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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; REQUIRING A STANDARD PREVAILING WAGE
RATE IN ORDER TO QUALIFY FOR FILM TAX CREDITS; AMENDING SECTION SECTIONS 15-31-1003
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~~ standard prevailing wage rate in effect and applicable to the work being performed.

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

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

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

26 (7) "Multimarket commercial distribution" means paid commercial distribution that extends to markets
27 outside the state.

28 (8) (a) "Postproduction company" means a company that:

- 1 (i) maintains a business location physically located in this state;
- 2 (ii) is engaged in qualified postproduction activities;
- 3 (iii) meets the requirements of 15-31-1005(4) in the tax year for which the postproduction company
- 4 claims the tax credit provided for in 15-31-1009; and
- 5 (iv) has been approved by the department of commerce to claim the credit provided for in 15-31-1009.
- 6 (b) The term does not include any form of business owned, affiliated, or controlled, in whole or in part,
- 7 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
- 8 guaranteed by the state.
- 9 (9) "Prereleased interactive game" means a new game, the offering of an existing game on a new
- 10 game platform, or a game sequel that is in the developmental stages of production and that may be available to
- 11 individuals for testing purposes but is not generally made available or distributed to consumers or to the general
- 12 public.
- 13 (10) (a) "Production company" means a company primarily engaged in qualified production activities
- 14 that have been approved by the department of commerce.
- 15 (b) The term does not include any form of business owned, affiliated, or controlled, in whole or in part,
- 16 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
- 17 guaranteed by the state.
- 18 (11) (a) "Production expenditure" means a preproduction or production expenditure incurred in
- 19 Montana that is directly used for a qualified production activity including:
 - 20 (i) set construction and operation;
 - 21 (ii) wardrobes, makeup, accessories, and related services;
 - 22 (iii) costs associated with photography and sound synchronization expenditures, excluding license
 - 23 fees, incurred with Montana companies for sound recordings and musical compositions, lighting, or related
 - 24 services and materials;
 - 25 (iv) editing and related services;
 - 26 (v) rental of facilities and equipment;
 - 27 (vi) leasing of vehicles, whether to be photographed or to transport people, equipment, or materials;
 - 28 (vii) lodging costs, including hotel rooms and private housing rentals paid for by the production

- 1 company;
- 2 (viii) per diem and living allowance paid to staff, cast, and crew members;
- 3 (ix) digital, film, or tape editing, film processing, transfers of film to tape or digital format, sound mixing,
- 4 computer graphics services, special effects services, visual effects services, and animation services;
- 5 (x) airfare, if purchased through a Montana travel agency or travel company;
- 6 (xi) insurance costs and bonding, if purchased through a Montana insurance agency; and
- 7 (xii) other direct costs of producing the project in accordance with generally accepted entertainment
- 8 industry practices and generally accepted accounting principles.
- 9 (b) The term does not include:
- 10 (i) compensation, which qualifies for the credit provided for in 15-31-1007(3)(b)(i) through (3)(b)(iv);
- 11 (ii) production expenditures for footage shot outside the state;
- 12 (iii) marketing;
- 13 (iv) story rights;
- 14 (v) distribution; or
- 15 (vi) postproduction expenditures.
- 16 (12) "Qualified Montana promotion" means a promotion of this state approved by the department of
- 17 commerce and consisting of:
- 18 (a) a qualified movie production that includes a 5-second static or animated logo that promotes
- 19 Montana in the end credits for the life of the project and that includes a link to the official state of Montana
- 20 website on the project's website;
- 21 (b) a qualified television production that includes an embedded 5-second Montana promotion during
- 22 each broadcast worldwide for the life of the project and that includes a link to the official state of Montana
- 23 website on the project's website;
- 24 (c) a qualified music video that includes the Montana logo at the end of each video and within online
- 25 promotions;
- 26 (d) a qualified interactive game that includes a 15-second Montana advertisement in units sold and
- 27 embedded in online promotions; or
- 28 (e) a qualified television special or sports event for which the network provides complimentary

1 placement of two 30-second spots per 30 minutes of qualifying television special or sports event programming
2 promoting Montana destinations and provided by the department of commerce as provided for in 15-31-
3 1004(7).

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

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

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

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

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

27 (16) (a) "Qualified production activity" means the production of a new film, video, or digital project in
28 this state and approved by the department of commerce, including only feature films, series for theaters,

1 television, or streaming, pilots, movies and scripted shows made for television or streaming, televised
2 commercial advertisements, music videos, corporate videos, industrial films, production for website creation,
3 television specials, sports events, video games, interactive entertainment, prereleased interactive games, and
4 sound recording projects used in a feature film, series, pilot, or movie for television.

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

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

16 (17) "Resident" has the meaning provided in 15-30-2101.

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

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

21
22 **Section 2.** Section 15-31-1010, MCA, is amended to read:

23 "~~15-31-1010. (Temporary) Limitation of tax credits. (1)(a) The department of commerce may~~
24 ~~grant to applicants pursuant to 15-31-1004 the authority to apply for the tax credits provided for in 15-31-1007~~
25 ~~and 15-31-1009.~~

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