

TITLE 14: COMMERCE
CHAPTER I: DEPARTMENT OF COMMERCE AND ECONOMIC OPPORTUNITY

PART 528
ILLINOIS FILM PRODUCTION SERVICES TAX CREDIT PROGRAM

Section	
528.10	Purpose
528.20	Definitions
528.30	Eligibility Determination
528.40	Application Process and Requirements
528.50	Evaluation of Application
528.60	Approval/Denial of Applications
528.62	Economic Impact Data
528.63	Diversity Impact Data
528.65	Accredited Production Certification
528.70	Request for Tax Credit Certificate
528.71	Approval/Denial of Tax Credit Certificate Request
528.75	Amount and Duration of Tax Credit
528.80	Interim and Final Film Tax Credit Certifications (Repealed)
528.85	Transfer of Tax Credit
528.90	Non-Compliance Provisions (Repealed)
528.100	Books and Records
528.110	Data for Reports to the General Assembly
528.120	Confidentiality of Documents and Data

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EFFECTIVE DATE

JAN 18 2007

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JAN 18 2007

SOS-CODE DIV.

Section 528.10 Purpose

The Department shall make film tax credit awards under the Film Production Services Tax Credit Act for the purpose of preserving and expanding the existing human infrastructure for the motion picture industry in Illinois, and *to promote and encourage the training and hiring of Illinois residents who represent the diversity of the Illinois population through the creation and implementation of training, education and recruitment programs organized in cooperation with Illinois colleges, universities, labor organizations and the motion picture industry.* (Section 5 of the Act)

(Source: Amended at 31 Ill. Reg. 2253, effective JAN 18 2007)

EFFECTIVE DATE

JAN 18 2007

SOS-CODE DIV.

Section 528.20 Definitions

The following definitions are applicable to this Part:

"Accredited Production" means, for productions commencing before May 1, 2006, a film, video, commercial, or television production that has been certified by the Department in which the aggregate Illinois labor expenditures included in the cost of the production exceed \$100,000 for productions of 30 minutes or longer, or \$50,000 for productions of 29 minutes or less. For productions commencing on or after May 1, 2006, "accredited production" means a film, video, commercial, or television production that has been certified by the Department in which the aggregate Illinois production spending included in the cost of the production exceeds \$100,000 for productions of 30 minutes or longer, or \$50,000 for productions of 29 minutes or less. "Accredited production" does not include a production that:

is news, current events, or public programming, or a program that includes weather or market reports;

is a talk show;

is a production in respect of a game, questionnaire, or contest;

is a sports event or activity;

is a gala presentation or awards show;

is a finished production that solicits funds;

is a production produced by a film production company if records, as required by 18 USC 2257, are to be maintained by that film production company with respect to any performer portrayed in that single media or multimedia program; or

is a production produced primarily for industrial, corporate, or institutional purposes. (Section 10 of the Act)

"Accredited Production Certificate" means a certificate issued by the Department certifying that the production is an accredited production that meets the guidelines of the Act. (Section 10 of the Act)

"Act" means the Film Production Services Tax Credit Act [35 ILCS 15].

EFFECTIVE DATE

JAN 18 2007

ENCL CODE DIV.

"Applicant" means an entity that is a film production company that is operating or has operated an accredited production located within the State of Illinois and that owns the copyright in the accredited production throughout the Illinois production period or has contracted directly with the owner of the copyright in the accredited production or a person acting on behalf of the owner to provide services for the accredited production, where the owner of the copyright is not an eligible production corporation. (Section 10 of the Act)

"Business Owned by a Person with a Disability" means a business concern that is at least 51% owned by one or more persons with a disability and the management and daily business operation of which are controlled by one or more of the persons with disabilities who own it. A not-for-profit agency for persons with disabilities that is exempt from taxation under Section 501 of the Internal Revenue Code of 1986 is also considered a "business owned by a person with a disability". [30 ILCS 575/2(A)(4.1)]

"Commercial Domicile" means the principal place from which the trade or business of a person is directed or managed.

"Credit" or "Tax Credit" means:

For an accredited production approved by the Department on or before January 1, 2005 and commencing before May 1, 2006, the amount equal to 25% of the Illinois labor expenditure approved by the Department. For Illinois labor expenditures generated by the employment of residents of geographic areas of high poverty or high unemployment, as determined by the Department, in an accredited production approved by the Department after January 1, 2005 and commencing before May 1, 2006, the applicant shall receive an enhanced credit of 10% in addition to the 25% credit.

For an accredited production commencing on or after May 1, 2006, the amount equal to:

20% of the Illinois production spending for the taxable year; plus

15% of the Illinois labor expenditures generated by the employment of residents of geographic areas of high poverty or high unemployment, as determined by the Department. (Section 10 of the Act)

EFFECTIVE DATE

JAN 18 2007

SOS-CODE DIV.

"Department" means the Illinois Department of Commerce and Economic Opportunity, formerly known as the Illinois Department of Commerce and Community Affairs.

"Director" means the Director of the Department.

"Diversity Data or Information" means data pertaining to gender, race, ethnicity and disability of all employees of the applicant.

"Diversity Plan" means a written document through which the applicant assures the Department that minorities and females will have equal opportunities in recruitment, selection, appointment, promotion, training, and related employment areas in the accredited production. The diversity plan must also describe the manner in which the applicant plans on hiring vendors certified by the Business Enterprise Council under the Business Enterprise for Minorities, Females, and Persons with Disabilities Act [30 ILCS 575] with respect to the accredited production. The diversity plan must also detail the manner in which the applicant proposes to achieve its goals to ensure employment of protected classes to achieve a diverse workforce, rather than merely to assure nondiscrimination.

"Economic Impact Data" means data pertaining to the types of jobs (production, talent and vendor) created and retained in Illinois, as well as the total amount an applicant spends in Illinois on the accredited production.

"Employee of the Applicant" or "Employee" means, for accredited productions commencing before May 1, 2006, any employee, agent, vendor, or contractor whose Illinois wages are included in the cost of the accredited production. For accredited productions commencing on or after May 1, 2006, "employee of the applicant" or "employee" shall mean only an individual who is an employee of the applicant for purposes of employment taxes imposed under Subtitle C of the Internal Revenue Code (26 USC Subtitle C).

"Entry Level Positions" means the lowest level of a hierarchy in a production, including untrained or unskilled labor working on a production, such as a production assistant.

"Female" shall mean *a person who is a citizen or lawful permanent resident of the United States and who is of the female gender.* [30 ILCS 575/2(A)(2)]

"Female Owned Business" means *a business concern which is at least 51% owned by one or more females, or, in the case of a corporation, at least 51% of the stock in which is owned by one or more females; and the management and*

EFFECTIVE DATE

JAN 18 2007

SOS-CODE DIV.

daily business operations of which are controlled by one or more of the females who own it. [30 ILCS 575/2(A)(4)].

"Illinois Labor Expenditure" means Illinois gross wages paid to employees of the applicant for services on the accredited production. To qualify as an Illinois labor expenditure, the expenditure must be:

reasonable in the circumstances;

included in the federal income tax basis of the property. For purposes of this provision, an expenditure that is immediately expensed as an advertising cost under Treasury Regulations section 1.162-1(a) or as a qualified film, television or commercial production cost under section 181 of the Internal Revenue Code shall be treated as included in the federal income tax basis of the accredited production if the expenditure would be required to be capitalized under section 263A of the Internal Revenue Code if that section applied to the accredited production;

incurred by the applicant for services on or after January 1, 2004;

incurred for the production stages of the accredited production, from the final script stage to the end of the post-production stage;

limited to the first \$25,000 of wages paid or incurred to each employee of an accredited production commencing before May 1, 2006 and the first \$100,000 of wages paid or incurred to each employee of an accredited production commencing on or after May 1, 2006;

for an accredited production commencing before May 1, 2006, exclusive of Illinois gross wages and benefits paid to or incurred for the 2 highest paid employees of the accredited production;

directly attributable to the accredited production;

paid in the tax year for which the applicant is claiming the credit or no later than 60 days after the end of the tax year;

*paid to persons residing in Illinois at the time the payments were made;
and*

paid for services rendered in Illinois. (Section 10 of the Act)

EFFECTIVE DATE

JAN 18 2007

SOS-CODE DIV.

"Illinois Production Spending" means *the expenses incurred by the applicant, that are reasonable under the circumstances and directly attributable to the accredited production, including, without limitation, all of the following:*

expenses to purchase, from vendors within Illinois, tangible personal property that is used in the accredited production in Illinois;

expenses to acquire services, from vendors in Illinois, for film production, editing, or processing in Illinois; and

the compensation, not to exceed \$100,000 for any one employee of the applicant, for contractual or salaried employees who are Illinois residents performing services with respect to the accredited production in Illinois.

[35 ILCS 15/10]

"Illinois Resident" means 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 an 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.

"Jobs Created and Retained" shall be measured in full-time equivalent jobs. In the case of a person hired as an "extra", each person hired for each day shall be deemed a full-time equivalent job for that day, based on the film industry standard equivalency of a "hire", which is a per day, per person standard. In other words, when the film industry hires an "extra" it considers each "extra" position to be a one day job that was created to fill a particular position for a particular purpose for a particular time.

"Management Position" means anyone in a supervisory or managerial position who has control over other employees who report to that individual. Management roles include, but are not limited to, coordinators, directors, managers, supervisors, masters and department heads.

"Minority" shall mean a person who is a citizen or lawful resident of the United States and who is:

African American (a person having origins in any of the black racial groups in Africa);

EFFECTIVE DATE

JAN 18 2007

SOS-CODE DIV.

Hispanic (a person of Spanish or Portuguese culture with origins in Mexico, South or Central America, or the Caribbean Islands, regardless of race);

Asian American (a person having origins in any of the original peoples of the Far East, Southeast, Asia, the Indian Subcontinent or the Pacific Islands); or

Native American or Alaskan Native (a person having origins in any of the original peoples of North America). [30 ILCS 575/2(A)(1)].

Minority Owned Business" means a business concern that is at least 51% owned by one or more minority persons, or in the case of a corporation, at least 51% of the stock is owned by one or more minority persons, or in the case of a corporation, at least 51% of the stock in which is owned by one or more minority persons; and the management and daily business operations of which are controlled by one or more of the minority individuals who own it. [30 ILCS 575/2(A)(3)].

"Person with a Disability" means a person who is a citizen or lawful resident of the United States and is a person qualifying as being disabled under Section 2(A)(2.1) of the Business Enterprise for Minorities, Females, and Person with Disabilities Act. [30 ILCS 575/2(A)(2.05]

"Commencement or Start of Principal Filming or Taping" means the date on which actual filming or taping of an accredited production commences. In other words, principal filming or taping begins at the culmination of preparation activity and starts with photography or taping of principal actors or action. In the case of an animated production, the commencement or start of filming or taping is the date on which begins the creation of artwork to be used in actual frames in the film.

"Production Staff and Crew" means office production staff and on-set technicians, including, but not limited to, accountants, coordinators, secretaries, camera, casting, construction, costume, electric, editing, grip, location, hair, make-up, props, swing gang, set decorating, sound, special effects, transportation, and visual effects.

"State" means the State of Illinois.

"Talent Related Positions" means any speaking, background or extra roles that appear in front of the camera. Talent refers to on screen performers holding these positions.

EFFECTIVE DATE

JAN 18 2007

SOS-CODE DIV.

"Tax Credit Certificate" means the tax credit certificate issued by the Department to the applicant certifying that it has complied with all statutory requirements of the Act and this Part and that it is entitled to a credit under the Act.

"Taxpayer" means any person as defined by and subject to the tax imposed by the Illinois Income Tax Act [35 ILCS 5/1501(a)(18), (a)(24)].

"Treasury Regulations" means the rules of the U.S. Internal Revenue Service published at Title 26 of the Code of Federal Regulations.

"Vendor in Illinois." Expenditures for purchases of tangible personal property or services from a vendor in Illinois shall mean:

Purchases of tangible personal property for use in Illinois on an accredited production from a person who is registered under the Illinois Retailers' Occupation Tax Act (ROTA) [35 ILCS 120]. A copy of the purchase receipt showing that the purchase was made at an Illinois location and that Illinois Retailers' Occupation Tax was paid shall be sufficient proof that the purchase was made from a vendor in Illinois. For tangible personal property ordered by mail, telephone or internet, a copy of the seller's ROTA registration certificate, along with a receipt showing that Illinois Use Tax was collected by the vendor, shall be sufficient proof that the purchase was made from a vendor in Illinois. Documentation that shows that Illinois Use Tax was collected by the vendor, but either does not show an Illinois address for the sale or is not accompanied by a ROTA registration certificate, shall not be sufficient proof that the purchase was made from a vendor in Illinois.

The lease or rental of real property located in Illinois for use in an accredited production, including hotels or other lodging for employees working on the accredited production.

The lease or rental of an automobile (as defined in the Illinois Automobile Renting Occupation and Use Tax Act [35 ILCS 155]) for use in an accredited production on which the rentor collects the Illinois Automobile Renting Occupation and Use Tax from the rentee.

The lease or rental of other tangible personal property for use in an accredited production if the owner of the property has paid Illinois Use Tax on the property. A copy of the invoice or receipt for the lease or rental showing an Illinois address for the lessor, and showing that no other

EFFECTIVE DATE

JAN 18 2007

SOS-CODE DIV.

state's sales tax is collected from the lessee, shall be sufficient proof that the transaction was with a vendor in Illinois.

The purchase of financial services (including insurance and the borrowing of funds) from a lender or insurer whose commercial domicile is in this State.

The purchase of other services with respect to an accredited production from an Illinois resident or from a person whose commercial domicile is in this State. For purposes of this provision only, the commercial domicile of a person whose business address (as shown in the records of the applicant) is in this State.

"Vendor Related Positions" means jobs obtained or created through a subcontractor, which includes but is not limited to security, janitorial, printing, florist, dry cleaners, and limousine services.

"Wages" means all compensation paid for services rendered by an employee in connection with an accredited production, including health, life, and disability insurance premiums, FICA taxes, pension contributions, expense reimbursement, and accrued vacation and sick pay.

(Source: Amended at 31 Ill. Reg. 2253, effective JAN 18 2007)

EFFECTIVE DATE

JAN 18 2007

SOS-CODE DIV.

Section 528.30 Eligibility Determination

Applicants must satisfy all of the following criteria in order to be eligible for a credit:

- a) Ownership of Copyright in Accredited Production
 - 1) The applicant must *own the copyright in the accredited production throughout the Illinois production period; or*
 - 2) The applicant has *contracted directly with the owner of the copyright in the accredited production, or a person acting on behalf of the owner, to provide services for the production, where the owner, of the copyright is not an eligible production corporation.* (Section 10 of the Act)
- b) Aggregate Illinois Labor Expenditures – Accredited Productions Commencing Before May 1, 2006
In order to qualify for a credit under the Act, the applicant must incur, in the 12-month period after the commencement of principal filming or taping of the production, Illinois labor expenditures that exceed the following amounts from pre-production through post-production:
 - 1) \$100,000 for productions of 30 minutes or longer;
 - 2) \$50,000 for productions of 29 minutes or less.
- c) Aggregate Illinois Production Spending – Accredited Productions Commencing on or After May 1, 2006
In order to qualify for a credit under the Act, the applicant must incur, in the 12-month period after the commencement of principal filming or taping of the production, Illinois production spending that exceeds the following amounts from pre-production through post-production:
 - 1) \$100,000 for productions of 30 minutes or longer;
 - 2) \$50,000 for productions of 29 minutes or less.
- d) Diversity Plan
The applicant must submit a diversity plan that meets the criteria set forth in Section 528.20 of this Part.
- e) Competitive Need for Credit

EFFECTIVE DATE

JAN 1 8 2007

The applicant must file a written statement or other documentation evidencing that the receipt of the credit is essential to the decision to operate the accredited production in Illinois. 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.

f) Training Programs

In order to qualify for a credit, the applicant must advise the Department whether it *intends to participate in training, education, and recruitment programs, if available, that are organized in cooperation with Illinois colleges and universities, labor organizations, and the motion picture industry and are designed to promote and encourage the training and hiring of Illinois residents who represent the diversity of the Illinois population.* [30 ILCS 15/30(a)(4)]

(Source: Amended at 31 Ill. Reg. 2253, effective JAN 18 2007)

EFFECTIVE DATE

JAN 18 2007

SOS-CODE DIV.

Section 528.40 Application Process and Requirements

The Department will accept and evaluate applications from eligible applicants in accordance with the following provisions:

- a) An applicant proposing a film, television or commercial production planned to be located in the State shall submit its application at least 24 hours prior to the start of principal filming or taping.
- b) Written applications will be required and must be submitted on the standard application form provided by the Department. Applications shall be submitted to the Department's office stated on the application. The applicant must provide the following information:
 - 1) Legal name, address, and telephone number of applicant.
 - 2) Name, title, and telephone number of primary contact person.
 - 3) Type of business entity:
 - A) Individual or Sole Proprietorship
 - B) Partnership
 - C) Corporation
 - D) Subchapter S Corporation
 - E) Limited Liability Company
 - F) Other (applicant will provide description).
 - 4) Date of incorporation or formation.
 - 5) Federal Employer Identification Number (FEIN) or Tax Identification Number (TIN).
 - 6) Production title.
 - 7) Type of production – a description stating that the production is one of the following:

EFFECTIVE DATE

JAN 18 2007

- A) Feature film
 - B) Television program
 - C) Commercial
 - D) Other (applicant will provide description).
- 8) Length of production.
 - 9) Date principal filming or taping begins in Illinois.
 - 10) Estimated number of shoot days in Illinois.
 - 11) Estimated total budget of production.
 - 12) Estimated total Illinois labor expenditure.
 - 13) Estimated number of Illinois residents to be hired to work on the production.
 - 14) A diversity plan.
 - 15) Documentation evidencing applicant's intention to participate in training, education and recruitment programs, if available, offered by Illinois colleges, universities, labor organizations and the motion picture industry that are designed to promote training and hiring of Illinois residents who represent the diversity of the Illinois population.
 - 16) A written statement evidencing that the receipt of the credit is essential to the decision to operate the accredited production in Illinois.
 - 17) The applicant must submit a story line or log line.
 - 18) The applicant will have to certify that it is and will remain in good standing with applicable State authorities, it is not currently operating under or subject to any cease and desist order or subject to any informal or formal regulatory action, and, to the best of the applicant's knowledge, it is not currently the subject of any investigation by any State or federal regulatory, law enforcement or legal authority. Should the applicant become the subject of an investigation by any State or federal regulatory, law enforcement or legal authority, the applicant shall promptly notify the Department of any such investigation. The applicant acknowledges that,

EFFECTIVE DATE

JUL 13 2007

SOS-CODE DIV.

should it become delinquent in its good standing status with any applicable State authority or if it later becomes subject to a cease and desist order or memorandum of understanding, or found in violation pursuant to any regulatory action or any court action or proceeding before any administrative agency, the Department is authorized to deny the applicant's request for a tax credit certificate.

- c) The applicant is responsible for the accuracy of all data, information, and documentation included in the application. Once submitted, applications shall become the property of the Department.
- d) Upon written request, the applicants shall issue any necessary authorization to the appropriate federal, State or local authority for the release of information concerning a production being considered under this Part, including but not limited to financial reports, and records relating to the applicant or the accredited production for which the credit is requested.
- e) In the case of a television series or any other production intended to be shown in two or more episodes, the applicant may elect to treat each episode as a separate production or to treat two or more episodes as a single production for all purposes of the Act. A single application may be filed for two or more productions, provided that the application clearly describes each separate production. For example, the application may state that each episode shall be treated as a separate production or that all episodes filmed or intended to be shown during a specific period of time will be treated as a single production.

(Source: Amended at 31 Ill. Reg. 2253, effective JAN 18 2007)

EFFECTIVE DATE

JAN 18 2007

REG CODE DIV

Section 528.50 Evaluation of Application

- a) Prior to substantive evaluation of an application for a credit, the Department shall review all applications to determine that all required information and documentation has been provided. Applicants will be notified, in writing, of any application deficiencies and will be allowed 30 days to correct the deficiencies through submission of additional documentation. The Department has the discretion to extend the cure period in extenuating circumstances, provided the applicant submits a written request outlining the circumstances for which it needs an extension.
- b) In evaluating applications, the Department shall determine a preponderance of the following requirements and conditions:
 - 1) The applicant will meet the requisite aggregate Illinois labor expenditure or Illinois production spending requirement in accordance with the provisions of Section 528.20 of this Part;
 - 2) The extent to which the applicant's diversity plan contains specific goals in meeting the diversity plan requirement to employ Illinois residents representing the diversity of the Illinois population subject to any applicable collective bargaining agreements to which the applicant is a signatory to perform work on the production;
 - 3) The extent to which the applicant intends to participate in training, education and recruitment programs, if available, that are organized in cooperation with Illinois colleges and universities, labor organizations, and the motion picture industry and are designed to promote and encourage the training and hiring of Illinois residents who represent the diversity of the Illinois population;
 - 4) The applicant's demonstration that the credit is essential to its decision to locate the production in Illinois; and
 - 5) Awarding the credit will result in an overall positive impact to the State.

(Source: Amended at 31 Ill. Reg. 2253, effective JAN 18 2007)

EFFECTIVE DATE

JAN 18 2007

DCE CODE DIV

Section 528.60 Approval/Denial of Applications

- a) The Department reserves the right to make inquiries, to conduct studies in the manner and by the methods it deems necessary, and to review information with respect to the application. The Department also reserves the right to request information from the applicant that is necessary to calculate the amount of the tax credit.
- b) The Department reserves the right to reject any application that does not comply with the statutory requirements of the Act and this Part. Upon receipt of an application, the Department shall review the application for completeness and approve or deny it within 60 days after the date of receipt. Applications are subject to final approval by the Director of the Department.
- c) Applicants shall be notified in writing as to the Department's evaluation of all completed applications. If the Department denies an application for the credit, it will specify the reasons for denial in writing and allow the applicant 30 days to amend and re-submit its application for further evaluation.

(Source: Amended at 31 Ill. Reg. 2253, effective JAN 18 2007)

EFFECTIVE DATE

JAN 18 2007

SOS-CODE DIV.

Section 528.62 Economic Impact Data

Each quarter, the applicant or its representative shall use its best efforts in submitting its economic information to the Department related to the following:

- a) **Jobs Created and Retained.** This information shall document the number of jobs created and retained for production, talent and vendor type jobs. Additionally, with respect to the production type of jobs, the applicant must use its best efforts to supply information disclosing the number of production type jobs created and/or retained and whether the production type jobs were entry, management or skilled labor.
- b) **Production Costs.** This information shall document the amount of production costs in various industries in Illinois. Industry production costs include, but are not limited to, vendor expenditures for catering, dry cleaning, janitorial services, maid services, security, transportation, etc.

(Source: Added at 31 Ill. Reg. 2253, effective JAN 18 2007)

EFFECTIVE DATE

JAN 18 2007

SOS-CODE DIV.

Section 528.63 Diversity Impact Data

Each quarter, the applicant or its representative shall use its best efforts in submitting its diversity information to the Department related to gender and ethnicity of all employees hired and the business ownership status of vendors hired. This information shall include job creation number for:

- a) Production staff and crew;
- b) Entry level positions;
- c) Management positions;
- d) Talent related positions; and
- e) Vendors (ownership status, i.e., businesses owned by minorities, females and persons with disabilities).

(Source: Added at 31 Ill. Reg. 2253, effective JAN 18 2007)

EFFECTIVE DATE

JAN 18 2007

Section 528.65 Accredited Production Certificate

Upon approval of an application, the Department will issue an accredited production certificate certifying that the production is an accredited production that meets the statutory requirements of the Act as well as the corresponding administrative rules. When the Department issues an accredited production certificate, this certificate does not automatically entitle the applicant to a tax credit. Rather, the tax credit is only awarded after an accredited production has been completed, the applicant submits its request for tax credit certificate, and the applicant successfully demonstrates to the Department that it has complied with its diversity plan or that it has made good-faith efforts to comply with its diversity plan.

(Source: Added at 31 Ill. Reg. 2253, effective JAN 18 2007)

EFFECTIVE DATE

JAN 18 2007

SOS-CODE DIV.

Section 528.70 Request for Tax Credit Certificate

The applicant may request a tax credit certificate from the Department 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 2 years following the completion of the production. In a case where a single application was filed for two or more productions, a single tax credit certificate may, at the request of the applicant, be issued for more than one production. The tax credit will be issued upon the Department's verification of all costs submitted as qualifying as the applicant's Illinois labor expenditures and verification that the applicant has met or made good-faith efforts in achieving the goals of the diversity plan included with its application as described in Section 528.20 of this Part.

- a) If an accredited production is not completed prior to the close of the applicant's taxable year, at the election of the applicant, a tax credit certificate dated as of the last day of the taxable year may be used for Illinois labor expenditures incurred during that taxable year or within 60 days after the close of that taxable year or Illinois production spending incurred during that taxable year. (Section 10 of the Act)
- b) In the case of an accredited production commencing before May 1, 2006, in which some Illinois labor expenditures are incurred in a taxable year of the applicant and some are incurred more than 60 days after the close of that taxable year:
 - 1) The applicant may request a single tax credit certificate for all Illinois labor expenditures incurred. If all Illinois labor expenditures are incurred not later than 60 days after the close of the last full taxable year of production, the tax credit certificate may be dated as of the last day of that taxable year as provided in subsection (a); or
 - 2) The applicant may submit a separate request for a tax credit certificate for each taxable year in which Illinois labor expenditures are incurred. Each request may, at the applicant's election, include Illinois labor expenditures incurred no later than 60 days after the end of the tax year as provided in subsection (b)(1) or only those Illinois labor expenditures incurred in the taxable year; provided that no Illinois labor expenditure may be claimed or allowed on more than one request.
- c) In the case of an accredited production commencing on or after May 1, 2006, in which some Illinois production spending is incurred in a taxable year of the applicant and some is incurred after the close of that taxable year:

EFFECTIVE DATE

JAN 10 2007

SOS-CODE DIV.

- 1) The applicant may request a single tax credit certificate for all Illinois production spending incurred; or
 - 2) The applicant may submit a separate request for a tax credit certificate for each taxable year in which Illinois production spending is incurred.
- d) With each request for a tax credit certificate filed on or after the effective date of this rulemaking, the applicant shall provide:
- 1) An itemized statement of the Illinois labor expenditures or Illinois production spending for which the credit is claimed and of Illinois labor expenditures generated by the employment of residents of geographic areas of high poverty or high unemployment for which additional credit is claimed;
 - 2) Copies of the books and records of the applicant for the accredited production, showing the Illinois labor expenditures or Illinois production spending for which the credit is claimed, and all documentation necessary to support its computation; and
 - 3) An attestation by a certified public accountant, in the form prescribed by the Department, that the computations are supported by the copies of the books, records and other documents of the applicant that are attached to the request and that the certified public accountant has examined the books, records and other documents according to procedures agreed upon by the Department. The attestation and examination must be performed by a certified public accountant:
 - A) who is qualified and independent of the applicant within the principles of the Securities and Exchange Commission regulations at 17 CFR 210.2-01; and
 - B) whose engagement to provide the attestation was approved by the Department before work on the engagement was commenced.

(Source: Old Section 528.70 renumbered to Section 528.75 and new Section 528.70 added at 31 Ill. Reg. 2253, effective JAN 18 2007)

EFFECTIVE DATE

JAN 18 2007

Section 528.71 Approval/Denial of Tax Credit Certificate Request

- a) When the applicant submits its request for a tax credit certificate, the Department will review and verify the applicant's final diversity hiring numbers for crew, vendors and talent to determine whether it met the goals outlined in its diversity plan before issuing the tax credit certificate.
- b) In the event the applicant fails to meet the goals of its diversity plan, the applicant must then demonstrate it made good-faith efforts in attempting to achieve its diversity goals in order for the tax credit certificate request to be approved. Good-faith efforts that the Department will consider include, but are not limited to, documentation demonstrating that the applicant communicated (written correspondence, phone call, email, meetings) with minority, female, and disabled vendors and applicable unions, as well as talent and workforce agencies/entities. The applicant may also submit any other documentation demonstrating its good-faith attempts to the Department for consideration. If appropriate documentation is unavailable, then, within the Department's discretion, the applicant may be permitted to submit an affidavit attesting to its good-faith efforts.

(Source: Added at 31 Ill. Reg. 2253, effective JAN 18 2007)

EFFECTIVE DATE

JAN 18 2007

SOS-CODE DIV.

Section 528.75 Amount and Duration of Tax Credit

- a) For tax years beginning on or after January 1, 2004, a person who has been awarded a credit under the Act is entitled to claim the credit against the taxes imposed under Section 201(a) and (b) of the Illinois Income Tax Act [35 ILCS 5/201(a) and (b)] in an amount determined by the Department. If the applicant is a partnership or Subchapter S corporation, the credit is allowed to the partners or shareholders in accordance with the determination of income and distributive share of income under sections 702 and 704 and Subchapter S of the Internal Revenue Code (26 USCA 702 and 704). For tax years ending prior to July 11, 2005 (the effective date of Public Act 94-0171), the credit may not be carried forward or back. For tax years ending on or after July 11, 2005, *if the amount of the credit exceeds the tax liability for the year, the excess may be carried forward and applied to the tax liability of the 5 taxable years following the excess credit year. The credit shall be applied to the earliest year for which there is a tax liability. If there are credits from more than one tax year that are available to offset a tax liability, the earlier credit shall be applied first.* In no event shall a credit under the Act reduce the taxpayer's liability to less than zero. [35 ILCS 5/213]
- b) For accredited productions commencing before May 1, 2006, eligible applicants will be awarded *a credit equal to 25% of the Illinois labor expenditures approved by the Department* for an accredited production. In addition, accredited productions approved by the Department after January 1, 2005 will be entitled to an additional 10% film tax credit for the Illinois labor expenditures approved by the Department for employees who earn more than \$1,000 on the production and live in geographic areas of high poverty or high unemployment in Illinois. (Section 10 of the Act)
- c) For accredited productions commencing on or after May 1, 2006, eligible applicants will be awarded *a credit equal to 20% of the Illinois production spending approved by the Department plus 15% of Illinois labor expenditures approved by the Department* for employees who earn more than \$1,000 on the production and live in geographic areas of high poverty or high unemployment in Illinois. (Section 10 of the Act)

(Source: Section 528.75 renumbered from Section 528.70 and amended at 31 Ill. Reg. 2253, effective JAN 18 2007)

EFFECTIVE DATE

JAN 18 2007

SOS-CODE DIV.

Section 528. 80 Interim and Final Film Tax Credit Certifications (Repealed)

(Source: Repealed at 31 Ill. Reg. 2253, effective JAN 18 2007)

Section 528.85 Transfer of Tax Credit

- a) *A transfer of the credit may be made by the applicant earning the credit within one year after the credit is awarded in accordance with rules adopted by the Department of Commerce and Economic Opportunity. (Section 213 of the Illinois Income Tax Act; see Public Act 94-0171)*
- b) For purposes of this provision, a tax credit is earned on the date that the tax credit certificate is issued under Section 528.70 of this Part.
- c) Tax credits earned by an applicant in a taxable year ending prior to July 11, 2005 (the effective date of Public Act 94-0171) may not be transferred.
- d) For purposes of this Section, a tax credit earned by a partnership or Subchapter S corporation shall be treated as having been earned by its partners in the amounts determined under 86 Ill. Adm. Code 100.2185(c).
- e) Transfer of a tax credit shall be made as follows:
 - 1) The applicant earning the credit shall request the transfer from the Department, in writing, identifying the transferees (name, tax identification number, mailing address) and the amount to be transferred to each transferee, and the applicant shall return the tax credit certificate to the Department, together with its transfer request. The applicant is allowed to transfer or allocate a single credit to no more than 10 transferees.
 - 2) A request for transfer may be submitted with the applicant's request for the tax credit certificate under Section 528.70 of this Part, in which case the Department may issue the requested certificates of transfer in lieu of the tax credit certificate.
 - 3) If the transfer request is timely and meets the requirements of this Section, the Department shall issue a certificate of transfer to each transferee, identifying the original tax credit certificate and stating the amount of the credit transferred.
 - 4) If the applicant earning the credit transfers less than the full amount of the credit, the Department shall issue a certificate of transfer to the applicant identifying the original tax credit certificate and stating the amount of tax credit retained by the applicant.

EFFECTIVE DATE

JAN 10 2007

SOS-CODE DIV.

- 5) If the person transferring the credit is a partner or shareholder in a partnership or Subchapter S corporation that earned the credit, that person shall submit to the Department, in lieu of the original tax credit certificate, copies of the tax credit certificates and copies of the Schedule K-1-P received by that person from the partnership or Subchapter S corporation stating that person's share of the credit.

(Source: Added at 31 Ill. Reg. 2253, effective JAN 18 2007)

EFFECTIVE DATE

JAN 18 2007

SOS-CODE DIV.

Section 528.90 Non-Compliance Provisions (Repealed)

(Source: Repealed at 31 Ill. Reg. 2253, effective JAN 18 2007)

EFFECTIVE DATE

JAN 18 2007

SOS-CODE DIV.

Section 528.100 Books and Records

The applicant must at all times keep proper books of record and accounts in accordance with generally accepted accounting principles consistently applied, with the books, records, or papers related to the accredited production in the custody or control of the taxpayer open for reasonable Department inspection and audits, and including, without limitation, the making of copies of the books, records, or papers, and the inspection or appraisal of any of the assets of the applicant or the accredited production. (Section 15(f) of the Act)

(Source: Amended at 31 Ill. Reg. 2253, effective JAN 18 2007)

EFFECTIVE DATE

JAN 18 2007

SOS-CODE DIV.

Section 528.110 Data for Reports to the General Assembly

- a) In determining whether the film tax credit program is effective in creating jobs in Illinois, the Department is responsible for determining the overall success of the program. Correspondingly, on a quarterly basis, the Department is required to advise the Illinois General Assembly of the film tax credit program's economic impact with respect to the types of jobs created, the amount and type of expenditures made in Illinois, and whether the human infrastructure of the motion picture industry reflects the diversity of the State. Each report to the General Assembly will provide an overall view of the Illinois film industry with respect to the jobs created and expenditures made for the requisite quarter. In order to satisfy this requirement, each applicant will be required to use its best efforts in submitting information pertaining to the following.
- 1) Types of jobs created:
 - A) Number of entry level positions;
 - B) Number of management related positions;
 - C) Number of talent positions;
 - D) Number of production staff and crew; and
 - E) Number of vendor related positions.
 - 2) Illinois expenditures: The amount of expenditures attributable to:
 - A) Labor;
 - B) Vendors; and
 - C) Other Illinois productions spending.
 - 3) Data or documentation submitted to the Department in connection with the achievement of, or good-faith efforts to achieve, the goals outlined in the diversity plan.
- b) *At the end of each fiscal year, the Department must submit to the General Assembly a report that includes, without limitation, the following information:*

EFFECTIVE DATE

JAN 10 2012

SOS-CODE DIV.

- 1) *an identification of each material vendor that provided goods or services that were included in an accredited production's Illinois production spending;*
- 2) *the amount paid to each identified material vendor by the accredited production;*
- 3) *for each identified material vendor, a statement as to whether the vendor is a minority owned business or a female owned business, as defined under Section 2 of the Business Enterprise for Minorities, Females, and Persons with Disabilities Act, which the Department will determine by comparing the vendors it has identified as providing goods or services that were included in an accredited production's Illinois production spending with the database of minority owned businesses and female owned businesses maintained by the Department of Central Management Services; and*
- 4) *a description of any steps taken by the Department to encourage accredited productions to use vendors who are a minority owned business or a female owned business. (Section 45(c) of the Act)*

JAN 18 2007

(Source: Added at 31 Ill. Reg. 2253, effective _____)

EFFECTIVE DATE

JAN 15 2007

SOS-CODE DIV.

Section 528.120 Confidentiality of Documents and Data

The Department will not permit public inspection or copying of any material that is or would be confidential under State law, specifically including the exemptions set forth in the Freedom of Information Act [5 ILCS 140]. If an applicant submits information it considers to be of a confidential nature as part of its application or request for a tax credit certificate, such information shall be marked or labeled "CONFIDENTIAL" in capital letters. The applicant shall also submit a statement briefly setting forth the grounds on which the information should be treated as confidential. The Department, based on the propriety nature of the material and privacy of the applicant's confidential information, shall not disclose the materials to the public.

(Source: Added at 31 Ill. Reg. 2253, effective JAN 18 2007)

EFFECTIVE DATE

JAN 18 2007

SOS-CODE DIV.