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Details:

(FORM UPDATED: 07/12/2010)

WISCONSIN STATE LEGISLATURE ... PUBLIC HEARING - COMMITTEE RECORDS

2007-08

(session year)

Senate

(Assembly, Senate or Joint)

Committee on ... Commerce, Utilities and Rail (SC-CUR)

COMMITTEE NOTICES ...

- Committee Reports ... **CR**
- Executive Sessions ... **ES**
- Public Hearings ... **PH**
- Record of Comm. Proceedings ... **RCP**

INFORMATION COLLECTED BY COMMITTEE FOR AND AGAINST PROPOSAL

- Appointments ... **Appt**
- Clearinghouse Rules ... **CRule**
- Hearing Records ... bills and resolutions
(**ab** = Assembly Bill) (**ar** = Assembly Resolution) (**ajr** = Assembly Joint Resolution)
(**sb** = Senate Bill) (**sr** = Senate Resolution) (**sfr** = Senate Joint Resolution)
- Miscellaneous ... **Misc**



SENATOR JEFF PLALE
SEVENTH SENATE DISTRICT

CHAIR
COMMITTEE ON COMMERCE, UTILITIES AND RAIL

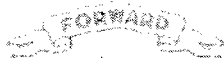
STATE CAPITOL
P.O. BOX 7882
MADISON, WI 53707-7882

800-361-5487 - MADISON
414-744-1444 - MILWAUKEE
SEN.PLALE@LEGIS.WISCONSIN.GOV

TO: MEMBERS, SENATE COMMITTEE ON COMMERCE, UTILITIES AND RAIL
FROM: KATY VENSUS, CLERK
SUBJECT: CR 07-063; IMPLEMENTING A FILM ACCREDITATION PROGRAM AND AFFECTING SMALL BUSINESS
DATE: 09/07/2007
CC: SEN. LASSA

Attached are the materials related to CR 07-063. Please let me know by 5pm on Thursday September 20th if any committee member has a question or concern.

Thanks.



August 20, 2007

Robert Marchant
Senate Chief Clerk
B20 Southeast, State Capitol
P.O. Box 7882
Madison, Wisconsin 53707-7882

Patrick Fuller
Assembly Chief Clerk
Room 401
17 West Main Street
Madison, Wisconsin 53703

Dear Chief Clerks::

NOTICE OF ADMINISTRATIVE RULES IN FINAL DRAFT FORM

CLEARINGHOUSE RULE NO.: 07-063

RULE NO.: Chapter Comm 133

RELATING TO: Film Production Accreditation Program

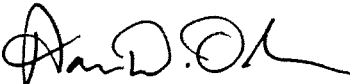
Section 227.19, Stats., requires agencies to submit proposed rules in final draft form to the chief clerk of each house for referral to the appropriate legislative standing committees.

The following information, as required by law, is being submitted to you.

1. Rules in final draft form (in triplicate).
2. Report consisting of:
 - a) Rule Report.
 - b) Legislative Council Rules Clearinghouse Report.
 - c) Response to Legislative Council Rules Clearinghouse Report.
 - d) Fiscal Estimate.
 - e) Final Regulatory Flexibility Analysis.

If you have any questions regarding this matter, please do not hesitate to contact us.

Respectfully submitted,



for Mary P. Burke
Secretary

RULE REPORT

Department of Commerce

Clearinghouse Rule No.: 07-063

Rule No.: Chapter Comm 133

Relating to: Film Production Accreditation Program

Contact person for substantive questions:

Contact person for internal processing:

Name Sam Rockweiler

Name (same)

Title Code Development Consultant

Title _____

Telephone Number 608-266-0797

Telephone Number _____

1. Basis and purpose of the proposed rule.

As required by SECTION 21m of 2005 Wisconsin Act 483, these rules would establish the procedures for obtaining any of the following from the Department, for use in claiming corresponding tax credits with the Department of Revenue: (1) accreditation of a production, (2) determination of the amount of expenditures that are directly used to produce an accredited production, and (3) certification of expenses that are related to establishing a film production company in Wisconsin.

2. How the proposed rule advances relevant statutory goals or purposes.

The proposed rules would foster development and growth of film, video, electronic game, broadcast entertainment and television productions in Wisconsin; and encourage establishment of film production companies in Wisconsin.

3. Changes to the rule analysis or fiscal estimate that was prepared for public hearing.

No changes were made to the fiscal estimate. The rule analysis was revised to include citation and explanation of the Department's statutory authority to provide leadership in fostering expansion of existing enterprises and in initiating efforts to attract new enterprises, as they relate to broadening and strengthening the economy of the State.

FISCAL ESTIMATE
DOA-2048 (R06/99)

ORIGINAL
 CORRECTED

UPDATED
 SUPPLEMENTAL

LRB or Bill No./Adm. Rule No.
Chapter Comm 133
Amendment No. if Applicable

Subject

Film Production Accreditation Program

Fiscal Effect

State: No State Fiscal Effect

Check columns below only if bill makes a direct appropriation

or affects a sum sufficient appropriation

Increase Existing Appropriation

Decrease Existing Appropriation

Create New Appropriation

Increase Existing Revenues

Decrease Existing Revenues

Increase Costs - May be Possible to Absorb
Within Agency's Budget Yes No

Decrease Costs

Local: No local government costs

1. Increase Costs

Permissive Mandatory

2. Decrease Costs

Permissive Mandatory

3. Increase Revenues

Permissive Mandatory

4. Decrease Revenues

Permissive Mandatory

5. Types of Local Governmental Units Affected:

Towns Villages Cities

Counties Others _____

School Districts WTCS Districts

Fund Sources Affected

GPR FED PRO PRS SEG SEG-S

Affected Ch. 20 Appropriations

Assumptions Used in Arriving at Fiscal Estimate

Although the proposed rules would newly result in review and approval of documentation relating to tax credits for producing film productions or for establishing film production companies, the number of these reviews and approvals is expected to be too small to result in significant changes in the Department's costs for administering its business development programs. Therefore, the proposed rules are not expected to have any significant fiscal effect on the Department.

The overall revenue impact on the state is uncertain and could be significant. The actual revenue impact will depend on the effectiveness of the tax credits in inducing new activity, the extent to which benefits accrue primarily to film productions and to film production companies that would not occur in Wisconsin without the credits, and the magnitude and nature of the expenditures associated with the new film productions.

The proposed rules are not expected to impose any significant costs on the private sector, because the rules address only voluntary submittal of documentation relating to tax credits for producing film productions or for establishing film production companies.

Long-Range Fiscal Implications

The long-range fiscal implications are not know at this time, because there is too much uncertainty about whether the tax benefits will actually accrue only to film productions and to film production companies that would not occur in Wisconsin without the benefits.

Agency/Prepared by: (Name & Phone No.)

Commerce/Pam Christenson 267-9304

Authorized Signature/Telephone No.

 266-8976

Date

6/14/07

FISCAL ESTIMATE WORKSHEET
 Detailed Estimate of Annual Fiscal Effect
 DOA-2047(R06/99)

ORIGINAL
 CORRECTED

UPDATED
 SUPPLEMENTAL

LRB or Bill No./Adm. Rule No. Amendment No.
 Chapter Comm 133

Subject

Film Production Accreditation Program

I. One-time Costs or Revenue Impacts for State and/or Local Government (do not include in annualized fiscal effect):

None known.

II. Annualized Costs:	Annualized Fiscal impact on State funds from:	
	Increased Costs	Decreased Costs
A. State Costs By Category		
State Operations - Salaries and Fringes	\$0	-\$0
(FTE Position Changes)	(0.00 FTE)	(- 0.00 FTE)
State Operations - Other Costs	\$0	-\$0
Local Assistance	\$0	-\$0
Aids to Individuals or Organizations	\$0	-\$0
TOTAL State Costs By Category	\$0	-\$0
B. State Costs By Source of Funds	Increased Costs	Decreased Costs
GPR	\$0	-\$0
FED	\$0	-\$0
PRO/PRS	\$0	-\$0
SEG/SEG-S	\$0	-\$0
III. State Revenues- Complete this only when proposal will increase or decrease state revenues (e.g., tax increase, decrease in license fee, etc.)	Increased Rev.	Decreased Rev.
GPR Taxes	\$0	-\$0
GPR Earned	\$0	-\$0
FED	\$0	-\$0
PRO/PRS	\$0	-\$0
SEG/SEG-S	\$0	-\$0
TOTAL State Revenues	\$0	-\$0

NET ANNUALIZED FISCAL IMPACT

	<u>STATE</u>	<u>LOCAL</u>
NET CHANGE IN COSTS	\$ 0	\$ 0
NET CHANGE IN REVENUES	\$ 0	\$ 0

Agency/Prepared by: (Name & Phone No.)

Pam Christenson 267-9304

Authorized Signature/Telephone No.

A. D. O. A.
266-8976

Date

6/14/07

DEPARTMENT OF COMMERCE
PUBLIC HEARING ATTENDANCE RECORD

RULE NO.: Chapter Comm 133

DATE: July 17, 2007

RELATING TO: Film Production Accreditation Program

TIME: 9:00 a.m.

LOCATION: Thompson Commerce Center, Third Floor, Room 3B

CITY: Madison, Wisconsin

Name	Representation (Business, Assoc., Group, Self, etc.)	City and State	Appearing in Support	Appearing in Opposition	Appearing for Information
MARY NELSON	VIRGINIA Film office	Madison, WI			✓
Anne Drecktrach	Self	La Crosse, WI			
Laura Muenich	Dept of Tourism	Madison			✓
Merrily Klason	Self	Mosque WI			✓
SCOTT ROBBE	Film Wisconsin	MILWAUKEE, WI			

**DEPARTMENT OF COMMERCE
SUMMARY OF PUBLIC HEARING COMMENTS AND AGENCY RESPONSE**

Clearinghouse Rule Number: 07-063		Hearing Location: Madison	
Rule Number: Chapter Comm 133		Hearing Date: July 17, 2007	
Relating to: Film Production Accreditation Program			
Comments: Oral or Exhibit No.	Presenter, Group Represented, City and State	Comments/Recommendations	Agency Response
Oral and Exhibit 1	Scott Robbe Film Wisconsin, Inc. Milwaukee, Wisconsin	<p>Thinks the Hearing draft is a very good first set of rules and definitions to help grow the film- and television-production business in Wisconsin. Appreciates the Department's review of incentive processes in other States.</p> <p>Recommends not tying the goals of the State's branding campaign to the film production accreditation process. Believes that when domestic and international producers and directors look at the 42 States that offer incentive packages, most of those packages will be seen as not tying any type of restrictions of content to the incentives. The producers and directors may view a tie to Wisconsin's branding campaign as being an infringement on their free speech rights, and believe that Wisconsin will try to influence the content. Wants to be able to sell Wisconsin as being a State which is dedicated to free speech and which in no way ties the accreditation process to content.</p> <p>Recommends making the tax credits transferable.</p>	<p>Support is noted.</p> <p>The proposed rules have been changed, in section Comm 133.30 (4), to refer to not hurting the reputation of the State, instead of referring to consistency with a positive brand image of the State.</p>
2	Barbara Lawton Lieutenant Governor Madison, Wisconsin	<p>Recommends treating wages for out-of-state workers as being production expenditures, if those workers are either paid through a Wisconsin-based payroll company or are independent contractors in Wisconsin.</p> <p>Appreciates the Department's effort in developing the proposed rules. Is concerned that the proposed requirement for film productions to not conflict with a desired brand image of Wisconsin would keep some filmmakers from deciding to do films in Wisconsin. States this requirement would brand Wisconsin as having an anachronistic, provincial mentality. Believes the brand should instead be one of a forward-thinking State that understands how bringing a very visible sector of the creative economy to life in Wisconsin would draw attention to the strengths in Wisconsin's more traditional sectors and infuse them with greater potential for innovation, because the visibility would be a magnet for the kind of talent that is needed. Other States that have attempted to ensure that only flattering images be recorded ("flattering" or "desired brand image" being highly subjective and slippery notions) have had to change their rules or law and eliminate the provision in order to draw business there. Believes Wisconsin can learn a vicarious lesson and not create an unnecessary delay in implementing its law.</p>	<p>The enabling legislation – 2005 Wisconsin Act 483 – does not allow transferring the tax credits.</p> <p>Agree. The proposed rules allow treating these wages in this manner, as indicated by the third Note under section Comm 133.20 (1).</p> <p>Support is noted.</p> <p>The proposed rules have been changed, in section Comm 133.30 (4), to refer to not hurting the reputation of the State, instead of referring to consistency with a positive brand image of the State.</p>

FINAL REGULATORY FLEXIBILITY ANALYSIS

Department of Commerce

CLEARINGHOUSE RULE NO.: 07-063

RULE NO.: Chapter Comm 133

RELATING TO: Film Production Accreditation Program

Final regulatory flexibility analysis not required. (Statement of determination required.)

1. Reason for including or failing to include the following methods for reducing impact of the rule on small businesses: Less stringent compliance or reporting requirements; less stringent schedules or deadlines for compliance or reporting requirements; simplification of compliance or reporting requirements; establishment of performance standards to replace design or operational standards; exemption from any or all requirements.

Less stringent qualification, application, and reporting requirements are not proposed for small businesses because 2005 Wisconsin Act 483 prescribes these requirements, and does not establish any lesser application to small businesses. However, during rule development, the Department took steps to reduce possible barriers for small businesses by soliciting and utilizing input from individuals and organizations that are expected to be familiar with small businesses.

2. Issues raised by small businesses during hearings, changes in proposed rules as a result of comments by small businesses and reasons for rejecting any alternatives suggested by small businesses.

A commenter at the public Hearing recommended (1) not tying the goals of the State's branding campaign to the film production accreditation program and (2) making the tax credits transferable. The proposed rules now refer to not hurting the reputation of the State, instead of referring to consistency with a positive brand image of the State. The rules have not been changed to allow transfer of the tax credits because that transfer is currently not allowed by 2005 Wisconsin Act 483.

(Continued on reverse side)

LEGISLATIVE COUNCIL RULES CLEARINGHOUSE REPORT

This rule has been reviewed by the Rules Clearinghouse. Based on that review, comments are reported as noted below:

1. STATUTORY AUTHORITY [s. 227.15 (2) (a)]

Comment Attached YES NO

2. FORM, STYLE AND PLACEMENT IN ADMINISTRATIVE CODE [s. 227.15 (2) (c)]

Comment Attached YES NO

3. CONFLICT WITH OR DUPLICATION OF EXISTING RULES [s. 227.15 (2) (d)]

Comment Attached YES NO

4. ADEQUACY OF REFERENCES TO RELATED STATUTES, RULES AND FORMS
[s. 227.15 (2) (e)]

Comment Attached YES NO

5. CLARITY, GRAMMAR, PUNCTUATION AND USE OF PLAIN LANGUAGE [s. 227.15 (2) (f)]

Comment Attached YES NO

6. POTENTIAL CONFLICTS WITH, AND COMPARABILITY TO, RELATED FEDERAL
REGULATIONS [s. 227.15 (2) (g)]

Comment Attached YES NO

7. COMPLIANCE WITH PERMIT ACTION DEADLINE REQUIREMENTS [s. 227.15 (2) (h)]

Comment Attached YES NO



WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

Ronald Sklansky
Clearinghouse Director

Richard Sweet
Clearinghouse Assistant Director

Terry C. Anderson
Legislative Council Director

Laura D. Rose
Legislative Council Deputy Director

CLEARINGHOUSE RULE 07-063

Comments

[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated January 2005.]

1. Statutory Authority

a. The criteria listed in ss. Comm 133.30 and 133.70 (1) (a) 5. to 7. are not criteria that are included in the statutes governing the film production tax credits. Although the Department of Commerce has the authority to implement a program to accredit film productions for purposes of the tax credits, it is not clear that the department has the authority to impose additional criteria for eligibility that may limit the number of persons who are eligible for the credit.

If these criteria are included in the final rule, they should be more specific so that a claimant is able to demonstrate that its film production meets the criteria. How will the department determine that a production would enhance economic development or enhance the potential for increasing the film, video, or electronic game industry in Wisconsin? In addition, how will the department determine that a production does not conflict with a desired brand image in Wisconsin?

b. Section Comm 133.34 (2) provides that a production will become accredited upon the issuance of a written approval from the department reflecting that the submitted application complies with the rule and “any other factors which the department deems relevant.” Any other factor that the department uses to make a determination and that meets the definition of the term “rule” in s. 227.01 (13), Stats., must be promulgated as an administrative rule.

4. Adequacy of References to Related Statutes, Rules and Forms

a. In s. Comm 133.36 (1) (d), because s. Comm 133.20 (1) simply cross-references the statutory definitions, it would be better to cite the statute defining “accredited production” rather than s. Comm 133.20 (1). This comment also applies to the reference to the definition of “production expenditures” in sub. (2) (a).

b. In s. Comm 133.70 (4), the notation “s.” should be replaced by the notation “ss.”

5. Clarity, Grammar, Punctuation and Use of Plain Language

a. In the note to s. Comm 133.20 (1) relating to the definition of “production expenditures,” it may be clearer to state that salary and wages are treated separately from production expenses.

b. In s. Comm 133.30 (1), “that are enabled” is awkward and could be replaced by the word “provided.”

c. Section Comm s. 133.90 (3) is somewhat unclear. It appears it would be better to state, “No person may file for the tax benefits under this chapter without the written approval under s. Comm 133.34 (2).” If the drafter wishes to include the definition of “person,” the specific cross-reference to that definition should be included instead of “as defined in subch. II.” Also, if this is a requirement for any claimant for a tax credit under ch. Comm 133, should sub. (3) be renumbered to be included in sub. (2)?

RESPONSE TO LEGISLATIVE COUNCIL CLEARINGHOUSE REPORT

Department of Commerce

CLEARINGHOUSE RULE NO.: 07-063

RULE NO.: Chapter Comm 133

RELATING TO: Film Production Accreditation Program

Agency contact person for substantive questions.

Name: Sam Rockweiler

Title: Code Development Consultant

Telephone No. 608-266-0797

Legislative Council report recommendations accepted in whole.

Yes

No

1. Review of statutory authority [s. 227.15(2)(a)]

a. Accepted

b. Accepted in part

c. Rejected

d. Comments attached

2. Review of rules for form, style and placement in administrative code [s. 227.15(2)(c)]

a. Accepted

b. Accepted in part

c. Rejected

d. Comments attached

(Continued on reverse side)

3. Review rules for conflict with or duplication of existing rules [s. 227.15(2)(d)]
- a. Accepted
 - b. Accepted in part
 - c. Rejected
 - d. Comments attached
4. Review rules for adequate references to related statutes, rules and forms [s. 227.15(2)(e)]
- a. Accepted
 - b. Accepted in part
 - c. Rejected
 - d. Comments attached
5. Review language of rules for clarity, grammar, punctuation and plainness [s. 227.15(2)(f)]
- a. Accepted
 - b. Accepted in part
 - c. Rejected
 - d. Comments attached
6. Review rules for potential conflicts with, and comparability to, related federal regulations [s. 227.15(2)(g)]
- a. Accepted
 - b. Accepted in part
 - c. Rejected
 - d. Comments attached
7. Review rules for permit action deadline [s. 227.15(2)(h)]
- a. Accepted
 - b. Accepted in part
 - c. Rejected
 - d. Comments attached

RESPONSE COMMENTS TO LEGISLATIVE COUNCIL CLEARINGHOUSE REPORT

Clearinghouse comment 1 a. In the rule summary, the citation and explanation of statutory authority has been expanded to show the Department's basis for considering economic development factors when determining whether to accredit a film production or whether to certify expenses relating to establishing a film production company in Wisconsin. Sections Comm 133.30 (intro.) and 133.70 (2) have also been revised to more clearly show that the requirement to conduct this consideration is directed at the Department. The Department's application form that is referenced in sections Comm 133.34 (1) and 133.70 (1) (a) 1. provides further details and instructions for enabling a claimant to demonstrate compatibility with these economic development factors. The reference in section Comm 133.30 (4) to not conflicting with a desired brand image of Wisconsin has been replaced with a reference to not hurting the reputation of the state of Wisconsin.

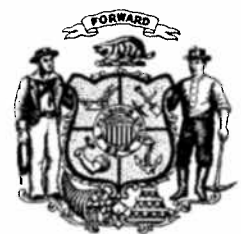
Clearinghouse comment 1 b. Section Comm 133.34 (2) has been revised to more specifically refer to submitting information that is necessary to evaluate an application, and this information is further described in the Department's application form.

Clearinghouse comment 5 a. Input from stakeholders indicates they need the additional guidance that is provided in the explanation of production expenses, in the third Note under section Comm 133.20 (1).

File reference: Comm 133/Legislative Review Clghse



WISCONSIN STATE LEGISLATURE





State of Wisconsin \ Department of Commerce

RULES IN FINAL DRAFT FORM

Rule No.: Chapter Comm 133

Relating to: Film Production Accreditation Program

Clearinghouse Rule No.: 07-063

**PROPOSED ORDER OF THE
DEPARTMENT OF COMMERCE**

CREATING RULES

The Wisconsin Department of Commerce proposes an order to create chapter Comm 133, relating to implementing a film production accreditation program, and affecting small business.

Rule Summary

1. Statutes Interpreted.

Sections 71.07 (5f) and (5h), 71.28 (5f) and (5h), 71.47 (5f) and (5h), 560.01, 560.03, and 560.206.

2. Statutory Authority.

Sections 227.11 (2) (a), 560.01 (1), 560.03 (intro.) and (1), and 560.206 (1) and (4).

3. Explanation of Agency Authority.

Sections 560.206 (1) and (4) of the Statutes require the Department to promulgate rules for implementing and administering a program to accredit film productions for the purposes of sections 71.07 (5f) and (5h), 71.28 (5f) and (5h), and 71.47 (5f) and (5h) of the Statutes. Sections 560.01 (1) and 560.03 (intro.) and (1) of the Statutes require the Department to foster the growth and diversification of the economy of the State, such as by encouraging and advocating economic development programs designed to broaden and strengthen the economy of the State, and by providing specific leadership in supporting and assisting the efforts of local business and industry to foster expansion of existing enterprises, and initiate efforts to attract new enterprises. Section 227.11 (2) (a) of the Statutes authorizes the Department to promulgate rules interpreting the provisions of any Statute administered by the Department.

4. Related Statute or Rule.

The Department has rules for several other programs associated with tax credits, but none of those programs relate to accrediting film productions or to tax credits for establishing film production companies.

5. Plain Language Analysis.

The proposed rules specify (1) the eligibility requirements for film productions to become accredited; (2) the documentation that must be submitted to receive accreditation and to receive

acceptance of incurred expenses that are related to tax credits for producing a film production in Wisconsin; (3) the documentation that must be submitted to receive acceptance of incurred expenses that are related to tax credits for establishing a film production company in Wisconsin; (4) the Department's response to the submitted documentation; and (5) use of the Department's response when filing claims with the Department of Revenue for the corresponding tax credits.

6. Summary of, and Comparison With, Existing or Proposed Federal Regulations.

A federal tax incentive program for film and television productions is available under Section 181 of the Internal Revenue Code. Under the program, investors in qualifying film and television productions may elect to immediately deduct the cost of qualifying film expenditures in the year the expenditures occur. The program is in effect for qualifying productions commencing before January 1, 2009. The federal deduction applies to qualifying productions up to \$15 million, or up to \$20 million if the production occurs in a qualifying distressed area. The incentive can be used in conjunction with any State film incentive. The Web site reference for the section in the Code is

http://www.law.cornell.edu/uscode/html/uscode26/usc_sec_26_00000181----000-.html.

7. Comparison With Rules in Adjacent States.

Michigan

In Michigan, rebates range from 12 to 20 percent, depending on the amount of the production spending in the State. According to the Director of the Michigan Film Office, there are no administrative rules for the program, but guidelines are available through the Office's Web site at http://www.michigan.gov/hal/0,1607,7-160-17445_19275_37781---,00.html.

Minnesota

Minnesota offers exemptions from sales and lodging taxes, and a rebate of 15 percent for eligible production costs incurred in the State. An Internet-based search did not reveal any administrative rules for the program, but guidelines are available through the following Web site: <http://www.mnfilmtv.org>.

Iowa

Iowa enacted legislation on May 17, 2007, that (1) offers producers a transferable income tax credit of 25 percent of qualified in-state expenditures, (2) offers investors the same credit, and (3) offers Iowa-based companies or Iowa residents a 100-percent income exclusion for monies earned from certified projects. No administrative rules have been developed yet for this program. Further information is available through the following Web site: <http://www.traveliowa.com/film/incentives.html>.

Illinois

In Illinois, rules for the Illinois Film Production Services Tax Credit Program are contained in Title 14, Chapter I, Part 528 of the Illinois Administrative Code, and can be viewed through the following Web site:

<http://www.ilga.gov/commission/jcar/admincode/014/01400528sections.html>.

Section 528.20 of the rules defines "Illinois resident" as "an individual who is domiciled in this State during the accredited production. Except in a case where the applicant has actual

knowledge, as shown in its books and records, that an individual is not an Illinois resident, the possession by an individual of a driver's license or other identification issued by this State prior to the commencement of the accredited production shall be sufficient proof that the individual is an Illinois resident and the address on the license or identification shall be deemed correct." The proposed Wisconsin rules do not include a definition of resident, but require residents to meet Department of Revenue residency criteria.

Under section 528.30, an applicant must file a written statement or other documentation showing that receiving the tax credits was essential to the decision to locate the accredited production in Illinois. According to the rules, "The documentation must show that the applicant has multi-state or international location options and could reasonably locate outside the state, or can demonstrate that at least one other state or nation is being considered for the accredited production, or other documentation showing that the receipt of the credit is a major factor in the applicant's decision to locate the accredited production in Illinois." The proposed Wisconsin rules require that in order for a production to become accredited, the production would not occur in Wisconsin without the tax benefits.

Under section 528.40, an application must be submitted at least 24 hours prior to the start of principal filming or taping. The proposed Wisconsin rules do not specify a submittal deadline prior to filming or taping. Section 528.40 also clarifies whether one or more applications can be filed for television shows with two or more episodes. The proposed Wisconsin rules do not differentiate for television shows with multiple episodes.

Section 528.50 gives an applicant 30 days to correct any deficiencies in the application, and provides 30 days to amend and re-submit an application after a denial. There are no similar timing deadlines in the proposed Wisconsin rules. Also in Section 528.50, Illinois will consider, in its evaluation of the application, whether awarding the credit will result in an overall positive impact to Illinois. Under the general eligibility criteria in the proposed Wisconsin rules, an accredited production must enhance economic development in Wisconsin.

Section 528.62 requires an applicant to quarterly submit economic impact data on jobs created and retained, and production costs. There is no such reporting requirement in the proposed Wisconsin rules, other than the information and documentation that must be submitted following completion of the accredited production, for the Department's verification and release of the tax credits.

Section 528.65 describes issuance of an "accredited production certificate" upon approval of an application. Section 528.70 details the procedures for the applicant to request a "tax credit certificate," certifying the actual amount of the credit awarded to the applicant at any time following the completion of the accredited production, but in no event later than two years following the completion of the production. This process is similar to what is described in the proposed Wisconsin rules, other than the two-year restriction. The Illinois rules also require attestation by a certified public accountant supporting the expenditures incurred by the applicant, which is not required in the Wisconsin rules.

Section 528.75 specifies the amount and duration of the tax credits. The amounts consist of (1) for productions commencing before May 1, 2006, a credit of 25 percent of the approved Illinois labor expenditures, plus an additional 10 percent for employees who earn more than

\$1,000 on the production and who live in geographic areas of high poverty or high unemployment; and (2) for productions commencing on or after May 1, 2006, a credit of 20 percent of the approved Illinois labor expenditures, plus an additional 15 percent for employees who earn more than \$1,000 on the production and who live in geographic areas of high poverty or high unemployment. For tax years ending prior to July 11, 2005, the credit cannot be carried forward or back. For tax years ending on or after July 11, 2005, any excess credits may be carried forward for five years. The Wisconsin amounts differ by including (1) a credit of 25 percent of the salary or wages for all employees of the claimant – but capped at \$25,000 per employee, and not including the two highest paid employees; (2) a credit of 25 percent of the production expenditures; and (3) a credit of 100 percent of the sales or use taxes paid for tangible personal property and taxable services that are used directly in producing an accredited production. The Wisconsin duration differs by (1) not allowing any credits to be carried forward, but (2) allowing unlimited refund of any unused credits for production expenditures.

Section 528.85 provides details for the transfer of the tax credits. The Wisconsin rules and legislation do not allow any transfer of credits.

The Illinois rules do not include any requirement that is similar to the proposed Wisconsin requirement that the production must not hurt the reputation of the state of Wisconsin.

8. Summary of Factual Data and Analytical Methodologies.

The data and methodology for developing these rules were derived from and consisted of (1) incorporating the criteria in 2005 Wisconsin Act 483; (2) incorporating applicable best practices the Department has developed in administering similar programs for economic development, business development, and tax-credit verification; (3) soliciting and utilizing input from the Department of Revenue, and from representatives of the stakeholders who are expected to participate in this program; and (4) reviewing Internet-based sources of related federal, state, and private-sector information. Particular attention was focused on input from producers of advertisement commercials that they need very quick responses to submitted estimates of expenses.

9. Analysis and Supporting Documents Used to Determine Effect on Small Business or in Preparation of an Economic Impact Report.

The primary document that was used to determine the effect of the proposed rules on small business was 2005 Wisconsin Act 483. This Act requires the Department to implement a program to accredit film productions for the purposes of sections 71.07 (5f) and (5h), 71.28 (5f) and (5h), and 71.47 (5f) and (5h) of the Statutes, and requires the Department to promulgate rules for administering the program. This Act applies its private-sector requirements only to film productions and to film production companies, for which a corresponding tax credit is desired.

10. Effect on Small Business.

The proposed rules are not expected to impose significant costs or other impacts on small businesses because the rules address submittal of documentation only by businesses that choose to pursue tax credits for producing film productions or for establishing film production companies.

to pursue tax credits for producing film productions or for establishing film production companies.

11. Agency Contact Person.

Steven Sabatke, Wisconsin Department of Commerce, Bureau of Business Development, P.O. Box 7970, Madison, WI, 53707-7970; telephone (608) 267-0762; e-mail ssabatke@commerce.state.wi.us.

File reference: Comm 133/rule analysis, LR

SECTION 1. Chapter Comm 133 is created to read:

Chapter Comm 133
FILM PRODUCTION ACCREDITATION PROGRAM

Subchapter I – Purpose, Scope and Authority.

Comm 133.10 Purpose, scope and authority. (1) The purpose and scope of this chapter is to establish the procedures for obtaining any of the following from the department, for use in claiming corresponding tax credits:

- (a) Accreditation of a production.
- (b) A determination of the amount of expenditures that are directly used to produce an accredited production.
- (c) Certification of expenses that are related to establishing a film production company in Wisconsin.

(2) This chapter is promulgated under the authority of s. 560.206 (4), Stats.

Subchapter II – Accreditation of Productions

Comm 133.20 Definitions. In this subchapter:

(1) The definitions in s. 71.07 (5f) (a) 1. to 3., Stats., shall apply.

Note: Sections 71.07 (5f) (a) 1. to 3., Stats., read as follows:

“1. ‘Accredited production’ means a film, video, electronic game, broadcast advertisement, or television production, as approved by the department of commerce, for which the aggregate salary and wages included in the cost of the production for the period ending 12 months after the month in which the principal filming or taping of the production begins exceeds \$100,000 for a production that is 30 minutes or longer or \$50,000 for a production that is less than 30 minutes. ‘Accredited production’ does not include any of the following, regardless of the production costs:

- a. News, current events, or public programming or a program that includes weather or market reports.
- b. A talk show.
- c. A production with respect to a questionnaire or contest.
- d. A sports event or sports activity.
- e. A gala presentation or awards show.
- f. A finished production that solicits funds.
- g. A production for which the production company is required under 18 USC 2257 to maintain records with respect to a performer portrayed in a single media or multimedia program.
- h. A production produced primarily for industrial, corporate, or institutional purposes.

2. ‘Claimant’ means a film production company that operates an accredited production in this state, if the company owns the copyright in the accredited production or has contracted directly with the copyright owner or a person acting on the owner’s behalf and if the company has a viable plan, as determined by the department of commerce, for the commercial distribution of the finished production.

3. ‘Production expenditures’ means any expenditures that are incurred in this state and directly used to produce an accredited production, including expenditures for set construction and operation, wardrobes, make-up, clothing accessories, photography, sound recording, sound synchronization, sound mixing, lighting, editing, film processing, film transferring, special effects, visual effects, renting or leasing facilities or equipment, renting or leasing motor vehicles, food, lodging, and any other similar expenditure as determined by the department of commerce. ‘Production

expenditures' include expenditures for music that is performed, composed, or recorded by a musician who is a resident of this state or published or distributed by an entity that has its headquarters in this state; air travel that is purchased from a travel agency or company that has its headquarters in this state; and insurance that is purchased from an insurance agency or company that has its headquarters in this state. 'Production expenditures' do not include salary or wages or expenditures for the marketing and distribution of an accredited production."

Note: 18 USC 2257, as referenced above in s. 71.07 (5f) (a) 1. g., relates to sexual exploitation and other abuse of children.

Note: "Production expenditures" do not include salary or wages paid directly by a claimant to the claimant's employees.

(2) "Department" means the department of commerce.

(3) "Incurred" means funds equal to the total cost have been dispersed by a claimant.

(4) "Person" includes natural persons, fiduciaries, and corporations, unless the context requires otherwise.

Comm 133.30 General eligibility criteria. The department shall consider whether all of the following are likely, in determining whether to accredit a production:

(1) The production would not occur in Wisconsin without the tax benefits provided under this chapter.

(2) The production would enhance economic development in Wisconsin.

(3) The production would enhance the potential for increasing the film, video or electronic game industry in Wisconsin.

(4) The production would not hurt the reputation of the state of Wisconsin.

Comm 133.31 Ineligible public programming. Public programming of a civic or governmental function is not eligible for becoming an accredited production.

Comm 133.32 Eligible and ineligible sports activities. (1) A travel promotion that addresses a sports event or sports activity is eligible for becoming an accredited production.

(2) A sports event or sports activity that is exclusively competitive in nature is not eligible for becoming an accredited production.

Comm 133.34 Obtaining accreditation. (1) APPLICATION. A potential claimant shall submit a separate accreditation application for each production, to the department, on a valid, department-prescribed form.

Note: The application form that is currently valid can be obtained from the department at P.O. Box 7970, Madison, WI, 53707; and may be available by accessing the department's Web site at www.commerce.wi.gov, and searching for the film production accreditation program.

Note: Under s. 560.206 (1), Stats., application for accreditation must be made to the department in each taxable year for which accreditation is desired.

(2) APPROVAL. A production shall become accredited upon issuance of a written approval from the department, to the claimant, reflecting that the submitted application complies with this chapter and provides any other information which the department deems is necessary to evaluate applications under this subchapter.

(3) REVOCATION. The department may revoke any approval issued under sub. (2) if the supporting information is found to be inaccurate or significantly misleading.

Note: In accordance with s. 560.206 (3), Stats., the department will notify the department of revenue of every production accredited under this section, and of any such accreditation that is revoked.

Comm 133.36 Determination of production expenditures, resident salary or wages, and sales or use taxes. (1) To obtain the department's determinations in sub. (2), and prior to filing for tax benefits, a claimant shall submit all of the following to the department, in writing:

(a) A list and description of the production expenditures incurred during the taxable year.

(b) A list of the salary or wages that were paid as specified in sub. (2) (b), and a description of the corresponding services.

(c) Attestation that the employees who received the salary or wages as specified sub. (2) (b) met department of revenue residency criteria, at the time of being paid.

Note: The application form that is referenced under s. Comm 133.34 (1) is accompanied with instructions that describe the department of revenue's residency criteria.

(d) Verification that the \$50,000 or \$100,000 threshold in s. 71.07 (5f) (a) 1. intro., Stats., was exceeded.

Note: See s. Comm 133.20 (1) Note for a reprint of s. 71.07 (5f) (a) 1. intro., Stats.

(e) An itemized list of the sales or use taxes paid in the taxable year, under ss. 77.52 and 77.53, Stats., corresponding to an itemized list of purchased tangible personal property and taxable services that were used directly in producing an accredited production, including all stages from the final script stage to the distribution of the finished production.

(f) Demonstration that the claimant either owns the copyright in the accredited production or has contracted directly with the copyright owner or a person acting on the owner's behalf.

(g) A viable plan for commercial distribution of the finished production.

(h) Any subsequent clarification requested by the department.

(2) The department shall determine the following amounts, after accrediting a production, and shall notify the claimant of those amounts, in writing:

(a) The production expenditures that were incurred during the taxable year.

(b) The salary or wages that were paid during the taxable year by the claimant to those employees of the claimant who met both of the following criteria:

1. Rendered services in this state to produce an accredited production.
2. Were residents of this state at the time they were paid.

(c) The sales or use taxes which were paid during the taxable year and which comply with the criteria in sub. (1) (e).

(3) (a) The department may increase the amount specified in a notification issued under sub. (2), after a claimant submits adequate written justification for that increase.

(b) The department may decrease the amount specified in a notification issued under sub. (2), after determining that the information on which the amount was based is inaccurate or significantly misleading.

(c) The department shall notify a claimant, in writing, of any increase or decrease established under this subsection.

Note: In accordance with s. 560.206 (3), Stats., the department will notify the department of revenue of the production expenditures that are verified under this section.

Subchapter III – Tax Credits for Establishing a Film Production Company

Comm 133.60 Definitions. In this subchapter:

(1) The definitions in s. 71.07 (5h) (a) 1. to 4., Stats., shall apply.

Note: Sections 71.07 (5h) (a) 1. to 4., Stats., read as follows:

“1. ‘Claimant’ means a person who files a claim under this subsection and who does business in this state as a film production company.

2. ‘Film production company’ means an entity that creates films, videos, electronic games, broadcast advertisement, or television productions, not including the productions described under s. 71.07 (5f) (a) 1. a. to h.

3. ‘Physical work’ does not include preliminary activities such as planning, designing, securing financing, researching, developing specifications, or stabilizing property to prevent deterioration.

4. ‘Previously owned property’ means real property that the claimant or a related person owned during the 2 years prior to doing business in this state as a film production company and for which the claimant may not deduct a loss from the sale of the property to, or an exchange of the property with, the related person under section 267 of the Internal Revenue Code.”

(2) “Department” means the department of commerce.

(3) “Incurred” means funds equal to the total cost have been dispersed by a potential claimant.

(4) “Person” includes natural persons, fiduciaries, and corporations, unless the context requires otherwise.

Comm 133.70 Certification of expenses relating to establishing a film production company. (1) (a) To obtain the department's preliminary approval in sub. (3), a potential claimant shall submit all of the following to the department, in writing:

1. A valid, department-prescribed application form.

Note: The application form that is currently valid can be obtained from the department at P.O. Box 7970, Madison, WI, 53707; and may be available by accessing the department's Web site at www.commerce.wi.gov, and searching for the film production accreditation program.

2. A preliminary, estimated list of the expenses referenced in sub. (5).

3. A description of how the estimated expenses will relate to establishing a film production company in Wisconsin.

4. Documentation showing that the expenses will comply with the limitations in s. 71.07 (5h) (c) 1. to 3., Stats.

Note: Sections 71.07 (5h) (c) 1. to 3., Stats., read as follows:

“Limitations. 1. A claimant may claim the credit under par. (b) 1. [for the purchase price of depreciable, tangible personal property], if the tangible personal property is purchased after December 31, 2007, and the personal property is used for at least 50 percent of its use in the claimant's business as a film production company.

2. A claimant may claim the credit under par. (b) 2. for an amount expended to construct, rehabilitate, remodel, or repair real property, if the claimant began the physical work of construction, rehabilitation, remodeling, or repair, or any demolition or destruction in preparation for the physical work, after December 31, 2007, or if the completed project is placed in service after December 31, 2007.

3. A claimant may claim the credit under par. (b) 2. for an amount expended to acquire real property, if the property is not previously owned property and if the claimant acquires the property after December 31, 2007, or if the completed project is placed in service after December 31, 2007.”

(b) A potential claimant shall provide any subsequent clarification requested by the department.

(2) The department shall consider whether all of the following are likely, in determining whether to issue a preliminary approval for establishing a film production company:

(a) The film production company would not be established in Wisconsin without the tax benefits provided under this chapter.

(b) The film production company would enhance economic development in Wisconsin.

(c) The film production company would enhance the potential for increasing the film, video or electronic game industry in Wisconsin.

(3) If the department determines that the expenses submitted under sub. (1) are likely to comply with s. 71.07 (5h) (c) 1. to 3., Stats., and that the film production company is likely to meet the conditions in sub. (2) (a) to (c), the department shall issue a preliminary approval to the potential claimant.

(4) To obtain the department's certification in sub. (5), and prior to filing for tax benefits, a potential claimant shall submit a finalized, incurred list of the expenses referenced in sub. (5), along with an explanation for any of the expenses which differ from the preliminary list under sub. (1).

(5) In accordance with ss. 71.07 (5h), 71.28 (5h), and 71.47 (5h), Stats., the department shall certify, in writing to a potential claimant, expenses that the department determines are related to establishing a film production company in Wisconsin.

(6) (a) The department may increase the amount specified in a certification issued under sub. (5), after a potential claimant submits adequate written justification for that increase.

(b) The department may decrease the amount specified in a certification issued under sub. (5), after determining that the information on which the amount was based is inaccurate or significantly misleading.

(c) The department shall notify a potential claimant, in writing, of any increase or decrease established under this subsection.

(d) The department shall notify the department of revenue, in writing, of any decrease established under this subsection.

Subchapter IV – Submittal of Claims

Comm 133.90 Claims. (1) A claimant, as defined in subch. II or III, may file for tax benefits under this chapter using forms acceptable to the department of revenue.

(2) Claims for tax credits for film production services or film production company investments shall include at least all of the following:

(a) 1. For film production services – a copy of the determination issued by the department under s. Comm 133.36 (2).

2. For film production company investments – a copy of the certification issued by the department under s. Comm 133.70 (5).

(b) The state employer tax identification number.

(c) The North American Industry Classification System code (NAICS) for the film production company, as defined in subch. III.

(END)

EFFECTIVE DATE

Pursuant to s. 227.22 (2) (intro.), Stats., these rules shall become effective on the first day of the month commencing after publication in the Wisconsin administrative register.

File reference: Comm 133 /rules 2007LRac