



## Ohio Revised Code

### Section 122.85 Tax credit-eligible productions.

Effective: September 29, 2017

Legislation: House Bill 49 - 132nd General Assembly

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(A) As used in this section and in sections 5726.55, 5733.59, 5747.66, and 5751.54 of the Revised Code:

(1) "Tax credit-eligible production" means a motion picture production certified by the director of development services under division (B) of this section as qualifying the motion picture company for a tax credit under section 5726.55, 5733.59, 5747.66, or 5751.54 of the Revised Code.

(2) "Certificate owner" means a motion picture company to which a tax credit certificate is issued or a person to which the company has transferred under division (H) of this section the authority to claim all or a part of the tax credit authorized by that certificate.

(3) "Motion picture company" means an individual, corporation, partnership, limited liability company, or other form of business association producing a motion picture.

(4) "Eligible production expenditures" means expenditures made after June 30, 2009, for goods or services purchased and consumed in this state by a motion picture company directly for the production of a tax credit-eligible production.

"Eligible production expenditures" includes, but is not limited to, expenditures for cast and crew wages, accommodations, costs of set construction and operations, editing and related services, photography, sound synchronization, lighting, wardrobe, makeup and accessories, film processing, transfer, sound mixing, special and visual effects, music, location fees, and the purchase or rental of facilities and equipment.

(5) "Motion picture" means entertainment content created in whole or in part within this state for distribution or exhibition to the general public, including, but not limited to, feature-length films; documentaries; long-form, specials, miniseries, series, and interstitial television programming; interactive web sites; sound recordings; videos; music videos; interactive television; interactive



games; video games; commercials; any format of digital media; and any trailer, pilot, video teaser, or demo created primarily to stimulate the sale, marketing, promotion, or exploitation of future investment in either a product or a motion picture by any means and media in any digital media format, film, or videotape, provided the motion picture qualifies as a motion picture. "Motion picture" does not include any television program created primarily as news, weather, or financial market reports, a production featuring current events or sporting events, an awards show or other gala event, a production whose sole purpose is fundraising, a long-form production that primarily markets a product or service or in-house corporate advertising or other similar productions, a production for purposes of political advocacy, or any production for which records are required to be maintained under 18 U.S.C. 2257 with respect to sexually explicit content.

(B) For the purpose of encouraging and developing a strong film industry in this state, the director of development services may certify a motion picture produced by a motion picture company as a tax credit-eligible production. In the case of a television series, the director may certify the production of each episode of the series as a separate tax credit-eligible production. A motion picture company shall apply for certification of a motion picture as a tax credit-eligible production on a form and in the manner prescribed by the director. Each application shall include the following information:

- (1) The name and telephone number of the motion picture production company;
- (2) The name and telephone number of the company's contact person;
- (3) A list of the first preproduction date through the last production date in Ohio;
- (4) The Ohio production office address and telephone number;
- (5) The total production budget of the motion picture;
- (6) The total budgeted eligible production expenditures and the percentage that amount is of the total production budget of the motion picture;
- (7) The total percentage of the motion picture being shot in Ohio;



- (8) The level of employment of cast and crew who reside in Ohio;
- (9) A synopsis of the script;
- (10) The shooting script;
- (11) A creative elements list that includes the names of the principal cast and crew and the producer and director;
- (12) Documentation of financial ability to undertake and complete the motion picture, including documentation that shows that the company has secured funding equal to at least fifty per cent of the total production budget of the motion picture;
- (13) Estimated value of the tax credit based upon total budgeted eligible production expenditures;
- (14) Any other information considered necessary by the director.

Within ninety days after certification of a motion picture as a tax credit-eligible production, and any time thereafter upon the request of the director of development services, the motion picture company shall present to the director sufficient evidence of reviewable progress. If the motion picture company fails to present sufficient evidence, the director may rescind the certification. Upon rescission, the director shall notify the applicant that the certification has been rescinded. Nothing in this section prohibits an applicant whose tax credit-eligible production certification has been rescinded from submitting a subsequent application for certification.

(C)(1) A motion picture company whose motion picture has been certified as a tax credit-eligible production may apply to the director of development services on or after July 1, 2009, for a refundable credit against the tax imposed by section 5726.02, 5733.06, 5747.02, or 5751.02 of the Revised Code. The director in consultation with the tax commissioner shall prescribe the form and manner of the application and the information or documentation required to be submitted with the application.

The credit is determined as follows:



(a) If the total budgeted eligible production expenditures stated in the application submitted under division (B) of this section or the actual eligible production expenditures as finally determined under division (D) of this section, whichever is least, is less than or equal to three hundred thousand dollars, no credit is allowed;

(b) If the total budgeted eligible production expenditures stated in the application submitted under division (B) of this section or the actual eligible production expenditures as finally determined under division (D) of this section, whichever is least, is greater than three hundred thousand dollars, the credit equals thirty per cent of the least of such budgeted or actual eligible expenditure amounts.

(2) Except as provided in division (C)(4) of this section, if the director of development services approves a motion picture company's application for a credit, the director shall issue a tax credit certificate to the company. The director in consultation with the tax commissioner shall prescribe the form and manner of issuing certificates. The director shall assign a unique identifying number to each tax credit certificate and shall record the certificate in a register devised and maintained by the director for that purpose. The certificate shall state the amount of the eligible production expenditures on which the credit is based and the amount of the credit. Upon the issuance of a certificate, the director shall certify to the tax commissioner the name of the applicant, the amount of eligible production expenditures shown on the certificate, and any other information required by the rules adopted to administer this section.

(3) The amount of eligible production expenditures for which a tax credit may be claimed is subject to inspection and examination by the tax commissioner or employees of the commissioner under section 5703.19 of the Revised Code and any other applicable law. Once the eligible production expenditures are finally determined under section 5703.19 of the Revised Code and division (D) of this section, the credit amount is not subject to adjustment unless the director determines an error was committed in the computation of the credit amount.

(4) No tax credit certificate may be issued before the completion of the tax credit-eligible production. Not more than forty million dollars of tax credit may be allowed per fiscal year beginning July 1, 2016, provided that, for any fiscal year in which the amount of tax credits allowed under this section is less than that maximum annual amount, the amount not allowed for that fiscal year shall be added



to the maximum annual amount that may be allowed for the following fiscal year.

(5) In approving applications for tax credits under this section, the director shall give priority to tax-credit eligible productions that are television series or miniseries.

(D) A motion picture company whose motion picture has been certified as a tax credit-eligible production shall engage, at the company's expense, an independent certified public accountant to examine the company's production expenditures to identify the expenditures that qualify as eligible production expenditures. The certified public accountant shall issue a report to the company and to the director of development services certifying the company's eligible production expenditures and any other information required by the director. Upon receiving and examining the report, the director may disallow any expenditure the director determines is not an eligible production expenditure. If the director disallows an expenditure, the director shall issue a written notice to the motion picture production company stating that the expenditure is disallowed and the reason for the disallowance. Upon examination of the report and disallowance of any expenditures, the director shall determine finally the lesser of the total budgeted eligible production expenditures stated in the application submitted under division (B) of this section or the actual eligible production expenditures for the purpose of computing the amount of the credit.

(E) No credit shall be allowed under section 5726.55, 5733.59, 5747.66, or 5751.54 of the Revised Code unless the director has reviewed the report and made the determination prescribed by division (D) of this section.

(F) This state reserves the right to refuse the use of this state's name in the credits of any tax credit-eligible motion picture production.

(G)(1) The director of development services in consultation with the tax commissioner shall adopt rules for the administration of this section, including rules setting forth and governing the criteria for determining whether a motion picture production is a tax credit-eligible production; activities that constitute the production of a motion picture; reporting sufficient evidence of reviewable progress; expenditures that qualify as eligible production expenditures; a competitive process for approving credits; consideration of geographic distribution of credits; and implementation of the program described in division (I) of this section. The rules shall be adopted under Chapter 119. of the Revised



Code.

(2) To cover the administrative costs of the program, the director shall require each applicant to pay an application fee equal to the lesser of ten thousand dollars or one per cent of the estimated value of the tax credit as stated in the application. The fees collected shall be credited to the tax incentives operating fund created in section 122.174 of the Revised Code. All grants, gifts, fees, and contributions made to the director for marketing and promotion of the motion picture industry within this state shall also be credited to the fund.

(H)(1) After the director of development services makes the determination required under division (D) of this section, a motion picture company to which a tax credit certificate is issued may transfer the authority to claim all or a portion of the amount of the tax credit the motion picture company is authorized to claim pursuant to that certificate under section 5726.55, 5733.59, 5747.66, or 5751.54 of the Revised Code to one or more other persons. Within thirty days after a transfer under this division, the motion picture company shall submit the following information to the director, on a form prescribed by the director:

- (a) Information necessary for the director to identify the certificate that is the basis for the transfer;
- (b) The portion or amount of the tax credit transferred to each transferee;
- (c) The portion or amount of the tax credit that the motion picture company retains the authority to claim;
- (d) The tax identification number of each transferee;
- (e) The date of the transfer;
- (f) Any other information required by the director;
- (g) Any information required by the tax commissioner.

The director shall deliver a copy of any submission received under division (H)(1) of this section to



the tax commissioner.

(2) A transferee may not claim a credit under section 5726.55, 5733.59, 5747.66, or 5751.54 of the Revised Code unless and until the transferring motion picture company complies with division (H)(1) of this section. A transferee may claim the transferred amount of any credit or portion of a credit for the same taxable year or tax period for which the transferring motion picture company was authorized to claim the credit or portion of a credit pursuant to the certificate. A motion picture company shall make no transfer under division (H)(1) of this section after the last day of the tax period or taxable year for which the motion picture company is required to claim the credit pursuant to the certificate.

A motion picture company may make not more than one transfer under division (H)(1) of this section for each tax credit certificate, but pursuant to that transaction, may allocate the authority to claim a portion of the credit to more than one transferee. A motion picture company may not authorize more than one transferee to claim the same portion of a credit.

(I) The director of development services shall establish a program for the training of Ohio residents who are or wish to be employed in the film or multimedia industry. Under the program, the director shall:

(1) Certify individuals as film and multimedia trainees. In order to receive such a certification, an individual must be an Ohio resident, have participated in relevant on-the-job training or have completed a relevant training course approved by the director, and have met any other requirements established by the director.

(2) Accept applications from motion picture companies that intend to hire and provide on-the-job training to one or more certified film and multimedia trainees who will be employed in the company's tax credit-eligible production.

(3) Upon completion of a tax-credit eligible production, and upon the receipt of any salary information and other documentation required by the director, authorize a reimbursement payment to each motion picture company whose application was approved under division (I)(2) of this section. The payment shall equal fifty per cent of the salaries paid to film and multimedia trainees employed



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in the production.