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STATE OF OKLAHOMA

2nd Session of the 57th Legislature (2020)

COMMITTEE SUBSTITUTE
FOR
HOUSE BILL NO. 3921

By: Dunnington of the House

and

Thompson of the Senate

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:

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

4 A. As used in this section:

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

16 2. "Qualified entertainment industry expenditure" means either
17 a film production project or television episode production project
18 with a projected budget amount in excess of Five Million Dollars
19 (\$5,000,000.00) and for which expenditures of the following type are
20 made within the state during the production process:

21 a. wages or salaries of persons:

22 (1) with respect to the credit percentage authorized
23 by subsection C of this section who are residents
24 of this state and who have earned income from

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

- 17 b. the cost of construction and operations, wardrobe,
- 18 accessories and related services,
- 19 c. the cost of photography, sound synchronization,
- 20 lighting and related services,
- 21 d. the cost of editing and related services,
- 22 e. rental of facilities and equipment,
- 23 f. other direct costs of producing a film or television
- 24 episode, and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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:

24

- 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 COMMITTEE REPORT BY: COMMITTEE ON APPROPRIATIONS AND BUDGET, dated
23 02/20/2020 - DO PASS, As Amended and Coauthored.
24