

2021 Montana Legislature

The following has special meaning:
green underline denotes added text
~~red struck-out text denotes deleted text~~

HOUSE BILL NO. 348

INTRODUCED BY J. KEANE

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE TAX CREDIT FOR MEDIA PRODUCTION; REQUIRING HIRING OF MONTANA RESIDENTS TO QUALIFY FOR THE ADDITIONAL CREDIT FOR COMPENSATION PAID; AMENDING SECTIONS 15-31-1003, 15-31-1004, AND 15-31-1007, MCA; AND PROVIDING AN APPLICABILITY DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 15-31-1003, MCA, is amended to read:

"15-31-1003. Definitions. As used in this part, unless the context requires otherwise, the following definitions apply:

- (1) "Affiliate" means a subsidiary of which more than 50% of the voting stock is owned directly by the parent corporation or another member of the Montana combined group.
- (2) "Base investment" means the amount expended by a production company as production expenditures and compensation incurred in this state that are directly used in a state-certified production.
- (3) (a) "Compensation" means Montana wages, salaries, commissions, payments to a loan-out company subject to the provisions of subsection (3)(c), union benefits, fringe benefits, and any other form of remuneration paid to employees for personal services performed in this state.

(b) The term does not include compensation paid that is less than the minimum wage described in 39-3-409.

(c) The term includes payments to a loan-out company by a production company if the production company withheld and remitted Montana income tax at the rate of 6.9% on all payments to the loan-out company for services performed in this state. The amount withheld is considered to have been withheld by the loan-out company on wages paid to its employees for services performed in this state. The amounts withheld must be allocated to the loan-out company's employees based on the payments made to the loan-out company's employees for services performed in Montana. For purposes of this chapter, loan-out company nonresident employees performing services in this state must be considered taxable nonresidents and the loan-out company is subject to income taxation in the tax year in which the loan-out company's employees perform services in this

state, notwithstanding any other provisions of Title 15. The withholding liability is subject to penalties and interest as provided in 15-1-216.

- (d) With respect to a single crew member or production staff member, excluding an actor, director, producer, or writer, the portion of any compensation that exceeds \$500,000 for a single production is not included when calculating the base investment.
 - (e) All payments to a single employee and any legal entity in which the employee has any direct or indirect ownership interest are considered as having been paid to the employee and must be aggregated regardless of the means of payment or distribution.
- (4) "Game platform" means the electronic delivery system used to launch or play an interactive game.
- (5) "Game sequel" means an interactive game that builds on the theme of a previously released interactive game, is distinguished by a new title, and features objectives or characters that are recognizably different from those in the original game.
- (6) (a) "Loan-out company" means a personal service company contracted with and retained by a production company to provide individual personnel who are not employees of the production company, including actors, directors, producers, writers, production designers, production managers, costume designers, directors of photography, editors, casting directors, first assistant directors, second unit directors, stunt coordinators, and similar personnel, for performance of services used directly in a qualified production activity.
- (b) The term does not include persons retained by a production company to provide tangible property or outside independent contractor services, such as catering, construction, trailers, equipment, and transportation.
- (7) "Multimarket commercial distribution" means paid commercial distribution that extends to markets outside the state.
- (8) (a) "Postproduction company" means a company that:
- (i) maintains a business location physically located in this state;
 - (ii) is engaged in qualified postproduction activities;
 - (iii) meets the requirements of 15-31-1005(4) in the tax year for which the postproduction company claims the tax credit provided for in 15-31-1009; and
 - (iv) has been approved by the department of commerce to claim the credit provided for in 15-31-1009.
- (b) The term does not include any form of business owned, affiliated, or controlled, in whole or in part, by a company or person that is in default on a tax obligation of the state, a loan made by the state, or a loan guaranteed by the state.

- (9) "Prereleased interactive game" means a new game, the offering of an existing game on a new game platform, or a game sequel that is in the developmental stages of production and that may be available to individuals for testing purposes but is not generally made available or distributed to consumers or to the general public.
- (10) (a) "Production company" means a company primarily engaged in qualified production activities that have been approved by the department of commerce.
- (b) The term does not include any form of business owned, affiliated, or controlled, in whole or in part, by a company or person that is in default on a tax obligation of the state, a loan made by the state, or a loan guaranteed by the state.
- (11) (a) "Production expenditure" means a preproduction or production expenditure incurred in Montana that is directly used for a qualified production activity including:
- (i) set construction and operation;
 - (ii) wardrobes, makeup, accessories, and related services;
 - (iii) costs associated with photography and sound synchronization expenditures, excluding license fees, incurred with Montana companies for sound recordings and musical compositions, lighting, or related services and materials;
 - (iv) editing and related services;
 - (v) rental of facilities and equipment;
 - (vi) leasing of vehicles, whether to be photographed or to transport people, equipment, or materials;
 - (vii) lodging costs, including hotel rooms and private housing rentals paid for by the production company;
 - (viii) per diem and living allowance paid to staff, cast, and crew members;
 - (ix) digital, film, or tape editing, film processing, transfers of film to tape or digital format, sound mixing, computer graphics services, special effects services, visual effects services, and animation services;
 - (x) airfare, if purchased through a Montana travel agency or travel company;
 - (xi) insurance costs and bonding, if purchased through a Montana insurance agency; and
 - (xii) other direct costs of producing the project in accordance with generally accepted entertainment industry practices and generally accepted accounting principles.
- (b) The term does not include:

- (i) compensation, which qualifies for the credit provided for in 15-31-1007(3)(b)(i) ~~through (3)(b)(iv)~~;
 - (ii) production expenditures for footage shot outside the state;
 - (iii) marketing;
 - (iv) story rights;
 - (v) distribution; or
 - (vi) postproduction expenditures.
- (12) "Qualified Montana promotion" means a promotion of this state approved by the department of commerce and consisting of:
- (a) a qualified movie production that includes a 5-second static or animated logo that promotes Montana in the end credits for the life of the project and that includes a link to the official state of Montana website on the project's website;
 - (b) a qualified television production that includes an embedded 5-second Montana promotion during each broadcast worldwide for the life of the project and that includes a link to the official state of Montana website on the project's website;
 - (c) a qualified music video that includes the Montana logo at the end of each video and within online promotions;
 - (d) a qualified interactive game that includes a 15-second Montana advertisement in units sold and embedded in online promotions; or
 - (e) a qualified television special or sports event for which the network provides complimentary placement of two 30-second spots per 30 minutes of qualifying television special or sports event programming promoting Montana destinations and provided by the department of commerce as provided for in 15-31-1004(7).
- (13) "Qualified postproduction activity" means an activity performed in this state on a qualified production employing traditional, emerging, and new workflow techniques used in postproduction for picture, sound, and music editing, rerecording and mixing, visual effects, graphic design, original scoring, animation, musical composition, and other activities performed after initial production and including activities performed on previously produced and edited content.
- (14) "Qualified postproduction wage" means wages incurred in this state directly in qualified postproduction activities for footage shot inside or outside this state.
- (15) (a) "Qualified production" means a new film, video, or digital project including only feature films, series for theaters, television, or streaming, pilots, movies and scripted shows made for television or streaming, televised commercial advertisements, music videos, corporate videos, industrial films, production for website creation, television specials, sports events, video games, interactive

entertainment, prereleased interactive games, and sound recording projects used in a feature film, series, pilot, or movie for television.

- (b) The term includes projects shot, recorded, or originally created in short or long form, animation, and music, fixed on a delivery system, including film, videotape, computer disc, laser disc, and any element of the digital domain, from which the program is viewed or reproduced and which is intended for multimarket commercial distribution via a theater, video on demand, digital or fiber optic distribution platforms, digital video recording, a digital platform designed for distribution of interactive games, licensing for exhibition by individual television stations, groups of stations, networks, advertiser-supported sites, cable television stations, streaming services, or public broadcasting stations.
 - (c) The term does not include the coverage of news, local interest programming, instructional videos, commercials distributed only on the internet, infomercials, solicitation-based productions, nonscripted television programs, feature films consisting primarily of stock footage not originally recorded in Montana, or projects containing obscenity as defined in 45-8-201(2).
- (16) (a) "Qualified production activity" means the production of a new film, video, or digital project in this state and approved by the department of commerce, including only feature films, series for theaters, television, or streaming, pilots, movies and scripted shows made for television or streaming, televised commercial advertisements, music videos, corporate videos, industrial films, production for website creation, television specials, sports events, video games, interactive entertainment, prereleased interactive games, and sound recording projects used in a feature film, series, pilot, or movie for television.
- (b) The term includes the production of projects filmed or recorded in this state, in whole or in part and in short or long form, animation and music, fixed on a delivery system, including film, videotape, computer disc, laser disc, and any element of the digital domain, from which the program is viewed or reproduced and which is intended for multimarket commercial distribution via a theater, video on demand, digital or fiber optic distribution platforms, digital video recording, a digital platform designed for distribution of interactive games, licensing for exhibition by individual television stations, groups of stations, networks, advertiser-supported sites, cable television stations, streaming services, or public broadcasting stations.
 - (c) The term does not include the coverage of news, local interest programming, instructional videos, commercials distributed only on the internet, infomercials, solicitation-based productions, nonscripted television programs, or feature films consisting primarily of stock footage not originally recorded in Montana, projects containing obscenity as defined in 45-8-201(2), or projects not shot, recorded, or originally created in Montana.
- (17) "Resident" has the meaning provided in 15-30-2101.
- (18) "State-certified production" means a production engaged in qualified production activities and certified by the department of commerce as provided in 15-31-1004.

- (19) "Underserved area" means a county in this state in which 14% or more people of all ages are in poverty as determined by the U.S. bureau of the census estimates for the most current year available."

Section 2. Section 15-31-1004, MCA, is amended to read:

"15-31-1004. Application for state certification.

- (1) (a) A production company may not receive the tax credit provided for in 15-31-1007 unless the production has been certified by the department of commerce as provided in this section.
- (b) A postproduction company may not receive the tax credit provided for in 15-31-1009 unless the postproduction company has been certified by the department of commerce. The postproduction company shall submit an application that includes the information provided for in subsection (2)(a) for the postproduction company. The application must be submitted in the year in which the postproduction plans to claim the credit and must be accompanied by a \$500 application fee. For the purposes of allocating the credit pursuant to 15-31-1010, the application must contain an estimate of the amount of credit the postproduction company will claim. A postproduction company that plans to claim the credit in more than 1 tax year must apply for the credit each year, but the application fee is only required in the first year of application. The department of commerce shall notify the applicant whether the postproduction company qualifies for the credit within 30 days of receipt of the application.
- (2) An application, on a form provided by the department of commerce, must be submitted by the production company to the department of commerce before the start of principal photography. The application must be accompanied by a \$500 fee and must include:
- (a) the production company's name, primary business address, telephone and fax numbers, incorporation information, federal tax identification number, and the name of at least one principal company officer or manager;
 - (b) the address and telephone and fax numbers of the production company's Montana office;
 - (c) the name of the line producer, unit production manager, or production accountant;
 - (d) a statement that the applicant meets the definition of production company in 15-31-1003;
 - (e) the title of the production;
 - (f) the type of production;
 - (g) the proposed dates of production from preproduction to the start and completion of principal photography;
 - (h) a copy or synopsis of the production script;
 - (i) a list of production locations;

- (j) a statement that the proposed production does not contain any material or performance that would be considered obscene under 45-8-201(2);
 - (k) a statement that the production will include a qualified Montana promotion; and
 - (l) a statement that the production company plans to make a base investment of \$350,000 or more or, if subsection (5) applies, that the production company plans to make a base investment of \$50,000 or more.
- (3) The application must be signed by the manager, agent, president, vice president, or other person authorized to represent the production company.
- (4) (a) The department of commerce shall notify the applicant within 30 days of receipt of the application as to whether the production qualifies as a state-certified production.
- (b) If the department of commerce approves the application, the department of commerce shall provide a certification number to the applicant.
- (5) The department of commerce may approve on a case-by-case basis an application for a commercial, music video, production for website creation, video game, interactive entertainment, or experimental or low-budget project that plans a base investment of less than \$350,000 but more than \$50,000.
- (6) (a) If the department of commerce determines that the production company has violated the provisions of subsection (2)(j) or (2)(k), the department of commerce may revoke the state certification of the production. If the department of commerce revokes the state certification, the department of commerce shall notify the department of revenue. The production company has the right to a hearing before the department of commerce on the revocation of the state certification as provided in Title 2, chapter 4, part 6.
- (b) The department of revenue shall recapture any tax credit claimed by a production company for which the state certification has been revoked. The recapture is subject to penalties and interest as provided in 15-1-216.
- (c) If the production company transferred the tax credit, the recapture provisions of 15-31-1008(7) apply.
- (7) The department of commerce shall design and furnish the Montana screen credit needed to qualify for the additional tax credit provided for in ~~15-31-1007(3)(b)(viii)~~ 15-31-1007(3)(b)(v) and the programming promoting Montana destinations provided for in 15-31-1003(12)(e).
- (8) The application fee must be deposited in an account in the state special revenue fund. The fee is statutorily appropriated to the department of commerce, as provided in 17-7-502, to administer the provisions of 15-31-1004 through 15-31-1012.
- (9) The department of commerce shall prescribe rules necessary to carry out the provisions of this section, including a procedure for review of the department of commerce's denial or revocation of state certification, the department's policies on the types of productions that may include the Montana screen credit, and the criteria for approving projects with a base investment of less than \$350,000."

Section 3. Section 15-31-1007, MCA, is amended to read:

"15-31-1007. Tax credit for media production.

- (1) Subject to 15-31-1010 and through the tax year ending December 31, 2029, a production company and its affiliates are allowed a credit against the taxes imposed by chapter 30 and this chapter for investments in a state-certified production approved by the department of commerce as provided in 15-31-1004 and 15-31-1005. The credit is for the base investment made up to 6 months before state certification through completion of the project. The credit must be claimed for the period July 1, 2019, through December 31, 2020, in which the production expenditures were incurred or the compensation was paid unless the credit is transferred to the next tax year because the limits provided for in 15-31-1010 have been met. For periods after December 31, 2020, the credit must be claimed for the year in which the production expenditures were incurred or the compensation was paid unless the credit is transferred to the next tax year because the limits provided for in 15-31-1010 have been met.
- (2) To claim the credit provided for in this section:
 - (a) the production company or its affiliate must have applied to the department of commerce as provided in 15-31-1005 and been approved to claim or transfer the credit; or
 - (b) the taxpayer must be the entity to which a credit approved pursuant to 15-31-1005 and this section was transferred.
- (3) (a) The credit is equal to 20% of the production expenditures in the state in the tax year, plus the additional amounts provided for in subsection (3)(b), but may not in the aggregate exceed 35% of the production company's base investment in the tax year.
 - (b) Additional amounts for which the credit may be claimed are:
 - (i) if at least 50% of the cast and crew are residents, excluding extras and five principal cast members:
 - (A) 25% of the compensation paid per production or season of a television series to each crew member or production staff member who is a resident, not to exceed a \$150,000 credit per person;
 - ~~(ii)~~ (B) 15% of the compensation paid per production or season of a television series to each crew member or production staff member who is not a resident but for whom Montana income taxes have been withheld, not to exceed a \$150,000 credit per person;
 - ~~(iii)~~ (C) 20% of the first \$7.5 million of compensation paid per production or season of a television series to each actor, director, producer, or writer for whom Montana income taxes have been withheld; and
 - ~~(iv)~~ (D) 30% of compensation paid per production or season of a television series to a student enrolled in a Montana college or university who works on the production for college credit. The credit may not exceed \$50,000 per student. If a credit provided for in this subsection ~~(3)(b)(iv)~~ (3)(b)(i)(D) is claimed for an enrolled student, the credits provided for in subsections

~~(3)(b)(i)(A)~~ through ~~(3)(b)(iii)~~ ~~(3)(b)(i)(C)~~ may not be claimed for the same enrolled student.

- ~~(v)~~ ~~(ii)~~ an additional 10% of payments made to a Montana college or university for stage rentals, equipment rentals, or location fees for filming on campus;
 - ~~(vi)~~ ~~(iii)~~ an additional 10% of all in-studio facility and equipment rental expenditures incurred in this state for a production that rents a studio for 20 days or more;
 - ~~(vii)~~ ~~(iv)~~ an additional 5% for production expenditures made in an underserved area; and
 - ~~(viii)~~ ~~(v)~~ an additional 5% of the base investment in the state if the state-certified production includes a Montana screen credit furnished by the state as provided in 15-31-1004(7).
- (4) If one production company makes a production expenditure to hire another production company to produce a project or contribute elements of a project for pay, the hired production company is considered a service provider for the hiring company and the hiring company is entitled to claim the credit for all expenditures that are incurred in the state.
- (5) Any unused credit may be carried forward for 5 years or may be transferred as provided in 15-31-1008. The credit allowed by this section, including a transferred credit, may not be refunded if the taxpayer has a tax liability less than the amount of the credit.
- (6) A taxpayer claiming a credit shall include with the tax return the following information:
- (a) the amount of tax credit claimed and transferred for the tax year;
 - (b) the amount of the tax credit previously claimed or transferred;
 - (c) the amount of the tax credit carried over from a previous tax year; and
 - (d) the amount of the tax credit to be carried over to a subsequent tax year.
- (7) (a) A taxpayer claiming the credit provided for in this section must claim the credit as provided in subsection (7)(b).
- (b) (i) An entity taxed as a corporation for Montana income tax purposes shall claim the credit on its corporate income tax return.
 - (ii) Individuals, estates, and trusts shall claim a credit allowed under this section on their individual income tax return.
 - (iii) An entity not taxed as a corporation shall claim the credit allowed under this section on member or partner returns as follows:
 - (A) corporate partners or members shall claim their share of the credit on their corporate income tax returns;

- (B) individual partners or members shall claim their share of the credit on their individual income tax returns; and
 - (C) partners or members that are estates or trusts shall claim their share of the credit on their fiduciary income tax returns.
- (c) In order to prevent disguised sales of the credit provided for in this section, allocations of credits through partnership and membership agreements may not be recognized unless they have a substantial economic effect as that term is defined in 26 U.S.C. 704 and applicable federal regulations.
- (8) The credit allowed under this section may not be claimed by a taxpayer if the taxpayer has included the amount of the production expenditure or compensation on which the amount of the credit was computed as a deduction under 15-30-2131 or 15-31-114."

NEW SECTION.

Section 4. Applicability. [This act] applies to income tax years beginning after December 31, 2021.