

1 **SENATE FLOOR VERSION**

2 February 26, 2020

3 **AS AMENDED**

4 SENATE BILL NO. 1442

5 By: Thompson

6 **[rebates - Compete with Canada Act - Oklahoma Film**
7 **and Music Office - film expenditure rebate -**
8 **effective date -**

9 **emergency]**

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

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

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

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

1 total expenditures as defined in paragraph 2 of this section. For
2 purposes of this paragraph, "Oklahoma-based" means a company or
3 individual with an Oklahoma income tax requirement;

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

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

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

1 material as defined in paragraph 1 of subsection B of Section 1024.1
2 of Title 21 of the Oklahoma Statutes, including, but not limited to,
3 national advertising messages that are broadcast on a national
4 affiliate or cable network, fixed on film or digital video, which
5 can be viewed or reproduced and which is exhibited in theaters,
6 licensed for exhibition by individual television stations, groups of
7 stations, networks, cable television stations or other means or
8 licensed for home viewing markets;

9 4. "High impact production" means a production for which total
10 expenditures or production costs are equal to or greater than Fifty
11 Million Dollars (\$50,000,000.00), with at least one-third (1/3) of
12 total costs deemed Oklahoma expenditures by the ~~Office of the~~
13 Oklahoma Film and Music ~~Commission~~ Office; provided, the Office may
14 set additional requirements relating to an individual production
15 which otherwise meets the expenditure threshold required by this
16 paragraph; and

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

19 SECTION 2. AMENDATORY 68 O.S. 2011, Section 3624, as
20 last amended by Section 3, Chapter 313, O.S.L. 2019 (68 O.S. Supp.
21 2019, Section 3624), is amended to read as follows:

22 Section 3624. A. There is hereby created the Oklahoma Film
23 Enhancement Rebate Program. A rebate in the amount of up to
24 seventeen percent (17%) of documented expenditures made in Oklahoma

1 directly attributable to the production of a film, television
2 production, or television commercial, as defined in Section 3623 of
3 this title, in this state, may be paid to the production company
4 responsible for the production. Provided, for documented
5 expenditures made after ~~July 1, 2009~~ the effective date of this act,
6 the rebate amount ~~shall be~~ may be no greater than thirty-five
7 percent (35%), except as provided in subsection B of this section.

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

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

18 D. To be eligible for a rebate payment:

19 1. The production company responsible for a film, television
20 production, or television commercial, as defined in Section 3623 of
21 this title, made in this state shall submit documentation to the
22 ~~Office of the Oklahoma Film and Music Commission~~ Office of the
23 amount of wages paid for employment in this state to residents of
24 this state directly relating to the production and the amount of

1 other production costs incurred in this state directly relating to
2 the production;

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

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

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

15 5. The production company shall provide evidence of financing
16 for production prior to the commencement of principal photography;
17 and

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

23 E. A production company shall not be eligible to receive both a
24 rebate payment pursuant to the provisions of ~~this act~~ the Compete

1 with Canada Film Act and an exemption from sales taxes pursuant to
2 the provisions of paragraph 23 of Section 1357 of this title. If a
3 production company has received such an exemption from sales taxes
4 and submits a claim for rebate pursuant to the provisions of the
5 Compete with Canada Film Act, the company shall be required to fully
6 repay the amount of the exemption to the Tax Commission. A claim
7 for a rebate shall include documentation from the Tax Commission
8 that repayment has been made as required herein or shall include an
9 affidavit from the production company that the company has not
10 received an exemption from sales taxes pursuant to the provisions of
11 paragraph 21 of Section 1357 of this title.

12 F. The Office shall approve or disapprove all claims for rebate
13 and shall notify the Tax Commission. The Tax Commission shall, upon
14 notification of approval from the ~~Office of the~~ Oklahoma Film and
15 Music ~~Commission Office~~, issue payment for all approved claims from
16 funds in the Oklahoma Film Enhancement Rebate Program Revolving Fund
17 created in Section 3625 of this title. ~~Excluding any rebate~~
18 ~~payments to high impact productions as provided for in subsection G~~
19 ~~of this section, the amount of payments in any single fiscal year~~
20 ~~shall not exceed Eight Million Dollars (\$8,000,000.00).~~ If the
21 amount of approved claims exceeds the ~~amount specified in this~~
22 ~~subsection in a fiscal year~~ balance of the fund, payments shall be
23 made in the order in which the claims are approved by the Office.
24 If an approved claim is not paid in whole or in part, the unpaid

1 claim or unpaid portion may be paid in ~~the following~~ a future fiscal
2 year subject to the ~~limitations specified in this subsection~~
3 availability of funds.

4 G. 1. At the time the ~~Office of the~~ Oklahoma Film and Music
5 ~~Commission Office~~ issues a conditional prequalification for a
6 production, such prequalification may include a proposed designation
7 as a high impact production, as defined in Section 3623 of this
8 title.

9 2. The proposed designation must be approved by the Cabinet
10 Secretary for ~~Commerce and~~ Tourism.

11 3. The Oklahoma Film and Music Office may set specific
12 additional requirements for any production designated as a high
13 impact production.

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

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

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,~~if the claim is approved when the Oklahoma~~
8 ~~Legislature is not in session.~~

9 SECTION 3. AMENDATORY 68 O.S. 2011, Section 3625, as
10 last amended by Section 4, Chapter 313, O.S.L. 2019 (68 O.S. Supp.
11 2019, Section 3625), is amended to read as follows:

12 Section 3625. A. There is hereby created in the State Treasury
13 a revolving fund for the Oklahoma Tax Commission to be designated
14 the "Oklahoma Film Enhancement Rebate Program Revolving Fund". The
15 fund shall be a continuing fund, not subject to fiscal year
16 limitations, and shall consist of all monies received by the Tax
17 Commission which are specifically required by law to be deposited in
18 the fund, any public or private donations, contributions, and gifts
19 received for the benefit of the fund and any amounts appropriated by
20 the Oklahoma Legislature. All monies accruing to the credit of the
21 fund are hereby appropriated and may be budgeted and expended by the
22 Tax Commission for the purpose of paying rebates as provided in ~~this~~
23 ~~act~~ the Compete with Canada Film Act. Expenditures from the fund
24 shall be made upon warrants issued by the State Treasurer against

1 claims filed as prescribed by law with the Director of the Office of
2 Management and Enterprise Services for approval and payment.

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

10 ~~SECTION 4. This act shall become effective July 1, 2020.~~

11 ~~SECTION 5. It being immediately necessary for the preservation~~
12 ~~of the public peace, health or safety, an emergency is hereby~~
13 ~~declared to exist, by reason whereof this act shall take effect and~~
14 ~~be in full force from and after its passage and approval.~~

15 COMMITTEE REPORT BY: COMMITTEE ON APPROPRIATIONS
16 February 26, 2020 - DO PASS AS AMENDED

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