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Oklahoma Film Enhancement Rebate Program

Administrative Rules

Rev. December 20, 2019

NOTE: The following administrative rules are for the Oklahoma Film Enhancement Rebate Program only. If you are applying for the Point-of-Purchase (POP) Sales Tax Exemption, **stop here**. The POP Sales Tax Exemption incentive is covered under a separate application processes. Please note that the POP sales tax exemption cannot be used in conjunction with the Oklahoma Film Enhancement Rebate Program.

SUBCHAPTER 1. OKLAHOMA FILM ENHANCEMENT REEBATE PROGRAM

725:35-1-1. Purpose

The purpose of the Oklahoma Film Enhancement Rebate Program (Program) is an incentive program to build a film industry in the state. In accordance with 68 O.S. § 3624, this Program shall be administered by the Oklahoma Tax Commission and Office of the Oklahoma Film and Music Commission (OFMO).

725:35-1-2. Definitions

In addition to the definitions in the statute:

- (A) "Above the Line Personnel (ATL)" are as defined in 68 O.S. § 3623, namely individuals hired or credited on screen for the Production as producers (all levels), principal cast (SAG Schedule F/Run of Show or equivalent), screenwriters and the Film director(s).
- (B) "ATL Limitation" means up to twenty-five percent (25%) of total Qualifying Oklahoma Expenditures (QOE, see Section 725:35-1-4).
- (C) "Crew" is as defined in 68 O.S. § 3623, namely persons who work on the Production who are not ATL (also known in the industry as "below-the-line" personnel).
- (D) The "documented expenditures" referred to in 68 O.S. § 3624.A. shall mean QOE as described in Section 725:35-1-4 below.
- (E) "Eligibility Application" refers to the Application of Eligibility for the Program. If the application is approved by OFMO, a Film is "Pre-Qualified."
- (F) "Final Application" is the package submitted to OFMO documenting all requirements have been completed and the Production Company is requesting payment of a Rebate Claim.
- (G) "Fiscal Earmark Year" is the fiscal year to which payment of potential Rebate Claims is assigned.
- (H) "High-Impact Production" is a Production that meets the requirements of 68 O.S. § 3623 and is so designated by the Oklahoma Tourism and Recreation Department (OTRD) Executive Director.
- (I) "Loan Out Company" is a legal entity (i.e., corporation, partnership or limited liability company) used by ATL and Crew to contract their services to the Production.
- (J) "Loan-Out Limitation" means up to twenty-five percent (25%) of Salary Costs for Oklahoma-Based Crew [as defined in Section 725:35-1-4(a)]. The OTRD Executive Director may, in their discretion, specify a different percentage for High Impact Productions.
- (K) "Application Estimate" is the estimated QOE submitted to OFMO 60 calendar days before the start of Principal Photography.

(L) "Oklahoma-Based" means a natural person that files (or is legally claimed as a dependent on) an Oklahoma resident tax return, or a business entity registered and in good standing as a Domestic entity with the Oklahoma Secretary of State and that files an Oklahoma income tax return.

(M) "Oklahoma Expatriate" is a person who previously resided for at least one year, but does not currently reside, in the state of Oklahoma.

(N) "Oklahoma Loan Out Company" is a Loan-Out Company with an active registration to do business in the state of Oklahoma as a domestic or foreign entity and that either reports payments received for the Production as Oklahoma earnings for the artist on an IRS Form W-2 or is considered a disregarded entity for federal income tax purposes.

(O) "Oklahoma Resident" means a person who is a resident under the Oklahoma Tax Code at the time of hire.

(P) "Oklahoma Vendor" is a seller, renter or lessor of goods or services who charges Oklahoma sales tax under an Oklahoma Sales Tax Permit on taxable transactions and is either (1) Oklahoma-Based or (2) a foreign business entity with an active registration to do business in Oklahoma and a physical Oklahoma location for transacting business.

(Q) "Payroll Burden" is employer-paid taxes (e.g., FICA, Medicare and unemployment insurance) and payroll-associated payments made on a specific employee's behalf by law or collective labor bargaining agreement (e.g., union dues and union fringes). Payroll Burden also includes the employer-paid portion of health insurance for an employee, provided such insurance was paid to an Oklahoma-Based insurance company or obtained through a licensed Oklahoma insurance broker.

(R) "Per Diem" means fixed payments made to Crew and ATL in lieu of reimbursement for lodging/housing, meals and incidentals, up to a maximum of the Per Diem Rate allowed for the applicable location and date in the U.S. General Services Administration Per Diem Rates.

(S) "Pre-Qualified" means a Film whose Eligibility Application has been approved by OFMO.

(T) "Principal Photography" is the filming of significant components of a Film which involve principal cast or, in the case of Films that do not involve live actors, the beginning of substantive work on the animation or graphics that form the Film's primary visual story.

(U) "Production" is a project to make a Film.

(V) "Production Budget" is the total budgeted cost of the Production.

(W) "Production Company" is as defined in 68 O.S. § 3623, more specifically the legal entity responsible for the Production. Eligibility and Final Applications will be filed by the Production Company and, unless previously

agreed to in writing by OFMO, payment of approved Rebate Claims will be made to the Production Company.

(X) "Proof of Funding" is demonstration in a form acceptable to OFMO that a Production has or will have funding in place to cover the Production's budget. Acceptable forms will be specifically approved by OFMO, but could include a letter of intent from a recognized industry financier, written verification of dedicated deposits in a recognized financial institution or a letter of credit from an acceptable guarantor.

(Y) "Rebate" is the percentage defined in 68 O.S. § 3624 of QOE.

(Z) "Rebate Claim" is the formal request for OFMO to issue a rebate under the Program. Only one Rebate Claim shall be processed per Production.

(AA) "Rebate Schedule" is a schedule of dates, deadlines and submittals the Production must achieve to submit the Final Application and have its Rebate Claim approved.

(BB) "Salary Costs" are those salaries and wages designated as Oklahoma earnings on payroll records, along with the associated Payroll Burden, Per Diem and Housing Allowance;

(CC) "Scouting Expenses" are costs incurred to identify locations, Crew, facilities, services and equipment to be used in the Production.

(DD) "Start of Pre-Production" is the opening of an Oklahoma office for the Production, or incurring (QOE) other than Scouting Expenses, or otherwise commencing business on the Production in Oklahoma other than scouting.

725:35-1-3. Program requirements and qualification

(a) Applying for Rebate Eligibility:

(1) Applications and all necessary forms will be submitted through the OFMO website (okfilmmusic.org) or as otherwise specified by OFMO.

(2) Unless otherwise agreed to by OFMO, Eligibility Applications will be submitted at least 60, calendar days prior to the Start of Production. The exact requirements of the Eligibility Application are shown on the OFMO website, but generally include:

(A) General information about the Production;

(B) Contact information;

(C) Preliminary Production milestone dates;

(D) A copy of the screenplay;

(E) The Production budget top sheet and estimated headcount;

(F) Various acknowledgements of Program and OFMO requirements and agreements to abide by them.

(3) Applicants may track the status of their Eligibility Application on the OFMO website.

(4) Application does not guarantee acceptance. OFMO considers each Eligibility Application individually based

upon many factors, including compliance with these Rules, the benefits of the project to Oklahoma (such as jobs, tourism, branding, image and follow-on work), funds available, anticipated future Program needs and other projects applying for a Rebate.

(5) If the Eligibility Application is approved, the Production will be Pre-Qualified and OFMO will work with the Production to establish a Rebate Schedule.

(6) At the time of Pre-Qualification, Productions are assigned to a Fiscal Earmark Year based upon the start of Principal Photography.

(7) Pre-Qualification does not guarantee ultimate approval of a Rebate Claim. The Production must meet the requirements of the Rebate Schedule and their Final Application must be approved in order for the Rebate Claim to be approved.

(8) If the Eligibility Application is denied, OFMO will provide the applicant with the reason(s) it was denied.

(9) Only one Eligibility Application per fiscal year per Production will be accepted.

(b) Application Estimate: If the Eligibility Application is approved, Application Estimate will be multiplied by the appropriate rebate percentage to determine the estimated amount to be paid in the Rebate Claim (the "Potential Rebate Claim").

(c) If the Final Application and actual Rebate Claim are approved:

(1) If the actual QOE are less than or equal to the Application Estimate, the Rebate Claim will be paid in full.

(2) If the actual QOE are more than the Application Estimate, the Potential Rebate Claim amount will be paid within the normal payment timeframe and the remainder will be considered an additional claim and may, depending upon OFMO's discretion and budget, be paid at a later date outside the normal timeframe.

(d) Rebate Schedule: After Pre-Qualification, OFMO and the Production will establish a schedule of dates based upon the following benchmarks:

(1) 60 calendar days prior to Principal Photography - submit Application Estimate and Proof of Funding for at least fifty percent (50%) of the Production Budget.

(2) Prior to paying salaries or wages to a Production employee in Oklahoma - submit a certificate of workers' compensation insurance with limits pursuant to Oklahoma law.

(3) 30 calendar days prior to Principal Photography - submit the following:

(A) Proof of Funding for the Production Budget;

(B) Updated shooting schedule;

(C) Updated screenplay;

- (D) Copy of the Completion Bond, if applicable;
 - (E) Additional documents as may be reasonably requested by OFMO.
- (4) 10 calendar days prior to Principal Photography
- (A) Submit a certificate of general liability insurance with a minimum limit of \$1,000,000 in coverage (or a binder for such with a start date no later than the estimated Start of Pre-Production);
 - (B) Submit a certificate of automobile liability insurance with a minimums of \$250,000/500,000/250,000 coverage (or a binder for such with a start date no later than the estimated Start of Pre-Production) or certification that no employee of the Production will drive an automobile as part of the Production;
 - (C) Work with OFMO to draft and distribute a press release about the Production to relevant media.
- (5) During Principal Photography - submit the following (preferably in advance, if practical):
- (A) Updates to the shooting schedule;
 - (B) Updates to the screenplay.
- (6) Within 90 calendar days of completion of the Production (or payment date of last QOE, if later):
- (A) Upload through the OFMO website the list of Oklahoma Crew, Oklahoma Expatriates and Vendors used on the Production;
 - (B) Submit the Final Application.
- (e) Completion Bond: Unless a Production is backed by a major studio or other financing source acceptable to OFMO, the Production will post a Completion Bond from a guarantor acceptable to OFMO guaranteeing the completion of the Production and payment of all Oklahoma liabilities. In lieu of a Completion Bond, a Production may produce evidence acceptable to OFMO that all Crew, vendors and taxes have been paid and there are no outstanding or potential liens in Oklahoma against the Production Company.
- (f) Incremental Music Rebate: To qualify for the additional rebate for Oklahoma music described in 68 O.S. § 3624.B, QOE described in Section 725:35-1-4(g) (9) must be \$20,000 or more.
- (g) End of Production Requirements:
- (1) Unless otherwise approved by OFMO, the end credit crawl of all release prints of a completed short or long-form film shall include "Filmed in Oklahoma utilizing the Oklahoma Film Enhancement Rebate Program" and a logo provided by OFMO.
 - (2) The Production Company shall provide to OFMO
 - (A) A film poster, final release copy of the Film on DVD and digital link to a copy of the Film if available.
 - (B) Production stills, behind-the-scenes footage or other images OFMO can use to promote the Program.

(h) CPA's Report: Final Rebate Applications will be accompanied by a CPA's Report ("Report"), prepared at the expense of the Applicant, attesting that the amounts in the application are QOE that comply with the requirements of these Rules.

(1) Reports will be prepared by a Certified Public Accountant currently licensed by the State of Oklahoma and who is independent under AICPA's Independence Rule.

(2) CPAs will carry professional liability insurance, in a form and from a carrier acceptable to OFMO, for at least \$500,000.

(3) The CPA's examination will be conducted according to the AICPA's Attestation Standards.

(4) Reports will use a materiality threshold set by OFMO and published on its website.

(5) CPAs will work with the Production Company to resolve exceptions or discrepancies prior to submitting the Final Application, such that the Report attests to the validity and accuracy of the amounts on the Application without exception.

(6) The Report will attest:

(A) Actual Production expenditures were at least \$50,000 and QOE at least \$25,000, or if a High-Impact Production, actual expenditures were at least \$50,000,000 and QOE at least \$16,666,667.

(B) All amounts on the Application are properly calculated and materially accurate.

(C) All Oklahoma payroll tax returns due from the Production Company (or its payroll processor) have been filed.

(D) All Oklahoma income tax returns for the Production Company due as of the Review date have been filed.

(7) The CPA will retain all workpapers for the Report for seven years, during which they may be subject to audit by the OFMO or its agents, upon a request by OFMO.

(i) Final Application:

(1) Upon completion of the Production and requirements herein, the Production Company will submit a Final Application.

(2) Submitting a Final Application does not guarantee approval. OFMO will approve or disapprove of all claims within 60 calendar days of receipt of a properly completed Final Application.

(3) If a Final Application or Rebate Claim is denied, Production Companies may attempt to correct any discrepancies or problems and resubmit within thirty (30) days of denial.

(4) Once a Final Application is approved by OFMO,

(A) Amendments are not allowed;

(B) The Production Company will work with OFMO to establish a vendor ID with the State.

(5) The Oklahoma Tax Commission shall, upon notification of approval from the OFMO, issue payment for all approved claims, subject to any Fiscal Year Maximum imposed by statute and any other agreements that the Production and OFMO have agreed to in writing in the case that the Production is a High-Impact Production.

(j) Fiscal Year Maximum: The Program has a rolling cap, which adds a new amount to the fund available to pay Rebate Claims each fiscal year. In order to ensure funds are available to pay all Pre-Qualified Productions, OFMO assigns each Pre-Qualification to a Fiscal Earmark Year, which may be one or more calendar years in the future. If the total amount available to pay claims in any one fiscal year is restricted by statute, claim approval priority will be determined using the Fiscal Earmark Year and some Productions might have to wait until the first day of a future Fiscal Earmark Year in order to receive payment. This statutory maximum would not affect the amount of the claim or its ultimate payment, but could affect the timing of when it is paid.

(k) Delays, Transferability and Expiration:

(1) A Pre-Qualified Production may delay the start of Principal Photography two times as described below. If the start is delayed a third time, or a Production does not start by the date specified in their latest update to the Production Schedule submitted to OFMO, Pre-Qualification is revoked, the Eligibility Application is denied and the Production cannot apply again until the following fiscal year.

(A) The first time a Pre-Qualified Production delays the start of Principal Photography, it moves to the end of the queue for the Fiscal Earmark Year of the new start date. Subsequent Pre-Qualifications with the same Fiscal Earmark Year are placed after it in the queue.

(B) The second time a Pre-Qualified Production delays the start of Principal Photography, it is placed last in the queue for the Fiscal Earmark Year of the new start date. Subsequent Pre-Qualifications with the same Fiscal Earmark Year are placed ahead of it in the queue.

(2) Pre-Qualification is specific to the Production and Production Company, and is non-transferable. Productions, screenplays and budgets may evolve but must remain substantially similar to those submitted in the Eligibility Application.

(3) Unless otherwise approved by OFMO, Pre-Qualification expires:

(A) Two years after the approval date of the Eligibility Application, if Principal Photography has not started, OR

(B) Two years from the start of Principal Photography.

(1) Open Records Act Exemptions:

(1) OFMO is subject to the State of Oklahoma Open Records Act, which governs public access to the records of government agencies. Under 74 O.S. § 2231, certain information provided to OFMO by a person or entity seeking economic advice from OFMO and any information compiled by OFMO in response to submissions, may be kept confidential.

(2) In order to protect confidentiality of such items, applicants must submit a written request to OFMO at the time of the Eligibility Application to withhold its information from disclosure on the grounds that it constitutes trade secrets, proprietary information or that the information, if disclosed, would cause substantial injury to the competitive position of the applicant. Applicants must specify the information for which they are seeking protection along with clearly stated reasons for the requested exception.

(3) OFMO reserves the right to determine whether the information submitted by the applicant will be withheld from disclosure. OFMO will notify the applicant of any requests for disclosure and notify the applicant as to whether the information will be disclosed.

(m) High Impact Production Requirements: Due to the size of potential rebates and considerable number of variables in High Impact Productions, the Executive Director is authorized to negotiate and finalize High Impact Production Requirements as part of the High Impact Production Eligibility Application process. High Impact Production Requirements can be tailored to the type and scope of the Production, and may carry additional incentives, provided these requirements and incentives do not contradict statutory provisions of the Program. Applicants would be required to meet the High Impact Production Requirements in order for the Final Application to be approved.

725:35-1-4. Qualifying Oklahoma Expenditures

(a) Salary Costs for Oklahoma-Based Crew;

(b) Salary Costs for Oklahoma Expatriate Crew (as described in Section 725:35-1-5);

(c) Payments to Oklahoma Loan-Out Companies for Oklahoma-Based Crew;

(d) Payments to Oklahoma Loan-Out Companies for Crew that is not Oklahoma-Based, subject to the Loan-Out Limitation;

(e) Subject to the Twenty-Five Percent Limitation, the sum of (1) payments to Oklahoma-Based ATL;

(2) payments to Oklahoma Loan-Out Companies for ATL; and
(3) payments to an Oklahoma-Based entity for using the Film's underlying creative work (e.g., screenplay or novel).

(f) Permits and fees paid to an Oklahoma state, county, or municipal governmental or quasi-governmental entity;

(g) Payments to an Oklahoma Vendor for the following:

- (1) Studio, stage or set construction and dismantling;
- (2) Production scheduling, management, administration and operations;
- (3) Casting and security services;
- (4) Wardrobe and make-up materials, consumables and services;
- (5) Set props and accessories (individual props costing in excess of fifty thousand dollars (\$50,000) require prior approval by OFMO to be included as a QOE);
- (6) Cameras, film, microphones, tape, digital storage media and other materials and equipment used to record sound and images;
- (7) Photography, visual image editing, animation, computer graphics and effects, and related visual services;
- (8) Sound (other than music) recording, editing, synchronization and related services;
- (9) Licensing or use rights for music, or recording of songs or musical score, used in the Film;
- (10) Lighting and electrical materials, equipment and services;
- (11) Location, building, facility, equipment, prop and wardrobe rental;
- (12) Stunts, special effects, pyrotechnics, firefighting, safety, handling/wrangling, security and other specialty services;
- (13) Lodging and accommodations (whether paid for directly by the production or provided as an allowance in the amount of actual costs of housing) for ATL and Crew;
- (14) Food, restaurants and catering;
- (15) Transportation of ATL, Crew, equipment and supplies;
- (16) Travel costs to and from Oklahoma paid to or through a travel agent;
- (17) Completion bonds and insurance (either guarantor or broker must be an Oklahoma Vendor);
- (18) Shipping and postage for packages originating or terminating within Oklahoma;
- (19) Fees, interest and financing charges paid to Oklahoma-Based financial institutions;
- (20) Other materials, supplies and contracted services approved in advance by OFMO;
- (21) Third-Party Reviews.

(h) Payments to an Oklahoma Vendor for the following valid Scouting Expenses of the Production:

- (1) Location scouting, planning and packaging services;
- (2) Travel costs to and from Oklahoma paid to a travel agent;
- (3) Lodging and accommodations within Oklahoma;
- (4) Transportation within Oklahoma;
- (5) Meals within Oklahoma.

(i) Payments made in accordance with the High Impact Production Requirements.

(j) Reimbursements made to individuals for goods and services that would have been QOE if paid directly by the Production, provided the individual provides a receipt for such goods and services.

725:35-1-5. Oklahoma Expatriate Crew Program

(a) OFMO will maintain a roster of Oklahoma Expatriate Crew and make such roster available to a Production Company upon request.

(b) The Expatriate roster will consist of Oklahoma Expatriates who:

- (1) Have registered as an Oklahoma Expatriate with OFMO;
- (2) Have completed a Declaration of Expatriate Status satisfactory to OFMO;
- (3) At the request of OFMO, agree to be accompanied by an intern provided by an Oklahoma educational institution for a period of time acceptable to OFMO during the Production.