

An Act

ENROLLED SENATE
BILL NO. 608

By: Hall of the Senate

and

Fetgatter, Hill, Pittman,
Waldron, Mize and
Rosecrants of the House

An Act relating to film production incentives; creating the Filmed in Oklahoma Act of 2021; providing definitions; creating incentive rebate program; requiring the Oklahoma Department of Commerce and the Oklahoma Tax Commission to administer the program; requiring submission of certain report; authorizing the promulgation of rules; providing for eligibility for rebate; prohibiting rebate payment while obtaining certain tax exemption; requiring repayment of certain exemption to obtain rebate; requiring the Department to approve or disapprove claims; requiring the Commission to issue payment for approved claims; requiring payments for claims to be made in the order they are approved upon certain circumstance; providing limit for certain claims each fiscal year; providing minimum expenditure requirement for eligibility; adding unutilized rebate payments to the subsequent fiscal year limit; designating base rebate amount for certain projects; offering supplemental rebate amounts for certain actions; clarifying post-production expenditures; requiring the utilization of apprentices to qualify for certain rebate; requiring the display of certain logo; providing exception; creating the Filmed in Oklahoma Program Revolving Fund; providing sources of fund; providing for expenditures; directing the transfer of certain funds upon expiration of act; prohibiting eligibility of certain projects receiving certain rebates; providing date of expiration of act; authorizing the payment of

certain claims after expiration; amending 68 O.S. 2011, Section 2352, as last amended by Section 3 of Enrolled House Bill No. 2894 of the 1st Session of the 58th Oklahoma Legislature, which relates to the distribution of income tax revenue; providing for transfer of funds to the Commission; providing for codification; providing an effective date; declaring an emergency; and providing a conditional effective date.

SUBJECT: Filmed in Oklahoma Act of 2021

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

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3631 of Title 68, unless there is created a duplication in numbering, reads as follows:

This act shall be known and may be cited as the "Filmed in Oklahoma Act of 2021".

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3632 of Title 68, unless there is created a duplication in numbering, reads as follows:

As used in the Filmed in Oklahoma Act of 2021:

1. "Above-the-line personnel" means producers, principal cast, screenwriters and directors who work on production of films or television series. The qualifying salary of above-the-line personnel may be included as crew, as defined in paragraph 3 of this section, if the salaries are paid to loan-out corporations and limited liability companies registered to do business in 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 5 of this section. For purposes of this paragraph, "Oklahoma-based" means a company or individual with an Oklahoma income tax requirement;

2. "Apprentice" means a person who works for a skilled or qualified person in order to learn a trade or profession for an agreed-upon period of time. An apprentice may work in any of the trades recognized by the Oklahoma Department of Commerce as necessary for a film production;

3. "Crew" means any person who works on preproduction, principal photography and postproduction, with the exception of above-the-line-personnel;

4. "Eligible television series" means a project if either seventy-five percent (75%) of the series season is filmed within the state or, for an episodic television pilot, if more than seventy-five percent (75%) of the pilot is filmed within the state;

5. "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, pursuant to the provisions of the Internal Revenue Code, 26 U.S.C., Section 62(a)(2),
- 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;

6. "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. The term shall also include filming for interactive and video gaming including, but not limited to, green screen, motion capture and similar production techniques;

7. "Multi-film deal" means a project in which a production company films at least seventy-five percent (75%) of main crew principal photography for three (3) or more films in this state within three (3) years or where the third film starts main crew principal photography within the three (3) year period;

8. "Nonresident crew member" means a person who is not an Oklahoma resident, hired for a qualifying production project occurring within the state and who is subject to the payment of Oklahoma employment taxes;

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

10. "Qualified production expenditure amount" means an expenditure defined pursuant to paragraph 5 of this section; and

11. "Qualified soundstage facility" means a state certified industry standard soundstage facility having not less than seven thousand five hundred (7,500) square feet of combined soundstage space and with a total state rental cost to the production company equal to at least one percent (1%) of the qualifying Oklahoma expenditures with respect to a production.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3633 of Title 68, unless there is created a duplication in numbering, reads as follows:

A. There is hereby created an incentive rebate program for certain film projects and eligible television series projects filmed or produced in Oklahoma who meet the requirements of this act.

B. The rebate program shall be administered by the Oklahoma Department of Commerce and the Oklahoma Tax Commission.

C. By October 1 of each year, the Oklahoma Department of Commerce shall submit an annual report to the Speaker of the House of Representatives, the President Pro Tempore of the Senate, the Chair of the Appropriations and Budget Committee of the House of Representatives, the Chair of the Appropriations Committee of the Senate and the Director of the Legislative Office of Fiscal Transparency detailing the program and incentive rebate payments.

D. The Oklahoma Department of Commerce and the Oklahoma Tax Commission may promulgate rules to implement the provisions of this act.

E. To be eligible for a rebate payment a production company shall:

1. Submit an application and documentation to the Oklahoma Department of Commerce as required by the Department;

2. Have filed any Oklahoma tax returns and tax documents required by law;

3. Provide evidence that all Oklahoma crew and local vendors have been paid and that there are no pending liens against the production company in this state;

4. Provide evidence of financing for production prior to the commencement of principal photography;

5. 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 in compliance with law, which shall include coverage of employer's liability; and

6. Provide evidence, as required by the Department, that the projects pursuant to this act are completed.

F. A production company shall not be eligible to receive both a rebate payment pursuant to the provisions of this act and an exemption from sales tax pursuant to the provisions of paragraph 23 of section 1357 of Title 68 of the Oklahoma Statutes. If a production company has received the exemption from sales taxes and submits a claim for rebate pursuant to the provisions of this 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 in this subsection or shall include an affidavit from the production company that the company has not received an exemption from sales tax pursuant to the provisions of paragraph 23 of Section 1357 of Title 68 of the Oklahoma Statutes.

G. The Department of Commerce shall approve or disapprove all claims for rebate and shall notify the Tax Commission subject to the limitations set forth in Section 4 of this act. Upon notification of approval from the Department, the Commission shall issue payment for all approved claims from funds held in the Filmed in Oklahoma Program Revolving Fund created pursuant to Section 9 of this act and subject to the limitations set forth in Section 4 of this act. If the amount of approved claims exceeds the balance of the revolving fund, payments shall be made in the order the claims are approved by the Department. If an approved claim is not paid in whole, the unpaid claim or unpaid portion of the claim shall be paid upon the availability of funds.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3634 of Title 68, unless there is created a duplication in numbering, reads as follows:

A. The total amount of rebate payments conditionally pre-qualified by the Department of Commerce each fiscal year with respect to any of the incentives authorized pursuant to this act shall not exceed Thirty Million Dollars (\$30,000,000.00). Projects not conditionally pre-qualified for rebate payments due to the

limitations provided in this section may be conditionally pre-qualified by the Department in subsequent fiscal years.

B. The amount of rebate payments conditionally pre-qualified by the Department of Commerce each fiscal year with respect to any of the incentives authorized pursuant to this act shall not exceed:

1. Seven Million Five Hundred Thousand Dollars (\$7,500,000.00) for production projects with total expenditures of less than Seven Million Five Hundred Thousand Dollars (\$7,500,000.00); and

2. Twenty-two Million Five Hundred Thousand Dollars (\$22,500,000.00) for production projects with total expenditures of Seven Million Five Hundred Thousand Dollars (\$7,500,000.00) or more.

C. A production project shall have total expenditures of Fifty Thousand Dollars (\$50,000.00) or more to be eligible for the rebate payments provided in this act.

D. In any fiscal year if the amount of rebate payments conditionally pre-qualified by the Department of Commerce are less than the limitations provided in this section, the excess rebate payments not utilized shall be added to subsequent fiscal year's limitation.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3635 of Title 68, unless there is created a duplication in numbering, reads as follows:

A. Subject to the final approval of the eligibility application by the Oklahoma Department of Commerce, a requirement that the incentive payments made pursuant to the provisions of this act achieve the maximum positive impact for the Oklahoma economy and subject to the Oklahoma workforce requirements of Section 7 of this act, the base incentive amount for a project filmed in this state shall be a maximum of twenty percent (20%) of the qualified production expenditure amount. An incentive for a project filmed in this state for wages paid to nonresident crew, not including above-the-line personnel, before July 1, 2023, shall be provided in the amount of seven and one-half percent (7.5%).

B. In addition to the amount authorized by subsection A of this section, there may be an additional incentive amount, subject to the final approval of the Oklahoma Department of Commerce, in the maximum amount of:

1. Three percent (3%) of the qualified production expenditure amount for projects where at least twenty-five percent (25%) of main crew principal photography days are filmed on location, excluding sound stage production, in any county of this state if the county has a population of less than two hundred fifty thousand (250,000) persons according to the federal Decennial Census or most recent population estimate;

2. Two percent (2%) of the qualified production expenditure amount for projects whose hub location, as determined by the Department, is or projects where at least twenty-five percent (25%) of main crew principal photography days are filmed on location, excluding sound stage production, in a municipality having a population of thirteen thousand (13,000) or fewer persons according to the federal Decennial Census or most recent population estimate regardless of the county in which the municipality is located or partially located;

3. Five percent (5%) of the qualified production expenditure amount for soundstage expenditures if at least twenty-five percent (25%) of main crew principal photography days are filmed at a qualified soundstage facility;

4. For eligible television series as defined in paragraph 4 of Section 2 of this act:

- a. two percent (2%) of the qualified production expenditure amount for an eligible television episodic pilot, and
- b. five percent (5%) of the qualified production expenditure amount if a television series is filmed for one or more seasons;

5. Five percent (5%) of the qualified production expenditure amount for an eligible multi-film deal as defined in paragraph 7 of Section 2 of this act; and

6. Three percent (3%) of the qualified production expenditure amount based on expenditures paid to Oklahoma vendors for post-production expenses with a minimum expenditure of three percent (3%) of Oklahoma production expenditures. Post-production expenditures include but are not limited to the following categories:

- a. sound recording or mixing,
- b. color grading,
- c. editorial work,
- d. visual effects,
- e. animation,
- f. deliverables, excluding marketing and advertising,
- g. music production, recording, mixing or composition,
- h. licensing of Oklahoma music, and
- i. editing equipment or editing facility rental.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3636 of Title 68, unless there is created a duplication in numbering, reads as follows:

A. Subject to the final approval of the eligibility application by the Oklahoma Department of Commerce, and subject to the requirement that incentive payments pursuant to the provisions of this act have the maximum positive impact for the economy of the state, the base incentive amount for post-production activity occurring in this state for a project filmed outside this state shall be a maximum of twenty percent (20%) of the qualified production expenditure amount.

B. In addition to the amount authorized by subsection A of this section, there may be an additional incentive amount, subject to the final approval of the Oklahoma Department of Commerce, for eligible

television series as defined in paragraph 4 of Section 2 of this act in the following amounts:

1. Two percent (2%) of the qualified production expenditure amount for an eligible episodic television pilot; and

2. Five percent (5%) of the qualified production expenditure amount if the television series is filmed for one or more seasons.

C. In addition to the amount authorized by subsection A of this section, there may be an additional five percent (5%) of the qualified production expenditure amount, subject to the final approval of the Oklahoma Department of Commerce, for an eligible multi-film deal, as defined in paragraph 7 of Section 2 of this act, produced outside this state.

D. The provisions of this section shall be applicable only with respect to qualified production expenditure amounts for post-production activity occurring within the state including, but not limited to, the following categories:

1. Sound recording or mixing;
2. Color grading;
3. Editorial work;
4. Visual effects;
5. Animation;
6. Deliverables, excluding marketing and advertising;
7. Music production, recording, mixing or composition;
8. Licensing of Oklahoma music; and
9. Editing equipment or editing facility rental.

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3637 of Title 68, unless there is created a duplication in numbering, reads as follows:

