

By: Senator(s) Harkins

To: Finance

COMMITTEE SUBSTITUTE
FOR
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;



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

(b) "Fringes" means costs paid by a production company for employee benefits that are subject to state income tax.

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

(d) "Production company" means a company engaged in the business of producing television productions. 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.

(e) "Qualified expenditures" means the actual expenses incurred and paid in Mississippi by a production company in connection with the production of a state-certified production in



the state and which are subject to payroll taxes or any taxes under Chapter 65, Title 27, Mississippi Code of 1972.

(f) "Resident" or "resident of Mississippi" means a natural person and, for the purpose of determining eligibility for the tax credit 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.

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

(h) "State-certified production" means a television production 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.

(i) "Television production" means any scripted or 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 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 not exceed twenty-five percent (25%) of the qualified expenditures made by the production company and shall consist of:

(i) 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;

(ii) A credit against the taxes imposed by Section 27-7-5 in an amount equal to thirty percent (30%) 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 credit is authorized only for the first Three Million Dollars (\$3,000,000.00) of such payroll and fringes; and

(iii) A credit against the taxes imposed by Section 27-7-5 in an amount equal to twenty-five percent (25%) of qualified expenditures subject to tax under Chapter 65, Title 27, Mississippi Code of 1972; however, if such expenditures exceed 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 expenditures.

(b) Qualified expenditures for which a tax credit may be claimed 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 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.

(c) 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.

(d) (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.

(e) 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.

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

(4) 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.

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

57-89-7. (1) (a) A motion picture 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 motion picture production company. Subject to the provisions of this



173 section, the amount of the rebate shall be equal to twenty-five
174 percent (25%) of the base investment made by the motion picture
175 production company.

176 (b) In addition to the rebates authorized under
177 paragraphs (a), (c) and (d) of this subsection, a motion picture
178 production company may receive a rebate equal to twenty-five
179 percent (25%) of payroll and fringes paid for any employee who is
180 not a resident and whose wages are subject to the Mississippi
181 Income Tax Withholding Law of 1968. However, if the payroll and
182 fringes paid for an employee exceeds Five Million Dollars
183 (\$5,000,000.00), then the rebate is authorized only for the first
184 Five Million Dollars (\$5,000,000.00) of such payroll and fringes.

185 (c) In addition to the rebates authorized under
186 paragraphs (a), (b) and (d) of this subsection, a motion picture
187 production company may receive a rebate equal to thirty percent
188 (30%) of payroll and fringes paid for any employee who is a
189 resident and whose wages are subject to the Mississippi Income Tax
190 Withholding Law of 1968. However, if the payroll and fringes paid
191 for an employee exceeds Five Million Dollars (\$5,000,000.00), then
192 the rebate is authorized only for the first Five Million Dollars
193 (\$5,000,000.00) of such payroll and fringes.

194 (d) In addition to the rebates authorized in paragraphs
195 (a), (b) and (c) of this subsection, a motion picture production
196 company may receive an additional rebate equal to five percent
197 (5%) of the payroll and fringes paid for any employee who is an



198 honorably discharged veteran of the United States Armed Forces and
199 whose wages are subject to the Mississippi Income Tax Withholding
200 Law of 1968.

201 (e) Base investment, payroll and/or fringes for which a
202 rebate may be requested under this section: (i) may not be used
203 or included for the purpose of satisfying any minimum investment
204 required in order to be eligible for a rebate under Section
205 57-89-51 or under Section 1 of this act and (ii) may not be used
206 for and shall not be eligible for any rebate authorized under
207 Section 57-89-51 or under Section 1 of this act.

208 (f) If a motion picture has physical production
209 activities and/or post-production activities both inside and
210 outside the state, then the motion picture production company
211 shall be required to provide an itemized accounting for each
212 employee regarding such activities inside and outside the state
213 for the purposes of proration of eligible payroll based on the
214 percentage of activities performed in the state.

215 (g) The total amount of rebates authorized for a motion
216 picture project shall not exceed Ten Million Dollars
217 (\$10,000,000.00) in the aggregate.

218 (h) The total amount of rebates authorized in any
219 fiscal year shall not exceed Twenty Million Dollars
220 (\$20,000,000.00) in the aggregate.

221 (2) A motion picture production company desiring a rebate
222 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



248 Mississippi by a production company as per diem and housing
249 allowances in connection with the production of a state-certified
250 production in the state. The term "base investment" shall not
251 include payroll. However, in the case of a production company, or
252 its owner, principal, member, production partner, independent
253 contractor director or producer, or subsidiary company that (i) is
254 designated and pre-qualified by the Mississippi Development
255 Authority as Mississippi-based or a Mississippi resident; (ii) has
256 filed income taxes in the State of Mississippi during each of the
257 previous three (3) years; and (iii) has engaged in activities
258 related to the production of at least two (2) series in
259 Mississippi during the past ten (10) years, base investment may
260 include payroll and fringes paid for any employee who is not a
261 resident and whose wages are subject to the Mississippi Income Tax
262 Withholding Law of 1968, if so requested by the production
263 company. A production company must submit such a request to the
264 Mississippi Development Authority at the time the company submits
265 an application for approval as a state-certified production. In
266 addition, if base investment includes payroll and fringes, and the
267 payroll and fringes paid for an employee exceeds Three Million
268 Dollars (\$3,000,000.00), then only the first Three Million Dollars
269 (\$3,000,000.00) of such payroll and fringes may be included in
270 base investment.



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

274 (i) Production company that is directly involved
275 in the physical production and/or post-production of a series in
276 the state;

277 (ii) Personal service corporation retained by a
278 production company to provide persons used directly in the
279 physical production and/or post-production of a series in the
280 state; or

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

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

291 (d) "Series" means a nationally distributed connected
292 set of television program episodes, consisting of not less than
293 two (2) episodes made in Mississippi, in whole or in part, for
294 viewing through: traditional television that is broadcast via
295 cable, satellite or over-the-air aerial antenna systems; the



296 digital distribution of television content as streaming media over
297 the Internet through streaming platforms, which may be viewed on
298 digital devices, such as a personal computer or handheld device;
299 or through DVD release. The term "series" shall not include any
300 production or work described in this paragraph (d) that contains
301 any material or performance defined in Section 97-29-103.

302 (e) "Production company" means a company engaged in the
303 business of producing series. The term "production company" shall
304 not mean or include any company owned, affiliated, or controlled,
305 in whole or in part, by any company or person which is in default
306 on a loan made by the state or a loan guaranteed by the state, or
307 any company or person who has ever declared bankruptcy under which
308 an obligation of the company or person to pay or repay public
309 funds or monies was discharged as a part of such bankruptcy.

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

313 (g) "Resident" or "resident of Mississippi" means a
314 natural person, and for the purpose of determining eligibility for
315 the rebate provided by this section, any person domiciled in the
316 State of Mississippi and any other person who maintains a
317 permanent place of abode within the state and spends in the
318 aggregate more than six (6) months of each year within the state.

319 (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



345 whose wages are subject to the Mississippi Income Tax Withholding
346 Law of 1968. However, if the payroll and fringes paid for an
347 employee exceeds Three Million Dollars (\$3,000,000.00), then the
348 rebate is authorized only for the first Three Million Dollars
349 (\$3,000,000.00) of such payroll and fringes.

350 (d) In addition to the rebates authorized in paragraphs
351 (a), (b) and (c) of this subsection, a production company may
352 receive an additional rebate equal to five percent (5%) of the
353 payroll and fringes paid for any employee who is an honorably
354 discharged veteran of the United States Armed Forces and whose
355 wages are subject to the Mississippi Income Tax Withholding Law of
356 1968.

357 (e) Base investment, payroll and/or fringes for which a
358 rebate may be requested under this section: (i) may not be used
359 or included for the purpose of satisfying any minimum investment
360 required in order to be eligible for a rebate under the
361 Mississippi Motion Picture Incentive Act or under Section 1 of
362 this act and (ii) may not be used for and shall not be eligible
363 for any rebate authorized under the Mississippi Motion Picture
364 Incentive Act or under Section 1 of this act.

365 (f) If a series has physical production activities
366 and/or post-production activities both inside and outside the
367 state, then the production company shall be required to provide an
368 itemized accounting for each employee regarding such activities
369 inside and outside the state for the purposes of proration of



370 eligible payroll based on the percentage of activities performed
371 in the state.

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

375 (* * *3) A production company desiring a rebate under this
376 section must submit a rebate request to the Department of Revenue
377 upon completion of the project. The request must include a
378 detailed accounting of the base investment made by the production
379 company and any other information required by the Department of
380 Revenue. Rebates made by the Department of Revenue under this
381 section shall be made from current income tax collections.

382 (* * *4) The Department of Revenue shall have all powers
383 necessary to implement and administer the provisions of this
384 section, and the Department of Revenue shall promulgate rules and
385 regulations, in accordance with the Mississippi Administrative
386 Procedures Law, necessary for the implementation of this section.

387 **SECTION 4.** This act shall take effect and be in force from
388 and after January 1, 2025, and shall stand repealed on December
389 31, 2024.

