

By: Senator(s) Harkins

To: Finance

SENATE BILL NO. 3167

1 AN ACT TO PROVIDE AN INCOME TAX CREDIT FOR A PORTION OF
2 CERTAIN EXPENDITURES MADE BY COMPANIES ENGAGED IN CERTAIN
3 TELEVISION PRODUCTIONS IN MISSISSIPPI; TO DEFINE CERTAIN TERMS; TO
4 ESTABLISH THE AMOUNT OF THE CREDIT; TO PROVIDE THAT, IF THE AMOUNT
5 OF THE CREDIT CLAIMED BY A PRODUCTION COMPANY EXCEEDS THE AMOUNT
6 OF INCOME TAX LIABILITY OF THE PRODUCTION COMPANY FOR A TAXABLE
7 YEAR, THE PRODUCTION COMPANY MAY CARRY THE EXCESS CREDIT FORWARD
8 FOR 10 YEARS; TO PROVIDE THAT, IN LIEU OF CLAIMING A TAX CREDIT,
9 THE PRODUCTION COMPANY MAY ELECT TO CLAIM A REBATE IN THE AMOUNT
10 OF 75% OF THE AMOUNT IT WOULD BE ELIGIBLE TO CLAIM AS A CREDIT; TO
11 AMEND SECTIONS 57-89-7 AND 57-89-51, MISSISSIPPI CODE OF 1972, TO
12 CONFORM TO THE PROVISIONS OF THIS ACT; AND FOR RELATED PURPOSES.

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

14 **SECTION 1.** (1) As used in this section, the following terms
15 shall have the meanings ascribed in this subsection unless the
16 context clearly indicates otherwise:

17 (a) "Employee" means an individual directly involved in
18 the physical production and/or post-production of a television
19 production produced in the state and who is employed by a:

20 (i) Production company that is directly involved
21 in the physical production and/or post-production of a television
22 production in the state;



23 (ii) Personal service corporation retained by a
24 production company to provide persons used directly in the
25 physical production and/or post-production of a television
26 production in the state; and/or

27 (iii) Payroll service or loan-out company that is
28 retained by a production company to provide employees who work
29 directly in the physical production and/or post-production of a
30 television production in the state.

31 (b) "Fringes" means costs paid by a production company
32 for employee benefits that are not subject to state income tax.
33 Fringes may include, but are not limited to, payments by an
34 employer for unemployment insurance, Federal Insurance
35 Contribution Act (FICA), workers' compensation insurance, pension
36 and welfare benefits and health insurance premiums.

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

40 (d) "Production company" means a company engaged in the
41 business of producing television productions. The term
42 "production company" shall not mean or include any company owned,
43 affiliated or controlled, in whole or in part, by any company or
44 person which is in default on a loan made by the state or a loan
45 guaranteed by the state, or any company or person who has ever
46 declared bankruptcy under which an obligation of the company or



47 person to pay or repay public funds or monies was discharged as a
48 part of such bankruptcy.

49 (e) "Qualified expenditures" means the actual expenses
50 incurred and paid in Mississippi by a production company in
51 connection with the production of a state-certified production in
52 the state. The term "qualified expenditures" includes amounts
53 expended in Mississippi by a production company as per diem and
54 housing allowances in connection with the production of a
55 state-certified production in the state. The term "qualified
56 expenditures" shall not include payroll.

57 (f) "Resident" or "resident of Mississippi" means a
58 natural person and, for the purpose of determining eligibility for
59 the tax credit provided by this section, any person domiciled in
60 the State of Mississippi and any other person who maintains a
61 permanent place of abode within the state and spends in the
62 aggregate more than six (6) months of each year within the state.

63 (g) "State" means the State of Mississippi.

64 (h) "State-certified production" means a television
65 production approved by the Mississippi Development Authority
66 produced by a production company in the state. An application for
67 approval as a state-certified production must be submitted to the
68 Mississippi Development Authority before production of the project
69 begins.

70 (i) "Television production" means any scripted or
71 unscripted series, content or pilot episodes intended for



broadcast or streaming. The term "television production" shall not include any production or work described in this paragraph (d) that contains any material or performance defined in Section 97-29-103.

(2) (a) A production company that expends at least Four Million Dollars (\$4,000,000.00) in qualified expenditures, payroll and/or fringes in the state for the production of a state-certified production in which at least sixty-five percent (65%) of the running time occurs from activities in Mississippi shall be entitled to a credit against the taxes imposed by Section 27-7-5. The amount of the credit shall be equal to twenty-five percent (25%) of the qualified expenditures made by the production company.

(b) In addition to the tax credits authorized under paragraphs (a), (c) and (d) of this subsection, a production company eligible for the credit in paragraph (a) of this subsection (2) shall be entitled to a credit against the taxes imposed by Section 27-7-5 in an amount 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 credit is authorized only for the first Three Million Dollars (\$3,000,000.00) of such payroll and fringes.



96 (c) In addition to the tax credits authorized under
97 paragraphs (a), (b) and (d) of this subsection, a production
98 company eligible for the credit in paragraph (a) of this
99 subsection (2) shall be entitled to a credit against the taxes
100 imposed by Section 27-7-5 in an amount equal to thirty percent
101 (30%) of payroll and fringes paid for any employee who is a
102 resident and whose wages are subject to the Mississippi Income Tax
103 Withholding Law of 1968. However, if the payroll and fringes paid
104 for an employee exceeds Three Million Dollars (\$3,000,000.00),
105 then the credit is authorized only for the first Three Million
106 Dollars (\$3,000,000.00) of such payroll and fringes.

107 (d) In addition to the tax credits authorized in
108 paragraphs (a), (b) and (c) of this subsection, a production
109 company eligible for the credit in paragraph (a) of this
110 subsection (2) shall be entitled to a credit against the taxes
111 imposed by Section 27-7-5 in an amount equal to five percent (5%)
112 of the payroll and fringes paid for employees, provided that at
113 least fifty percent (50%) of the employees are residents whose
114 wages are subject to the Mississippi Income Tax Withholding Law of
115 1968 and are employed as directors, producers and/or
116 cinematographers for the state-certified production.

117 (e) Qualified expenditures, payroll and/or fringes for
118 which a tax credit may be claimed under this section: (i) may not
119 be used or included for the purpose of satisfying any minimum
120 investment required in order to be eligible for a rebate under the



Mississippi Motion Picture Incentive Act or under Section 57-89-51 and (ii) may not be used for and shall not be eligible for any rebate authorized under the Mississippi Motion Picture Incentive Act or under Section 57-89-51.

(f) If a television production has physical production activities and/or post-production activities both inside and outside the state, then the 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.

(g) (i) If the amount of the tax credit authorized by this section exceeds the total state income tax liability of the production company for the credit year, the amount that exceeds the total state income tax liability may be carried forward for the ten (10) succeeding tax years.

(ii) In lieu of claiming a tax credit, the production company may elect to claim a rebate in the amount of seventy-five percent (75%) of the amount that would be eligible to claim as a credit. The election may be made at any time after the certification of the rebate. If the production company has utilized a credit on an income tax return before making an election to claim a rebate, then the available rebate will be reduced by the amount of credit utilized. If claiming a credit instead of a rebate, the production company shall claim the credit



on the income tax return for the tax year for which the credit is certified.

(iii) Credits authorized by this section that are earned by a partnership, limited liability company, S corporation or other similar pass-through entity shall be allocated among all partners, members or shareholders, respectively, either in proportion to their ownership interest in such entity or as the partners, members or shareholders mutually agree as provided in an executed document. Partners, members or other owners of a pass-through entity are not eligible to elect a refund of excess credit in lieu of a carryforward of the credit. However, a partnership or limited liability company taxed as a partnership may elect to claim a rebate at the entity level on a form prescribed by the Department of Revenue.

(iv) Rebate requests must be submitted to the Department of Revenue on forms prescribed by the department. The Department of Revenue then will provide the production company with a voucher for the approved amount. Within twelve (12) months of the issuance of the voucher by the Department of Revenue, the production company may submit the voucher to the department to receive payment. Rebates shall be made from current tax collections.

(h) The total amount of credits and rebates authorized in any fiscal year shall not exceed Forty-two Million Dollars (\$42,000,000.00) in the aggregate.



171 (3) A production company desiring a credit under this
172 section must submit a request to the Department of Revenue upon
173 completion of the project. The request must include a detailed
174 accounting of the qualified expenditures made by the production
175 company, the amount of payroll and fringes paid by the production
176 company and any other information required by the Department of
177 Revenue.

178 (4) The Department of Revenue shall have all powers
179 necessary to implement and administer the provisions of this
180 section, and the Department of Revenue shall promulgate rules and
181 regulations, in accordance with the Mississippi Administrative
182 Procedures Law, necessary for the implementation of this section.

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

185 57-89-7. (1) (a) A motion picture production company that
186 expends at least Fifty Thousand Dollars (\$50,000.00) in base
187 investment, payroll and/or fringes, in the state shall be entitled
188 to a rebate of a portion of the base investment made by the motion
189 picture production company. Subject to the provisions of this
190 section, the amount of the rebate shall be equal to twenty-five
191 percent (25%) of the base investment made by the motion picture
192 production company.

193 (b) In addition to the rebates authorized under
194 paragraphs (a), (c) and (d) of this subsection, a motion picture
195 production company may receive a rebate equal to twenty-five



196 percent (25%) of payroll and fringes paid for any employee who is
197 not a resident and whose wages are subject to the Mississippi
198 Income Tax Withholding Law of 1968. However, if the payroll and
199 fringes paid for an employee exceeds Five Million Dollars
200 (\$5,000,000.00), then the rebate is authorized only for the first
201 Five Million Dollars (\$5,000,000.00) of such payroll and fringes.

202 (c) In addition to the rebates authorized under
203 paragraphs (a), (b) and (d) of this subsection, a motion picture
204 production company may receive a rebate equal to thirty percent
205 (30%) of payroll and fringes paid for any employee who is a
206 resident and whose wages are subject to the Mississippi Income Tax
207 Withholding Law of 1968. However, if the payroll and fringes paid
208 for an employee exceeds Five Million Dollars (\$5,000,000.00), then
209 the rebate is authorized only for the first Five Million Dollars
210 (\$5,000,000.00) of such payroll and fringes.

211 (d) In addition to the rebates authorized in paragraphs
212 (a), (b) and (c) of this subsection, a motion picture production
213 company may receive an additional rebate equal to five percent
214 (5%) of the payroll and fringes paid for any employee who is an
215 honorably discharged veteran of the United States Armed Forces and
216 whose wages are subject to the Mississippi Income Tax Withholding
217 Law of 1968.

218 (e) Base investment, payroll and/or fringes for which a
219 rebate may be requested under this section: (i) may not be used
220 or included for the purpose of satisfying any minimum investment



required in order to be eligible for a rebate under Section 57-89-51 or under Section 1 of this act and (ii) may not be used for and shall not be eligible for any rebate authorized under Section 57-89-51 or under Section 1 of this act.

(f) 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.

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

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

(2) A motion picture production company desiring a rebate under this section must submit a rebate request to the Department of Revenue upon 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. Rebates made by the Department of Revenue under this section shall be made from current income tax collections. The Department of Revenue shall



not approve any application for a rebate under subsection (1) (b) of this section after July 1, 2017.

(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.

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

SECTION 3. Section 57-89-51, Mississippi Code of 1972, is amended as follows:

57-89-51. (1) As used in this section, the following terms shall have the meanings ascribed in this subsection unless the context clearly indicates otherwise:

(a) "Base investment" means the actual investment made and expended in Mississippi by a production company in connection with the production of a state-certified production in the state. The term "base investment" includes amounts expended in Mississippi by a production company as per diem and housing allowances in connection with the production of a state-certified production in the state. The term "base investment" shall not include payroll. However, in the case of a production company, or its owner, principal, member, production partner, independent contractor director or producer, or subsidiary company that (i) is



271 designated and pre-qualified by the Mississippi Development
272 Authority as Mississippi-based or a Mississippi resident; (ii) has
273 filed income taxes in the State of Mississippi during each of the
274 previous three (3) years; and (iii) has engaged in activities
275 related to the production of at least two (2) series in
276 Mississippi during the past ten (10) years, base investment may
277 include payroll and fringes paid for any employee who is not a
278 resident and whose wages are subject to the Mississippi Income Tax
279 Withholding Law of 1968, if so requested by the production
280 company. A production company must submit such a request to the
281 Mississippi Development Authority at the time the company submits
282 an application for approval as a state-certified production. In
283 addition, if base investment includes payroll and fringes, and the
284 payroll and fringes paid for an employee exceeds Three Million
285 Dollars (\$3,000,000.00), then only the first Three Million Dollars
286 (\$3,000,000.00) of such payroll and fringes may be included in
287 base investment.

288 (b) "Employee" means an individual directly involved in
289 the physical production and/or post-production of a series
290 produced in the state and who is employed by a:

291 (i) Production company that is directly involved
292 in the physical production and/or post-production of a series in
293 the state;

294 (ii) Personal service corporation retained by a
295 production company to provide persons used directly in the



physical production and/or post-production of a series in the state; or

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

(c) "Fringes" means costs paid by a production company for employee benefits that are not subject to state income tax. Fringes may include, but are not limited to, payments by an employer for unemployment insurance, Federal Insurance Contribution Act (FICA), workers' compensation insurance, pension and welfare benefits and health insurance premiums.

(d) "Series" means a nationally distributed connected set of television program episodes, consisting of not less than two (2) episodes made in Mississippi, in whole or in part, for viewing through: traditional television that is broadcast via cable, satellite or over-the-air aerial antenna systems; the digital distribution of television content as streaming media over the Internet through streaming platforms, which may be viewed on digital devices, such as a personal computer or handheld device; or through DVD release. The term "series" shall not include any production or work described in this paragraph (d) that contains any material or performance defined in Section 97-29-103.

(e) "Production company" means a company engaged in the business of producing series. The term "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 this section, 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 series approved by the Mississippi Development Authority produced by a 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.

(2) (a) A production company that expends at least Fifty Thousand Dollars (\$50,000.00) 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 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 production company.

(b) In addition to the rebates authorized under paragraphs (a), (c) and (d) of this subsection, a 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 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 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) Base investment, payroll and/or fringes for which a rebate may be requested under this section: (i) may not be used or included for the purpose of satisfying any minimum investment required in order to be eligible for a rebate under the Mississippi Motion Picture Incentive Act or under Section 1 of this act and (ii) may not be used for and shall not be eligible for any rebate authorized under the Mississippi Motion Picture Incentive Act or under Section 1 of this act.

(f) If a series has physical production activities and/or post-production activities both inside and outside the state, then the 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.

(g) The total amount of rebates authorized in any fiscal year shall not exceed Ten Million Dollars (\$10,000,000.00) in the aggregate.

(* * *3) A production company desiring a rebate under this section must submit a rebate request to the Department of Revenue upon completion of the project. The request must include a detailed accounting of the base investment made by the production



396 company and any other information required by the Department of
397 Revenue. Rebates made by the Department of Revenue under this
398 section shall be made from current income tax collections.

399 (* * *4) The Department of Revenue shall have all powers
400 necessary to implement and administer the provisions of this
401 section, and the Department of Revenue shall promulgate rules and
402 regulations, in accordance with the Mississippi Administrative
403 Procedures Law, necessary for the implementation of this section.

404 **SECTION 4.** This act shall take effect and be in force from
405 and after January 1, 2025.

