

By: Representative Smith

To: Tourism

HOUSE BILL NO. 1132

1 AN ACT TO AMEND SECTION 57-89-3, MISSISSIPPI CODE OF 1972, TO
 2 REVISE THE DEFINITION OF THE TERMS "BASE INVESTMENT," "FRINGES"
 3 AND "STATE-CERTIFIED PRODUCTION" UNDER THE MISSISSIPPI MOTION
 4 PICTURE INCENTIVE ACT; TO AMEND SECTION 57-89-7, MISSISSIPPI CODE
 5 OF 1972, TO REVISE CERTAIN PROVISIONS REGARDING REBATES UNDER THE
 6 MISSISSIPPI MOTION PICTURE INCENTIVE ACT; TO REVISE THE AMOUNT OF
 7 CERTAIN EXPENSES FOR WHICH REBATES MAY BE MADE; TO PROVIDE THAT A
 8 REBATE MAY BE ASSIGNED TO A THIRD PARTY, PROVIDED THAT THE THIRD
 9 PARTY IS A MISSISSIPPI ENTITY; TO PROVIDE THAT THE DEPARTMENT OF
 10 REVENUE MAY APPROVE APPLICATIONS FOR CERTAIN REBATES UNDER THE
 11 MISSISSIPPI MOTION PICTURE INCENTIVE ACT UNTIL JULY 1, 2021; TO
 12 PROVIDE TIME PERIODS WITHIN WHICH THE DEPARTMENT OF REVENUE MUST
 13 ISSUE REBATES UNDER THE MISSISSIPPI MOTION PICTURE INCENTIVE ACT;
 14 AND FOR RELATED PURPOSES.

15 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

16 **SECTION 1.** Section 57-89-3, Mississippi Code of 1972, is
 17 amended as follows:

18 57-89-3. As used in this chapter, the following terms shall
 19 have the meanings ascribed in this section unless the context
 20 clearly indicates otherwise:

21 (a) "Base investment" means the actual investment made
 22 and expended in Mississippi by a motion picture production
 23 company, or an employee of that company, in connection with the
 24 production of a state-certified production in the state. The term



25 "base investment" includes amounts expended in Mississippi by a
26 motion picture production company as per diem and housing
27 allowances in connection with the production of a state-certified
28 production in the state. The term "base investment" shall not
29 include payroll.

30 (b) "Employee" means an individual directly involved in
31 the physical production and/or post-production of a motion picture
32 produced in the state and who is employed by a:

33 (i) Motion picture production company that is
34 directly involved in the physical production and/or
35 post-production of a motion picture in the state;

36 (ii) Personal service corporation retained by a
37 motion picture production company to provide persons used directly
38 in the physical production and/or post-production of a motion
39 picture in the state; or

40 (iii) Payroll service or loan-out company that is
41 retained by a motion picture production company to provide
42 employees who work directly in the physical production and/or
43 post-production of a motion picture in the state.

44 (c) "Fringes" means costs paid by a motion picture
45 production company on or after September 1, 2013, for employee
46 benefits that are not subject to state income tax. Fringes may
47 include, but are not limited to, payments by an employer for
48 unemployment insurance, Federal Insurance Contribution Act (FICA),
49 workers' compensation insurance, pension and welfare benefits and



50 health insurance premiums, and other payments to industry guilds
51 and unions that are related to employment.

52 (d) "Motion picture" means a nationally distributed
53 feature-length film, video, DVD, television program or series,
54 commercial, or computer or video game made in Mississippi, in
55 whole or in part, for theatrical or DVD release or television
56 viewing or as a television pilot or viewing through streaming
57 video or Internet delivery, or for playing on a video game
58 console, personal computer or handheld device. The term "motion
59 picture" shall not include the production of television coverage
60 of news and athletic events, or a film, video, DVD, television
61 program, series, or commercial that contains any material or
62 performance defined in Section 97-29-103.

63 (e) "Motion picture production company" means a company
64 and employees of the company engaged in the business of producing
65 nationally distributed motion pictures, videos, DVDs, television
66 programs or series, commercials, or computer or video games
67 intended for a theatrical release, for television viewing or for
68 playing on a video game console, personal computer or handheld
69 device. The term "motion picture production company" includes a
70 company engaged in the business of making such productions through
71 the use of animation, interactive media, preproduction and
72 post-production 3D applications, video game cinematics, virtual
73 production, visual effects, and motion capture within the fields
74 of feature film, television, commercials and games. The term



75 "motion picture production company" shall not mean or include any
76 company owned, affiliated, or controlled, in whole or in part, by
77 any company or person which is in default on a loan made by the
78 state or a loan guaranteed by the state, or any company or person
79 who has ever declared bankruptcy under which an obligation of the
80 company or person to pay or repay public funds or monies was
81 discharged as a part of such bankruptcy.

82 (f) "Payroll" means salary, wages or other compensation
83 including related benefits paid to employees upon which
84 Mississippi income tax is due and has been withheld.

85 (g) "Resident" or "resident of Mississippi" means a
86 natural person, and for the purpose of determining eligibility for
87 the rebate provided by Section 57-89-7, any person domiciled in
88 the State of Mississippi and any other person who maintains a
89 permanent place of abode within the state and spends in the
90 aggregate more than six (6) months of each year within the state.

91 (h) "State" means the State of Mississippi.

92 (i) "State-certified production" means a motion picture
93 project approved by the Mississippi Development Authority produced
94 by a motion picture production company in the state. An
95 application for approval as a state-certified production must be
96 submitted to the Mississippi Development Authority before
97 production of the project begins. Certification is the
98 responsibility of the Mississippi Development Authority and
99 revisions to the certification may be made at any time during



100 production at the discretion of the Mississippi Development
101 Authority.

102 **SECTION 2.** Section 57-89-7, Mississippi Code of 1972, is
103 amended as follows:

104 57-89-7. (1) (a) A Mississippi-based motion picture
105 production company that expends at least Fifty Thousand Dollars
106 (\$50,000.00) in base investment, payroll and/or fringes, or other
107 motion picture production company that expends at least One
108 Hundred Thousand Dollars (\$100,000.00) in base investment, payroll
109 and/or fringes, in the state shall be entitled to a rebate of a
110 portion of the base investment made by the motion picture
111 production company. Subject to the provisions of this section,
112 the amount of the rebate shall be equal to twenty-five percent
113 (25%) of the base investment made by the motion picture production
114 company. The portion of base investment attributable to costs for
115 producers, directors and/or cast that is eligible for a rebate
116 cannot exceed forty-five percent (45%) of the base investment.

117 If the base investment attributable to costs for producers,
118 directors and/or cast exceeds forty-five percent (45%) of the base
119 investment, the rebate is authorized only for the that is
120 eligible for the rebate cannot exceed forty-five percent (45%) o

121 (b) In addition to the rebates authorized under
122 paragraphs (a), (c) and (d) of this subsection, a motion picture
123 production company may receive a rebate equal to * * * twenty
124 percent (20%) of payroll and fringes paid for any employee who is



125 not a resident and whose wages are subject to the Mississippi
126 Income Tax Withholding Law of 1968. However, if the payroll and
127 fringes paid for an employee exceeds * * * Three Million Dollars
128 (\$3,000,000.00), then the rebate is authorized only for the
129 first * * * Three Million Dollars (\$3,000,000.00) of such payroll
130 and fringes.

131 (c) In addition to the rebates authorized under
132 paragraphs (a), (b) and (d) of this subsection, a motion picture
133 production company may receive a rebate equal to * * * thirty-five
134 percent (35%) of payroll and fringes paid for any employee who is
135 a resident and whose wages are subject to the Mississippi Income
136 Tax Withholding Law of 1968. However, if the payroll and fringes
137 paid for an employee exceeds * * * Three Million Dollars
138 (\$3,000,000.00), then the rebate is authorized only for the
139 first * * * Three Million Dollars (\$3,000,000.00) of such payroll
140 and fringes.

141 (d) In addition to the rebates authorized in paragraphs
142 (a), (b) and (c) of this subsection, a motion picture production
143 company may receive an additional rebate equal to five percent
144 (5%) of the payroll and fringes paid for any employee who is an
145 honorably discharged veteran of the United States Armed Forces and
146 whose wages are subject to the Mississippi Income Tax Withholding
147 Law of 1968.

148 (e) If a motion picture has physical production
149 activities and/or post-production activities both inside and



150 outside the state, then the motion picture production company
151 shall be required to provide an itemized accounting for each
152 employee regarding such activities inside and outside the state
153 for the purposes of proration of eligible payroll based on the
154 percentage of activities performed in the state.

155 (f) The total amount of rebates authorized for a motion
156 picture project shall not exceed Ten Million Dollars
157 (\$10,000,000.00) in the aggregate.

158 (g) The total amount of rebates authorized in any
159 fiscal year shall not exceed Twenty Million Dollars
160 (\$20,000,000.00) in the aggregate.

161 (h) Rebates authorized for a motion picture project may
162 be assigned to a third party, provided that the third party is a
163 Mississippi entity.

164 (2) (a) A motion picture production company desiring a
165 rebate under this section must submit a rebate request to the
166 Department of Revenue * * * no later than ninety (90) days after
167 completion of the project. The request must include a detailed
168 accounting of the base investment made by the motion picture
169 production company and any other information required by the
170 Department of Revenue. Subject to the provisions of this
171 subsection (2), a rebate must be made by the Department of Revenue
172 within ninety (90) business days after the receipt of all
173 relevant, required and requested documents. Rebates made by the



174 Department of Revenue under this section shall be made from
175 current income tax collections. * * *

176 (b) (i) A third-party audit or pre-audit is authorized
177 at the expense of the motion picture production company. The
178 Department of Revenue will annually prepare a list of firms and
179 auditors approved for such purposes.

180 (ii) If a third party is used for an audit, the
181 third party performing the audit must deliver the report to the
182 Department of Revenue within forty-five (45) business days after
183 the receipt of all relevant documents. The Department of Revenue
184 must issue a rebate within forty-five (45) business days after the
185 receipt of such report.

186 (iii) If a third party is not used for an audit,
187 and the audit is performed by the Department of Revenue, the
188 department must deliver the first review of the production
189 expenditure submission within ninety (90) business days after the
190 receipt of the rebate request. Any subsequent review by the
191 Department of Revenue must be completed within fifteen (15)
192 business days after the receipt of all relevant, required and
193 requested documents.

194 (3) The Department of Revenue shall have all powers
195 necessary to implement and administer the provisions of this
196 section, and the Department of Revenue shall promulgate rules and
197 regulations, in accordance with the Mississippi Administrative
198 Procedures Law, necessary for the implementation of this section.



199 (4) The State Auditor may conduct performance and compliance
200 audits under this chapter according to Section 7-7-211(o) and may
201 bill the oversight agency.

202 **SECTION 3.** This act shall take effect and be in force from
203 and after July 1, 2018.

