

SENATE BILL NO. 326

INTRODUCED BY G. HERTZ, W. GALT, M. LEE, R. GREGG, C. NEUMANN, J. WEBER, C. SCHOMER, E. TILLEMANN, E. BUTTREY, W. CURDY, W. MCKAMEY, T. RUNNING WOLF, C. SPRUNGER, D. FERN, D. HARVEY, J. KASSMIER, G. LAMMERS, M. YAKAWICH, E. BOLDMAN, B. CARTER, J. COHENOUR, P. FLOWERS, D. HAWK, G. NIKOLAKAKOS, S. MORIGEAU, M. ROMANO, M. THANE, J. DARLING, J. LYNCH, V. MOORE

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE MONTANA ECONOMIC DEVELOPMENT INDUSTRY ADVANCEMENT ACT FILM TAX CREDITS; REVISING ELIGIBLE PRODUCTIONS AND POSTPRODUCTION ACTIVITY; PROVIDING AN INCREASED CREDIT FOR HIRING VETERANS AND ENROLLED TRIBAL MEMBERS; EXTENDING THE CREDITS THROUGH 2045; INCREASING THE AGGREGATE CREDIT LIMIT; ALLOCATING THE CREDIT TO CERTAIN ENTITIES; PROVIDING THAT UNUSED ALLOCATED CREDITS MAY BE CLAIMED BY OTHER ENTITIES FOR A FEE; DESIGNATING THE FEE FOR FILM INDUSTRY WORKFORCE TRAINING; PROVIDING RULEMAKING AUTHORITY; AMENDING SECTIONS 15-31-1002, 15-31-1003, 15-31-1004, 15-31-1007, 15-31-1009, 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:

NEW SECTION. Section 1. Media manufacturing industry workforce training account. (1) There is an account in the state special revenue fund provided for in 17-2-102 known as the film industry workforce training account.

(2) The fee collected under 15-31-1010(2)(c) must be deposited in the account.

(3) The department of labor and industry shall use money in the account to provide workforce training for the film industry.

Section 2. Section 15-31-1002, MCA, is amended to read:

1 **"15-31-1002. Purpose.** ~~(1)-The purpose of this part is to enhance Montana's economy by expanding~~
2 ~~film and related media production in the state, by increasing job opportunities for a broad array of workers, and~~
3 ~~by promoting the growth of small businesses. The objectives of this part are to:~~

- 4 ~~(a) — advertise Montana as open for business to qualifying projects;~~
5 ~~(b) — develop a broad spectrum of high-paying jobs in the state;~~
6 ~~(c) — encourage investment of funds to finance media production in the state;~~
7 ~~(d) — expand opportunities for existing Montana small businesses and for new small businesses that~~
8 ~~provide goods and services to qualified projects; and~~
9 ~~(e) — promote tourism in the state.~~

10 ~~(2) — The objectives in subsection (1) will best be achieved by offering tax incentives as provided in~~
11 ~~this part create a more resilient Montana economy by diversifying and driving local growth in the media~~
12 ~~manufacturing sector and ancillary supporting sectors by:~~

- 13 ~~(1) — creating tax credit reservation allocations that put Montana businesses first;~~
14 ~~(2) — driving brick and mortar investment into permanent infrastructure in the state;~~
15 ~~(3) — increasing career pathway training and full-time equivalent jobs for a broad array of Montana~~
16 ~~resident workers;~~
17 ~~(4) — expanding a sustainable media manufacturing sector through film and related media production~~
18 ~~in the state; and~~
19 ~~(5) — limiting liability to the state."~~

20
21 **Section 3.** Section 15-31-1003, MCA, is amended to read:

22 **"15-31-1003. Definitions.** As used in this part, unless the context requires otherwise, the following
23 definitions apply:

- 24 (1) "Affiliate" means a subsidiary of which more than 50% of the voting stock is owned directly by
25 the parent corporation or another member of the Montana combined group.
26 (2) "Base investment" means the amount expended by a production company as production
27 expenditures and compensation incurred in this state that are directly used in a state-certified production.
28 (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 highest marginal rate in effect under 15-30-2103 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 loan-out company on wages paid to its employees for services performed in this state. The amounts withheld must be allocated to the loan-out company's employees based on the payments made to the loan-out company's employees for services performed in Montana. For purposes of this chapter, loan-out company nonresident employees performing services in this state must be considered taxable nonresidents and the loan-out company is subject to income taxation in the tax year in which the loan-out company's employees perform services in this state, notwithstanding any other provisions of Title 15. The withholding liability is subject to penalties and interest as provided in 15-1-216.

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

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

(4) "Domiciled company" means a corporation incorporated in the state or a partnership, limited liability company, or other business entity subject to tax under Title 15, chapter 30 or 31:

(a) domiciled and headquartered in the state for a minimum of 1 year for the purpose of performing qualified production activities or qualified postproduction activities; and

(b) that maintains a minimum of 15 resident full-time equivalent jobs that pay wages above the state average median income and for which Montana income tax is withheld.

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

1 ~~(5)(6)~~ "Game sequel" means an interactive game that builds on the theme of a previously released
2 interactive game, is distinguished by a new title, and features objectives or characters that are recognizably
3 different from those in the original game.

4 ~~(7)~~ "Independent film production" means a state-certified production with a production budget
5 approved by the department of commerce of \$3 million or less.

6 ~~(6)(8)~~ (a) "Loan-out company" means a personal service company contracted with and retained by a
7 production company to provide individual personnel who are not employees of the production company,
8 including actors, directors, producers, writers, production designers, production managers, costume designers,
9 directors of photography, editors, casting directors, first assistant directors, second unit directors, stunt
10 coordinators, and similar personnel, for performance of services used directly in a qualified production activity.

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

14 ~~(7)(9)~~ "Multimarket commercial distribution" means paid commercial distribution that extends to
15 markets outside the state.

16 ~~(8)(10)~~ (a) "Postproduction company" means a company that:

- 17 (i) maintains a business location physically located in this state;
18 (ii) is engaged in qualified postproduction activities;
19 (iii) meets the requirements of 15-31-1005(4); and
20 (iv) has been approved by the department of commerce to claim the credit provided for in 15-31-
21 1009.

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

25 ~~(9)(11)~~ "Prereleased interactive game" means a new game, the offering of an existing game on a new
26 game platform, or a game sequel that is in the developmental stages of production and that may be available to
27 individuals for testing purposes but is not generally made available or distributed to consumers or to the general
28 public.

Amendment - 1st Reading-white - Requested by: Greg Hertz - (S) Taxation

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Drafter: Megan Moore,

SB0326.001.001

~~(10)(12)~~(a) "Production company" means a company primarily engaged in qualified production activities that have been approved by the department of commerce.

(b) The term does not include any form of business owned, affiliated, or controlled, in whole or in part, 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 guaranteed by the state.

~~(11)(13)~~(a) "Production expenditure" means a preproduction or production expenditure incurred in Montana that is directly used for a qualified production activity including:

- (i) set construction and operation;
- (ii) wardrobes, makeup, accessories, and related services;
- (iii) costs associated with photography and sound synchronization expenditures, excluding license fees, incurred with Montana companies for sound recordings and musical compositions, lighting, or related services and materials;
- (iv) editing and related services;
- (v) rental of facilities and equipment;
- (vi) leasing of vehicles, whether to be photographed or to transport people, equipment, or materials;
- (vii) lodging costs, including hotel rooms and private housing rentals paid for by the production company;
- (viii) per diem and living allowance paid to staff, cast, and crew members;
- (ix) digital, film, or tape editing, film processing, transfers of film to tape or digital format, sound mixing, computer graphics services, special effects services, visual effects services, and animation services;
- (x) airfare, if purchased through a Montana travel agency or travel company;
- (xi) insurance costs and bonding, if purchased through a Montana insurance agency; and
- (xii) other direct costs of producing the project in accordance with generally accepted entertainment industry practices and generally accepted accounting principles.

(b) The term does not include:

- (i) compensation, which qualifies for the credit provided for in 15-31-1007(3)(b)(i) through ~~(3)(b)(iv)~~ ~~(3)(b)(v)~~;

(ii) production expenditures for footage shot outside the state;

(iii) marketing;

(iv) story rights;

(v) distribution; or

(vi) postproduction expenditures.

(14) "Qualified Montana facility" means a media manufacturing facility of 10,000 or more square feet and measuring at least 25 feet from floor to truss that was constructed or renovated in the state on or after January 1, 2025, at a minimum capital expenditure of \$10 million for the primary purpose of engaging in the development of qualified production or postproduction activities and ~~that for which the owner~~ is subject to tax under Title 15, chapter 30 or 31.

~~(12)(15)~~ "Qualified Montana promotion" means a promotion of this state approved by the department of commerce and consisting of:

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

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

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

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

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

~~(13)(16)~~ "Qualified postproduction activity" means an activity performed in this state on a qualified production employing traditional, emerging, and new workflow techniques used in postproduction for picture,

1 sound, and music editing, rerecording and mixing, visual effects, graphic design, original scoring, animation,
2 musical composition, and other activities performed after initial production and including activities performed on
3 previously produced and edited content.

4 ~~(14)~~(17)"Qualified postproduction wage" means wages incurred in this state directly in qualified
5 postproduction activities for footage shot inside or outside this state.

6 ~~(15)~~(18)(a) "Qualified production" means a production, for which a minimum of 60% of principal
7 photography time was completed in the state, that is a new film, video, or digital project including only feature
8 films, series for theaters, television, or streaming, pilots, movies and scripted shows made for television or
9 streaming, nonscripted television programs, documentaries, televised commercial advertisements, music
10 videos, corporate videos, industrial films, production for website creation, television specials, sports events,
11 video games, interactive entertainment, prereleased interactive games, and sound recording projects used in a
12 feature film, series, pilot, or movie for television.

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

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

24 ~~(16)~~(19)(a) "Qualified production activity" means a production, for which a minimum of 60% of principal
25 photography time was completed in the state, that is the production of a new film, video, or digital project in this
26 state and approved by the department of commerce, including only feature films, series for theaters, television,
27 or streaming, pilots, movies and scripted shows made for television or streaming, nonscripted television
28 programs, documentaries, televised commercial advertisements, music videos, corporate videos, industrial

1 films, production for website creation, television specials, sports events, video games, interactive entertainment,
2 prereleased interactive games, and sound recording projects used in a feature film, series, pilot, or movie for
3 television.

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

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

16 ~~(17)(20)~~"Resident" has the meaning provided in 15-30-2101.

17 ~~(18)(21)~~"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)(22)~~"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 4.** Section 15-31-1004, MCA, is amended to read:

23 **"15-31-1004. Application for state certification.** (1) (a) A production company may not receive the
24 tax credit provided for in 15-31-1007 unless the production has been certified by the department of commerce
25 as provided in this section.

26 (b) A postproduction company may not receive the tax credit provided for in 15-31-1009 unless the
27 postproduction company has been certified by the department of commerce. The postproduction company shall
28 submit an application that includes the information provided for in subsection (2)(a) for the postproduction

1 company. The application must be submitted in the year in which the postproduction plans to claim the credit
2 and must be accompanied by a \$500 application fee. For the purposes of allocating the credit pursuant to 15-
3 31-1010, the application must contain an estimate of the amount of credit the postproduction company will
4 claim. A postproduction company that plans to claim the credit in more than 1 tax year must apply for the credit
5 each year, but the application fee is only required in the first year of application. The department of commerce
6 shall notify the applicant whether the postproduction company qualifies for the credit within 30 days of receipt of
7 the application.

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

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

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

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

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

17 (e) the title of the production;

18 (f) the type of production;

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

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

22 (i) a list of production locations;

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

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

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

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

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

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

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

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

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

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

(7) The department of commerce shall design and furnish the Montana screen credit needed to qualify for the additional tax credit provided for in ~~15-31-1007(3)(b)(viii)~~ 15-31-1007(3)(b)(ix) and the programming promoting Montana destinations provided for in ~~15-31-1003(42)(e)~~ (15)(e).

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

1 and the criteria for approving projects with a base investment of less than \$350,000."

2
3 **Section 5.** Section 15-31-1007, MCA, is amended to read:

4 **"15-31-1007. Tax credit for media production.** (1) Subject to 15-31-1010 and through the tax year
5 ending December 31, ~~2029~~ 2045, a production company and its affiliates are allowed a credit against the taxes
6 imposed by chapter 30 and this chapter for investments in a state-certified production approved by the
7 department of commerce as provided in 15-31-1004 and 15-31-1005. The credit is for the base investment
8 made up to 6 months before state certification through completion of the project. ~~The credit must be claimed for~~
9 ~~the period July 1, 2019, through December 31, 2020, in which the production expenditures were incurred or the~~
10 ~~compensation was paid unless the credit is transferred to the next tax year because the limits provided for in~~
11 ~~15-31-1010 have been met. For periods after December 31, 2020, the Subject to 15-31-1010(3)(a), the credit~~
12 ~~must be claimed for the year in which the production expenditures were incurred or the compensation was paid~~
13 ~~unless the credit is transferred to the next tax year because the limits provided for in 15-31-1010 have been~~
14 ~~met.~~

15 (2) To claim the credit provided for in this section:

16 (a) the production company or its affiliate must have applied to the department of commerce as
17 provided in 15-31-1005 and been approved to claim or transfer the credit; or

18 (b) the taxpayer must be the entity to which a credit approved pursuant to 15-31-1005 and this
19 section was transferred.

20 (3) (a) The credit is equal to 20% of the production expenditures in the state in the tax year, plus
21 the additional amounts provided for in subsection (3)(b), but may not in the aggregate exceed 35% of the
22 production company's base investment in the tax year.

23 (b) Additional amounts for which the credit may be claimed are:

24 (i) 25% of the compensation paid per production or season of a television series to each crew
25 member or production staff member who is a resident, not to exceed a \$150,000 credit per person;

26 (ii) 15% of the compensation paid per production or season of a television series to each crew
27 member or production staff member who is not a resident but for whom Montana income taxes have been
28 withheld, not to exceed a \$150,000 credit per person;

- 1 (iii) 20% of the first \$7.5 million of compensation paid per production or season of a television
2 series to each actor, director, producer, or writer for whom Montana income taxes have been withheld;
- 3 (iv) 30% of compensation paid per production or season of a television series to a student enrolled
4 in a Montana college or university who works on the production as a paid intern or as a bona fide employee and
5 for college credit. The credit may not exceed \$50,000 per student. If a credit provided for in this subsection
6 (3)(b)(iv) is claimed for an enrolled student, the credits provided for in subsections (3)(b)(i) through (3)(b)(iii)
7 and (3)(b)(v) may not be claimed for the same enrolled student.
- 8 (v) 30% of the compensation paid per production or season of a television series to each crew
9 member or production staff member who is a Montana resident veteran of the armed forces of the United
10 States or an enrolled member or descendant of an Indian tribe recognized by the state, not to exceed a
11 \$150,000 credit for each person. If a credit provided for in this subsection (3)(b)(v) is claimed, the credits
12 provided for in subsections (3)(b)(i) through (3)(b)(iv) may not be claimed for the same crew member or
13 production staff.
- 14 ~~(v)(vi)~~ an additional 10% of payments made to a Montana college or university for stage rentals,
15 equipment rentals, or location fees for filming on campus;
- 16 ~~(vi)(vii)~~ an additional 10% of all in-studio facility and equipment rental expenditures incurred in this
17 state for a production that rents a studio for 20 days or more;
- 18 ~~(vii)(viii)~~ an additional 5% for production expenditures made in an underserved area; and
- 19 ~~(viii)(ix)~~ an additional 5% of the base investment in the state if the state-certified production includes a
20 Montana screen credit furnished by the state as provided in 15-31-1004(7).
- 21 (4) If one production company makes a production expenditure to hire another production
22 company to produce a project or contribute elements of a project for pay, the hired production company is
23 considered a service provider for the hiring company and the hiring company is entitled to claim the credit for all
24 expenditures that are incurred in the state.
- 25 (5) Any unused credit may be carried forward for 5 years or may be transferred as provided in 15-
26 31-1008. The credit allowed by this section, including a transferred credit, may not be refunded if the taxpayer
27 has a tax liability less than the amount of the credit.
- 28 (6) A taxpayer claiming a credit shall include with the tax return the following information:

(a) the amount of tax credit claimed and transferred for the tax year;

(b) the amount of the tax credit previously claimed or transferred;

(c) the amount of the tax credit carried over from a previous tax year; and

(d) the amount of the tax credit to be carried over to a subsequent tax year.

(7) (a) A taxpayer claiming the credit provided for in this section must claim the credit as provided in subsection (7)(b).

(b) (i) An entity taxed as a corporation for Montana income tax purposes shall claim the credit on its corporate income tax return.

(ii) Individuals, estates, and trusts shall claim a credit allowed under this section on their individual income tax return.

(iii) An entity not taxed as a corporation shall claim the credit allowed under this section on member or partner returns as follows:

(A) corporate partners or members shall claim their share of the credit on their corporate income tax returns;

(B) individual partners or members shall claim their share of the credit on their individual income tax returns; and

(C) partners or members that are estates or trusts shall claim their share of the credit on their fiduciary income tax returns.

(c) In order to prevent disguised sales of the credit provided for in this section, allocations of credits through partnership and membership agreements may not be recognized unless they have a substantial economic effect as that term is defined in 26 U.S.C. 704 and applicable federal regulations.

(8) The credit allowed under this section may not be claimed by a taxpayer if the taxpayer has included the amount of the production expenditure or compensation on which the amount of the credit was computed in determining Montana taxable income under 15-30-2120 or as a deduction under 15-31-114."

Section 6. Section 15-31-1009, MCA, is amended to read:

"15-31-1009. Tax credit for postproduction wages. (1) Through Subject to 15-31-1010 and through the tax year ending December 31, 2029 2045, a postproduction company that has incurred qualified

1 postproduction wages in the tax year is allowed a credit against the taxes imposed by chapter 30 and this
2 chapter if the taxpayer applies to the department of commerce as provided in 15-31-1004 and to the
3 department of revenue as provided in 15-31-1005 and is approved to claim the credit.

4 (2) The tax credit is equal to 25% of qualified postproduction wages incurred in the state.

5 (3) A tax credit claimed under this section may not exceed the postproduction company's total
6 compensation paid to employees working in this state for the tax year in which the credit is claimed.

7 (4) The tax credit allowed by this section may not be refunded if the taxpayer has no tax liability.
8 Any unused credit may be carried forward for 5 years.

9 (5) A taxpayer claiming a credit shall include with the tax return the following information:

10 (a) the amount of tax credit claimed for the tax year;

11 (b) the amount of the tax credit previously claimed;

12 (c) the amount of the tax credit carried over from a previous tax year; and

13 (d) the amount of the tax credit to be carried over to a subsequent tax year.

14 (6) (a) A taxpayer claiming the credit provided for in this section must claim the credit as provided
15 in subsection (6)(b).

16 (b) (i) An entity taxed as a corporation for Montana income tax purposes shall claim the credit on
17 its corporate income tax return.

18 (ii) Individuals, estates, and trusts shall claim a credit allowed under this section on their individual
19 income tax return.

20 (iii) An entity not taxed as a corporation shall claim the credit allowed under this section on member
21 or partner returns as follows:

22 (A) corporate partners or members shall claim their share of the credit on their corporate income
23 tax returns;

24 (B) individual partners or members shall claim their share of the credit on their individual income
25 tax returns; and

26 (C) partners or members that are estates or trusts shall claim their share of the credit on their
27 fiduciary income tax returns.

28 (c) In order to prevent disguised sales of the credit provided for in this section, allocations of

credits through partnership and membership agreements may not be recognized unless they have a substantial economic effect as that term is defined in 26 U.S.C. 704 and applicable federal regulations.

(7) A postproduction company may not claim a credit under this section for production expenditures for which the media production credit provided for in 15-31-1007 is claimed."

Section 7. 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 -- allocation -- fee. (1) (a) The department of commerce may grant to applicants pursuant to 15-31-1004 the authority to apply for the tax

1 credits provided for in 15-31-1007 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 subsections (2) and (3)~~ 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 \$12 ~~\$30~~ million per calendar year and must be allocated as provided in subsection (2)(b).

9 (b) ~~Claims must be allowed on a first-come, first-served basis within the allocations provided for in~~
10 ~~subsection (2)(b).~~

11 (b) ~~Except as provided in subsection subsections (2)(c) and (2)(d) and beginning January 1, 2025,~~
12 credits under 15-31-1007 and 15-31-1009 are allocated as follows:

13 ~~(i) \$12 million is allocated for credits approved prior to December 31, 2024; and~~

14 ~~(ii) \$18 million is allocated on a first-come, first-served basis as follows:~~

15 ~~(A)(i)~~ 40% to any production company or postproduction company on a first-come, first-served basis;

16 ~~(B)(ii)~~ 10% for independent film productions;

17 ~~(C)(iii)~~ 25% for media production credits derived from any portion of base investment related to the
18 rental cost of qualified Montana facilities; and

19 ~~(D)(iv)~~ 25% for domiciled companies.

20 (c) ~~Beginning April 1, 2026, each By~~ April 1 ~~of each year~~ following the year the production

21 expenditures were incurred ~~or the compensation was paid, any balance not claimed under subsections~~

22 ~~(2)(b)(ii)(B) through (2)(b)(ii)(D) (2)(b)(iv)~~ for the prior year is available on a first-come, first-served basis ~~for~~

23 ~~productions occurring in the prior year in addition to the amount allocated under subsection (2)(b)(i). Any~~

24 unclaimed credit balance that becomes available under this section is subject to a 2% fee.

25 ~~(d) If there are no remaining credits approved prior to December 31, 2024, that were disallowed~~
26 ~~because the calendar year limit was reached, the total amount of credits must be allocated as provided in~~
27 ~~subsection (2)(b)(ii).~~

28 ~~(d) Beginning January 1, 2025, the allocation in subsection (2)(b)(i) must be used first for credit~~

validated for productions that occurred before January 1, 2025, until the year when all the validated credit for productions that occurred in years prior to 2025 has been used. This section does not apply to the credit balance that becomes available in subsection (2)(c).

(3) (a) A taxpayer whose claim for a credit from a production occurring prior to January 1, 2025, is approved and audited prior to December 31, 2024, but is disallowed because the calendar year limit has been reached may use the credit in the next calendar year ~~but the~~. 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).

(b) Beginning January 1, 2025, a tax credit must be claimed for the year in which the production expenditures were incurred or the compensation was paid. The credit may not be used in the next calendar year if the calendar year limit has been reached.

(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.

(4) The fee provided for in subsection (2)(c) must be deposited in the account provided for in [section 1] and used for film industry workforce training."

NEW SECTION. Section 8. Repealer. Sections 1, 2, 3, 4, 5, 6, 7, 8, and 9, Chapter 509, Laws of 2021, are repealed.

NEW SECTION. Section 9. Notification to tribal governments. The secretary of state shall send a copy of [this act] to each federally recognized tribal government in Montana.

NEW SECTION. Section 10. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 15, chapter 31, part 10, and the provisions of Title 15, chapter 31, part 10, apply to [section 1].

NEW SECTION. Section 11. Effective date. [This act] is effective on passage and approval.

- 2025

Drafter: Megan Moore,

1

3 meaning of 1-2-109, to income tax years beginning on or after January 1, 2025.

4 - END -



**Legislative
Services
Division**