

1 HOUSE BILL NO. 340

2 INTRODUCED BY W. GALT

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE MONTANA ECONOMIC
5 DEVELOPMENT INDUSTRY ADVANCEMENT ACT FILM TAX INCENTIVES; REVISING ELIGIBLE
6 PRODUCTIONS TO INCLUDE NONSCRIPTED PRODUCTIONS; REVISING THE CALCULATION OF THE
7 MEDIA PRODUCTION CREDIT; EXPANDING THE POSTPRODUCTION CREDIT TO APPLY TO QUALIFIED
8 POSTPRODUCTION ACTIVITIES; REMOVING THE LIMIT ON CREDITS CLAIMED; PROVIDING
9 RULEMAKING AUTHORITY; AMENDING SECTIONS 15-31-1003, 15-31-1004, 15-31-1005, 15-31-1006, 15-
10 31-1007, 15-31-1009, 15-31-1010, 15-31-1011, AND 15-31-1012, MCA; AND PROVIDING AN IMMEDIATE
11 EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE."

12
13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

14
15 **Section 1.** Section 15-31-1003, MCA, is amended to read:

16 **"15-31-1003. Definitions.** As used in this part, unless the context requires otherwise, the following
17 definitions apply:

18 (1) "Affiliate" means a subsidiary of which more than 50% of the voting stock is owned directly by the
19 parent corporation or another member of the Montana combined group.

20 (2) "Base investment" means the amount expended by a production company as production
21 expenditures and compensation incurred in this state that are directly used in a state-certified production.

22 (3) (a) "Compensation" means Montana wages, salaries, commissions, payments to a loan-out
23 company subject to the provisions of subsection (3)(c), union benefits, fringe benefits, and any other form of
24 remuneration paid to employees for personal services performed in this state.

25 (b) The term does not include compensation paid that is less than the minimum wage described in 39-
26 3-409.

27 (c) The term includes payments to a loan-out company by a production company if the production
28 company withheld and remitted Montana income tax at the rate of 6.9% on all payments to the loan-out

1 company for services performed in this state. The amount withheld is considered to have been withheld by the
2 loan-out company on wages paid to its employees for services performed in this state. The amounts withheld
3 must be allocated to the loan-out company's employees based on the payments made to the loan-out
4 company's employees for services performed in Montana. For purposes of this chapter, loan-out company
5 nonresident employees performing services in this state must be considered taxable nonresidents and the loan-
6 out company is subject to income taxation in the tax year in which the loan-out company's employees perform
7 services in this state, notwithstanding any other provisions of Title 15. The withholding liability is subject to
8 penalties and interest as provided in 15-1-216.

9 (d) With respect to a single crew member or production staff member, excluding an actor, director,
10 producer, or writer, the portion of any compensation that exceeds ~~\$500,000~~ \$600,000 for a single production is
11 not included when calculating the base investment.

12 (e) All payments to a single employee and any legal entity in which the employee has any direct or
13 indirect ownership interest are considered as having been paid to the employee and must be aggregated
14 regardless of the means of payment or distribution.

15 (4) "Game platform" means the electronic delivery system used to launch or play an interactive game.

16 (5) "Game sequel" means an interactive game that builds on the theme of a previously released
17 interactive game, is distinguished by a new title, and features objectives or characters that are recognizably
18 different from those in the original game.

19 (6) (a) "Loan-out company" means a personal service company contracted with and retained by a
20 production company to provide individual personnel who are not employees of the production company,
21 including actors, directors, producers, writers, production designers, production managers, costume designers,
22 directors of photography, editors, casting directors, first assistant directors, second unit directors, stunt
23 coordinators, and similar personnel, for performance of services used directly in a qualified production activity.

24 (b) The term does not include persons retained by a production company to provide tangible property
25 or outside independent contractor services, such as catering, construction, trailers, equipment, and
26 transportation.

27 (7) "Multimarket commercial distribution" means paid commercial distribution that extends to markets
28 outside the state.

1 (8) (a) "Postproduction company" means a company that:

2 (i) maintains a business location physically located in this state;

3 (ii) is engaged in qualified postproduction activities;

4 (iii) meets the requirements of 15-31-1005(4) in the tax year for which the postproduction company
5 claims the tax credit provided for in 15-31-1009; and

6 (iv) has been approved by the department of commerce to claim the credit provided for in 15-31-1009.

7 (b) The term does not include any form of business owned, affiliated, or controlled, in whole or in part,
8 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
9 guaranteed by the state.

10 (9) "Prereleased interactive game" means a new game, the offering of an existing game on a new
11 game platform, or a game sequel that is in the developmental stages of production and that may be available to
12 individuals for testing purposes but is not generally made available or distributed to consumers or to the general
13 public.

14 (10) (a) "Production company" means a company primarily engaged in qualified production activities
15 that have been approved by the department of commerce.

16 (b) The term does not include any form of business owned, affiliated, or controlled, in whole or in part,
17 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
18 guaranteed by the state.

19 (11) (a) "Production expenditure" means a preproduction or production expenditure incurred in
20 Montana that is directly used for a qualified production activity including:

21 (i) set construction and operation;

22 (ii) wardrobes, makeup, accessories, and related services;

23 (iii) costs associated with photography and sound synchronization expenditures, excluding license
24 fees, incurred with Montana companies for sound recordings and musical compositions, lighting, or related
25 services and materials;

26 (iv) editing and related services;

27 (v) rental of facilities and equipment;

28 (vi) leasing of vehicles, whether to be photographed or to transport people, equipment, or materials;

- 1 (vii) lodging costs, including hotel rooms and private housing rentals paid for by the production
2 company;
- 3 (viii) per diem and living allowance paid to staff, cast, and crew members;
- 4 (ix) digital, film, or tape editing, film processing, transfers of film to tape or digital format, sound mixing,
5 computer graphics services, special effects services, visual effects services, and animation services;
- 6 (x) airfare, if purchased through a Montana travel agency or travel company;
- 7 (xi) insurance costs and bonding, if purchased through a Montana insurance agency; and
- 8 (xii) other direct costs of producing the project in accordance with generally accepted entertainment
9 industry practices and generally accepted accounting principles.

10 (b) The term does not include:

- 11 (i) compensation, which qualifies for the credit provided for in 15-31-1007(3)(b)(i) through (3)(b)(iv);
- 12 (ii) production expenditures for footage shot outside the state;
- 13 (iii) marketing;
- 14 (iv) story rights;
- 15 (v) distribution; or
- 16 (vi) postproduction expenditures.

17 (12) "Qualified Montana promotion" means a promotion of this state approved by the department of
18 commerce and consisting of:

19 (a) a qualified movie production that includes a 5-second static or animated logo that promotes
20 Montana in the end credits for the life of the project and that includes a link to the official state of Montana
21 website on the project's website;

22 (b) a qualified television production that includes an embedded 5-second Montana promotion during
23 each broadcast worldwide for the life of the project and that includes a link to the official state of Montana
24 website on the project's website;

25 (c) a qualified music video that includes the Montana logo at the end of each video and within online
26 promotions;

27 (d) a qualified interactive game that includes a 15-second Montana advertisement in units sold and
28 embedded in online promotions; or

1 (e) a qualified television special or sports event for which the network provides complimentary
 2 placement of two 30-second spots per 30 minutes of qualifying television special or sports event programming
 3 promoting Montana destinations and provided by the department of commerce as provided for in 15-31-
 4 1004(7).

5 (13) "Qualified postproduction activity" means an activity performed in this state on a qualified
 6 production employing traditional, emerging, and new workflow techniques used in postproduction for picture,
 7 sound, and music editing, rerecording and mixing, visual effects, graphic design, original scoring, animation,
 8 musical composition, and other activities performed after initial production and including activities performed on
 9 previously produced and edited content.

10 ~~(14) "Qualified postproduction wage" means wages incurred in this state directly in qualified~~
 11 ~~postproduction activities for footage shot inside or outside this state.~~

12 (14) "Qualified postproduction expenditure" means an expenditure incurred in this state directly in
 13 qualified postproduction activities for footage shot inside or outside this state, including without limitation:

14 (a) costs associated with picture and sound synchronization;

15 (b) expenditures, excluding license fees, incurred with Montana companies for sound recordings and
 16 musical compositions, lighting, or related services and materials;

17 (c) editing and related services;

18 (d) rental of facilities and equipment;

19 (e) leasing of vehicles;

20 (f) costs of food and lodging;

21 (g) digital, film, or tape editing, film processing, transfers of film to tape or digital format, sound mixing,
 22 computer graphics services, special effects services, visual effects services, and animation services;

23 (h) compensation paid to an employee working within this state on qualified postproduction activities;

24 (i) airfare, if purchased through a Montana travel agency or travel company;

25 (j) insurance costs and bonding, if purchased through a Montana insurance agency; and

26 (k) other direct postproduction costs for the project in accordance with generally accepted
 27 entertainment industry practices.

28 (15) (a) "Qualified production" means a new film, video, or digital project including only feature films,

1 series for theaters, television, or streaming, pilots, movies and ~~scripted~~ shows made for television or streaming,
2 televised commercial advertisements, music videos, corporate videos, industrial films, production for website
3 creation, television specials, sports events, video games, interactive entertainment, prereleased interactive
4 games, and sound recording projects used in a feature film, series, pilot, or movie for television or streaming.

5 (b) The term includes projects shot, recorded, or originally created in short or long form, animation,
6 and music, fixed on a delivery system, including film, videotape, computer disc, laser disc, and any element of
7 the digital domain, from which the program is viewed or reproduced and which is intended for multimarket
8 commercial distribution via a theater, video on demand, digital or fiber optic distribution platforms, digital video
9 recording, a digital platform designed for distribution of interactive games, licensing for exhibition by individual
10 television stations, groups of stations, networks, advertiser-supported sites, cable television stations, streaming
11 services, or public broadcasting stations.

12 (c) The term does not include the coverage of news, local interest programming, ~~instructional videos,~~
13 ~~commercials distributed only on the internet,~~ infomercials, solicitation-based productions, ~~nonscripted television~~
14 ~~programs,~~ feature films consisting primarily of stock footage not originally recorded in Montana, or projects
15 containing obscenity as defined in 45-8-201(2).

16 (16) (a) "Qualified production activity" means the production of a new film, video, or digital project in
17 this state and approved by the department of commerce, including only feature films, series for theaters,
18 television, or streaming, pilots, movies and ~~scripted~~ shows made for television or streaming, ~~televised~~
19 commercial advertisements, music videos, corporate videos, industrial films, production for website creation,
20 television specials, sports events, video games, interactive entertainment, prereleased interactive games, and
21 sound recording projects used in a feature film, series, pilot, or movie for television or streaming.

22 (b) The term includes the production of projects filmed or recorded in this state, in whole or in part and
23 in short or long form, animation and music, fixed on a delivery system, including film, videotape, computer disc,
24 laser disc, and any element of the digital domain, from which the program is viewed or reproduced and which is
25 intended for multimarket commercial distribution via a theater, video on demand, digital or fiber optic distribution
26 platforms, digital video recording, a digital platform designed for distribution of interactive games, licensing for
27 exhibition by individual television stations, groups of stations, networks, advertiser-supported sites, cable
28 television stations, streaming services, or public broadcasting stations.

1 (c) The term does not include the coverage of news, local interest programming, ~~instructional videos,~~
 2 ~~commercials distributed only on the internet,~~ infomercials, solicitation-based productions, ~~nonscripted television~~
 3 ~~programs,~~ or feature films consisting primarily of stock footage not originally recorded in Montana, projects
 4 containing obscenity as defined in 45-8-201(2), or projects not shot, recorded, or originally created in Montana.

5 (17) "Resident" has the meaning provided in 15-30-2101.

6 (18) "State-certified production" means a production engaged in qualified production activities and
 7 certified by the department of commerce as provided in 15-31-1004.

8 (19) "Underserved area" means a county in this state in which 14% or more people of all ages are in
 9 poverty as determined by the U.S. bureau of the census estimates for the most current year available."
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10

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

12 **"15-31-1004. Application for state certification.** (1) (a) A production company may not receive the
 13 tax credit provided for in 15-31-1007 unless the production has been certified by the department of commerce
 14 as provided in this section.

15 (b) A postproduction company may not receive the tax credit provided for in 15-31-1009 unless the
 16 postproduction company has been certified by the department of commerce. The postproduction company shall
 17 submit an application that includes the information provided for in subsection (2)(a) for the postproduction
 18 company. The application must be submitted in the year in which the postproduction plans to claim the credit
 19 and must be accompanied by a \$500 application fee. ~~For the purposes of allocating the credit pursuant to 15-~~
 20 ~~31-1010, the application must contain an estimate of the amount of credit the postproduction company will~~
 21 ~~claim.~~ A postproduction company that plans to claim the credit in more than 1 tax year must apply for the credit
 22 each year, but the application fee is only required in the first year of application. The department of commerce
 23 shall notify the applicant whether the postproduction company qualifies for the credit within 30 days of receipt of
 24 the application.

25 (2) An application, on a form provided by the department of commerce, must be submitted by the
 26 production company to the department of commerce before the start of principal photography in the state. The
 27 application must be accompanied by a \$500 fee and must include:

28 (a) the production company's name, primary business address, telephone and fax numbers,

- 1 incorporation information, federal tax identification number, and the name of at least one principal company
2 officer or manager;
- 3 (b) the address and telephone and fax numbers of the production company's Montana office;
4 (c) the name of the line producer, unit production manager, or production accountant;
5 (d) a statement that the applicant meets the definition of production company in 15-31-1003;
6 (e) the title of the production;
7 (f) the type of production;
8 (g) the proposed dates of production from preproduction to the start and completion of principal
9 photography;
- 10 (h) a copy or synopsis of the production script;
11 (i) a list of production locations;
12 (j) a statement that the proposed production does not contain any material or performance that would
13 be considered obscene under 45-8-201(2);
14 (k) a statement that the production will include a qualified Montana promotion; and
15 (l) a statement that the production company plans to make a base investment of \$350,000 or more or,
16 if subsection (5) applies, that the production company plans to make a base investment of \$50,000 or more.
- 17 (3) The application must be signed by the manager, agent, president, vice president, or other person
18 authorized to represent the production company.
- 19 (4) (a) The department of commerce shall notify the applicant within 30 days of receipt of the
20 application as to whether the production qualifies as a state-certified production.
- 21 (b) If the department of commerce approves the application, the department of commerce shall
22 provide a certification number to the applicant.
- 23 (5) The department of commerce may approve on a case-by-case basis an application for a
24 commercial, music video, production for website creation, video game, interactive entertainment, or
25 experimental or low-budget project that plans a base investment of less than \$350,000 but more than \$50,000.
- 26 (6) (a) If the department of commerce determines that the production company has violated the
27 provisions of subsection (2)(j) or (2)(k), the department of commerce may revoke the state certification of the
28 production. If the department of commerce revokes the state certification, the department of commerce shall

1 notify the department of revenue. The production company has the right to a hearing before the department of
2 commerce on the revocation of the state certification as provided in Title 2, chapter 4, part 6.

3 (b) The department of revenue shall recapture any tax credit claimed by a production company for
4 which the state certification has been revoked. The recapture is subject to penalties and interest as provided in
5 15-1-216.

6 (c) If the production company transferred the tax credit, the recapture provisions of 15-31-1008(7)
7 apply.

8 (7) The department of commerce shall design and furnish the Montana screen credit needed to
9 qualify for the additional tax credit provided for in 15-31-1007(3)(b)(viii) and the programming promoting
10 Montana destinations provided for in 15-31-1003(12)(e).

11 (8) The application fee must be deposited in an account in the state special revenue fund. The fee is
12 statutorily appropriated to the department of commerce, as provided in 17-7-502, to administer the provisions of
13 15-31-1004 through 15-31-1012.

14 (9) The department of commerce shall prescribe rules necessary to carry out the provisions of this
15 section, including a procedure for review of the department of commerce's denial or revocation of state
16 certification, the department's policies on the types of productions that may include the Montana screen credit,
17 and the criteria for approving projects with a base investment of less than \$350,000."

18

19 **Section 3.** Section 15-31-1005, MCA, is amended to read:

20 **"15-31-1005. Submission of costs -- fee.** (1) Prior to claiming the media production tax credit
21 provided for in 15-31-1007 or the tax credit for postproduction ~~wages~~expenditures provided for in 15-31-1009,
22 a production company or postproduction company must be approved to claim the credit by the department of
23 commerce and shall submit costs to the department of revenue as provided in this section. A taxpayer may not
24 claim a credit provided for in 15-31-1007 or 15-31-1009 unless the costs have been approved as provided in
25 this section. The submission of cost information must be accompanied by a fee as follows:

26 (a) for a production company with a base investment of less than \$350,000, \$500;

27 (b) for a production company with a base investment of \$350,000 or more, \$1,000;

28 (c) for a postproduction company claiming the credit provided for in 15-31-1009, \$1,000.

1 (2) (a) A production company wishing to claim or transfer the tax credit for media production provided
2 for in 15-31-1007 shall submit to the department of revenue detailed information on production expenditures
3 and compensation paid in connection with the state-certified production. Production expenditures and
4 compensation paid must be submitted within 60 90 days of the completion of principal photography or, for a
5 state-certified production for which expenditures will be claimed for multiple tax years, by the end of the tax year
6 for which the credit will be claimed. If the production company fails to submit the required expenditures and
7 compensation within 60 90 days, the tax credits may not be claimed until the following tax year.

8 (b) The information submitted by the production company must include:

9 (i) the certification number of the state-certified production, as provided for in 15-31-1004(4);

10 (ii) a description of the qualified production activities and the production expenditures, including
11 information that demonstrates a base investment of \$350,000 or more or, if 15-31-1004(5) applies, a base
12 investment of \$50,000 or more; and

13 (iii) if compensation is included in the production expenditures, a detailed listing of employee names,
14 social security numbers, Montana wages, state of residence, and whether the employee is an enrolled student.

15 (3) (a) The department of revenue shall review the costs submitted pursuant to subsection (2) ~~and~~
16 ~~provide to the department of commerce the amount of the media production tax credit calculated pursuant to~~
17 ~~15-31-1007 that may be claimed or transferred and the federal tax identification number of the production~~
18 ~~company.~~

19 (b) (i) Except as provided in subsection (3)(b)(ii), the department of revenue shall approve the media
20 production tax credit if the state-certified production's base investment is \$350,000 or more.

21 (ii) The department of revenue shall approve the credit for a commercial, music video, production for
22 website creation, video game, interactive entertainment, or experimental or low-budget project certified by the
23 department of commerce pursuant to 15-31-1004(5) if the production's base investment is \$50,000 or more.

24 (c) A credit may be approved as provided in this subsection (3) only if principal photography began
25 within 1 year of the date the department of commerce certified the production pursuant to 15-31-1004.

26 (4) (a) A postproduction company wishing to claim the tax credit for qualified postproduction~~wages~~
27 ~~expenditures~~ provided for in 15-31-1009 shall submit to the department of revenue a detailed listing of
28 employee names, social security numbers, and Montana wages information on qualified postproduction

1 expenditures.

2 (b) The information submitted by the postproduction company must include:

3 (i) a description of the qualified postproduction activities;

4 (ii) a certification that the postproduction company maintains a business location physically located in
5 this state; and

6 (iii) if compensation is included in the qualified postproduction expenditures, a detailed listing of
7 employee names, social security numbers, and Montana wages.

8 (5) A production company or postproduction company that submits costs pursuant to this section to
9 claim the credit provided for in 15-31-1007 or 15-31-1009 shall submit the production expenditure verification
10 report provided for in 15-31-1006 by the due date provided for in 15-30-2604 without extension.

11 (6) The identity and social security number or federal tax identification number of the employees for
12 which compensation information is submitted pursuant to this section are subject to the provisions of 15-30-
13 2618 and 15-31-511.

14 (7) The fee provided for in subsection (1) must be deposited in the state special revenue fund. The
15 fee is statutorily appropriated, as provided in 17-7-502, to the department of revenue to administer the
16 provisions of 15-31-1007 through 15-31-1009."
17

18 **Section 4.** Section 15-31-1006, MCA, is amended to read:

19 **"15-31-1006. Production expenditure verification report.** (1) A production company or
20 postproduction company that claims the credit provided for in 15-31-1007 or 15-31-1009 shall submit a
21 production expenditure verification report to the department of revenue as provided in this section.

22 (2) The production expenditure verification report must:

23 (a) be issued by a certified public accountant who is unrelated to the production company or
24 postproduction company and include a certification to that effect;

25 (b) be performed in accordance with the accounting standards generally accepted in the United
26 States;

27 (c) be addressed to the person who engaged the accountant with a copy addressed to the production
28 company, postproduction company, or person who applies for the credit provided for in 15-31-1007;

- 1 (d) include the accountant's name, address, and telephone number;
- 2 (e) include the date of completion of the accountant's work; and
- 3 (f) contain a statement of acknowledgment by the accountant that the state is relying on the report to
4 issue tax credits.
- 5 (3) The contents of the report must include:
- 6 (a) verification of the accuracy of the production expenditures and compensation submitted pursuant
7 to 15-31-1005(2) or the ~~wages and compensation~~ postproduction expenditures submitted pursuant to 15-31-
8 1005(4);
- 9 (b) an opinion from the accountant stating that there are no related party transactions or that material
10 related party transactions are properly reported and accounted for, adequately disclosed, and explained in the
11 report; and
- 12 (c) a statement that the submission of the production expenditures and compensation presents fairly,
13 in all material aspects, the production expenditures, postproduction ~~wages~~ expenditures, and compensation
14 expended in Montana pursuant to the provisions of this part.
- 15 (4) All costs associated with the report are the obligation of the production company or postproduction
16 company."

17

18 **Section 5.** Section 15-31-1007, MCA, is amended to read:

19 **"15-31-1007. Tax credit for media production.** (1) Subject to 15-31-1010 and through the tax year
20 ending December 31, 2029, a production company and its affiliates are allowed a credit against the taxes
21 imposed by chapter 30 and this chapter for investments in a state-certified production approved by the
22 department of commerce as provided in 15-31-1004 and 15-31-1005. The credit is for the base investment
23 made up to ~~6 months~~ 1 year before state certification through completion of the project. ~~The credit must be~~
24 ~~claimed for the period July 1, 2019, through December 31, 2020, in which the production expenditures were~~
25 ~~incurred or the compensation was paid unless the credit is transferred to the next tax year because the limits~~
26 provided for in 15-31-1010 have been met. For periods after December 31, 2020, the The credit must be
27 claimed for the year in which the production expenditures were incurred or the compensation was paid unless
28 ~~the credit is transferred to the next tax year because the limits provided for in 15-31-1010 have been met.~~

1 (2) To claim the credit provided for in this section:

2 (a) the production company or its affiliate must have applied to the department of commerce as
3 provided in 15-31-1005 and been approved to claim or transfer the credit; or

4 (b) the taxpayer must be the entity to which a credit approved pursuant to 15-31-1005 and this section
5 was transferred.

6 (3) (a) The credit is equal to 20% of the production expenditures in the state in the tax year, plus the
7 additional amounts provided for in subsection (3)(b), but may not in the aggregate exceed 35% of the
8 production company's base investment in the tax year.

9 (b) Additional amounts for which the credit may be claimed are:

10 (i) 25% of the compensation paid per production or season of a television series to each crew
11 member or production staff member who is a resident, not to exceed a \$150,000 credit per person;

12 (ii) 15% of the compensation paid per production or season of a television series to each crew member
13 or production staff member who is not a resident but for whom Montana income taxes have been withheld, not
14 to exceed a \$150,000 credit per person;

15 (iii) ~~20%~~ 25% of the first ~~\$7.5~~ \$10 million of compensation paid per production or season of a television
16 series to each actor, director, producer, or writer for whom Montana income taxes have been withheld;

17 (iv) 30% of compensation paid per production or season of a television series to a student enrolled in a
18 Montana college or university who works on the production for college credit. The credit may not exceed
19 \$50,000 per student. If a credit provided for in this subsection (3)(b)(iv) is claimed for an enrolled student, the
20 credits provided for in subsections (3)(b)(i) through (3)(b)(iii) may not be claimed for the same enrolled student.

21 (v) an additional 10% of payments made to a Montana college or university for stage rentals,
22 equipment rentals, or location fees for filming on campus;

23 (vi) an additional 10% of all in-studio facility and equipment rental expenditures incurred in this state for
24 a production that rents a studio for 20 days or more;

25 (vii) an additional 5% for production expenditures made in an underserved area; and

26 (viii) an additional 5% of the base investment in the state if the state-certified production includes a
27 Montana screen credit furnished by the state as provided in 15-31-1004(7).

28 (4) If one production company makes a production expenditure to hire another production company to

1 produce a project or contribute elements of a project for pay, the hired production company is considered a
2 service provider for the hiring company and the hiring company is entitled to claim the credit for all expenditures
3 that are incurred in the state.

4 (5) Any unused credit may be carried forward for 5 years or may be transferred as provided in 15-31-
5 1008. The credit allowed by this section, including a transferred credit, may not be refunded if the taxpayer has
6 a tax liability less than the amount of the credit.

7 (6) A taxpayer claiming a credit shall include with the tax return the following information:

8 (a) the amount of tax credit claimed and transferred for the tax year;

9 (b) the amount of the tax credit previously claimed or transferred;

10 (c) the amount of the tax credit carried over from a previous tax year; and

11 (d) the amount of the tax credit to be carried over to a subsequent tax year.

12 (7) (a) A taxpayer claiming the credit provided for in this section must claim the credit as provided in
13 subsection (7)(b).

14 (b) (i) An entity taxed as a corporation for Montana income tax purposes shall claim the credit on its
15 corporate income tax return.

16 (ii) Individuals, estates, and trusts shall claim a credit allowed under this section on their individual
17 income tax return.

18 (iii) An entity not taxed as a corporation shall claim the credit allowed under this section on member or
19 partner returns as follows:

20 (A) corporate partners or members shall claim their share of the credit on their corporate income tax
21 returns;

22 (B) individual partners or members shall claim their share of the credit on their individual income tax
23 returns; and

24 (C) partners or members that are estates or trusts shall claim their share of the credit on their
25 fiduciary income tax returns.

26 (c) In order to prevent disguised sales of the credit provided for in this section, allocations of credits
27 through partnership and membership agreements may not be recognized unless they have a substantial
28 economic effect as that term is defined in 26 U.S.C. 704 and applicable federal regulations.

1 (8) The credit allowed under this section may not be claimed by a taxpayer if the taxpayer has
2 included the amount of the production expenditure or compensation on which the amount of the credit was
3 computed as a deduction under 15-30-2131 or 15-31-114."
4

5 **Section 6.** Section 15-31-1009, MCA, is amended to read:

6 **"15-31-1009. Tax credit for postproduction wages expenditures.** (1) Through the tax year ending
7 December 31, 2029, a postproduction company that has incurred qualified postproduction ~~wages~~expenditures
8 in the tax year is allowed a credit against the taxes imposed by chapter 30 and this chapter if the taxpayer
9 applies to the department of commerce as provided in 15-31-1004 and to the department of revenue as
10 provided in 15-31-1005 and is approved to claim the credit.

11 (2) The tax credit is equal to 25% of qualified postproduction ~~wages~~expenditures incurred in the
12 state.

13 (3) A tax credit claimed under this section may not exceed the postproduction company's total
14 ~~compensation paid to employees working in this state~~ postproduction expenditures for the tax year in which the
15 credit is claimed.

16 (4) The tax credit allowed by this section may not be refunded if the taxpayer has no tax liability. Any
17 unused credit may be carried forward for 5 years.

18 (5) A taxpayer claiming a credit shall include with the tax return the following information:

19 (a) the amount of tax credit claimed for the tax year;

20 (b) the amount of the tax credit previously claimed;

21 (c) the amount of the tax credit carried over from a previous tax year; and

22 (d) the amount of the tax credit to be carried over to a subsequent tax year.

23 (6) (a) A taxpayer claiming the credit provided for in this section must claim the credit as provided in
24 subsection (6)(b).

25 (b) (i) An entity taxed as a corporation for Montana income tax purposes shall claim the credit on its
26 corporate income tax return.

27 (ii) Individuals, estates, and trusts shall claim a credit allowed under this section on their individual
28 income tax return.

1 (iii) An entity not taxed as a corporation shall claim the credit allowed under this section on member or
2 partner returns as follows:

3 (A) corporate partners or members shall claim their share of the credit on their corporate income tax
4 returns;

5 (B) individual partners or members shall claim their share of the credit on their individual income tax
6 returns; and

7 (C) partners or members that are estates or trusts shall claim their share of the credit on their
8 fiduciary income tax returns.

9 (c) In order to prevent disguised sales of the credit provided for in this section, allocations of credits
10 through partnership and membership agreements may not be recognized unless they have a substantial
11 economic effect as that term is defined in 26 U.S.C. 704 and applicable federal regulations.

12 (7) A postproduction company may not claim a credit under this section for production expenditures
13 for which the media production credit provided for in 15-31-1007 is claimed."
14

15 **Section 7.** Section 15-31-1010, MCA, is amended to read:

16 **"15-31-1010. Limitation of tax credits.** (1)~~(a)~~ The department of commerce may grant to applicants
17 pursuant to 15-31-1004 the authority to apply for the tax credits provided for in 15-31-1007 and 15-31-1009.

18 ~~(b) (2)~~ The authorization by the department of commerce to apply for a credit does not guarantee the
19 credit. A taxpayer authorized to apply for a credit pursuant to 15-31-1004 and this section must meet the
20 requirements of 15-31-1005 through 15-31-1009 ~~and subsection (2) of this section.~~

21 ~~(c) The department of commerce shall make reasonable efforts to post on its website the amount of~~
22 ~~tax credits available and not yet allocated.~~

23 ~~(2) (a) Total claims for the tax credits provided for in 15-31-1007 and 15-31-1009 may not exceed~~
24 ~~\$10 million per calendar year.~~

25 ~~(b) Claims must be allowed on a first-come, first-served basis. A taxpayer whose claim for a credit is~~
26 ~~disallowed because the calendar year limit has been reached may use the credit in the next calendar year but~~
27 ~~the transfer of the credit to the next calendar year does not extend the carry forward periods provided for in 15-~~
28 ~~31-1007(5) or 15-31-1009(4).~~

1 ~~(c) If a claim is disallowed because the calendar year limit has been reached, the department of~~
2 ~~revenue may waive penalties and interest pursuant to 15-1-216.~~

3 ~~(d) The department of revenue shall make reasonable efforts to post on its website the amount of~~
4 ~~credits available and not yet claimed."~~

5

6 **Section 8.** Section 15-31-1011, MCA, is amended to read:

7 **"15-31-1011. Report to legislature.** (1) The department of commerce shall provide a written report
8 about the economic impact of the tax credits provided for in 15-31-1007 through 15-31-1009 to the revenue
9 interim committee provided for in 5-5-227. The report must be provided ~~no less than 6 months before the start~~
10 ~~of the 2021 regular legislative session and~~, pursuant to 5-11-210, every 2 years ~~thereafter~~, and must be posted
11 on the department of commerce's website.

12 (2) The report must include:

13 (a) the overall impact of the tax credits;

14 (b) the dollar amount of tax credits issued;

15 (c) the number of net new jobs created;

16 (d) the amount of compensation paid;

17 (e) the economic impact of the film industry in the state;

18 (f) the names of all state certified productions eligible to claim tax credits; and

19 (g) any other information that describes the impact of the tax credits.

20 (3) The department of commerce shall contract with a research organization to prepare the report
21 required by this section. The research organization may not be affiliated with the film industry or with the
22 department of commerce. The department of commerce may use the fees collected pursuant to 15-31-1004 or
23 other funding to pay for the report.

24 (4) The department of commerce shall make recommendations to the revenue interim committee on
25 whether to make changes to the tax credits provided for in 15-31-1007 through 15-31-1009, ~~including changes~~
26 ~~to the cap provided for in 15-31-1010.~~ The revenue interim committee may make recommendations to the
27 legislature based on the information contained in the report and the department of commerce's
28 recommendations."

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Section 9. Section 15-31-1012, MCA, is amended to read:

"15-31-1012. Rulemaking. (1) The department of commerce and the department of revenue shall adopt rules necessary to implement and administer this part. The rules must include procedures for:

(a) determining production expenditures allowed under 15-31-1007 and postproduction ~~wages~~ expenditures allowed under 15-31-1009;

(b) administering the transfer of credits and the registration and reporting requirements of credit brokers pursuant to 15-31-1008; and

(c) reviewing taxpayer compliance with the provisions of 15-31-1004.

(2) The department of revenue and the department of commerce shall jointly adopt rules related to the content of the definitions in 15-31-1003."

NEW SECTION. **Section 10. Effective date.** [This act] is effective on passage and approval.

NEW SECTION. **Section 11. Retroactive applicability.** [This act] applies retroactively, within the meaning of 1-2-109, to income tax years beginning after December 31, 2020.

- END -