

Sec. 12-217jj. Film production tax credit. Regulations. (a) As used in this section:

(1) "Commissioner" means the Commissioner of Revenue Services.

(2) "Department" means the Department of Economic and Community Development.

(3) (A) "Qualified production" means entertainment content created in whole or in part within the state, including motion pictures; documentaries; long-form, specials, mini-series, series, sound recordings, videos and music videos and interstitials television programming; interactive television; interactive games; videogames; commercials; any format of digital media, including an interactive web site, created for distribution or exhibition to the general public; 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 qualified production via any means and media in any digital media format, film or videotape, provided such program meets all the underlying criteria of a qualified production.

(B) "Qualified production" shall not include any ongoing television program created primarily as news, weather or financial market reports, a production featuring current events, 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, a production used for corporate training or in-house corporate advertising or other similar productions, or any production for which records are required to be maintained under 18 USC 2257 with respect to sexually explicit content.

(4) "Eligible production company" means a corporation, partnership, limited liability company, or other business entity engaged in the business of producing qualified productions on a one-time or ongoing basis, and qualified by the Secretary of the State to engage in business in the state.

(5) "Production expenses or costs" means all expenditures clearly and demonstrably incurred in the state in the preproduction, production or postproduction costs of a qualified production, including:

(A) Expenditures incurred in the state in the form of either compensation or purchases including production work, production equipment not eligible for the infrastructure tax credit provided in section 12-217kk, production software, postproduction work, postproduction equipment, postproduction software, set design, set construction, props, lighting, wardrobe, makeup, makeup accessories, special effects, visual effects, audio effects, film processing, music, sound mixing, editing, location fees, soundstages and any and all other costs or services directly incurred in connection with a state-certified qualified production;

(B) Expenditures for distribution, including preproduction, production or postproduction costs relating to the creation of trailers, marketing videos, commercials, point-of-purchase videos and any and all content created on film or digital media,

including the duplication of films, videos, CDs, DVDs and any and all digital files now in existence and those yet to be created for mass consumer consumption; the purchase, by a company in the state, of any and all equipment relating to the duplication or mass market distribution of any content created or produced in the state by any digital media format which is now in use and those formats yet to be created for mass consumer consumption; and

(C) "Production expenses or costs" does not include the following: (i) On and after January 1, 2008, compensation in excess of fifteen million dollars paid to any individual or entity representing an individual, for services provided in the production of a qualified production and on or after January 1, 2010, compensation subject to Connecticut personal income tax in excess of twenty million dollars paid in the aggregate to any individuals or entities representing individuals, for star talent provided in the production of a qualified production; (ii) media buys, promotional events or gifts or public relations associated with the promotion or marketing of any qualified production; (iii) deferred, leveraged or profit participation costs relating to any and all personnel associated with any and all aspects of the production, including, but not limited to, producer fees, director fees, talent fees and writer fees; (iv) costs relating to the transfer of the production tax credits; (v) any amounts paid to persons or businesses as a result of their participation in profits from the exploitation of the qualified production; and (vi) any expenses or costs relating to an independent certification, as required by subsection (g) of this section, or as the department may otherwise require, pertaining to the amount of production expenses or costs set forth by an eligible production company in its application for a production tax credit.

(6) "Sound recording" means a recording of music, poetry or spoken-word performance, but does not include the audio portions of dialogue or words spoken and recorded as part of a motion picture, video, theatrical production, television news coverage or athletic event.

(7) "State-certified qualified production" means a qualified production produced by an eligible production company that (A) is in compliance with regulations adopted pursuant to subsection (k) of this section, (B) is authorized to conduct business in this state, and (C) has been approved by the department as qualifying for a production tax credit under this section.

(8) "Interactive web site" means a web site, the production costs of which (A) exceed five hundred thousand dollars per income year, and (B) is primarily (i) interactive games or end user applications, or (ii) animation, simulation, sound, graphics, story lines or video created or repurposed for distribution over the Internet. An interactive web site does not include a web site primarily used for institutional, private, industrial, retail or wholesale marketing or promotional purposes, or which contains obscene content.

(9) "Post-certification remedy" means the recapture, disallowance, recovery, reduction, repayment, forfeiture, decertification or any other remedy that would have the effect of reducing or otherwise limiting the use of a tax credit provided by this section.

(10) "Compensation" means base salary or wages and does not include bonus pay, stock options, restricted stock units or similar arrangements.

(b) The Department of Economic and Community Development shall administer a system of tax credit vouchers within the resources, requirements and purposes of this section for eligible production companies producing a state-certified qualified production in the state.

(1) For income years commencing on or after January 1, 2006, but prior to January 1, 2010, any eligible production company incurring production expenses or costs in excess of fifty thousand dollars shall be eligible for a credit against the tax imposed under chapter 207 or this chapter equal to thirty per cent of such production expenses or costs.

(2) For income years commencing on or after January 1, 2010, (A) any eligible production company incurring production expenses or costs of not less than one hundred thousand dollars, but not more than five hundred thousand dollars, shall be eligible for a credit against the tax imposed under chapter 207 or this chapter equal to ten per cent of such production expenses or costs, (B) any such company incurring such expenses or costs of more than five hundred thousand dollars, but not more than one million dollars, shall be eligible for a credit against the tax imposed under chapter 207 or this chapter equal to fifteen per cent of such production expenses or costs, and (C) any such company incurring such expenses or costs of more than one million dollars shall be eligible for a credit against the tax imposed under chapter 207 or this chapter equal to thirty per cent of such production expenses or costs.

(c) No eligible production company incurring an amount of production expenses or costs that qualifies for such credit shall be eligible for such credit unless on or after January 1, 2010, such company conducts (1) not less than twenty-five per cent of principal photography days within the state, or (2) expends not less than fifty per cent of postproduction costs within the state, or (3) expends not less than one million dollars of postproduction costs within the state.

(d) (1) For income years commencing on or after January 1, 2009, but prior to January 1, 2010, fifty per cent of production expenses or costs shall be counted toward such credit when incurred outside the state and used within the state, and one hundred per cent of such expenses or costs shall be counted toward such credit when incurred within the state and used within the state.

(2) For income years commencing on or after January 1, 2010, no expenses or costs incurred outside the state and used within the state shall be eligible for a credit, and one hundred per cent of such expenses or costs shall be counted toward such credit when incurred within the state and used within the state.

(e) On and after July 1, 2006, and for income years commencing on or after January 1, 2006, any credit allowed pursuant to this subsection may be sold, assigned or

otherwise transferred, in whole or in part, to one or more taxpayers, provided no credit, after issuance, may be sold, assigned or otherwise transferred, in whole or in part, more than three times.

(f) On and after July 1, 2006, and for income years commencing on or after January 1, 2006, all or part of any such credit allowed under this subsection shall be claimed against the tax imposed under chapter 207 or this chapter for the income year in which the production expenses or costs were incurred, or in the three immediately succeeding income years. Any production tax credit allowed under this subsection shall be nonrefundable.

(g) (1) An eligible production company shall apply to the department for a tax credit voucher on an annual basis, but not later than ninety days after the first production expenses or costs are incurred in the production of a qualified production, and shall provide with such application such information as the department may require to determine such company's eligibility to claim a credit under this section. No production expenses or costs may be listed more than once for purposes of the tax credit voucher pursuant to this section, or pursuant to section 12-217kk or 12-217ll, and if a production expense or cost has been included in a claim for a credit, such production expense or cost may not be included in any subsequent claim for a credit.

(2) Not later than ninety days after the end of the annual period, or after the last production expenses or costs are incurred in the production of a qualified production, an eligible production company shall apply to the department for a production tax credit voucher, and shall provide with such application such information and independent certification as the department may require pertaining to the amount of such company's production expenses or costs. Such independent certification shall be provided by an audit professional chosen from a list compiled by the department. If the department determines that such company is eligible to be issued a production tax credit voucher, the department shall enter on the voucher the amount of production expenses or costs that has been established to the satisfaction of the department and the amount of such company's credit under this section. The department shall provide a copy of such voucher to the commissioner, upon request.

(3) The department shall charge a reasonable administrative fee sufficient to cover the department's costs to analyze applications submitted under this section.

(h) If an eligible production company sells, assigns or otherwise transfers a credit under this section to another taxpayer, the transferor and transferee shall jointly submit written notification of such transfer to the department not later than thirty days after such transfer. If such transferee sells, assigns or otherwise transfers a credit under this section to a subsequent transferee, such transferee and such subsequent transferee shall jointly submit written notification of such transfer to the department not later than thirty days after such transfer. The notification after each transfer shall include the credit voucher number, the date of transfer, the amount of such credit transferred, the tax credit balance before and after the transfer, the tax identification numbers for both the transferor and the

transferee, and any other information required by the department. Failure to comply with this subsection will result in a disallowance of the tax credit until there is full compliance on the part of the transferor and the transferee, and for a second or third transfer, on the part of all subsequent transferors and transferees. The department shall provide a copy of the notification of assignment to the commissioner upon request.

(i) Any eligible production company that submits information to the department that it knows to be fraudulent or false shall, in addition to any other penalties provided by law, be liable for a penalty equal to the amount of such company's credit entered on the production tax credit certificate issued under this section.

(j) No tax credits transferred pursuant to this section shall be subject to a post-certification remedy, and the department and the commissioner shall have no right, except in the case of possible material misrepresentation or fraud, to conduct any further or additional review, examination or audit of the expenditures or costs for which such tax credits were issued. The sole and exclusive remedy of the department and the commissioner shall be to seek collection of the amount of such tax credits from the entity that committed the fraud or misrepresentation.

(k) The department, in consultation with the commissioner, shall adopt regulations, in accordance with the provisions of chapter 54, as may be necessary for the administration of this section.

(P.A. 06-83, S. 20; 06-186, S. 83; 06-187, S. 79; P.A. 07-236, S. 1; June Sp. Sess. P.A. 07-4, S. 69, 70; June Sp. Sess. P.A. 07-5, S. 13; P.A. 08-142, S. 1; June Sp. Sess. P.A. 09-3, S. 97; Sept. Sp. Sess. P.A. 09-8, S. 1-3; P.A. 10-107, S. 1; June Sp. Sess. P.A. 10-1, S. 61.)

History: P.A. 06-83 effective July 1, 2006, and applicable to income years commencing on or after January 1, 2006; P.A. 06-186 amended Subsec. (a) to redefine "qualified production" by deleting exception and changing reference to obscene material and to redefine "production expenses or costs" by eliminating requirement that they be in cash, requiring intellectual property to be produced primarily in state, requiring expenditures to be incurred within state rather than paid to persons authorized to do business in state, eliminating provision allowing commissioner to determine other production expenses or costs, exempting talent fees and making technical changes, amended Subsec. (b) by replacing former provisions with provisions allowing any eligible production company to receive 30% credit and allowing a three-year carryforward, eliminated former Subsec. (c) re wage tax credit, redesignated existing Subsec. (d) as new Subsec. (c) and made conforming changes therein, eliminated former Subsec. (e) re carryforward period, inserted new Subsec. (d) re procedure upon transfer of credit, and redesignated existing Subsec. (f) as new Subsec. (e) and amended same to require the commission, in consultation with the commissioner, to adopt regulations, effective July 1, 2006, and applicable to income years commencing on or after January 1, 2006; P.A. 06-187 amended Subsec. (f) to require the commission, in consultation with the commissioner, to adopt regulations, effective July 1, 2006 (Revisor's note: In Subsec.

(a)(6)(A), a reference to "subsection (f) of this section" was changed editorially by the Revisors to "subsection (e) of this section", for accuracy); P.A. 07-236 amended Subsec. (a) to redefine "qualified production" and "production expenses or costs" and add definitions of "sound recording", "interactive web site" and "post-certification remedy", amended Subsec. (b) to divide existing provisions into Subdivs. (1) to (3) and, in Subdiv. (1), to apply credit to taxes due under chapter 207 and add Subpara. (A) re expenses or costs on and after January 1, 2009, and Subpara. (B) re expenses or costs on and after January 1, 2012, and, in Subdiv. (2), to limit credit transfers to three times, amended Subsec. (c) to add provisions in Subdiv. (1) to prohibit limit on listing expenses or costs on a tax credit voucher more than one once, to add new Subdiv. (2) re requirements for applying for tax credit vouchers, and to redesignate existing Subdiv. (2) as Subdiv. (3), amended Subsec. (d) to add provisions re second or third transfers, added new Subsec (e) re submission of false or fraudulent information and Subsec. (f) re post-certification remedy, redesignated existing Subsec. (e) as Subsec. (g) and made conforming changes throughout, effective July 1, 2007, and applicable to income years commencing on or after January 1, 2007; June Sp. Sess. P.A. 07-4 amended Subsec. (a) by making a technical change in Subdiv. (3)(A) and inserting "in the state" re expenditures incurred in Subdiv. (5), effective July 1, 2007, and applicable to income years commencing on or after January 1, 2007, and amended Subsec. (c) by inserting "and independent certification" in Subdivs. (2) and (3), effective July 1, 2007; June Sp. Sess. P.A. 07-5 amended Subsec. (f) to substitute "commission" for "commissioner" re issuance of tax credit voucher and make technical changes, effective October 6, 2007; P.A. 08-142 amended Subsec. (b) by changing eligibility date in Subdiv. (1) from income years commencing on or after January 1, 2007, to income years commencing on or after January 1, 2006, and amending Subdivs. (2) and (3) to specify that provisions are applicable on and after July 1, 2006, for income years commencing on or after January 1, 2006, effective June 5, 2008; June Sp. Sess. P.A. 09-3 made changes throughout to transfer responsibility for program from Commission on Culture and Tourism to Department of Economic and Community Development, amended Subsec. (a) by deleting infomercials from definition of "qualified production" in Subdiv. (3)(A) and removing compensation in excess of \$20,000,000 and costs of independent certification from definition of "production expenses or costs" in Subdiv. (5)(C), amended Subsec. (b)(1) by designating existing provisions re income years on or after January 1, 2006, as new Subpara. (A), amending same to make applicable prior to January 1, 2010, and replacing former Subparas. (A) and (B) with new Subparas. (B) to (D) re spending and in-state work required to qualify for credit, amended Subsec. (c) by deleting former Subdiv. (2) re interim voucher, redesignating existing Subdiv. (3) as Subdiv. (2), amending same to add provision re independent certification provided by audit professional chosen from list, and adding new Subdiv. (3) re administrative fee, amended Subsec. (e) by deleting "wilfully" re submission of information, and amended Subsec. (f) by replacing former provisions with provisions re post-certification remedy, effective September 9, 2009, and applicable to income years commencing on or after January 1, 2010; Sept. Sp. Sess. P.A. 09-8 amended Subsec. (b) by replacing "not less than five hundred thousand one dollars" with "more than five hundred thousand dollars" in Subdiv. (1)(B)(ii), adding provision re postproduction costs in Subdiv. (1)(C) and inserting "all or part of" re credit in Subdiv. (3), effective October 5, 2009; P.A. 10-107 amended Subsec. (a) by deleting

"development" from definition of "production expenses or costs" in Subdiv. (5) and adding Subdiv. (10) defining "compensation", redesignated existing Subsec. (b)(1) as Subsec. (b) and made technical changes therein, redesignated existing Subsec. (b)(1)(C) as new Subsec. (c) and amended same by changing principal photography days requirement from 50% to 25% and adding "or (C) expends not less than one million dollars of postproduction costs within the state" and redesignated existing Subsecs. (b)(1)(D) to (g) as Subsecs. (d) to (k), effective July 1, 2010, and applicable to income years commencing on or after January 1, 2010; June Sp. Sess. P.A. 10-1 made technical changes in Subsec. (c), effective July 1, 2010, and applicable to income years commencing on or after January 1, 2010 (Revisor's note: In 2011, internal references to "subsection (c) of this section" in Subsec. (a)(5)(C)(vi) and "subsection (g) of this section" in Subsec. (a)(7)(A) were changed editorially by the Revisors to "subsection (g) of this section" and "subsection (k) of this section", respectively, to reflect changes made by P.A. 10-107).