



## Ohio Revised Code

### Section 122.85 Tax credit-eligible productions.

Effective: September 6, 2012

Legislation: House Bill 508, House Bill 510 - 129th 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.

(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 resident and nonresident 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 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;
- (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 director of development services' request, 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 the sum of the following, subject to the limitation in division (C)(4) of this section:

(i) Twenty-five per cent of the least of such budgeted or actual eligible expenditure amounts excluding budgeted or actual eligible expenditures for resident cast and crew wages;

(ii) Thirty-five per cent of budgeted or actual eligible expenditures for resident cast and crew wages.

(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 biennium beginning on or after July 1, 2011, and not more than twenty million dollars may be allowed in the



first year of the biennium. At any time, not more than five million dollars of tax credit may be allowed per tax credit-eligible production.

(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; and consideration of geographic distribution of credits. The rules shall be adopted under Chapter 119. of the Revised Code.

(2) The director may require a reasonable application fee to cover administrative costs of the tax



credit program. The fees collected shall be credited to the motion picture tax credit program operating fund, which is hereby created in the state treasury. The motion picture tax credit program operating fund shall consist of all grants, gifts, fees, and contributions made to the director for marketing and promotion of the motion picture industry within this state. The director shall use money in the fund to pay expenses related to the administration of the Ohio film office and the credit authorized by this section and sections 5726.55., 5733.59, 5747.66, and 5751.54 of the Revised Code.

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*The Legislative Service Commission presents the text of this section as a composite of the section as amended by multiple acts of the General Assembly. This presentation recognizes the principle stated in R.C. 1.52(B) that amendments are to be harmonized if reasonably capable of simultaneous operation.*