

1 **SENATE FLOOR VERSION**

2 February 18, 2021

3 SENATE BILL NO. 608

By: Hall of the Senate

4 and

5 **Fetgatter** of the House

6
7
8 **[film production incentives - Compete with Canada**
9 **Film Act - effective date]**

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

12 SECTION 1. AMENDATORY 68 O.S. 2011, Section 3621, is
13 amended to read as follows:

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

16 SECTION 2. AMENDATORY 68 O.S. 2011, Section 3623, as
17 amended by Section 2, Chapter 313, O.S.L. 2019 (68 O.S. Supp. 2020,
18 Section 3623), is amended to read as follows:

19 Section 3623. As used in the ~~Compete with Canada Film Act~~
20 Oklahoma Film Incentive Act:

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

1 the director, also known as "above-the-line personnel", may be
2 included as crew if the salaries are paid to loan-out corporations
3 and limited liability companies registered to do business in ~~the~~
4 ~~State of Oklahoma~~ this state or the salaries are paid to Oklahoma-
5 based above-the-line personnel. The qualifying salary of above-the-
6 line personnel shall not comprise more than twenty-five percent
7 (25%) of total expenditures as defined in paragraph 2 of this
8 section. For purposes of this paragraph, "Oklahoma-based" means a
9 company or individual with an Oklahoma income tax requirement;

10 2. "Expenditure" or "production cost" includes but is not
11 limited to:

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

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

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

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

22 SECTION 3. AMENDATORY 68 O.S. 2011, Section 3624, as
23 last amended by Section 3, Chapter 313, O.S.L. 2019 (68 O.S. Supp.
24 2020, 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 this state directly attributable to the production of a film,
5 television production, or television commercial, as defined in
6 Section 3623 of this title, in this state, may be paid to the
7 production company responsible for the production. Provided, for
8 documented expenditures made after July 1, 2009, the rebate amount
9 shall be thirty-five percent (35%), except as provided in subsection
10 B of this section. Provided, for documented expenditures made after
11 July 1, 2022, the rebate amount shall be nineteen percent (19%),
12 except as provided in subsection B of this section.

13 B. The amount of rebate paid to the production company as
14 provided for in subsection A of this section shall be increased by
15 an:

16 1. An additional two percent (2%) of documented expenditures if
17 a production company spends at least Twenty Thousand Dollars
18 (\$20,000.00) for the use of music created by ~~an Oklahoma~~ a resident
19 of this state that is recorded in ~~Oklahoma~~ this state or for the
20 cost of recording songs or music in ~~Oklahoma~~ this state for use in
21 the production;

22 2. For documented expenditures made after July 1, 2022, an
23 additional two percent (2%) if a production company hires two (2)
24 persons in coordination with the Oklahoma Works Employer Portal;

1 3. For documented expenditures made after July 1, 2022, an
2 additional two percent (2%) if a production company displays the
3 state logo, as provided by the Oklahoma Film and Music Commission,
4 in the film, television production or television commercial;

5 4. For documented expenditures made after July 1, 2022, an
6 additional two percent (2%) if a production company conducts the
7 filming outside of at least a fifty (50) mile radius from downtown
8 Oklahoma City, as determined by the Commission;

9 5. For documented expenditures made after July 1, 2022, an
10 additional five percent (5%) if a production company's filming at a
11 location in this state accounts for at least one-third (1/3) of
12 total production days; and

13 6. For documented expenditures made after July 1, 2022, an
14 additional five percent (5%) if a production company produces
15 multiple films for exhibition in a theater or at least six (6)
16 episodes of a film series in this state.

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

21 D. To be eligible for a rebate payment:

22 1. The production company responsible for a film, television
23 production, or television commercial, as defined in Section 3623 of
24 this title, made in this state shall submit documentation to the

1 Office of the Oklahoma Film and Music Commission of the amount of
2 wages paid for employment in this state to residents of this state
3 directly relating to the production and the amount of other
4 production costs incurred in this state directly relating to the
5 production;

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

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

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

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

21 6. The production company shall provide evidence of a
22 certificate of general liability insurance with a minimum coverage
23 of One Million Dollars (\$1,000,000.00) and a workers' compensation
24

1 policy pursuant to state law, which shall include coverage of
2 employer's liability.

3 E. A production company shall not be eligible to receive both a
4 rebate payment pursuant to the provisions of ~~this act~~ Section 3621
5 et seq. of this title and an exemption from sales taxes pursuant to
6 the provisions of paragraph 23 of Section 1357 of this title. If a
7 production company has received such an exemption from sales taxes
8 and submits a claim for rebate pursuant to the provisions of the
9 ~~Compete with Canada Film Act~~ Oklahoma Film Incentive Act, the
10 company shall be required to fully repay the amount of the exemption
11 to the Tax Commission. A claim for a rebate shall include
12 documentation from the Tax Commission that repayment has been made
13 as required herein or shall include an affidavit from the production
14 company that the company has not received an exemption from sales
15 taxes pursuant to the provisions of paragraph ~~21~~ 23 of Section 1357
16 of this title.

17 F. The Office shall approve or disapprove all claims for rebate
18 and shall notify the Tax Commission. The Tax Commission shall, upon
19 notification of approval from the Office of the Film and Music
20 Commission, issue payment for all approved claims from funds in the
21 Oklahoma Film Enhancement Rebate Program Revolving Fund created in
22 Section 3625 of this title. Excluding any rebate payments to high
23 impact productions as provided for in subsection G of this section,
24 the amount of payments in any single fiscal year shall not exceed

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

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

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

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

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

22 a. by special appropriation to the Oklahoma Film
23 Enhancement Rebate Program Revolving Fund, if the
24

1 claim is approved during a regular or special session
2 of the Oklahoma Legislature, or

3 b. by payment from the Oklahoma Quick Action Closing Fund
4 pursuant to Section 48.2 of Title 62 of the Oklahoma
5 Statutes, if the claim is approved when the Oklahoma
6 Legislature is not in session.

7 SECTION 4. AMENDATORY 68 O.S. 2011, Section 3626, as
8 last amended by Section 5, Chapter 313, O.S.L. 2019 (68 O.S. Supp.
9 2020, Section 3626), is amended to read as follows:

10 Section 3626. The provisions of the ~~Compete with Canada Film~~
11 ~~Act~~ Oklahoma Film Incentive Act shall be terminated effective ~~July~~
12 ~~1, 2027~~ July 1, 2035, and no claim shall be paid thereafter.

13 SECTION 5. This act shall become effective November 1, 2021.

14 COMMITTEE REPORT BY: COMMITTEE ON APPROPRIATIONS
15 February 18, 2021 - DO PASS
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