

Clearinghouse Rule 07-063

**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), and 560.206

2. Statutory Authority.

Sections 227.11 (2) (a) 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. 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 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 conflict with a desired brand image 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.

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.

12. Place Where Comments Are to Be Submitted, and Deadline for Submission.

Comments on the proposed rules may be submitted by e-mail to srockweiler@commerce.state.wi.us, no later than July 20, 2007. If e-mail submittal is not possible, written comments may be mailed, by the same date, to Sam Rockweiler, Department of Commerce, Division of Environmental and Regulatory Services, P.O. Box 14427, Madison, WI 53708-0427.

File reference: Comm 133/rule analysis, ph