3 greater than Twenty Thousand Dollars (\$20,000.00);

4        3. One percent (1%) for a qualifying soundstage expenditure  
5 equal to or greater than Ten Thousand Dollars (\$10,000.00);

6        4. One percent (1%) for use of a "filmed in Oklahoma" logo;

7        5. One percent (1%) for the use of an opening credit using the  
8 following language: "In Association With The State of Oklahoma"

9 which includes a logo and incorporates an animated sequenced  
10 approved by the Oklahoma Department of Tourism and Recreation; and

11        6. One percent (1%) for a qualifying film or television  
12 expenditure for a qualified environmental sustainability plan.

13        E. Subject to the limitations prescribed by subsections G, H,  
14 I, J, K and L of this section, in addition to the credits for  
15 qualifying entertainment industry expenditures as authorized by  
16 subsection C or D of this section, there shall be allowed as a  
17 credit against the tax imposed pursuant to Section 2355 of Title 68  
18 of the Oklahoma Statutes or Section 624 or 628 of Title 36 of the  
19 Oklahoma Statutes in an amount equal to fifteen percent (15%) of the  
20 qualifying expenditure for compensation paid to nonresidents.

21        F. All credits authorized pursuant to the provisions of this  
22 section shall be fully transferable to any subsequent transferee.  
23  
24

1 G. No credit authorized by the provisions of this section may  
2 be used to reduce an income tax or insurance premium tax liability  
3 for any period after June 30, 2030.

4 H. Subject to the provisions of subsection K and L of this  
5 subsection, the total amount of credits that may be earned/claimed  
6 pursuant to the provisions of subsections C, D and E of this section  
7 shall not exceed Fifty Million Dollars (\$50,000,000.00) per year.

8 I. Notwithstanding any other provisions of this section, no  
9 film production project may qualify for more than Seven Million  
10 Dollars (\$7,000,000.00) in tax credits authorized by this section  
11 for a single income tax year. The maximum credit amount prescribed  
12 by this subsection shall be applicable with respect to the total  
13 amount of any and all credits available pursuant to subsections C, D  
14 and E of this section.

15 J. Notwithstanding any other provisions of this section, no  
16 television episode production project may qualify for more than One  
17 Million Two Hundred Thousand Dollars (\$1,200,000.00) in tax credits  
18 authorized by this section for a single income tax year. The  
19 maximum credit amount prescribed by this subsection shall be  
20 applicable with respect to the total amount of any and all credits  
21 available pursuant to subsections C, D and E of this section.

22 K. The total amount of credits authorized by this section used  
23 to offset tax shall be adjusted annually to limit the annual amount  
24 of credits to Fifty Million Dollars (\$50,000,000.00). The Tax

1 Commission shall annually calculate and publish a percentage by  
2 which the credits authorized by this section shall be reduced so the  
3 total amount of credits used to offset tax does not exceed Fifty  
4 Million Dollars (\$50,000,000.00) per year. The formula to be used  
5 for the percentage adjustment shall be Fifty Million Dollars  
6 (\$50,000,000.00) divided by the credits used to offset tax in the  
7 second preceding year.

8 L. Pursuant to subsection K of this section, in the event the  
9 total tax credits authorized by this section exceed Fifty Million  
10 Dollars (\$50,000,000.00) in any calendar year, the Tax Commission  
11 shall permit any excess over Fifty Million Dollars (\$50,000,000.00)  
12 but shall factor such excess into the percentage adjustment formula  
13 for subsequent years.

14 M. In order for the Tax Commission to administer the provisions  
15 of subsections K and L of this section with respect to insurance  
16 premium tax credits claimed, the Oklahoma Insurance Department shall  
17 provide such information to the Tax Commission as may be required  
18 regarding the amount of credits claimed against the tax imposed  
19 pursuant to Section 624 or 628 of Title 36 of the Oklahoma Statutes.  
20 Such information shall be provided to the Tax Commission not later  
21 than the date specified by the Tax Commission. The Tax Commission  
22 shall use the insurance premium tax credit information provided to  
23 it in order to compute the percentage adjustment as provided by  
24 subsection L of this section.

1 N. No taxpayer, whether claiming tax credits based upon its own  
2 expenditures or pursuant to a transferred tax credit, shall be  
3 allowed to claim any of the tax credits authorized by this section  
4 and the investment tax credit authorized pursuant to Section 2357.4  
5 of Title 68 of the Oklahoma Statutes.

6 O. No taxpayer, whether claiming tax credits based upon its own  
7 expenditures or pursuant to a transferred tax credit, shall be  
8 allowed to claim any of the tax credits authorized by this section  
9 and to receive payments authorized pursuant to the provisions of the  
10 Oklahoma Film and Television Production Incentive Program.

11 SECTION 2. AMENDATORY 68 O.S. 2011, Section 3621, is  
12 amended to read as follows:

13 Section 3621. This act shall be known and may be cited as the  
14 "~~Compete with Canada~~ Oklahoma Film Act and Television Production  
15 Incentive Program".

16 SECTION 3. AMENDATORY 68 O.S. 2011, Section 3622, is  
17 amended to read as follows:

18 Section 3622. The Legislature hereby finds that the production  
19 of films or television episode production projects in Oklahoma not  
20 only provides jobs for Oklahomans and dollars for Oklahoma  
21 businesses, but also enhances the state's image nationwide.  
22 Recognizing that the high costs of film production are driving  
23 motion picture and television production out of the country, most  
24 notably to Canada, and that the film industry is always seeking



1 attractive locations that can help cut the costs of production, the  
2 Legislature further finds that the State of Oklahoma, with the  
3 appropriate incentive, can become an attractive site for film and  
4 television episode production ~~and that Oklahoma is presently among~~  
5 ~~several states with minimal incentives to attract the film industry.~~  
6 It is therefore the intent of the Legislature that Oklahoma provide  
7 an incentive that will stand out among those of other states and  
8 increase film production in this state.

9 SECTION 4. AMENDATORY 68 O.S. 2011, Section 3623, as  
10 amended by Section 2, Chapter 313, O.S.L. 2019 (68 O.S. Supp. 2019,  
11 Section 3623), is amended to read as follows:

12 Section 3623. As used in the ~~Compete with Canada~~ Oklahoma Film  
13 ~~Act~~ and Television Production Incentive Program:

14 1. "Crew" means any person who works on preproduction,  
15 principal photography, and postproduction, with the exception of  
16 producers, principal cast, screenwriters, and the director. The  
17 qualifying salary of producers, principal cast, screenwriters, and  
18 the director, also known as "above-the-line personnel", may be  
19 included as crew if the salaries are paid to loan-out corporations  
20 and limited liability companies registered to do business in the  
21 State of Oklahoma or the salaries are paid to Oklahoma-based above-  
22 the-line personnel. The qualifying salary of above-the-line  
23 personnel shall not comprise more than twenty-five percent (25%) of  
24 total expenditures as defined in paragraph 2 of this section. For

1 purposes of this paragraph, "Oklahoma-based" means a company or  
2 individual with an Oklahoma income tax requirement;

3 2. "Expenditure" or "production cost" includes but is not  
4 limited to:

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

21 3. "Film" means a professional single media, multimedia program  
22 or feature, which is not child pornography as defined in subsection  
23 A of Section 1024.1 of Title 21 of the Oklahoma Statutes or obscene  
24 material as defined in paragraph 1 of subsection B of Section 1024.1

1 of Title 21 of the Oklahoma Statutes, including, but not limited to,  
2 national advertising messages that are broadcast on a national  
3 affiliate or cable network, fixed on film or digital video, which  
4 can be viewed or reproduced and which is exhibited in theaters,  
5 licensed for exhibition by individual television stations, groups of  
6 stations, networks, cable television stations or other means or  
7 licensed for home viewing markets;

8 4. "High impact production" means a production for which total  
9 expenditures or production costs are equal to or greater than Fifty  
10 Million Dollars (\$50,000,000.00), with at least one-third (1/3) of  
11 total costs deemed Oklahoma expenditures by the Office of the  
12 Oklahoma Film and Music Commission; ~~and~~

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

15 6. "Television episode production project" means a coherent  
16 narrative unit within a larger dramatic work and which is not  
17 defined as a "film" pursuant to paragraph 3 of this subsection and  
18 the final content of which is intended for broadcast by conventional  
19 television stations, by cable television or through a streaming  
20 service by use of the Internet or similar technology.

21 SECTION 5. AMENDATORY 68 O.S. 2011, Section 3624, as  
22 last amended by Section 3, Chapter 313, O.S.L. 2019 (68 O.S. Supp.  
23 2019, Section 3624), is amended to read as follows:

1       Section 3624. A. There is hereby created the Oklahoma Film  
2 Enhancement Rebate Program. A rebate in the amount of up to  
3 seventeen percent (17%) of documented expenditures made in Oklahoma  
4 directly attributable to the production of a film, television  
5 production, or television commercial, as defined in Section 3623 of  
6 this title, in this state, may be paid to the production company  
7 responsible for the production. Provided, for documented  
8 expenditures made after July 1, 2009, the rebate amount shall be  
9 thirty-five percent (35%), except as provided in subsection B of  
10 this section.

11       B. The amount of rebate paid to the production company as  
12 provided for in subsection A of this section shall be increased by  
13 an additional two percent (2%) of documented expenditures if a  
14 production company spends at least Twenty Thousand Dollars  
15 (\$20,000.00) for the use of music created by an Oklahoma resident  
16 that is recorded in Oklahoma or for the cost of recording songs or  
17 music in Oklahoma for use in the production.

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

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 has filed or will file any Oklahoma  
8 tax return or tax document which may be required by law;

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~~ a film or television episode  
17 production project shall be Fifty Thousand Dollars (\$50,000.00) of  
18 which not less than Twenty-five Thousand Dollars (\$25,000.00) shall  
19 be expended in this state;

20 5. The production company shall provide evidence of financing  
21 for production prior to the commencement of principal photography;  
22 and

23 6. The production company shall provide evidence of a  
24 certificate of general liability insurance with a minimum coverage

1 of One Million Dollars (\$1,000,000.00) and a workers' compensation  
2 policy pursuant to state law, which shall include coverage of  
3 employer's liability.

4 E. A production company shall not be eligible to receive both a  
5 rebate payment pursuant to the provisions of this act and an  
6 exemption from sales taxes pursuant to the provisions of paragraph  
7 23 of Section 1357 of this title. If a production company has  
8 received such an exemption from sales taxes and submits a claim for  
9 rebate pursuant to the provisions of the ~~Compete with Canada~~  
10 Oklahoma Film Act and Television Production Incentive Program, the  
11 company shall be required to fully repay the amount of the exemption  
12 to the Tax Commission. A claim for a rebate shall include  
13 documentation from the Tax Commission that repayment has been made  
14 as required herein or shall include an affidavit from the production  
15 company that the company has not received an exemption from sales  
16 taxes pursuant to the provisions of paragraph 21 of Section 1357 of  
17 this title.

18 F. The Office shall approve or disapprove all claims for rebate  
19 and shall notify the Tax Commission. The Tax Commission shall, upon  
20 notification of approval from the Office of the Film and Music  
21 Commission, issue payment for all approved claims from funds in the  
22 Oklahoma Film Enhancement Rebate Program Revolving Fund created in  
23 Section 3625 of this title. Excluding any rebate payments to high  
24 impact productions as provided for in subsection G of this section,

1 the amount of payments in any single fiscal year shall not exceed  
2 Eight Million Dollars (\$8,000,000.00). If the amount of approved  
3 claims exceeds the amount specified in this subsection in a fiscal  
4 year, payments shall be made in the order in which the claims are  
5 approved by the Office. If an approved claim is not paid in whole  
6 or in part, the unpaid claim or unpaid portion may be paid in the  
7 following fiscal year subject to the limitations specified in this  
8 subsection.

9 G. 1. At the time the Office of the Film and Music Commission  
10 issues a conditional prequalification for a production, such  
11 prequalification may include a proposed designation as a high impact  
12 production, as defined in Section 3623 of this title.

13 2. The proposed designation must be approved by the Cabinet  
14 Secretary for Commerce and Tourism.

15 3. If the high impact production otherwise meets all of the  
16 requirements of the ~~Compete with Canada Act~~ Oklahoma Film and  
17 Television Production Incentive Program and the Office gives final  
18 approval to rebate claims, such rebate claims shall not be subject  
19 to the Eight Million Dollar (\$8,000,000.00) cap provided for in  
20 subsection F of this section.

21 4. The payment of a rebate claim approved by the Office for a  
22 production designated as a high impact production by the Cabinet  
23 Secretary may be made as follows:

- 1           a.    by special appropriation to the Oklahoma Film  
2                Enhancement Rebate Program Revolving Fund, if the  
3                claim is approved during a regular or special session  
4                of the Oklahoma Legislature, or  
5           b.    by payment from the Oklahoma Quick Action Closing Fund  
6                pursuant to Section 48.2 of Title 62 of the Oklahoma  
7                ~~Statutes~~ Statutes, if the claim is approved when the  
8                Oklahoma Legislature is not in session.

9       SECTION 6.       AMENDATORY       68 O.S. 2011, Section 3626, as  
10   last amended by Section 5, Chapter 313, O.S.L. 2019 (68 O.S. Supp.  
11   2019, Section 3626), is amended to read as follows:

12       Section 3626. The provisions of the ~~Compete with Canada~~  
13   Oklahoma Film Act and Television Production Incentive Program shall  
14   be terminated effective July 1, 2027, and no claim shall be paid  
15   thereafter.

16       SECTION 7. This act shall become effective July 1, 2020.

17       SECTION 8. It being immediately necessary for the preservation  
18   of the public peace, health or safety, an emergency is hereby  
19   declared to exist, by reason whereof this act shall take effect and  
20   be in full force from and after its passage and approval.

21  
22       57-2-11232       MAH       02/20/20  
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24