

STATE-LAW, 2005 OR H 2191 , Enacted, (July 20, 2005)

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Oregon

Changes in Bill text reflected as:

~~Text Deleted~~

Text Added

~~Text Vetoed~~

SUMMARY: Creates a labor rebate for costs incurred by persons engaged in film production in Oregon if costs exceed threshold level; creates the Greenlight Oregon Labor Rebate Fund; continuously appropriates moneys in the fund to the Economic and Community Development Department for purpose of paying rebates through the Oregon Film and Video Office.-

SAME__AS:

Current Legislative Status

01/10/2005 INTRODUCED.

01/17/2005 To HOUSE Committee on TRADE AND ECONOMIC DEVELOPMENT.

03/01/2005 From HOUSE Committee on TRADE AND ECONOMIC DEVELOPMENT: Do pass with amendment.

03/01/2005 Printed A Engrossed Text.

03/01/2005 To HOUSE Committee on REVENUE.

05/19/2005 From HOUSE Committee on REVENUE: Do pass as amended.

05/19/2005 Printed B Engrossed Text.

05/24/2005 Passed HOUSE. *****To SENATE.

05/27/2005 To SENATE Committee on REVENUE.

06/29/2005 From SENATE Committee on REVENUE: Do pass.

06/30/2005 Passed SENATE.

06/30/2005 Eligible for GOVERNOR'S desk.

07/14/2005 *****To GOVERNOR.

07/20/2005 Signed by GOVERNOR.

07/29/2005 Chaptered. Chapter No. 559

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session: Oregon 73rd Legislative Assembly

cite: 2005 OR H 2191

Enacted

July 20, 2005

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73rd OREGON LEGISLATIVE ASSEMBLY--2005 Regular Session

Enrolled

House Bill 2191

Ordered printed by the Speaker pursuant to House Rule 12.00A (5). Pre-session

filed (at the request of Governor Theodore R. Kulongoski for Oregon Film and

Video Office)

CHAPTER

AN ACT

Relating to film production incentives; creating new provisions; amending ORS 316.131; appropriating money; and prescribing an effective date.

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

SECTION 1. (1) As used in this section:

(a) 'Actual expenses' means the costs paid in Oregon for principal photography, production or postproduction in Oregon of a qualifying film production, 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) 'Commercial' means a moving image production created to advertise a product or service.

(c) 'Qualifying compensation' means wages paid by an employer to an employee for services performed in Oregon in connection with a qualifying film production.

(d)(A) 'Qualifying film production' means a production that occurs primarily in Oregon of:

(i) One or more commercials;

(ii) One or more episodes of a television show; or

(iii) A movie to be released in theaters, on video, on television, over the Internet or over any other distribution channel.

(B) 'Qualifying film production' does not include the production of one or more segments of a newscast or sporting event.

(2) The Oregon Film and Video Office shall pay a labor rebate to any person engaged in a qualifying film production for qualifying compensation paid by the person, if:

(a) The person has been certified by the office as eligible for a labor rebate;

(b) The person has made withholding payments under section 4 of this 2005 Act; and

(c) The office has verified the actual expenses that support a claim for a labor rebate under this section and those expenses exceed \$1 million.

(3) The amount of the labor rebate for a qualifying film production shall equal the amount withheld under section 4 of this 2005 Act with respect to the qualifying film production and deposited in the Greenlight Oregon Labor Rebate Fund established in section 2 of this 2005 Act, less the expenses described in subsection (5)(b) of this section.

(4)(a) A person seeking a labor rebate under this section shall apply to the office for certification.

(b) The office shall certify a person intending to engage in a qualifying film production as eligible for a labor rebate under this section if it is reasonably likely that the person will incur actual expenses of at least \$1 million that are related to a qualifying film production and:

(A) If the qualifying film production consists of one or more episodes of a television series, the actual expenses are associated with production that comprises no more than a single season of episodes;

(B) If the qualifying film production consists of one or more commercials, the actual expenses are to be incurred within a single year; or

(C) If the qualifying film production consists of a movie or other film production not described in subparagraph (A) or (B) of this paragraph, the actual expenses are associated with that movie or other film production.

(c) If the office decides to certify an applicant, the office shall send a written certificate to the applicant and a copy of the certificate to the Department of Revenue.

(5)(a) Upon completion of the qualifying film production for which a certificate was issued under subsection (4) of this section, the office shall verify the actual expenses supporting a claim for a labor rebate under this section. The certificate holder shall submit to the office proof of the actual expenses paid in Oregon to produce the qualifying film production. The proof must include any documentation that may be required by the office in its discretion to verify the actual expenses.

(b) The office may deduct from the amount of the labor rebate costs reasonably incurred to verify the actual expenses, including but not limited to the cost for a review or audit of the supporting documentation by an accountant or auditor.

(c) The office may adopt rules that establish procedures for the submission of proof of and verification of actual expenses and the payment of rebates.

(6)(a) Following verification of actual expenses by the office, the office shall pay a labor rebate to the certificate holder in the amount determined under subsection (3) of this section.

(b) If the office is unable to verify that actual expenses of the certificate holder are at least \$1 million for the qualifying film production for which the certificate was issued, the office may not pay a labor rebate to the certificate holder. Moneys in the Greenlight Oregon Labor Rebate Fund that are attributable to withholding paid by a certificate holder for whom the office is unable to verify sufficient actual expenses may be used for the purposes of the office.

SECTION 1a. The Oregon Film and Video Office may not issue a qualifying film production labor rebate certificate under section 1 of this 2005 Act on or after January 1, 2012.

SECTION 2. (1) The Greenlight Oregon Labor Rebate Fund is established in the State Treasury, separate and distinct from the General Fund. Interest earned by the Greenlight Oregon Labor Rebate Fund shall be credited to the Greenlight Oregon Labor Rebate Fund.

(2) All moneys in the Greenlight Oregon Labor Rebate Fund are continuously appropriated to the Economic and Community Development Department for the purposes of transferring amounts requested under subsection (3) of this section to the Oregon Film and Video Office.

(3) Following verification by the Oregon Film and Video Office of actual expenses of a qualifying film production certificate holder under section 1 of this 2005 Act and a request for a transfer of funds by the office, the department shall transfer amounts sufficient to pay the labor rebate described in section 1 (6)(a) of this 2005 Act and the costs of the office described in section 1 (5)(b) of this 2005 Act.

SECTION 3. Sections 4 and 5 of this 2005 Act are added to and made a part of ORS 316.162 to 316.219.

SECTION 4. (1) A person who has obtained a written certificate under section 1 of this 2005 Act, who is engaged in a qualifying film production and who pays qualifying compensation shall withhold, in lieu of the state personal income tax withholding requirements under ORS 316.167, 6.2 percent of the qualifying compensation paid.

(2) For tax years beginning on or after January 1, 2007, the Department of Revenue may by rule prescribe a withholding percentage that reflects the department's best estimate of state personal income tax attributable to qualifying compensation. If a withholding percentage is established by rule, a person described in subsection (1) of this section shall withhold at the percentage

established by rule in lieu of subsection (1) of this section and the state personal income tax withholding requirements under ORS 316.167.

(3) A person who withholds amounts under this section shall pay the amounts withheld to the Department of Revenue and shall file combined quarterly tax and assessment reports in accordance with ORS 316.168.

(4) A person who is required to withhold amounts under this section shall file, in addition to any other reports required by law, a report with the Oregon Film and Video Office, reporting:

(a) The total amount of qualifying compensation paid by the person;

(b) The names, taxpayer identification numbers and amounts of qualifying compensation paid to each employee receiving qualifying compensation during the period during which the qualifying film production was produced;

(c) The total amount withheld under this section for the period during which the qualifying film production was produced; and

(d) Any other information required by the office.

(5) The report must be filed with the office as soon as is practicable following completion of the qualifying film production or, in the case of a qualifying film production that consists of commercials, annually on or before January 31 of the year following the year in which the commercials were produced. The office shall report the total amount reported by each person under subsection (4)(c) of this section to the department.

(6) Notwithstanding ORS 316.171 or other law governing claims for refund of withheld amounts under ORS 316.162 to 316.219, a person who withholds amounts under this section may not file a claim for refund with respect to any amount shown as having been withheld or any payment accompanying a report filed under ORS 316.162 to 316.219 for a reporting period that overlaps a period for which a report is filed under subsection (4) of this section.

SECTION 5. (1) Notwithstanding ORS 316.168 or 316.502, the Department of Revenue shall deposit into a suspense account established under ORS 293.445 amounts that are withheld and paid to the department under section 4 of this 2005 Act and that equal the amounts reported to the department by the Oregon Film and Video Office under section 4 (5) of this 2005 Act.

(2) Notwithstanding ORS 314.835 or 314.840 or other law concerning the disclosure of tax information, the department may send copies of withholding reports filed under ORS 316.162 to 316.219 by a certificate holder and statements of the amounts actually withheld by a certificate holder to the Oregon Film and Video Office.

(3) Amounts necessary to reimburse the department for the expenses of the department in administering this section and section 4 of this 2005 Act, not to exceed one-half of one percent of amounts deposited in the suspense account described in subsection (1) of this section, are continuously appropriated to the department from the suspense account. The balance of the suspense account shall be transferred to the Greenlight Oregon Labor Rebate Fund established under section 2 of this 2005 Act.

SECTION 6. ORS 316.131 is amended to read:

316.131. (1) A nonresident shall be allowed a credit against the taxes otherwise due under this chapter for income taxes imposed by and paid to the state of residence (not including any preference, alternative or minimum tax) on income taxable under this chapter, subject to the following conditions:

(a) The credit shall be allowed only if the state of residence either:

(A) Does not tax the income of residents of this state derived from sources within that state; or

(B) Allows residents of this state a credit against income taxes imposed by that state on income for tax paid or payable under this chapter.

(b) The credit ~~shall~~ may not be allowed for taxes paid to a state that allows its residents a credit against the taxes imposed by that state for income tax paid or payable under this chapter irrespective of whether its residents are allowed a credit against the taxes imposed by this chapter for income taxes paid to that state.

(c) Credit shall be allowed only for the proportion of the taxes paid to the state of residence (not including preference, alternative or minimum taxes) as the adjusted gross income taxable under this chapter and also subject to taxes in the state of residence bears to the entire adjusted gross income upon which the taxes paid to the state of residence are imposed.

(d) The credit ~~shall~~ may not exceed the proportion of the tax payable under this chapter that the modified adjusted gross income subject to tax in the state of residence and also taxable under this chapter bears to the entire modified adjusted gross income of the taxpayer.

(2) For purposes of this section, the amount of income taxes paid to another state includes the taxpayer's pro rata share of any taxes on, or according to, or measured by, income or profits paid or accrued that were paid by an S corporation.

(3) Notwithstanding subsection (1) of this section, credit may not be allowed under this section for taxes paid by a nonresident on qualifying compensation.

~~(3)~~(4) As used in this section:

(a) 'Modified adjusted gross income' means federal adjusted gross income as modified by this chapter and the other laws of this state applicable to personal income taxation.

(b) 'Qualifying compensation' has the meaning given that term in section 1 of this 2005 Act.

~~(b)~~(c) 'State' means a state, district, territory or possession of the United States.

SECTION 7. Section 8 of this 2005 Act is added to and made a part of ORS chapter 316.

SECTION 8. If the amount received as a labor rebate under section 1 of this 2005 Act is included in federal taxable income for federal tax purposes, then the amount shall be subtracted from federal taxable income for purposes of determining Oregon taxable income under this chapter.

SECTION 9. Section 10 of this 2005 Act is added to and made a part of ORS chapter 317.

SECTION 10. If the amount received as a labor rebate under section 1 of this 2005 Act is included in federal taxable income for federal tax purposes, then the amount shall be subtracted from federal taxable income for purposes of determining Oregon taxable income under this chapter.

SECTION 11. This 2005 Act takes effect on the 91st day after the date on which the regular session of the Seventy-third Legislative Assembly adjourns sine die.