

By: Senator(s) Horhn, Carter, Simmons  
(13th), Chassaniol, Burton, Moran, Simmons  
(12th), Norwood, Jackson (32nd), Jackson  
(11th), Barnett, Frazier, Butler, Jordan

To: Finance

## SENATE BILL NO. 2748

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



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

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

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



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

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

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

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

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



production at the discretion of the Mississippi Development  
Authority.

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

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

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

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



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

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

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

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



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

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

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

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

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



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

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

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

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

(3) The Department of Revenue shall have all powers  
necessary to implement and administer the provisions of this  
section, and the Department of Revenue shall promulgate rules and  
regulations, in accordance with the Mississippi Administrative  
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.

