

DRAFT

SUMMARY

Increases amount of maximum total tax credits for certified film production development contributions for fiscal year. Allows for reimbursement for local media production projects from both portions of Oregon Production Investment Fund. Limits amount of expense reimbursement from principal portion of fund for filmmakers other than local filmmakers and for local media production services companies. Increases limit on reimbursement for local filmmaker or local media production services company.

Applies to fiscal years beginning on or after July 1, 2016.

Takes effect on 91st day following adjournment sine die.

A BILL FOR AN ACT

Relating to certified film production development contributions; creating new provisions; amending ORS 284.367, 284.368 and 315.514; and prescribing an effective date.

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

SECTION 1. ORS 284.367 is amended to read:

284.367. (1) The Oregon Production Investment Fund is established in the State Treasury, separate and distinct from the General Fund. Interest earned by the Oregon Production Investment Fund shall be credited to the fund.

(2) Moneys in the Oregon Production Investment Fund shall consist of:

(a) Amounts donated to the fund;

(b) Amounts appropriated or otherwise transferred to the fund by the Legislative Assembly;

(c) Other amounts deposited in the fund from any source; and

(d) Interest earned by the fund.

(3) [*Ninety-five*] **Ninety-two and one-half** percent of moneys in the fund

are continuously appropriated to the Oregon Business Development Department for the purposes of making:

(a) Reimbursements to filmmakers **or local media production services companies** under ORS 284.368;

(b) Payments to a tax credit marketer for marketing services provided by the marketer as described in ORS 284.369; and

(c) Refunds described in ORS 315.514 (5).

(4) *[Five]* **Seven and one-half** percent of moneys in the fund are continuously appropriated to the department for the purpose of making reimbursements to local filmmakers or local media production services companies under ORS 284.368 (3). Total annual reimbursements to local media production services companies **under this subsection** may not exceed *[five]* **seven and one-half** percent of the moneys deposited annually in the fund. On July 1 of each fiscal year, any moneys that remain unexpended or unallocated from the previous fiscal year may be used by the department for the purpose of making reimbursements to filmmakers **or local media production services companies** under ORS 284.368 (2).

(5) Expenditures from the fund are not subject to ORS 291.232 to 291.260.

SECTION 2. 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, or for media production services, 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) **“Local media production project” means a single interactive video game or a portion thereof, or postproduction services for a single film.**

[(e)] (f) “Local media production services company” means a media production services company that has its principal place of business in this state.

[(f)] (g) “Media production services” includes postproduction services and interactive video game development. “Media production services” does not include the production of a commercial or one or more segments of a newscast or sporting event.

[(g)] (h) “Media production services company” means a person who is engaged in media production services.

[(h)] (i) “Resident of this state” has the meaning given that term in ORS 316.027.

(2)(a) The Oregon Business Development Department may reimburse a filmmaker **or local media production services company** for a portion of the actual Oregon expenses, **up to \$5.5 million**, incurred by the filmmaker **or local media production services company**.

(b) Maximum reimbursement for a single film **or a single local media production project** 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) Notwithstanding paragraph (b) of this subsection, maximum reimbursement for a single film may not exceed 50 percent of total moneys received by the Oregon Production Investment Fund during the biennium in which the actual Oregon expenses are incurred.

[(c)] (d) To qualify for reimbursement under this subsection, total actual Oregon expenses for [the] **a film or a local media production project** must

equal or exceed \$1 million.

(3)(a) The department may reimburse a local filmmaker or local media production services company for all or a portion of the actual Oregon expenses, up to [*\$1 million*] **\$5.5 million**, incurred by the local filmmaker or local media production services company.

(b) To qualify for reimbursement under this subsection:

(A) Total actual Oregon expenses paid for the film or media production services must be at least \$75,000;

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

(C) The local filmmaker or local media production services company 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.

(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 filmmaker or local media production services company 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 filmmaker or local media production services 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 filmmaker or local

media production services company under this section.

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

SECTION 3. 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 Department of Revenue shall, in cooperation with the Oregon Film and Video Office, conduct an auction of tax credits under this section. The department may conduct the auction in the manner that it determines is best suited to maximize the return to the state on the sale of tax credit certifications and shall announce a reserve bid prior to conducting the auction. The reserve amount shall be at least 95 percent of the total amount of the tax credit. Moneys necessary to reimburse the department for the actual costs incurred by the department in administering an auction, not to exceed 0.25 percent of auction proceeds, are continuously appropriated to the department. The department shall deposit net receipts from the auction required under this section in the Oregon Production Investment Fund.

(b) The Oregon Film and Video Office shall adopt rules in order to achieve the following goals:

(A) Subject to paragraph (a) of this subsection, generate contributions for which tax credits of [~~\$10~~] **\$14** 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) Contributions made under this section shall be deposited in the Oregon Production Investment Fund.

1 (4)(a) Upon receipt of a contribution, the Oregon Film and Video Office
2 shall, except as provided in ORS 315.516, issue to the taxpayer written cer-
3 tification of the amount certified for tax credit under this section to the
4 extent the amount certified for tax credit, when added to all amounts previ-
5 ously certified for tax credit under this section, does not exceed [~~\$10~~] **\$14**
6 million for the fiscal year in which certification is made.

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

11 (5) To the extent the Oregon Film and Video Office does not certify con-
12 tributed amounts as eligible for a tax credit under this section, the taxpayer
13 may request a refund of the amount the taxpayer contributed, and the office
14 shall refund that amount.

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

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

26 (c) A taxpayer is not eligible for a tax credit under this section if the first
27 tax year for which the credit would otherwise be allowed begins on or after
28 January 1, 2024.

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

1 (8) If the amount of contribution for which a tax credit certification is
2 made is allowed as a deduction for federal tax purposes, the amount of the
3 contribution shall be added to federal taxable income for Oregon tax pur-
4 poses.

5 **SECTION 4. The amendments to ORS 284.367, 284.368 and 315.514 by**
6 **sections 1 to 3 of this 2016 Act apply to fiscal years beginning on or**
7 **after July 1, 2016.**

8 **SECTION 5. This 2016 Act takes effect on the 91st day after the date**
9 **on which the 2016 regular session of the Seventy-eighth Legislative**
10 **Assembly adjourns sine die.**