

**Amendment - 1st Reading/2nd House-blue - Requested by: John Fitzpatrick - (H)  
Appropriations**

68th Legislature

Drafter: Megan Moore, 406-444-4496

SB0014.003.005

1 SENATE BILL NO. 14  
2 INTRODUCED BY G. HERTZ  
3 BY REQUEST OF THE REVENUE INTERIM COMMITTEE  
4  
5 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE MONTANA ECONOMIC DEVELOPMENT  
6 INDUSTRY ADVANCEMENT ACT; INCREASING THE LIMIT ON MONTANA ECONOMIC DEVELOPMENT  
7 INDUSTRY ADVANCEMENT ACT FILM TAX CREDITS; PROVIDING AN INCREASED CREDIT FOR HIRING  
8 VETERANS AND ENROLLED TRIBAL MEMBERS; EXTENDING THE CREDIT THROUGH 2033;  
9 ALLOCATING THE CREDIT TO CERTAIN ENTITIES; REVISING EXPENDITURES THAT QUALIFY FOR THE  
10 CREDIT; PROVIDING A DEFINITION; AMENDING SECTION SECTIONS 15-31-1003, 15-31-1004, 15-31-  
11 1007, 15-31-1009, AND 15-31-1010, MCA; REPEALING SECTIONS 1 THROUGH 9, CHAPTER 509, LAWS  
12 OF 2021; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY  
13 DATE."

14  
15 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

16  
17 **SECTION 1. SECTION 15-31-1003, MCA, IS AMENDED TO READ:**

18 **"15-31-1003. Definitions.** As used in this part, unless the context requires otherwise, the following  
19 definitions apply:

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

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

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

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

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1 3-409.

2 (c) The term includes payments to a loan-out company by a production company if the production  
3 company withheld and remitted Montana income tax at the rate of 6.9% on all payments to the loan-out  
4 company for services performed in this state. The amount withheld is considered to have been withheld by the  
5 loan-out company on wages paid to its employees for services performed in this state. The amounts withheld  
6 must be allocated to the loan-out company's employees based on the payments made to the loan-out  
7 company's employees for services performed in Montana. For purposes of this chapter, loan-out company  
8 nonresident employees performing services in this state must be considered taxable nonresidents and the loan-  
9 out company is subject to income taxation in the tax year in which the loan-out company's employees perform  
10 services in this state, notwithstanding any other provisions of Title 15. The withholding liability is subject to  
11 penalties and interest as provided in 15-1-216.

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

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

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

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

23 ~~(5)(6) (5)~~ "Game sequel" means an interactive game that builds on the theme of a previously released  
24 interactive game, is distinguished by a new title, and features objectives or characters that are recognizably  
25 different from those in the original game.

26 ~~(6)(7) (6)~~ (a) "Loan-out company" means a personal service company contracted with and retained  
27 by a production company to provide individual personnel who are not employees of the production company,

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1 including actors, directors, producers, writers, production designers, production managers, costume designers,  
2 directors of photography, editors, casting directors, first assistant directors, second unit directors, stunt  
3 coordinators, and similar personnel, for performance of services used directly in a qualified production activity.

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

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

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

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

11 (ii) is engaged in qualified postproduction activities;

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

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

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

22 ~~(10)(11)~~ (10) (a) "Production company" means a company primarily engaged in qualified production  
23 activities that have been approved by the department of commerce.

24 (b) The term does not include any form of business owned, affiliated, or controlled, in whole or in part,  
25 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  
26 guaranteed by the state.

27 ~~(11)(12)~~ (11) (a) "Production expenditure" means a preproduction or production expenditure incurred

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- 1 in Montana that is directly used for ~~a qualified production activity including:~~
- 2       ~~(i) set construction and operation;~~
- 3       ~~(ii) wardrobes, makeup, accessories, and related services;~~
- 4       ~~(iii) costs associated with photography and sound synchronization expenditures, excluding license~~
- 5 ~~fees, incurred with Montana companies for sound recordings and musical compositions, lighting, or related~~
- 6 ~~services and materials;~~
- 7       ~~(iv) editing and related services;~~
- 8       ~~(v) rental of facilities and equipment;~~
- 9       ~~(vi) leasing of vehicles, whether to be photographed or to transport people, equipment, or materials;~~
- 10       ~~(vii) lodging costs, including hotel rooms and private housing rentals paid for by the production~~
- 11 ~~company;~~
- 12       ~~(viii) per diem and living allowance paid to staff, cast, and crew members;~~
- 13       ~~(ix) digital, film, or tape editing, film processing, transfers of film to tape or digital format, sound mixing,~~
- 14 ~~computer graphics services, special effects services, visual effects services, and animation services;~~
- 15       ~~(x) airfare, if purchased through a Montana travel agency or travel company;~~
- 16       ~~(xi) insurance costs and bonding, if purchased through a Montana insurance agency; and~~
- 17       ~~(xii) other direct costs of producing the project in accordance with generally accepted entertainment~~
- 18 ~~industry practices and generally accepted accounting principles.~~
- 19       (b) The term does not include:
- 20       (i) compensation, which qualifies for the credit provided for in 15-31-1007(3)(b)(i) through ~~(3)(b)(iv)~~
- 21 ~~(3)(B)(v)~~;
- 22       (ii) production expenditures for footage shot outside the state;
- 23       (iii) marketing;
- 24       (iv) story rights;
- 25       (v) distribution; or
- 26       (vi) postproduction expenditures.
- 27       (12) "QUALIFIED MONTANA FACILITY" MEANS A PURPOSE-BUILT CLEAR-SPAN MEDIA MANUFACTURING

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1 FACILITY OF 10,000 OR MORE SQUARE FEET AND MEASURING AT LEAST 45 FEET FROM FLOOR TO TRUSS, CONSTRUCTED  
2 IN THE STATE ON OR AFTER JANUARY 1, 2023, AT A MINIMUM INITIAL DEVELOPMENT COST OF \$20 MILLION FOR THE  
3 PRIMARY PURPOSE OF ENGAGING IN THE DEVELOPMENT OF QUALIFIED PRODUCTION OR POSTPRODUCTION ACTIVITIES  
4 AND THAT IS SUBJECT TO TAX UNDER TITLE 15, CHAPTER 30 OR 31.

5 ~~\_\_\_\_\_~~(12)(13) "Qualified Montana promotion" means a promotion of this state approved by the department  
6 of commerce and consisting of:

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

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

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

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

17 (e) a qualified television special or sports event for which the network provides complimentary  
18 placement of two 30-second spots per 30 minutes of qualifying television special or sports event programming  
19 promoting Montana destinations and provided by the department of commerce as provided for in 15-31-  
20 1004(7).

21 ~~(13)~~(14) "Qualified postproduction activity" means an activity performed in this state on a qualified  
22 production employing traditional, emerging, and new workflow techniques used in postproduction for picture,  
23 sound, and music editing, rerecording and mixing, visual effects, graphic design, original scoring, animation,  
24 musical composition, and other activities performed after initial production and including activities performed on  
25 previously produced and edited content.

26 ~~(14)~~(15) "Qualified postproduction wage" means wages incurred in this state directly in qualified  
27 postproduction activities for footage shot inside or outside this state.

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1           ~~(15)~~(16) (a) "Qualified production" means a new film, video, or digital project including only feature  
2 films, series for theaters, television, or streaming, pilots, movies and scripted shows made for television or  
3 streaming, televised commercial advertisements, music videos, corporate videos, industrial films, production for  
4 website creation, television specials, sports events, video games, interactive entertainment, prereleased  
5 interactive games, and sound recording projects used in a feature film, series, pilot, or movie for television.

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

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

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

23           (b) The term includes the production of projects filmed or recorded in this state, in whole or in part and  
24 in short or long form, animation and music, fixed on a delivery system, including film, videotape, computer disc,  
25 laser disc, and any element of the digital domain, from which the program is viewed or reproduced and which is  
26 intended for multimarket commercial distribution via a theater, video on demand, digital or fiber optic distribution  
27 platforms, digital video recording, a digital platform designed for distribution of interactive games, licensing for

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1 exhibition by individual television stations, groups of stations, networks, advertiser-supported sites, cable  
2 television stations, streaming services, or public broadcasting stations.

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

7 ~~(17)~~(18) "Resident" has the meaning provided in 15-30-2101.

8 ~~(18)~~(19) "State-certified production" means a production engaged in qualified production activities and  
9 certified by the department of commerce as provided in 15-31-1004.

10 ~~(19)~~(20) "Underserved area" means a county in this state in which 14% or more people of all ages are  
11 in poverty as determined by the U.S. bureau of the census estimates for the most current year available."  
12

13 **SECTION 2. SECTION 15-31-1004, MCA, IS AMENDED TO READ:**

14 **"15-31-1004. Application for state certification.** (1) (a) A production company may not receive the  
15 tax credit provided for in 15-31-1007 unless the production has been certified by the department of commerce  
16 as provided in this section.

17 (b) A postproduction company may not receive the tax credit provided for in 15-31-1009 unless the  
18 postproduction company has been certified by the department of commerce. The postproduction company shall  
19 submit an application that includes the information provided for in subsection (2)(a) for the postproduction  
20 company. The application must be submitted in the year in which the postproduction plans to claim the credit  
21 and must be accompanied by a \$500 application fee. For the purposes of allocating the credit pursuant to 15-  
22 31-1010, the application must contain an estimate of the amount of credit the postproduction company will  
23 claim. A postproduction company that plans to claim the credit in more than 1 tax year must apply for the credit  
24 each year, but the application fee is only required in the first year of application. The department of commerce  
25 shall notify the applicant whether the postproduction company qualifies for the credit within 30 days of receipt of  
26 the application.

27 (2) An application, on a form provided by the department of commerce, must be submitted by the