

SECTION 1. Comm 133.10 (1) (c) is amended to read:

**Comm 133.10 (1) (c)** Certification of expenses that are related to establishing or operating a film production company in Wisconsin.

SECTION 2. Comm 133.20 (1) Note [1] is amended to read:

**Comm 133.20 (1) Note [1]:** 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’ also means an electronic game, 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 36 months after the month in which the principal programming, filming, or taping of the production begins exceeds \$100,000. ‘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~~ person who files a claim under this subsection.
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~~ labor-related contract payments.”

SECTION 3. Comm 133.20 (1) Note [3] is repealed.

SECTION 4. Comm 133.20 (3) is amended to read:

**Comm 133.20 (3)** “Incurred” means funds equal to the total cost have been ~~dispersed~~ disbursed by a potential claimant.

SECTION 5. Comm 133.32 is repealed.

SECTION 6. Comm 133.34 (1) is renumbered Comm 133.34 (1) (a).

SECTION 7. Comm 133.34 (1) (b) and (c) are created to read:

**Comm 133.34 (1) (b)** An application for accrediting a production shall be submitted at least 21 days prior to the start of filming or taping the production.

(c) Applications shall be reviewed by the department on a first-come, first-served basis.

SECTION 8. Comm 133.35 is created to read:

**Comm 133.35 Ineligible expenditures.** Expenditures for any of the following are not eligible for submittal or acceptance under s. Comm 133.36:

(1) Marketing and distribution of an accredited production.

(2) Alcoholic beverages.

(3) Tobacco.

(4) Gifts to cast and crew members.

(5) Expenses related to cast and crew parties.

(6) Per diems paid to non-Wisconsin residents.

(7) Bank and transaction fees.

(8) Legal fees, such as for development, marketing or business set-up.

(9) Expenditures for forfeitures, fees, expenses and costs associated with violation of federal or state law or local ordinances.

(10) Losses and damages.

SECTION 9. Comm 133.36 (title) and (1) (b) and (c) are amended to read:

**Comm 133.36 (title) Determination of production expenditures, and resident salary, ~~or wages, and sales or use taxes~~ labor-related contract payments.**

(1) (b) A list of the salary, ~~or wages~~ or labor-related contract payments 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~~ or labor-related contract payments as specified sub. (2) (b) ~~met department of revenue residency criteria,~~ were residents of this state under s. 71.02, Stats., 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.~~

SECTION 10. Comm 133.36 (1) (e) to (g) are repealed and recreated to read:

**Comm 133.36 (1) (e)** Verification that the 35-percent threshold in s. 71.07 (5f) (c) 1., 71.28 (5f) (c) 1. or 71.47 (5f) (c) 1. was met.

**Note:** Sections 71.07 (5f) (c) 3., 71.28 (5f) (c) 3. and 71.47 (5f) (c) 3., Stats., read as follows: "A claimant may not claim a credit under this subsection if less than 35 percent of the total budget for the accredited production is spent in this state."

(f) Verification of compliance with the sourcing requirement in s. 71.07 (5f) (c) 3., 71.28 (5f) (c) 3. or 71.47 (5f) (c) 3., Stats.

**Note:** Sections 71.07 (5f) (c) 3., 71.28 (5f) (c) 3. and 71.47 (5f) (c) 3., Stats., read as follows: "No credit may be claimed under par. (b) 3. for the purchase of tangible personal property or items, property, or goods under s. 77.52 (1) (b), (c), or (d) the sale of which is not sourced to this state, as provided under s. 77.522."

(g) A fee in the amount of 2 percent of the production expenditures listed in the application, or \$5,000, whichever is less.

SECTION 11. Comm 133.36 (1) (h) is renumbered Comm 133.36 (1) (i).

SECTION 12. Comm 133.36 (1) (h) is created to read:

**Comm 133.36 (1) (h)** Documentation evidencing that receipt of the credit is a major factor in the applicant's decision to operate the accredited production in this state. The documentation shall include details showing that the applicant has multistate or international location options and either could reasonably operate the production outside the state or is considering operating the production in at least one other state or nation.

SECTION 13. Comm 133.36 (2) (b) (intro.) is amended to read:

**Comm 133.36 (2) (b) (intro.)** The salary, ~~or wages~~ or labor-related contract payments that were paid during the taxable year by the claimant to those employees of the claimant who met both of the following criteria:

SECTION 14. Comm 133.36 (2) (c) is repealed and recreated to read:

**Comm 133.36 (2) (c)** Any reduction in allocation of tax credits that is needed to either broaden the potential for promoting economic development or to avoid exceeding the annual aggregated cap of \$500,000 specified in ss. 71.07 (5f) (c) 5. and (5h) (c) 4m., 71.28 (5f) (c) 5. and (5h) (c) 4m., and 71.47 (5f) (c) 5. and (5h) (c) 4m., Stats.

SECTION 15. Comm 133 subchapter III (title) is amended to read:

CHAPTER Comm 133 SUBCHAPTER III (title), TAX CREDITS FOR ESTABLISHING OR OPERATING A FILM PRODUCTION COMPANY

SECTION 16. Comm 133.60 (1) Note is amended to read:

**Comm 133.60 (1) 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 exclusively creates ~~films, videos, electronic games, broadcast advertisement, or television productions, not including the productions described under s. 71.07~~ accredited productions, as defined in sub. (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, except that section 267 of the Internal Revenue Code is modified so that if the claimant owns any part of the property, rather than 50 percent ownership, the claimant is subject to section 267 of the Internal Revenue Code for purposes of this subsection.”

SECTION 17. Comm 133.60 (3) is amended to read:

**Comm 133.60 (3)** “Incurred” means funds equal to the total cost have been ~~dispersed~~ disbursed by a potential claimant.

SECTION 18. Comm 133.70 (1) (a) 3. is amended to read:

**Comm 133.70 (1) (a) 3.** A description of how the estimated expenses will relate to establishing or operating a film production company in Wisconsin.

SECTION 19. Comm 133.70 (1) (a) 4. and Note are renumbered Comm 133.70 (1) (a) 5. and Note and amended to read:

**Comm 133.70 (1) (a) 5.** Documentation showing that the expenses will comply with the limitations in s. 71.07 (5h) (c) 1. to 3., 71.28 (5h) (c) 1. to 3. or 71.47 (5h) (c) 1. to 3., Stats.

**Note:** Sections 71.07 (5h) (c) 1. to 3., 71.28 (5h) (c) 1. to 3. and 71.47 (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, or item, property, or good under s. 77.52 (1) (b), (c), or (d), is purchased after December 31, ~~2007~~ 2008, and the tangible personal property, item, property, or good 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~~ 2008, ~~or if~~ and the completed project is placed in service after December 31, ~~2007~~ 2008.

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~~ 2008, ~~or if~~ and the completed project is placed in service after December 31, ~~2007~~ 2008.”

SECTION 20. Comm 133.70 (1) (a) 4. and Note are created to read:

**Comm 133.70 (1) (a) 4.** Documentation showing that the expenses will be within the scope prescribed in s. 71.07 (5h) (b) 1., 71.28 (5h) (b) 1. or 71.47 (5h) (b) 1., Stats.

**Note:** The expenses prescribed in s. 71.07 (5h) (b) 1., 71.28 (5h) (b) 1. and 71.47 (5h) (b) 1., Stats., consist of “The purchase price of depreciable, tangible personal property and items, property, and goods under s. 77.52 (1) (b), (c), and (d), if the sale of the tangible personal property, items, property, or goods is sourced to this state under s. 77.522.”

SECTION 21. Comm 133.70 (2) (a) is repealed.

SECTION 22. Comm 133.70 (2) (b) and (c) are renumbered Comm 133.70 (2) (a) and (b) and amended to read:

**Comm 133.70 (2) (a)** The film production company and its investment would enhance economic development in Wisconsin.

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

SECTION 23. Comm 133.70 (3) and (5) are amended to read:

**Comm 133.70 (3)** If the department determines that the expenses submitted under sub. (1) are likely expected to comply with s. 71.07 (5h) (c) 1. to 3., 71.28 (5h) (c) 1. to 3. or 71.47 (5h) (c) 1. to 3., Stats., and that the film production company is likely expected to meet the conditions in sub. (2) (a) ~~to (e)~~ and (b), the department shall issue a preliminary approval to the potential claimant.

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

(b) The department may award a lesser allocation of tax credits than what the applicant may be eligible for, to either broaden the potential for promoting economic development or to avoid exceeding the annual aggregated cap of \$500,000 specified in ss. 71.07 (5f) (c) 5. and (5h) (c) 4m., 71.28 (5f) (c) 5. and (5h) (c) 4m., and 71.47 (5f) (c) 5. and (5h) (c) 4m., Stats.

SECTION 24. Comm 133.90 (2) (b) and (c) are repealed.

SECTION 25. Comm 133.90 (2) (a) 1. and 2. are renumbered Comm 133.90 (2) (a) and (b).

**(END)**

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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.

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*File reference: Comm 133/rules PH 2ac*