

By: Representatives Smith, Clark, Sykes

To: Tourism

HOUSE BILL NO. 1132  
(As Passed the House)

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 TIME PERIODS WITHIN  
10 WHICH THE DEPARTMENT OF REVENUE MUST ISSUE REBATES UNDER THE  
11 MISSISSIPPI MOTION PICTURE INCENTIVE ACT; AND FOR RELATED  
12 PURPOSES.

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

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

16 57-89-3. As used in this chapter, the following terms shall  
17 have the meanings ascribed in this section unless the context  
18 clearly indicates otherwise:

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



24 motion picture production company as per diem and housing  
25 allowances in connection with the production of a state-certified  
26 production in the state. The term "base investment" shall not  
27 include payroll. However, in the case of a Mississippi based  
28 motion picture production company that has been in existence for  
29 more than five (5) years and has engaged in activities related to  
30 the production of at least two (2) motion pictures in Mississippi  
31 during such time, base investment shall include payroll and  
32 fringes.

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

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

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

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

47 (c) "Fringes" means costs paid by a motion picture  
48 production company on or after September 1, 2013, for employee



49 benefits that are not subject to state income tax. Fringes may  
50 include, but are not limited to, payments by an employer for  
51 unemployment insurance, Federal Insurance Contribution Act (FICA),  
52 workers' compensation insurance, pension and welfare benefits and  
53 health insurance premiums, and other payments to industry guilds  
54 and unions that are related to employment.

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

66 (e) "Motion picture production company" means a company  
67 and employees of the company engaged in the business of producing  
68 nationally distributed motion pictures, videos, DVDs, television  
69 programs or series, commercials, or computer or video games  
70 intended for a theatrical release, for television viewing or for  
71 playing on a video game console, personal computer or handheld  
72 device. The term "motion picture production company" includes a  
73 company engaged in the business of making such productions through



74 the use of animation, interactive media, preproduction and  
75 post-production 3D applications, video game cinematics, virtual  
76 production, visual effects, and motion capture within the fields  
77 of feature film, television, commercials and games. The term  
78 "motion picture production company" shall not mean or include any  
79 company owned, affiliated, or controlled, in whole or in part, by  
80 any company or person which is in default on a loan made by the  
81 state or a loan guaranteed by the state, or any company or person  
82 who has ever declared bankruptcy under which an obligation of the  
83 company or person to pay or repay public funds or monies was  
84 discharged as a part of such bankruptcy.

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

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

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

95 (i) "State-certified production" means a motion picture  
96 project approved by the Mississippi Development Authority produced  
97 by a motion picture production company in the state. An  
98 application for approval as a state-certified production must be



99 submitted to the Mississippi Development Authority before  
100 production of the project begins. Certification is the  
101 responsibility of the Mississippi Development Authority and  
102 revisions to the certification may be made at any time during  
103 production at the discretion of the Mississippi Development  
104 Authority.

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

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

120 (b) Subject to the provisions of this paragraph (b), in  
121 addition to the rebates authorized under paragraphs (a), (c) and  
122 (d) of this subsection, a motion picture production company may  
123 receive a rebate equal to twenty-five percent (25%) of payroll and



124 fringes paid for any employee who is not a resident and whose  
125 wages are subject to the Mississippi Income Tax Withholding Law of  
126 1968. However, if the payroll and fringes paid for an employee  
127 exceeds Five Million Dollars (\$5,000,000.00), then the rebate is  
128 authorized only for the first Five Million Dollars (\$5,000,000.00)  
129 of such payroll and fringes. A motion picture production company  
130 that receives a rebate for base investment that includes payroll  
131 and fringes may not receive a rebate for such payroll and fringes  
132 under this paragraph (b).

133 (c) Subject to the provisions of this paragraph (c), in  
134 addition to the rebates authorized under paragraphs (a), (b) and  
135 (d) of this subsection, a motion picture production company may  
136 receive a rebate equal to \* \* \* thirty-five percent (35%) of  
137 payroll and fringes paid for any employee who is a resident and  
138 whose wages are subject to the Mississippi Income Tax Withholding  
139 Law of 1968. However, if the payroll and fringes paid for an  
140 employee exceeds Five Million Dollars (\$5,000,000.00), then the  
141 rebate is authorized only for the first Five Million Dollars  
142 (\$5,000,000.00) of such payroll and fringes. A motion picture  
143 production company that receives a rebate for base investment that  
144 includes payroll and fringes may not receive a rebate for such  
145 payroll and fringes under this paragraph (c).

146 (d) Subject to the provisions of this paragraph (d), in  
147 addition to the rebates authorized in paragraphs (a), (b) and (c)  
148 of this subsection, a motion picture production company may



149 receive an additional rebate equal to five percent (5%) of the  
150 payroll and fringes paid for any employee who is an honorably  
151 discharged veteran of the United States Armed Forces and whose  
152 wages are subject to the Mississippi Income Tax Withholding Law of  
153 1968. A motion picture production company that receives a rebate  
154 for base investment that includes payroll and fringes may not  
155 receive a rebate for such payroll and fringes under this paragraph  
156 (d).

157 (e) If a motion picture has physical production  
158 activities and/or post-production activities both inside and  
159 outside the state, then the motion picture production company  
160 shall be required to provide an itemized accounting for each  
161 employee regarding such activities inside and outside the state  
162 for the purposes of proration of eligible payroll based on the  
163 percentage of activities performed in the state.

164 (f) The total amount of rebates authorized for a motion  
165 picture project shall not exceed Ten Million Dollars  
166 (\$10,000,000.00) in the aggregate.

167 (g) The total amount of rebates authorized in any  
168 fiscal year shall not exceed Twenty Million Dollars  
169 (\$20,000,000.00) in the aggregate.

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



173           (2) (a) A motion picture production company desiring a  
174 rebate under this section must submit a rebate request to the  
175 Department of Revenue \* \* \* no later than ninety (90) days after  
176 completion of the project. The request must include a detailed  
177 accounting of the base investment made by the motion picture  
178 production company and any other information required by the  
179 Department of Revenue. Subject to the provisions of this  
180 subsection (2), a rebate must be made by the Department of Revenue  
181 within ninety (90) business days after the receipt of all  
182 relevant, required and requested documents. Rebates made by the  
183 Department of Revenue under this section shall be made from  
184 current income tax collections. The Department of Revenue shall  
185 not approve any application for a rebate under subsection (1)(b)  
186 of this section after July 1, 2017.

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

191           (ii) If a third party is used for an audit, the  
192 third party performing the audit must deliver the report to the  
193 Department of Revenue within forty-five (45) business days after  
194 the receipt of all relevant documents. The Department of Revenue  
195 must issue a rebate within forty-five (45) business days after the  
196 receipt of such report.





197                    (iii) If a third party is not used for an audit,  
198 and the audit is performed by the Department of Revenue, the  
199 department must deliver the first review of the production  
200 expenditure submission within ninety (90) business days after the  
201 receipt of the rebate request. Any subsequent review by the  
202 Department of Revenue must be completed within fifteen (15)  
203 business days after the receipt of all relevant, required and  
204 requested documents.

205            (3) The Department of Revenue shall have all powers  
206 necessary to implement and administer the provisions of this  
207 section, and the Department of Revenue shall promulgate rules and  
208 regulations, in accordance with the Mississippi Administrative  
209 Procedures Law, necessary for the implementation of this section.

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

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

