

Enrolled Senate Bill 621

Sponsored by Senator JOHNSON; Senators BONAMICI, DEVLIN, METSGER, MONROE, MORRISETTE, Representatives BOONE, DEMBROW, HARKER, HUNT, READ (at the request of Governor Theodore R. Kulongoski)

CHAPTER

AN ACT

Relating to Oregon Production Investment Fund; creating new provisions; amending ORS 284.368 and 315.514; repealing sections 1 and 3, chapter ___, Oregon Laws 2009 (Enrolled Senate Bill 863); and prescribing an effective date.

Be It Enacted by the People of the State of Oregon:

SECTION 1. ORS 284.368 is amended to read:

284.368. (1) As used in this section:

(a) "Actual **Oregon** expenses" means the costs paid in Oregon for principal photography, production or postproduction in Oregon of a film, including but not limited to the purchase or rental cost of equipment, food, lodging, real property and permits and payments made for salaries, wages and benefits for work in Oregon.

(b) "Film" means a television movie or one or more episodes of a single television series, or a movie produced for release to theaters, video or the Internet. "Film" does not include the production of a commercial or one or more segments of a newscast or sporting event.

(2)(a) The Economic and Community Development Department may reimburse a bona fide television or film production company for a portion of the actual **Oregon** expenses [*paid in Oregon by*] **of** the television or film production company [*to produce a film*].

(b) Maximum reimbursement for a single film [*or television series*] shall be the total of:

(A) 10 percent of payments made for employee salaries, wages and benefits for work done in Oregon; and

(B) 20 percent of all other actual **Oregon** expenses [*paid in Oregon*].

(c) In order to qualify for reimbursement under this section, total actual **Oregon** expenses [*paid*] for the film must equal or exceed \$750,000.

(d) Reimbursement under this section shall be made from moneys credited to or deposited in the Oregon Production Investment Fund during the biennium in which the actual **Oregon** expenses were paid or any prior biennium. A reimbursement may not be made to the extent funds are not available in the fund to make the reimbursement.

(3)(a) Total actual **Oregon** expenses supporting a claim for reimbursement under this section must be verified by the Oregon Film and Video Office. The production company must submit to the office proof of the actual **Oregon** expenses [*paid in Oregon to produce the film*]. The proof must include any documentation that may be required by the office in its discretion to verify the actual **Oregon** expenses.

(b) The office may charge the production company for costs reasonably incurred to verify the actual **Oregon** expenses, including but not limited to the cost for a review or audit of the supporting documentation by an accountant or auditor. The office may require the department to deduct the costs incurred by the office in performing its review or audit from any reimbursement made to the production company under this section.

(c) The office may adopt rules that establish a procedure for the submission and verification of actual **Oregon** expenses.

SECTION 1a. If Senate Bill 863 becomes law, sections 1 (amending ORS 284.368) and 3, chapter __, Oregon Laws 2009 (Enrolled Senate Bill 863), are repealed.

SECTION 1b. If Senate Bill 863 becomes law, ORS 284.368, as amended by section 1 of this 2009 Act, is amended to read:

284.368. (1) As used in this section:

(a) "Actual Oregon expenses" means the costs paid in Oregon for principal photography, production or postproduction in Oregon of a film, including but not limited to the purchase or rental cost of equipment, food, lodging, real property and permits and payments made for salaries, wages and benefits for work in Oregon.

(b) "Film" means a television movie or one or more episodes of a single television series, or a movie produced for release to theaters, video or the Internet. "Film" does not include the production of a commercial or one or more segments of a newscast or sporting event.

(c) "**Filmmaker**" means a person who owns a television or film production company.

(d) "**Local filmmaker**" means a person who owns a television or film production company that has its principal place of business in this state.

(e) "**Resident of this state**" has the meaning given that term in ORS 316.027.

(2)(a) The Economic and Community Development Department may reimburse a [*bona fide television or film production company*] **filmmaker** for a portion of the actual Oregon expenses [*of the television or film production company*] **incurred by the filmmaker.**

(b) Maximum reimbursement for a single film shall be the total of:

(A) 10 percent of payments made for employee salaries, wages and benefits for work done in Oregon; and

(B) 20 percent of all other actual Oregon expenses.

(c) [*In order*] To qualify for reimbursement under this [*section*] **subsection**, total actual Oregon expenses for the film must equal or exceed \$750,000.

[*(d) Reimbursement under this section shall be made from moneys credited to or deposited in the Oregon Production Investment Fund during the biennium in which the actual Oregon expenses were paid or any prior biennium. A reimbursement may not be made to the extent funds are not available in the fund to make the reimbursement.*]

(3)(a) **The department may reimburse a local filmmaker for all or a portion of the actual Oregon expenses incurred by the local filmmaker.**

(b) **To qualify for reimbursement under this subsection:**

(A) **Total actual Oregon expenses paid for the film must be at least \$75,000 and less than \$750,000;**

(B) **The local filmmaker must have spent 80 percent of the film's payroll on employees who are residents of this state; and**

(C) **The local filmmaker must have employed or contracted with a public accountant certified under ORS 673.040 for the provision of payroll services.**

(4) **Reimbursement under this section shall be made from moneys credited to or deposited in the Oregon Production Investment Fund during the biennium in which the actual Oregon expenses were paid or any prior biennium. A reimbursement may not be made to the extent funds are not available in the fund to make the reimbursement.**

[*(3)(a)*] (5)(a) Total actual Oregon expenses supporting a claim for reimbursement under this section must be verified by the Oregon Film and Video Office. The [*production company*] **filmmaker**

must submit to the office proof of the actual Oregon expenses. The proof must include any documentation that may be required by the office in its discretion to verify the actual Oregon expenses.

(b) The office may charge the [*production company*] **filmmaker** for costs reasonably incurred to verify the actual Oregon expenses, including but not limited to the cost for a review or audit of the supporting documentation by an accountant or auditor. The office may require the department to deduct the costs incurred by the office in performing its review or audit from any reimbursement made to the [*production company*] **filmmaker** under this section.

(c) The office may adopt rules that establish a procedure for the submission and verification of actual Oregon expenses.

SECTION 1c. If Senate Bill 863 becomes law, the amendments to ORS 284.368 by section 1b of this 2009 Act become operative on January 1, 2010, and apply to actual Oregon expenses incurred by local filmmakers on or after January 1, 2010.

SECTION 2. ORS 315.514 is amended to read:

315.514. (1) A credit against the taxes that are otherwise due under ORS chapter 316 or, if the taxpayer is a corporation, under ORS chapter 317 or 318, is allowed to a taxpayer for certified film production development contributions made by the taxpayer during the tax year to the Oregon Production Investment Fund established under ORS 284.367.

(2)(a) The amount of the tax credit shall equal the amount certified for credit by the Oregon Film and Video Office, except that a contribution must equal at least 90 percent of the tax credit.

(b) The Oregon Film and Video Office shall adopt rules for determining the amount of tax credit to be certified by the office. The rules shall be adopted in order to achieve the following goals:

(A) Subject to paragraph (a) of this subsection, generate contributions for which tax credits of [\$5] **\$7.5** million are certified for each fiscal year;

(B) Maximize income and excise tax revenues that are retained by the State of Oregon for state operations; and

(C) Provide the necessary financial incentives for taxpayers to make contributions, taking into consideration the impact of granting a credit upon a taxpayer's federal income tax liability.

(3) A taxpayer seeking a tax credit under this section shall apply for tax credit certification to the Oregon Film and Video Office on a form supplied by the office. The taxpayer shall include payment of the contribution at the time of application.

(4) Contributions made under this section shall be deposited in the Oregon Production Investment Fund.

(5)(a) Upon receipt of a contribution, the Oregon Film and Video Office shall issue to the taxpayer written certification of the amount certified for tax credit under this section to the extent the amount certified for tax credit, when added to all amounts previously certified for tax credit under this section, does not exceed [\$5] **\$7.5** million for the fiscal year in which certification is made.

(b) The Oregon Film and Video Office is not liable, and a refund of a contributed amount need not be made, if a taxpayer who has received tax credit certification is unable to use all or a portion of the tax credit to offset the tax liability of the taxpayer.

(6) To the extent the Oregon Film and Video Office does not certify contributed amounts as eligible for a tax credit under this section, the taxpayer may request a refund of the amount the taxpayer contributed, and the office shall refund that amount.

(7)(a) Except as provided in paragraph (b) of this subsection, a tax credit claimed under this section may not exceed the tax liability of the taxpayer and may not be carried over to another tax year.

(b) Any tax credit otherwise allowable under this section that is not used by the taxpayer in a particular tax year may be carried forward and offset against the taxpayer's tax liability for the next succeeding tax year. Any credit remaining unused in the next succeeding tax year may be carried forward and used in the second succeeding tax year, and likewise, any credit not used in that second succeeding tax year may be carried forward and used in the third succeeding tax year but may not be carried forward for any tax year thereafter.

(c) A taxpayer is not eligible for a tax credit under this section if the first tax year for which the credit would otherwise be allowed begins on or after January 1, 2012.

(8) If a tax credit is claimed under this section by a nonresident or part-year resident taxpayer, the amount shall be allowed without proration under ORS 316.117.

(9) A taxpayer who has received a tax credit certificate under this section may sell the certificate to another taxpayer. The sale is effective only if a notice of tax credit certificate sale is filed with the Department of Revenue. The notice shall be filed on a form prescribed by the department on or before the date on which the income or corporate excise tax return of the buyer for the first year for which the credit could be claimed is filed or due, whichever is earlier. The notice form shall include the following information:

- (a) The name and taxpayer identification number of the seller;
- (b) The name and taxpayer identification number of the buyer;
- (c) The amount of the tax credit certificate that is being sold to the buyer;
- (d) The amount of the tax credit certificate that is being retained by the seller; and
- (e) Any other information required by the department.

(10) If requested by the Department of Revenue, the Oregon Film and Video Office shall supply a list of taxpayers that have obtained tax credit certification under this section, and for each listed taxpayer disclose:

- (a) The amount of contribution made by the taxpayer; and
- (b) The amount certified for tax credit under this section.

(11) If the amount of contribution for which a tax credit certification is made is allowed as a deduction for federal tax purposes, the amount of the contribution shall be added to federal taxable income for Oregon tax purposes.

SECTION 3. This 2009 Act takes effect on the 91st day after the date on which the regular session of the Seventy-fifth Legislative Assembly adjourns sine die.

Passed by Senate June 9, 2009

Received by Governor:

Repassed by Senate June 27, 2009

.....M.,....., 2009

Approved:

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Secretary of Senate

.....M.,....., 2009

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President of Senate

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Governor

Passed by House June 26, 2009

Filed in Office of Secretary of State:

.....M.,....., 2009

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Speaker of House

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Secretary of State