

1 STATE OF OKLAHOMA

2 2nd Session of the 57th Legislature (2020)

3 HOUSE BILL 3921

By: Dunnington

6 AS INTRODUCED

7 An Act relating to revenue and taxation; authorizing
8 credit against income tax and insurance premium tax
9 for certain qualifying entertainment production
10 expenses; defining terms; specifying taxable years
11 for which credits may be claimed; providing for base
12 credit amount; providing for additional credit
13 amounts; providing for credit based on compensation
14 to certain nonresidents; imposing limitation on
15 maximum credits available for film; imposing
16 limitation on maximum credits available for
17 television episode; imposing annual cap on total
18 available credits; amending 68 O.S. 2011, Sections
19 3622, 3623, as amended by Section 2, Chapter 313,
20 O.S.L. 2019 and Section 3624, as last amended by
21 Section 3, Chapter 313, O.S.L. 2019 (68 O.S. Supp.
22 2019, Sections 3623 and 3624), which relate to the
23 Compete with Canada Film Act; modifying statement of
24 legislative intent; modifying definitions; modifying
fiscal year reference; providing for codification;
providing an effective date; and declaring an
emergency.

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

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

24 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; and

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 in this state, including
22 payments to personal services corporations with
23 respect to the services of qualified performing
24

1 artists, as determined under Section 62(a) (A) of
2 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 in this state,
7 including payments to personal services
8 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 or television
18 episode, and

19 g. the wages and salaries of persons who are defined and
20 registered as an Oklahoma Expatriate by the Office of
21 the Oklahoma Film and Music Commission.

22 B. Subject to the limitations imposed pursuant to subsections
23 G, H, I and J of this section, for taxable years beginning on or
24 after July 1, 2020, and ending not later than June 30, 2030, there

1 shall be allowed as a credit against the tax imposed pursuant to
2 Section 2355 of Title 68 of the Oklahoma Statutes or the tax imposed
3 pursuant to Section 624 or 628 of Title 36 of the Oklahoma Statutes
4 for qualified entertainment industry project expenditures.

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

7 D. Subject to the limitations prescribed by subsections G, H, I
8 and J of this section, in addition to the credit amount authorized
9 by subsection C of this section, there shall be allowed an
10 additional credit equal to:

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

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

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

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

19 5. One percent (1%) for the use of an opening credit using the
20 following language: "In Association With The State of Oklahoma"
21 which includes a logo and incorporates an animated sequenced
22 approved by the Oklahoma Department of Tourism and Recreation; and
23 6. One percent (1%) for a qualifying film or television
24 expenditure for a qualified environmental sustainability plan.

1 E. Subject to the limitations prescribed by subsections G, H, I
2 and J of this section, in addition to the credits for qualifying
3 entertainment industry expenditures as authorized by subsection C or
4 D of this section, there shall be allowed as a credit against the
5 tax imposed pursuant to Section 2355 of Title 68 of the Oklahoma
6 Statutes or Section 624 or 628 of Title 36 of the Oklahoma Statutes
7 in an amount equal to fifteen percent (15%) of the qualifying
8 expenditure for compensation paid to nonresidents.

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

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

14 H. The total amount of credits that may be earned/claimed
15 pursuant to the provisions of subsections C, D and E of this section
16 shall not exceed Fifty Million Dollars (\$50,000,000.00) per year.

17 I. Notwithstanding any other provisions of this section, no
18 film production project may qualify for more than Seven Million
19 Dollars (\$7,000,000.00) in tax credits authorized by this section
20 for a single income tax year.

21 J. Notwithstanding any other provisions of this section, no
22 television episode production project may qualify for more than One
23 Million Two Hundred Thousand Dollars (\$1,200,000.00) in tax credits
24 authorized by this section for a single income tax year.

1 SECTION 2. AMENDATORY 68 O.S. 2011, Section 3622, is
2 amended to read as follows:

3 Section 3622. The Legislature hereby finds that the production
4 of films or television episodes in Oklahoma not only provides jobs
5 for Oklahomans and dollars for Oklahoma businesses, but also
6 enhances the state's image nationwide. Recognizing that the high
7 costs of film production are driving motion picture and television
8 production out of the country, most notably to Canada, and that the
9 film industry is always seeking attractive locations that can help
10 cut the costs of production, the Legislature further finds that the
11 State of Oklahoma, with the appropriate incentive, can become an
12 attractive site for film and television episode production ~~and that~~
13 ~~Oklahoma is presently among several states with minimal incentives~~
14 ~~to attract the film industry.~~ It is therefore the intent of the
15 Legislature that Oklahoma provide an incentive that will stand out
16 among those of other states and increase film production in this
17 state.

18 SECTION 3. AMENDATORY 68 O.S. 2011, Section 3623, as
19 amended by Section 2, Chapter 313, O.S.L. 2019 (68 O.S. Supp. 2019,
20 Section 3623), is amended to read as follows:

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

22 1. "Crew" means any person who works on preproduction,
23 principal photography, and postproduction, with the exception of
24 producers, principal cast, screenwriters, and the director. The

1 qualifying salary of producers, principal cast, screenwriters, and
2 the director, also known as "above-the-line personnel", may be
3 included as crew if the salaries are paid to loan-out corporations
4 and limited liability companies registered to do business in the
5 State of Oklahoma or the salaries are paid to Oklahoma-based above-
6 the-line personnel. The qualifying salary of above-the-line
7 personnel shall not comprise more than twenty-five percent (25%) of
8 total 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 residents of this
14 state and who have earned income from working on a
15 film in this state, including payments to personal
16 services corporations with respect to the services of
17 qualified performing artists, as determined under
18 Section 62(a)(A) of the Internal Revenue Code,
- 19 b. the cost of construction and operations, wardrobe,
20 accessories and related services,
- 21 c. the cost of photography, sound synchronization,
22 lighting and related services,
- 23 d. the cost of editing and related services,
- 24 e. rental of facilities and equipment,

1 f. other direct costs of producing a film, and

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

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

16 4. "High impact production" means a production for which total
17 expenditures or production costs are ~~equal to or~~ not greater than
18 ~~Fifty Million Dollars (\$50,000,000.00)~~ Five Million Dollars
19 (\$5,000,000.00), with at least one-third (1/3) of total costs deemed
20 Oklahoma expenditures by the Office of the Oklahoma Film and Music
21 Commission; and

22 5. "Production company" means a person or company who produces
23 film for exhibition in theaters, on television or elsewhere.
24

1 SECTION 4. AMENDATORY 68 O.S. 2011, Section 3624, as
2 last amended by Section 3, Chapter 313, O.S.L. 2019 (68 O.S. Supp.
3 2019, Section 3624), is amended to read as follows:

4 Section 3624. A. There is hereby created the Oklahoma Film
5 Enhancement Rebate Program. A rebate in the amount of up to
6 seventeen percent (17%) of documented expenditures made in Oklahoma
7 directly attributable to the production of a film, television
8 production, or television commercial, as defined in Section 3623 of
9 this title, in this state, may be paid to the production company
10 responsible for the production. Provided, for documented
11 expenditures made after July 1, ~~2009~~ 2020, the rebate amount shall
12 be thirty-five percent (35%), except as provided in subsection B of
13 this section.

14 B. The amount of rebate paid to the production company as
15 provided for in subsection A of this section shall be increased by
16 an additional two percent (2%) of documented expenditures if a
17 production company spends at least Twenty Thousand Dollars
18 (\$20,000.00) for the use of music created by an Oklahoma resident
19 that is recorded in Oklahoma or for the cost of recording songs or
20 music in Oklahoma for use in the production.

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

24 D. To be eligible for a rebate payment:

1 1. The production company responsible for a film, television
2 production, or television commercial, as defined in Section 3623 of
3 this title, made in this state shall submit documentation to the
4 Office of the Oklahoma Film and Music Commission of the amount of
5 wages paid for employment in this state to residents of this state
6 directly relating to the production and the amount of other
7 production costs incurred in this state directly relating to the
8 production;

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

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

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

21 5. The production company shall provide evidence of financing
22 for production prior to the commencement of principal photography;
23 and
24

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

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

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

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

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

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

16 3. If the high impact production otherwise meets all of the
17 requirements of the Compete with Canada Act and the Office gives
18 final approval to rebate claims, such rebate claims shall not be
19 subject to the Eight Million Dollar (\$8,000,000.00) cap provided for
20 in 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 ~~Statues~~ Statutes, if the claim is approved when the
8 Oklahoma Legislature is not in session.

9 SECTION 5. This act shall become effective July 1, 2020.

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

14

15 57-2-9947 MAH 01/16/20

16

17

18

19

20

21

22

23

24