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SENATE BILL NO. 14
INTRODUCED BY G. HERTZ
BY REQUEST OF THE REVENUE INTERIM COMMITTEE

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE MONTANA ECONOMIC DEVELOPMENT
INDUSTRY ADVANCEMENT ACT; INCREASING THE LIMIT ON MONTANA ECONOMIC DEVELOPMENT
INDUSTRY ADVANCEMENT ACT FILM TAX CREDITS; ALLOCATING THE CREDIT TO CERTAIN ENTITIES;
PROVIDING A DEFINITION; AMENDING SECTION SECTIONS 15-31-1003, 15-31-1004, AND 15-31-1010,
MCA; REPEALING SECTIONS 1 THROUGH 9, CHAPTER 509, LAWS OF 2021; AND PROVIDING AN
IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 15-31-1003, MCA, is amended to read:

"15-31-1003. Definitions. As used in this part, unless the context requires otherwise, the following definitions apply:

(1) "Affiliate" means a subsidiary of which more than 50% of the voting stock is owned directly by the parent corporation or another member of the Montana combined group.

(2) "Base investment" means the amount expended by a production company as production expenditures and compensation incurred in this state that are directly used in a state-certified production.

(3) (a) "Compensation" means Montana wages, salaries, commissions, payments to a loan-out company subject to the provisions of subsection (3)(c), union benefits, fringe benefits, and any other form of remuneration paid to employees for personal services performed in this state.

(b) The term does not include compensation paid that is less than the minimum wage described in 39-3-409.

(c) The term includes payments to a loan-out company by a production company if the production company withheld and remitted Montana income tax at the rate of 6.9% on all payments to the loan-out company for services performed in this state. The amount withheld is considered to have been withheld by the

1 loan-out company on wages paid to its employees for services performed in this state. The amounts withheld
 2 must be allocated to the loan-out company's employees based on the payments made to the loan-out
 3 company's employees for services performed in Montana. For purposes of this chapter, loan-out company
 4 nonresident employees performing services in this state must be considered taxable nonresidents and the loan-
 5 out company is subject to income taxation in the tax year in which the loan-out company's employees perform
 6 services in this state, notwithstanding any other provisions of Title 15. The withholding liability is subject to
 7 penalties and interest as provided in 15-1-216.

8 (d) With respect to a single crew member or production staff member, excluding an actor, director,
 9 producer, or writer, the portion of any compensation that exceeds \$500,000 for a single production is not
 10 included when calculating the base investment.

11 (e) All payments to a single employee and any legal entity in which the employee has any direct or
 12 indirect ownership interest are considered as having been paid to the employee and must be aggregated
 13 regardless of the means of payment or distribution.

14 (4) "Game platform" means the electronic delivery system used to launch or play an interactive game.

15 (5) "Domiciled company" means a corporation incorporated in the state or a partnership, limited
 16 liability company, or other business entity subject to tax under Title 15, chapter 30 or 31, and domiciled and
 17 headquartered in the state for a minimum of 1 year for the purpose of performing qualified production activities
 18 or qualified postproduction activities or producing a nationally or internationally distributed qualified production.

19 ~~(5)(6)~~ "Game sequel" means an interactive game that builds on the theme of a previously released
 20 interactive game, is distinguished by a new title, and features objectives or characters that are recognizably
 21 different from those in the original game.

22 ~~(6)(7)~~ (a) "Loan-out company" means a personal service company contracted with and retained by a
 23 production company to provide individual personnel who are not employees of the production company,
 24 including actors, directors, producers, writers, production designers, production managers, costume designers,
 25 directors of photography, editors, casting directors, first assistant directors, second unit directors, stunt
 26 coordinators, and similar personnel, for performance of services used directly in a qualified production activity.

27 (b) The term does not include persons retained by a production company to provide tangible property
 28 or outside independent contractor services, such as catering, construction, trailers, equipment, and

1 transportation.

2 ~~(7)(8)~~ "Multimarket commercial distribution" means paid commercial distribution that extends to
3 markets outside the state.

4 ~~(8)(9)~~ (a) "Postproduction company" means a company that:

5 (i) maintains a business location physically located in this state;

6 (ii) is engaged in qualified postproduction activities;

7 (iii) meets the requirements of 15-31-1005(4) in the tax year for which the postproduction company
8 claims the tax credit provided for in 15-31-1009; and

9 (iv) has been approved by the department of commerce to claim the credit provided for in 15-31-1009.

10 (b) The term does not include any form of business owned, affiliated, or controlled, in whole or in part,
11 by a company or person that is in default on a tax obligation of the state, a loan made by the state, or a loan
12 guaranteed by the state.

13 ~~(9)(10)~~ "Prereleased interactive game" means a new game, the offering of an existing game on a new
14 game platform, or a game sequel that is in the developmental stages of production and that may be available to
15 individuals for testing purposes but is not generally made available or distributed to consumers or to the general
16 public.

17 ~~(10)(11)~~ (a) "Production company" means a company primarily engaged in qualified production
18 activities that have been approved by the department of commerce.

19 (b) The term does not include any form of business owned, affiliated, or controlled, in whole or in part,
20 by a company or person that is in default on a tax obligation of the state, a loan made by the state, or a loan
21 guaranteed by the state.

22 ~~(11)(12)~~ (a) "Production expenditure" means a preproduction or production expenditure incurred in
23 Montana that is directly used for a qualified production activity including:

24 (i) set construction and operation;

25 (ii) wardrobes, makeup, accessories, and related services;

26 (iii) costs associated with photography and sound synchronization expenditures, excluding license
27 fees, incurred with Montana companies for sound recordings and musical compositions, lighting, or related
28 services and materials;

1 (iv) editing and related services;
2 (v) rental of facilities and equipment;
3 (vi) leasing of vehicles, whether to be photographed or to transport people, equipment, or materials;
4 (vii) lodging costs, including hotel rooms and private housing rentals paid for by the production
5 company;
6 (viii) per diem and living allowance paid to staff, cast, and crew members;
7 (ix) digital, film, or tape editing, film processing, transfers of film to tape or digital format, sound mixing,
8 computer graphics services, special effects services, visual effects services, and animation services;
9 (x) airfare, if purchased through a Montana travel agency or travel company;
10 (xi) insurance costs and bonding, if purchased through a Montana insurance agency; and
11 (xii) other direct costs of producing the project in accordance with generally accepted entertainment
12 industry practices and generally accepted accounting principles.

13 (b) The term does not include:
14 (i) compensation, which qualifies for the credit provided for in 15-31-1007(3)(b)(i) through (3)(b)(iv);
15 (ii) production expenditures for footage shot outside the state;
16 (iii) marketing;
17 (iv) story rights;
18 (v) distribution; or
19 (vi) postproduction expenditures.

20 ~~(12)~~(13) "Qualified Montana promotion" means a promotion of this state approved by the department
21 of commerce and consisting of:

22 (a) a qualified movie production that includes a 5-second static or animated logo that promotes
23 Montana in the end credits for the life of the project and that includes a link to the official state of Montana
24 website on the project's website;

25 (b) a qualified television production that includes an embedded 5-second Montana promotion during
26 each broadcast worldwide for the life of the project and that includes a link to the official state of Montana
27 website on the project's website;

28 (c) a qualified music video that includes the Montana logo at the end of each video and within online

1 promotions;

2 (d) a qualified interactive game that includes a 15-second Montana advertisement in units sold and
3 embedded in online promotions; or

4 (e) a qualified television special or sports event for which the network provides complimentary
5 placement of two 30-second spots per 30 minutes of qualifying television special or sports event programming
6 promoting Montana destinations and provided by the department of commerce as provided for in 15-31-
7 1004(7).

8 ~~(13)~~(14) "Qualified postproduction activity" means an activity performed in this state on a qualified
9 production employing traditional, emerging, and new workflow techniques used in postproduction for picture,
10 sound, and music editing, rerecording and mixing, visual effects, graphic design, original scoring, animation,
11 musical composition, and other activities performed after initial production and including activities performed on
12 previously produced and edited content.

13 ~~(14)~~(15) "Qualified postproduction wage" means wages incurred in this state directly in qualified
14 postproduction activities for footage shot inside or outside this state.

15 ~~(15)~~(16) (a) "Qualified production" means a new film, video, or digital project including only feature
16 films, series for theaters, television, or streaming, pilots, movies and scripted shows made for television or
17 streaming, televised commercial advertisements, music videos, corporate videos, industrial films, production for
18 website creation, television specials, sports events, video games, interactive entertainment, prereleased
19 interactive games, and sound recording projects used in a feature film, series, pilot, or movie for television.

20 (b) The term includes projects shot, recorded, or originally created in short or long form, animation,
21 and music, fixed on a delivery system, including film, videotape, computer disc, laser disc, and any element of
22 the digital domain, from which the program is viewed or reproduced and which is intended for multimarket
23 commercial distribution via a theater, video on demand, digital or fiber optic distribution platforms, digital video
24 recording, a digital platform designed for distribution of interactive games, licensing for exhibition by individual
25 television stations, groups of stations, networks, advertiser-supported sites, cable television stations, streaming
26 services, or public broadcasting stations.

27 (c) The term does not include the coverage of news, local interest programming, instructional videos,
28 commercials distributed only on the internet, infomercials, solicitation-based productions, nonscripted television

1 programs, feature films consisting primarily of stock footage not originally recorded in Montana, or projects
2 containing obscenity as defined in 45-8-201(2).

3 ~~(16)~~(17) (a) "Qualified production activity" means the production of a new film, video, or digital project
4 in this state and approved by the department of commerce, including only feature films, series for theaters,
5 television, or streaming, pilots, movies and scripted shows made for television or streaming, televised
6 commercial advertisements, music videos, corporate videos, industrial films, production for website creation,
7 television specials, sports events, video games, interactive entertainment, prereleased interactive games, and
8 sound recording projects used in a feature film, series, pilot, or movie for television.

9 (b) The term includes the production of projects filmed or recorded in this state, in whole or in part and
10 in short or long form, animation and music, fixed on a delivery system, including film, videotape, computer disc,
11 laser disc, and any element of the digital domain, from which the program is viewed or reproduced and which is
12 intended for multimarket commercial distribution via a theater, video on demand, digital or fiber optic distribution
13 platforms, digital video recording, a digital platform designed for distribution of interactive games, licensing for
14 exhibition by individual television stations, groups of stations, networks, advertiser-supported sites, cable
15 television stations, streaming services, or public broadcasting stations.

16 (c) The term does not include the coverage of news, local interest programming, instructional videos,
17 commercials distributed only on the internet, infomercials, solicitation-based productions, nonscripted television
18 programs, or feature films consisting primarily of stock footage not originally recorded in Montana, projects
19 containing obscenity as defined in 45-8-201(2), or projects not shot, recorded, or originally created in Montana.

20 ~~(17)~~(18) "Resident" has the meaning provided in 15-30-2101.

21 ~~(18)~~(19) "State-certified production" means a production engaged in qualified production activities and
22 certified by the department of commerce as provided in 15-31-1004.

23 ~~(19)~~(20) "Underserved area" means a county in this state in which 14% or more people of all ages are
24 in poverty as determined by the U.S. bureau of the census estimates for the most current year available."
25

26 **Section 2.** Section 15-31-1004, MCA, is amended to read:

27 **"15-31-1004. Application for state certification.** (1) (a) A production company may not receive the
28 tax credit provided for in 15-31-1007 unless the production has been certified by the department of commerce

1 as provided in this section.

2 (b) A postproduction company may not receive the tax credit provided for in 15-31-1009 unless the
3 postproduction company has been certified by the department of commerce. The postproduction company shall
4 submit an application that includes the information provided for in subsection (2)(a) for the postproduction
5 company. The application must be submitted in the year in which the postproduction plans to claim the credit
6 and must be accompanied by a \$500 application fee. For the purposes of allocating the credit pursuant to 15-
7 31-1010, the application must contain an estimate of the amount of credit the postproduction company will
8 claim. A postproduction company that plans to claim the credit in more than 1 tax year must apply for the credit
9 each year, but the application fee is only required in the first year of application. The department of commerce
10 shall notify the applicant whether the postproduction company qualifies for the credit within 30 days of receipt of
11 the application.

12 (2) An application, on a form provided by the department of commerce, must be submitted by the
13 production company to the department of commerce before the start of principal photography. The application
14 must be accompanied by a \$500 fee and must include:

15 (a) the production company's name, primary business address, telephone and fax numbers,
16 incorporation information, federal tax identification number, and the name of at least one principal company
17 officer or manager;

18 (b) the address and telephone and fax numbers of the production company's Montana office;

19 (c) the name of the line producer, unit production manager, or production accountant;

20 (d) a statement that the applicant meets the definition of production company in 15-31-1003;

21 (e) the title of the production;

22 (f) the type of production;

23 (g) the proposed dates of production from preproduction to the start and completion of principal
24 photography;

25 (h) a copy or synopsis of the production script;

26 (i) a list of production locations;

27 (j) a statement that the proposed production does not contain any material or performance that would
28 be considered obscene under 45-8-201(2);

1 (k) a statement that the production will include a qualified Montana promotion; and

2 (l) a statement that the production company plans to make a base investment of \$350,000 or more or,
3 if subsection (5) applies, that the production company plans to make a base investment of \$50,000 or more.

4 (3) The application must be signed by the manager, agent, president, vice president, or other person
5 authorized to represent the production company.

6 (4) (a) The department of commerce shall notify the applicant within 30 days of receipt of the
7 application as to whether the production qualifies as a state-certified production.

8 (b) If the department of commerce approves the application, the department of commerce shall
9 provide a certification number to the applicant.

10 (5) The department of commerce may approve on a case-by-case basis an application for a
11 commercial, music video, production for website creation, video game, interactive entertainment, or
12 experimental or low-budget project that plans a base investment of less than \$350,000 but more than \$50,000.

13 (6) (a) If the department of commerce determines that the production company has violated the
14 provisions of subsection (2)(j) or (2)(k), the department of commerce may revoke the state certification of the
15 production. If the department of commerce revokes the state certification, the department of commerce shall
16 notify the department of revenue. The production company has the right to a hearing before the department of
17 commerce on the revocation of the state certification as provided in Title 2, chapter 4, part 6.

18 (b) The department of revenue shall recapture any tax credit claimed by a production company for
19 which the state certification has been revoked. The recapture is subject to penalties and interest as provided in
20 15-1-216.

21 (c) If the production company transferred the tax credit, the recapture provisions of 15-31-1008(7)
22 apply.

23 (7) The department of commerce shall design and furnish the Montana screen credit needed to
24 qualify for the additional tax credit provided for in 15-31-1007(3)(b)(viii) and the programming promoting
25 Montana destinations provided for in ~~15-31-1003(12)(e)~~ 15-31-1003(13)(e).

26 (8) The application fee must be deposited in an account in the state special revenue fund. The fee is
27 statutorily appropriated to the department of commerce, as provided in 17-7-502, to administer the provisions of
28 15-31-1004 through 15-31-1012.

(9) The department of commerce shall prescribe rules necessary to carry out the provisions of this section, including a procedure for review of the department of commerce's denial or revocation of state certification, the department's policies on the types of productions that may include the Montana screen credit, and the criteria for approving projects with a base investment of less than \$350,000."

Section 3. Section 15-31-1010, MCA, is amended to read:

" 15-31-1010. (Temporary) Limitation of tax credits. (1) (a) The department of commerce may grant to applicants pursuant to 15-31-1004 the authority to apply for the tax credits provided for in 15-31-1007 and 15-31-1009.

(b) The authorization by the department of commerce to apply for a credit does not guarantee the credit. A taxpayer authorized to apply for a credit pursuant to 15-31-1004 and this section must meet the requirements of 15-31-1005 through 15-31-1009 and subsection (2) of this section.

(c) The department of commerce shall make reasonable efforts to post on its website the amount of tax credits available and not yet allocated.

(2) (a) Total claims for the tax credits provided for in 15-31-1007 and 15-31-1009 may not exceed [\$12 million] per calendar year.

(b) Claims must be allowed on a first come, first served basis. A taxpayer whose claim for a credit is disallowed because the calendar year limit has been reached may use the credit in the next calendar year but the transfer of the credit to the next calendar year does not extend the carry forward periods provided for in 15-31-1007 (5) or 15-31-1009 (4).

(c) If a claim is disallowed because the calendar year limit has been reached, the department of revenue may waive penalties and interest pursuant to 15-1-216.

(d) The department of revenue shall make reasonable efforts to post on its website the amount of credits available and not yet claimed. (Bracketed language is temporarily amended to "\$10 million" on occurrence of contingency for income tax years 2022, 2023, 2024, and 2025 until July 1, 2025—secs. 7(6), 9, Ch. 509, L. 2021—see compiler's comment.)

15-31-1010. (Effective July 1, 2025) Limitation of tax credits. (1) (a) The department of commerce may grant to applicants pursuant to 15-31-1004 the authority to apply for the tax credits provided for in 15-31-

Amendment - 1st Reading-white - Requested by: Mary Ann Dunwell - (S) Taxation

68th Legislature

Drafter: Jaret Coles, 406-444-4022

SB0014.001.006

1 1007 and 15-31-1009.

2 (b) The authorization by the department of commerce to apply for a credit does not guarantee the
3 credit. A taxpayer authorized to apply for a credit pursuant to 15-31-1004 and this section must meet the
4 requirements of 15-31-1005 through 15-31-1009 and subsection (2) of this section.

5 (c) The department of commerce shall make reasonable efforts to post on its website the amount
6 of tax credits available and not yet allocated.

7 (2) (a) Total claims for the tax credits provided for in 15-31-1007 and 15-31-1009 may not exceed
8 ~~\$42-\$30~~ million per calendar year, 25% of which must be granted to a domiciled company.

9 (b) Claims must be allowed on a first-come, first-served basis. A taxpayer whose claim for a credit
10 is disallowed because the calendar year limit has been reached may use the credit in the next calendar year
11 but the transfer of the credit to the next calendar year does not extend the carry forward periods provided for in
12 15-31-1007(5) or 15-31-1009(4).

13 (c) If a claim is disallowed because the calendar year limit has been reached, the department of
14 revenue may waive penalties and interest pursuant to 15-1-216.

15 (d) The department of revenue shall make reasonable efforts to post on its website the amount of
16 credits available and not yet claimed."

17
18 NEW SECTION. Section 4. Repealer. Sections 1 through 9, Chapter 509, Laws of 2021, are
19 repealed.

20
21 NEW SECTION. Section 5. Effective date. [This act] is effective on passage and approval.

22
23 NEW SECTION. Section 6. Retroactive applicability. [This act] applies retroactively, within the
24 meaning of 1-2-109, to income tax years beginning on or after January 1, 2023.

25 - END -