

1 STATE OF OKLAHOMA

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

3 SENATE BILL 1442

By: Thompson

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7 AS INTRODUCED

8 An Act relating to rebates; amending 68 O.S. 2011,
9 Sections 3623, as amended by Section 2, 3624 and
10 3625, as last amended by Sections 3 and 4, Chapter
11 313, O.S.L. 2019 (68 O.S. Supp. 2019, Sections 3623,
12 3624 and 3625), which relate to the Compete with
13 Canada Act; modifying definition by authorizing
14 Oklahoma Film and Music Office to set additional
15 requirements for certain productions; providing for
16 flexible film expenditure rebate amounts no greater
17 than a specified amount after a certain date;
18 modifying limit on total rebate payments in a single
19 fiscal year; eliminating exception to limit on rebate
20 claims; limiting payments to availability of funds
21 subject to specified exceptions; modifying amount
22 apportioned by Oklahoma Tax Commission to pay
23 rebates; updating statutory references; providing an
24 effective date; and declaring an emergency.

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

21 SECTION 1. AMENDATORY 68 O.S. 2011, Section 3623, as
22 amended by Section 2, Chapter 313, O.S.L. 2019 (68 O.S. Supp. 2019,
23 Section 3623), is amended to read as follows:

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

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

14 2. "Expenditure" or "production cost" includes but is not
15 limited to:

- 16 a. wages or salaries of persons who are residents of this
17 state and who have earned income from working on a
18 film in this state, including payments to personal
19 services corporations with respect to the services of
20 qualified performing artists, as determined under
21 Section 62(a)(A) of the Internal Revenue Code,
- 22 b. the cost of construction and operations, wardrobe,
23 accessories and related services,

- c. the cost of photography, sound synchronization, lighting and related services,
- d. the cost of editing and related services,
- e. rental of facilities and equipment,
- 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~~ Office;

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

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

1 set additional requirements relating to an individual production
2 which otherwise meets the expenditure threshold required by this
3 paragraph; and

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

6 SECTION 2. AMENDATORY 68 O.S. 2011, Section 3624, as
7 last amended by Section 3, Chapter 313, O.S.L. 2019 (68 O.S. Supp.
8 2019, Section 3624), is amended to read as follows:

9 Section 3624. A. There is hereby created the Oklahoma Film
10 Enhancement Rebate Program. A rebate in the amount of up to
11 seventeen percent (17%) of documented expenditures made in Oklahoma
12 directly attributable to the production of a film, television
13 production, or television commercial, as defined in Section 3623 of
14 this title, in this state, may be paid to the production company
15 responsible for the production. Provided, for documented
16 expenditures made after ~~July 1, 2009~~ the effective date of this act,
17 the rebate amount ~~shall be~~ may be no greater than thirty-five
18 percent (35%), except as provided in subsection B of this section.

19 B. The amount of rebate paid to the production company as
20 provided for in subsection A of this section shall be increased by
21 an additional two percent (2%) of documented expenditures if a
22 production company spends at least Twenty Thousand Dollars
23 (\$20,000.00) for the use of music created by an Oklahoma resident
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1 that is recorded in Oklahoma or for the cost of recording songs or
2 music in Oklahoma for use in the production.

3 C. The rebate program shall be administered by the ~~Office of~~
4 ~~the~~ Oklahoma Film and Music ~~Commission~~ Office and the Oklahoma Tax
5 Commission, as provided in the Compete with Canada Film Act.

6 D. To be eligible for a rebate payment:

7 1. The production company responsible for a film, television
8 production, or television commercial, as defined in Section 3623 of
9 this title, made in this state shall submit documentation to the
10 ~~Office of the~~ Oklahoma Film and Music ~~Commission~~ Office of the
11 amount of wages paid for employment in this state to residents of
12 this state directly relating to the production and the amount of
13 other production costs incurred in this state directly relating to
14 the production;

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

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

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

4 5. The production company shall provide evidence of financing
5 for production prior to the commencement of principal photography;
6 and

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

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

1 F. The Office shall approve or disapprove all claims for rebate
2 and shall notify the Tax Commission. The Tax Commission shall, upon
3 notification of approval from the ~~Office of the~~ Oklahoma Film and
4 Music ~~Commission~~ Office, issue payment for all approved claims from
5 funds in the Oklahoma Film Enhancement Rebate Program Revolving Fund
6 created in Section 3625 of this title. ~~Excluding any rebate~~
7 ~~payments to high impact productions as provided for in subsection G~~
8 ~~of this section, the amount of payments in any single fiscal year~~
9 ~~shall not exceed Eight Million Dollars (\$8,000,000.00).~~ If the
10 amount of approved claims exceeds the ~~amount specified in this~~
11 ~~subsection in a fiscal year~~ balance of the fund, payments shall be
12 made in the order in which the claims are approved by the Office.
13 If an approved claim is not paid in whole or in part, the unpaid
14 claim or unpaid portion may be paid in ~~the following~~ a future fiscal
15 year subject to the ~~limitations specified in this subsection~~
16 availability of funds.

17 G. 1. At the time the ~~Office of the~~ Oklahoma Film and Music
18 ~~Commission~~ Office issues a conditional prequalification for a
19 production, such prequalification may include a proposed designation
20 as a high impact production, as defined in Section 3623 of this
21 title.

22 2. The proposed designation must be approved by the Cabinet
23 Secretary for ~~Commerce and~~ Tourism.
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1 3. The Oklahoma Film and Music Office may set specific
2 additional requirements for any production designated as a high
3 impact production.

4 4. If the high impact production otherwise meets all of the
5 requirements of the Compete With Canada Act and the Office gives
6 final approval to rebate claims, such rebate claims shall ~~not~~ be
7 subject to the ~~Eight Million Dollar (\$8,000,000.00) cap provided for~~
8 ~~in subsection F of this section.~~

9 ~~4. The~~ availability of funds in the revolving fund created
10 pursuant to Section 3625 of this title, unless the payment of a
11 rebate claim approved by the Office for a production designated as a
12 high impact production by the Cabinet Secretary ~~may be made as~~
13 ~~follows~~ is made by either:

- 14 a. ~~by~~ special appropriation to the Oklahoma Film
15 Enhancement Rebate Program Revolving Fund, ~~if the~~
16 ~~claim is approved during a regular or special session~~
17 ~~of the Oklahoma Legislature, or~~
- 18 b. ~~by~~ payment from the Oklahoma Quick Action Closing Fund
19 pursuant to Section 48.2 of Title 62 of the Oklahoma
20 Statutes, ~~if the claim is approved when the Oklahoma~~
21 ~~Legislature is not in session.~~

22 SECTION 3. AMENDATORY 68 O.S. 2011, Section 3625, as
23 last amended by Section 4, Chapter 313, O.S.L. 2019 (68 O.S. Supp.
24 2019, Section 3625), is amended to read as follows:

1 Section 3625. A. There is hereby created in the State Treasury
2 a revolving fund for the Oklahoma Tax Commission to be designated
3 the "Oklahoma Film Enhancement Rebate Program Revolving Fund". The
4 fund shall be a continuing fund, not subject to fiscal year
5 limitations, and shall consist of all monies received by the Tax
6 Commission which are specifically required by law to be deposited in
7 the fund, any public or private donations, contributions, and gifts
8 received for the benefit of the fund and any amounts appropriated by
9 the Oklahoma Legislature. All monies accruing to the credit of the
10 fund are hereby appropriated and may be budgeted and expended by the
11 Tax Commission for the purpose of paying rebates as provided in ~~this~~
12 ~~act~~ the Compete with Canada Film Act. Expenditures from the fund
13 shall be made upon warrants issued by the State Treasurer against
14 claims filed as prescribed by law with the Director of the Office of
15 Management and Enterprise Services for approval and payment.

16 B. The Oklahoma Tax Commission shall apportion, from the
17 revenues which would otherwise be apportioned to the General Revenue
18 Fund pursuant to subparagraph a of paragraph 1 of Section 2352 of
19 this title, ~~an amount that the Commission estimates to be necessary~~
20 Eight Million Dollars (\$8,000,000.00) in each fiscal year to pay the
21 rebates provided by Section 3624 of this title to the Oklahoma Film
22 Enhancement Rebate Program Revolving Fund.

23 SECTION 4. This act shall become effective July 1, 2020.
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1 SECTION 5. It being immediately necessary for the preservation
2 of the public peace, health or safety, an emergency is hereby
3 declared to exist, by reason whereof this act shall take effect and
4 be in full force from and after its passage and approval.
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