

## OK S 608, Amended

Oklahoma

SUMMARY: Relates to film production incentives; relate to the Compete with Canada Film Act; renames act; clarifies statutory language; modifies amount of rebate after certain date; provides additional rebates for meeting certain requirements; extends term of act; updates statutory reference; provides an effective date.

Legislative History and AnalysisChanges in Bill text reflected as:

~~Text Deleted~~

*Text Added*

~~Text Vetoed~~

Current Legislative Status

01/20/2021 PREFILED.

02/01/2021 INTRODUCED.

02/02/2021 To SENATE Committee on FINANCE.

02/09/2021 From SENATE Committee on FINANCE: Do pass as amended.

02/09/2021 Title Stricken.

02/09/2021 To SENATE Committee on APPROPRIATIONS.

02/18/2021 From SENATE Committee on APPROPRIATIONS: Do pass.

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session: Oklahoma 1st Regular Session of the 58th Legislaturecite: 2021 OK S 608

Amended February 9, 2021Hall

SENATE FLOOR VERSION

February 18, 2021 SENATE BILL NO. 608

By:

Hall of the Senateand

Fetgatter of the House

[film production incentives - Compete with Canada Film Act - effective date]

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

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

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

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

Section 3623. As used in the Compete with Canada Film Act ***Oklahoma Film Incentive 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 ***this state*** 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;

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

SECTION 3. AMENDATORY 68 O.S. 2011, Section 3624, as last amended by Section 3, Chapter 313, O.S.L. 2019 (68 O.S. Supp. 2020, 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 **this state** 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 rebate amount shall be thirty-five percent (35%), except as provided in subsection B of this section. **Provided, for documented expenditures made after July 1, 2022, the rebate amount shall be nineteen percent (19%), 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:

1. **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 a resident of this state that is recorded in Oklahoma this state or for the cost of recording songs or music in Oklahoma this state for use in the production ;**
2. **For documented expenditures made after July 1, 2022, an additional two percent (2%) if a production company hires two (2) persons in coordination with the Oklahoma Works Employer Portal;**
3. **For documented expenditures made after July 1, 2022, an additional two percent (2%) if a production company displays the state logo, as provided by the Oklahoma Film**

*and Music Commission, in the film, television production or television commercial;*

- 4. For documented expenditures made after July 1, 2022, an additional two percent (2%) if a production company conducts the filming outside of at least a fifty (50) mile radius from downtown Oklahoma City, as determined by the Commission;*
- 5. For documented expenditures made after July 1, 2022, an additional five percent (5%) if a production company's filming at a location in this state accounts for at least one-third (1/3) of total production days; and*
- 6. For documented expenditures made after July 1, 2022, an additional five percent (5%) if a production company produces multiple films for exhibition in a theater or at least six (6) episodes of a film series in this state .*

C. The rebate program shall be administered by the Office of the Oklahoma Film and Music Commission and the Oklahoma Tax Commission, as provided in the Compete with Canada Film Act *Oklahoma Film Incentive 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 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 **Section 3621 et seq. of this title** 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 **Oklahoma Film Incentive 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 **23** 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 Film and Music Commission, 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, 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 fiscal year subject to the limitations specified in this subsection.
  - G.
    1. At the time the Office of the Film and Music Commission 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. If the high impact production otherwise meets all of the requirements of the Compete With Canada Act **Oklahoma Film Incentive 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 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:

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

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

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