

Chapter Comm 133

FILM PRODUCTION ACCREDITATION PROGRAM

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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.

Note: See chapter Comm 149 for additional requirements relating to (1) contracts between the Department and recipients of economic-development grants, loans or tax credits; (2) submittal of statements for such grants and loans; and (3) penalties for submitting false or misleading information, or for failing to comply with the terms of a contract.

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Subchapter II — Accreditation of Production.

Comm 133.20 Definitions. In this subchapter:

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

Note: Section 71.07 (5f) (a) 1. to 3., Stats., reads 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.

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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.

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

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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.

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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) **REVOCAION.** 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.

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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.

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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: Section 71.07 (5h) (a) 1. to 4., Stats., reads 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.

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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: Section 71.07 (5h) (c) 1. to 3., Stats., reads 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.

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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.

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