

OK S 1442, Engrossed

Oklahoma

SUMMARY: Relates to rebates; relate to the Compete with Canada Act; modifies definition by authorizing Oklahoma Film and Music Office to set additional requirements for certain productions; provides for flexible film expenditure rebate amounts no greater than a specified amount after a certain date; modifies limit on total rebate payments in a single fiscal year; eliminates exception to limit on rebate claims; limits payments to availability of funds subject to specified exceptions.

Legislative History and Analysis Changes in Bill text reflected as:

~~Text Deleted~~

Text Added

~~Text Vetoed~~

Current Legislative Status 01/15/2020 PREFILED.

02/03/2020 INTRODUCED.

02/06/2020 To SENATE Committee on APPROPRIATIONS.

02/26/2020 From SENATE Committee on APPROPRIATIONS: Do pass as amended. 02/26/2020 Title Stricken.

02/26/2020 Emergency clause stricken. 03/11/2020 Amended on SENATE floor. 03/11/2020 Title restored.

03/11/2020 Passed SENATE. *****To HOUSE.

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session: Oklahoma 2nd Regular Session of the 57th Legislature cite: 2019 OK S 1442

Engrossed March 11, 2020 Thompson ENGROSSED

SENATE BILL NO. 1442

By: Thompson of the Senate and

Dunnington of the House

An Act relating to rebates; amending 68 O.S. 2011, Sections 3623, as amended by Section 2, 3624 and 3625,

as last amended by Sections 3 and 4, Chapter 313, O.S.L. 2019 (68 O.S. Supp. 2019, Sections 3623, 3624 and 3625), which relate to the Compete with Canada Act; modifying definition by authorizing Oklahoma Film and Music Office to set additional requirements for certain productions; providing for flexible film expenditure rebate amounts no greater than a specified amount after a certain date; modifying limit on total rebate payments in a single fiscal year; eliminating exception to limit on rebate claims; limiting payments to availability of funds subject to specified exceptions; modifying amount apportioned by Oklahoma Tax Commission to pay rebates; updating statutory references; providing an effective date; and declaring an emergency.

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

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

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

1. "Crew" means any person who works on preproduction, principal photography, and postproduction, with the exception of producers, principal cast, screenwriters, and the director. The qualifying salary of producers, principal cast, screenwriters, and the director, also known as "above-the-line personnel", may be included as crew if the salaries are paid to loan-out corporations and limited liability companies registered to do business in the State of Oklahoma or the salaries are paid to Oklahoma-based above-the-line personnel. The qualifying salary of above-the-line personnel shall not comprise more than twenty-five percent (25%) of total expenditures as defined in paragraph 2 of this section. For purposes of this paragraph, "Oklahoma-based" means a company or individual with an Oklahoma income tax requirement;
2. "Expenditure" or "production cost" includes but is not limited to:
 - a. wages or salaries of persons who are residents of this state and who have earned income from working on a film in this state, including payments to personal services corporations with respect to the services of qualified performing artists, as determined under Section 62(a)(A) of the Internal Revenue Code,
 - b. the cost of construction and operations, wardrobe, 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 set additional requirements relating to an individual production which otherwise meets the expenditure threshold required by this paragraph** ; and
5. "Production company" means a person or company who produces film for exhibition in theaters, on television or elsewhere.

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

Section 3624.

- A. There is hereby created the Oklahoma Film Enhancement Rebate Program. A rebate in the amount of up to seventeen percent (17%) of documented expenditures made in Oklahoma directly attributable to the production of a film, television production, or television commercial, as defined in Section 3623 of this title, in this state, may be paid to the production company responsible for the production. Provided, for documented expenditures made after ~~July 1, 2009~~ **the effective date of this act** , the rebate amount ~~shall be~~ **may be no greater than** thirty-five percent (35%), except as provided in subsection B of this section.
- B. The amount of rebate paid to the production company as provided for in subsection A of this section shall be increased by an additional two percent (2%) of documented expenditures if a production company spends at least Twenty Thousand Dollars (\$20,000.00) for the use of music created by an Oklahoma resident that is recorded in Oklahoma or for the cost of recording songs or music in Oklahoma for use in the production.
- C. The rebate program shall be administered by the ~~Office of the~~ Oklahoma Film and Music ~~Commission~~ **Office** and the Oklahoma Tax Commission, as provided in the Compete with Canada Film Act.
- D. To be eligible for a rebate payment:
 1. The production company responsible for a film, television production, or television commercial, as defined in Section 3623 of this title, made in this

state shall submit documentation to the ~~Office of the~~ Oklahoma Film and Music ~~Commission~~ **Office** of the amount of wages paid for employment in this state to residents of this state directly relating to the production and the amount of other production costs incurred in this state directly relating to the production;

2. The production company has filed or will file any Oklahoma tax return or tax document which may be required by law;
 3. Except major studio productions, the production company shall provide the name of the completion guarantor and a copy of the bond guaranteeing the completion of the project or if a film has not secured a completion bond, the production company shall provide evidence that all Oklahoma crew and local vendors have been paid and there are no liens against the production company pending in the state;
 4. The minimum budget for the film shall be Fifty Thousand Dollars (\$50,000.00) of which not less than Twenty- five Thousand Dollars (\$25,000.00) shall be expended in this state;
 5. The production company shall provide evidence of financing for production prior to the commencement of principal photography; and
 6. The production company shall provide evidence of a certificate of general liability insurance with a minimum coverage of One Million Dollars (\$1,000,000.00) and a workers' compensation policy pursuant to state law, which shall include coverage of employer's liability.
- E. A production company shall not be eligible to receive both a rebate payment pursuant to the provisions of ~~this act~~ **the Compete with Canada Film Act** and an exemption from sales taxes pursuant to the provisions of paragraph 23 of Section 1357 of this title. If a production company has received such an exemption from sales taxes and submits a claim for rebate pursuant to the provisions of the Compete with Canada Film Act, the company shall be required to fully repay the amount of the exemption to the Tax Commission. A claim for a rebate shall include documentation from the Tax Commission that repayment has been made as required herein or shall include an affidavit from the production company that the company has not received an exemption from sales taxes pursuant to the provisions of paragraph 21 of Section 1357 of this title.
- F. The Office shall approve or disapprove all claims for rebate and shall notify the Tax Commission. The Tax Commission shall, upon notification of approval from the ~~Office of the~~ **Oklahoma** Film and Music ~~Commission~~ **Office** , issue payment for all approved claims from funds in the Oklahoma Film Enhancement Rebate Program Revolving Fund created in Section 3625 of this title. ~~Excluding any rebate payments to high impact productions as provided for in subsection G of this section, the amount of payments in any single fiscal year shall not exceed Eight Million Dollars (\$8,000,000.00).~~ If the amount of approved claims exceeds the ~~amount specified in this subsection~~ **in a fiscal year** *balance of the fund* , payments shall be made in the order in which the claims are approved by the Office. If an approved claim is not paid in

whole or in part, the unpaid claim or unpaid portion may be paid in ~~the following a future~~ fiscal year subject to the ~~limitations specified in this subsection~~ *availability of funds* .

- G. 1. At the time the ~~Office of the Oklahoma~~ Film and Music ~~Commission~~ *Office* issues a conditional prequalification for a production, such prequalification may include a proposed designation as a high impact production, as defined in Section 3623 of this title.
2. The proposed designation must be approved by the Cabinet Secretary for ~~Commerce and~~ Tourism.
3. *The Oklahoma Film and Music Office may set specific additional requirements for any production designated as a high impact production.*
4. If the high impact production otherwise meets all of the requirements of the Compete With Canada Act and the Office gives final approval to rebate claims, such rebate claims shall ~~not~~ be subject to the ~~Eight Million Dollar (\$8,000,000.00) cap provided for in subsection F of this section. 4. The availability of funds in the revolving fund created pursuant to Section 3625 of this title, unless the~~ payment of a rebate claim approved by the Office for a production designated as a high impact production by the Cabinet Secretary ~~may be made as follows~~ *is made by either* :
- a. ~~by~~ special appropriation to the Oklahoma Film Enhancement Rebate Program Revolving Fund ~~, if the claim is approved during a regular or special session of the Oklahoma Legislature~~ , or
- b. ~~by~~ payment from the Oklahoma Quick Action Closing Fund pursuant to Section 48.2 of Title 62 of the Oklahoma Statutes ~~, if the claim is approved when the Oklahoma Legislature is not in session~~ .

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

Section 3625.

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

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

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

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