AN ACT REVISING REPORTING REQUIREMENTS FOR THE MONTANA ECONOMIC DEVELOPMENT INDUSTRY ADVANCEMENT FILM TAX INCENTIVES; REVISING DUE DATES FOR THE SUBMISSION OF COSTS AND THE PRODUCTION EXPENDITURE VERIFICATION REPORT; REVISING WHICH PRODUCTIONS MUST FILE A PRODUCTION EXPENDITURE VERIFICATION REPORT; AMENDING SECTIONS 15-31-1003, 15-31-1005, AND 15-31-1006, MCA; AND PROVIDING AN 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 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) "Game platform" means the electronic delivery system used to launch or play an interactive game.

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

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

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

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

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

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

(ii) is engaged in qualified postproduction activities;

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

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

(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.

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

(10) (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) (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);

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

(iii) marketing;

(iv) story rights;

(v) distribution; or

(vi) postproduction expenditures.

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

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

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

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

(c) The term does not include the coverage of news, local interest programming, instructional videos, commercials distributed only on the internet, infomercials, solicitation-based productions, nonscripted television programs, feature films consisting primarily of stock footage not originally recorded in Montana, or

projects containing obscenity as defined in 45-8-201(2).

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

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

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

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

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

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

Section 2. Section 15-31-1005, MCA, is amended to read:

"**15-31-1005. Submission of costs -- fee.** (1) Prior to claiming the media production tax credit provided for in 15-31-1007 or the tax credit for postproduction wages provided for in 15-31-1009, a production

company or postproduction company must be approved to claim the credit by the department of commerce and shall submit costs to the department of revenue as provided in this section. A taxpayer may not claim a credit provided for in 15-31-1007 or 15-31-1009 unless the costs have been approved as provided in this section. The submission of cost information must be accompanied by a fee as follows:

(a) for a production company with a base investment of less than $350,000, $500;

(b) for a production company with a base investment of $350,000 or more, $1,000;

(c) for a postproduction company claiming the credit provided for in 15-31-1009, $1,000.

(2) (a) A production company wishing to claim or transfer the tax credit for media production provided for in 15-31-1007 shall submit to the department of revenue detailed information on production expenditures and compensation paid in connection with the state-certified production. Production expenditures and compensation paid must be submitted: ~~within 60 days of the completion of principal photography or, for a~~

(i) by the last day of the third year following the year in which principal photography ended; or

(ii) for a state-certified production for which expenditures will be claimed for multiple tax years:~~, by the end of the tax year for which the credit will be claimed. If the production company fails to submit the required expenditures and compensation within 60 days, the tax credits may not be claimed until the following tax year~~

(A) annually, if the production company chooses to submit production expenditures and compensation paid within each year; or

(B) by the last day of the third year following the year in which principal photography ended.

(b) The fee provided for in subsection (1) must be paid with each submission of production expenditures and compensation paid filed under subsection (2)(a).

~~(b)~~(c) The information submitted by the production company must include:

(i) the certification number of the state-certified production, as provided for in 15-31-1004(4);

(ii) a description of the qualified production activities and the production expenditures, including information that demonstrates a base investment of $350,000 or more or, if 15-31-1004(5) applies, a base investment of $50,000 or more; and

(iii) if compensation is included in the production expenditures, a detailed listing of employee names, social security numbers, Montana wages, state of residence, and whether the employee is an enrolled

student.

(3) (a) The department of revenue shall review the costs submitted pursuant to subsection (2) and provide to the department of commerce the amount of the media production tax credit calculated pursuant to 15-31-1007 that may be claimed or transferred and the federal tax identification number of the production company.

(b) (i) Except as provided in subsection (3)(b)(ii), the department of revenue shall approve the media production tax credit if the state-certified production's base investment is $350,000 or more.

(ii) The department of revenue shall approve the credit for a commercial, music video, production for website creation, video game, interactive entertainment, or experimental or low-budget project certified by the department of commerce pursuant to 15-31-1004(5) if the production's base investment is $50,000 or more.

(c) A credit may be approved as provided in this subsection (3) only if principal photography began within 1 year of the date the department of commerce certified the production pursuant to 15-31-1004.

(4) A postproduction company wishing to claim the tax credit for qualified postproduction wages provided for in 15-31-1009 shall submit to the department of revenue a detailed listing of employee names, social security numbers, and Montana wages by the last day of the third year following the year the postproduction company paid the qualified postproduction wages.

~~(5) A production company or postproduction company that submits costs pursuant to this section to claim the credit provided for in 15-31-1007 or 15-31-1009 shall submit the production expenditure verification report provided for in 15-31-1006 by the due date provided for in 15-30-2604 without extension.~~

~~(6)~~(5) The identity and social security number or federal tax identification number of the employees for which compensation information is submitted pursuant to this section are subject to the provisions of 15-30-2618 and 15-31-511.

~~(7)~~(6) The fee provided for in subsection (1) must be deposited in the state special revenue fund. The fee is statutorily appropriated, as provided in 17-7-502, to the department of revenue to administer the provisions of 15-31-1007 through 15-31-1009."

Section 3. Section 15-31-1006, MCA, is amended to read:

"**15-31-1006. Production expenditure verification report.** (1) A production company ~~or~~

~~postproduction company~~ with a base investment of more than $350,000 that claims the credit provided for in 15-31-1007 ~~or 15-31-1009~~ shall submit a production expenditure verification report to the department of revenue as provided in this section. The report must be submitted with the submission of costs required by 15-31-1005(2)(a).

(2) The production expenditure verification report must:

(a) be issued by a certified public accountant who is unrelated to the production company ~~or postproduction company~~ and include a certification to that effect;

(b) be performed in accordance with the accounting standards generally accepted in the United States;

(c) be addressed to the person who engaged the accountant with a copy addressed to the production company~~, postproduction company,~~ or person who applies for the credit provided for in 15-31-1007;

(d) include the accountant's name, address, and telephone number;

(e) include the date of completion of the accountant's work; and

(f) contain a statement of acknowledgment by the accountant that the state is relying on the report to issue tax credits.

(3) The contents of the report must include:

(a) verification of the accuracy of the production expenditures and compensation submitted pursuant to 15-31-1005(2) ~~or the wages and compensation submitted pursuant to 15-31-1005(4)~~;

(b) an opinion from the accountant stating that there are no related party transactions or that material related party transactions are properly reported and accounted for, adequately disclosed, and explained in the report; and

(c) a statement that the submission of the production expenditures and compensation presents fairly, in all material aspects, the production expenditures~~, postproduction wages,~~ and compensation expended in Montana pursuant to the provisions of this part.

(4) All costs associated with the report are the obligation of the production company ~~or postproduction company~~."

Section 4. Applicability. [This act] applies to income tax years beginning after December 31, 2023.

- END -

I hereby certify that the within bill,

SB 27, originated in the Senate.

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Secretary of the Senate

_____

President of the Senate

Signed this _____day

of_____, 2023.

_____

Speaker of the House

Signed this _____day

of_____, 2023.

SENATE BILL NO. 27

INTRODUCED BY W. SALES

BY REQUEST OF THE DEPARTMENT OF REVENUE

AN ACT REVISING REPORTING REQUIREMENTS FOR THE MONTANA ECONOMIC DEVELOPMENT INDUSTRY ADVANCEMENT FILM TAX INCENTIVES; REVISING DUE DATES FOR THE SUBMISSION OF COSTS AND THE PRODUCTION EXPENDITURE VERIFICATION REPORT; REVISING WHICH PRODUCTIONS MUST FILE A PRODUCTION EXPENDITURE VERIFICATION REPORT; AMENDING SECTIONS 15-31-1003, 15-31-1005, AND 15-31-1006, MCA; AND PROVIDING AN APPLICABILITY DATE.