

Updated Guidelines for the Motion Picture Production Tax Credit

***These Guidelines supersede the Guidelines for the Virginia Motion Picture Production Tax Credit issued by the Department on August 6, 2012 (Public Document 12-128) and December 21, 2010 (Public Document 10-281).*

Introduction

During the 2010 Session, the Virginia General Assembly enacted House Bill 861 and Senate Bill 257 (2010 *Acts of Assembly*, Chapters 418 and 599) which established the Motion Picture Production Tax Credit. This is a refundable income tax credit for certain motion picture production companies that film motion picture productions in Virginia. For the 2012-2014 biennium, the credit was capped at \$5 million. For the 2010-2012 biennium, the credit was capped at \$2.5 million.

During the 2014 Session, the Virginia General Assembly enacted House Bill 460 (2014 *Acts of Assembly*, Chapter 730) which increased the credit cap to \$6.5 million per fiscal year for Fiscal Years 2015 and thereafter, imposed a January 1, 2019 sunset date on the credit, and amended the reporting requirements imposed on the Department of Taxation (“the Department”).

These guidelines are published by the Department to provide updated guidance to taxpayers regarding the Motion Picture Production Tax Credit as required by *Va. Code* § 58.1-439.12.03. These guidelines are not rules or regulations subject to the provisions of the Administrative Process Act (*Va. Code* § 2.2-4000 *et seq.*) according to the provisions outlined in *Va. Code* § 58.1-439.12.03. These guidelines supersede the Guidelines for the Virginia Motion Picture Production Tax Credit issued by the Department on August 6, 2012 (Public Document 12-128) and December 21, 2010 (Public Document 10-281). As necessary, additional information will be published and posted on the Department’s website, www.tax.virginia.gov.

These guidelines represent the Department’s interpretation of the relevant laws. They do not constitute formal rulemaking and hence do not have the force and effect of law or regulation. In the event that the final determination of any court holds that any provision of these guidelines is contrary to law, taxpayers who follow these guidelines will be treated as relying on erroneous written advice for purposes of waiving penalty and interest under *Va. Code* §§ 58.1-105, 58.1-1835 and 58.1-1845. To the extent there is a question regarding the application of these guidelines, taxpayers are encouraged to write to the Department and seek a written response to their question.

General Overview

The Motion Picture Production Tax Credit is comprised of three separate components, (1) a base credit, (2) an additional Virginia resident employee credit, and (3) an additional Virginia resident first-time industry employee credit. A motion picture production company (as defined in the “Definitions” section below) may apply to the Virginia Film Office (“VFO”) for each of the above credits that it qualifies for in a single taxable year. To be eligible for the two additional Virginia resident credits, a production company must qualify for the base credit.

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Base Credit: Any production company with qualifying expenses of at least \$250,000 with respect to a motion picture production filmed in Virginia is eligible for the base credit. The base credit is equal to 15 percent of a production company's qualifying expenses, or 20 percent of such expenses if the motion picture production is filmed in an economically distressed area of Virginia as designated by the Virginia Economic Development Partnership Authority.

Additional Virginia Resident Credit: A production company that qualifies for the base credit may qualify for an additional credit equal to 10 percent of its total aggregate payroll for Virginia residents employed in connection with a motion picture production filmed in Virginia. To be eligible for this credit, the production company's total costs in Virginia related to the motion picture production must be at least \$250,000. If the production company's total costs in Virginia related to the motion picture production exceed \$1 million, the amount of this additional credit is increased to 20 percent of the total aggregate payroll for Virginia residents employed in connection with the motion picture production.

Additional Virginia Resident First-Time Industry Employee Credit: A production company that qualifies for the base credit is eligible for an additional credit equal to 10 percent of the total aggregate payroll for Virginia residents employed for the first time as actors or members of a production crew in connection with a motion picture production filmed in Virginia. "Employed for the first time as an actor or member of a production crew" means receiving compensation and wages for the first time in Virginia as either an actor or as a member of the production crew.

Definitions

"Motion picture production company" ("production company") means any individual, corporation, partnership, electing small business corporation (S corporation), limited liability company, or other form of business association that films a motion picture production. For purposes of determining whether a company qualifies to receive the Motion Picture Production Tax Credit, an entity that is at least 80 percent owned by a production company and that is required to file a Virginia income tax return may also be considered a production company if the memorandum of understanding between the VFO and the production company designates such entity as the company that will receive the credit. If a production company hires another production company to film a motion picture production, only the hiring production company may claim the Motion Picture Production Tax Credit for such motion picture production.

"Motion picture production" means any recorded motion picture project using a series of moving images intended for distribution or commercial use.

"Production" means the period encompassing the pre-production, principal photography, and post-production of a recorded motion picture project.

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Minimum Eligibility Requirements

A production company may be eligible for the Motion Picture Production Tax Credit if it:

- Satisfactorily completes the initial application at least 30 days prior to production (found on the VFO website, <http://FilmVirginia.org>);
- Meets all deadlines outlined by the VFO;
- Completes all of the requirements specified in the memorandum of understanding;
- Films a motion picture production eligible for the credit in Virginia;
- Has at least \$250,000 in qualifying expenses;
- Makes a best faith effort to film at least 50 percent of the motion picture production's principal photography in Virginia; and
- Agrees to contain a "filmed in Virginia" credit and Virginia logo in the final motion picture production.

Motion Picture Productions Eligible for the Credit

The credit will only be granted for expenses with respect to motion picture productions that are eligible for the credit. Motion picture productions that are eligible for the credit include, but are not limited to:

- Feature length films;
- Documentaries;
- Long-form specials;
- Television mini-series;
- Episodic television series, which include a television program consisting of multiple episodes of a single season. An entire season of episodes is considered to be one motion picture production;
- Commercial advertisements, which include advertisements recorded on film, videotape or digital medium for multi-market distribution which extends outside the state of Virginia by way of broadcast television networks, cable, satellite, internet, DVD, home video or motion picture theaters;
- Videos and music videos; and
- Interactive television.

Digital interactive media productions are eligible for the credit in taxable years beginning on or after January 1, 2013. "Digital interactive media productions" are any interactive entertainment intended for commercial exploitation, including, but not limited to:

- Video game projects;
- Console games;
- Computer games;
- Handheld console games;
- Mobile electronic device games; and

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- Massively multi-player online video games (MMOG) and virtual worlds that meet the requirement of multi-market distribution via the Internet or any other channel of exhibition.

Motion Picture Productions Ineligible for the Credit

The following productions are ineligible for the credit:

- Political advertising or editorial based content;
- A television program consisting primarily of news, weather or financial market reports;
- A live or pre-recorded motion picture production featuring current events, sporting events or an awards show or other gala event;
- A reality television production;
- Motion picture productions primarily featuring a game, questionnaire, auction or contest;
- Any motion picture production that contains obscene material, as determined by the VFO;
- Motion picture productions with the sole purpose of fundraising;
- A long-form motion picture production that primarily markets a product or service;
- A motion picture production used for corporate training or in-house corporate advertising;
- Games of chance websites and other motion picture productions related to games of chance;
- Marketing and promotional websites, or microsites;
- All forms of social media, social networking, marketing, and brand promotion;
- Infomercials, infotainment, or edutainment content;
- Solicitation-based motion picture productions; and
- Branding, marketing, promotion, and e-advertising campaigns.

Qualifying Expenses

“Qualifying expenses” means the sum of actual amounts spent in Virginia by a production company in connection with a motion picture production filmed in Virginia for:

- Goods and services leased or purchased; and
- Compensation and wages paid to employees (not to exceed \$1 million per individual with respect to a single production).

Goods and Services

In the case of tangible property, qualifying expenses are expenses for goods and materials purchased or leased from a qualified vendor that are actually and physically provided, supplied, consumed or used within Virginia. A “qualified vendor” is any individual, partnership, corporation, limited liability company or other business entity that:

- Is qualified to do business in Virginia;

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- Maintains a physical place of business in Virginia; and
- Provides goods and services in its ordinary course of business to a production company during the filming of a motion picture production.

“Goods and services” include physical products and services that are leased or purchased in Virginia in connection with a motion picture production filmed in Virginia. For goods with a purchase price of \$25,000 or more, the amount included in qualifying expenses is the purchase price of the goods less the fair market value of the goods at the time production is completed.

Example 1:

Taxpayer A is a production company that is filming a motion picture production in Virginia. During Taxable Year 2015, Taxpayer A purchased a new car in Virginia for \$50,000 to be used as a prop on the set of the motion picture production. The car’s value depreciated to \$40,000 during production. Taxpayer A may only report the \$10,000 of depreciation as a qualifying expense.

In the case of services, qualifying expenses are expenses, not including wages, for services performed within Virginia.

Expenses that are for goods and services may only qualify for the base portion of the credit.

Compensation and Wages

“Compensation and wages” means “wages” as defined in Internal Revenue Code (“IRC”) § 3401. Only the first \$1 million of compensation paid to each employee will be considered a qualifying expense. Acceptable payment methods include, but are not limited to, direct payments, indirect payments through an agent, and payments through a personal service company or employee leasing company.

For purposes of the two additional Virginia resident credits, “payroll” is defined the same as “compensation and wages.”

Fringe benefits may qualify for the two additional Virginia resident credits to the extent they are included in the federal definition of “wages” and are subject to federal withholding pursuant to IRC § 3401. Fringe benefits that are not considered to be wages under federal law may qualify for the base credit to the extent such expenses were for qualifying goods and services, but may not qualify for the two additional Virginia resident credits. For additional information regarding the treatment of fringe benefits see [Public Document 13-188](#) (October 18, 2013).

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Examples of Qualifying Expenses

To the extent that they meet the above requirements, examples of qualifying expenses include, but are not limited to:

- Resident and non-resident cast and crew wages (less than or equal to \$1 million per individual);
- Accommodations;
- Costs of set construction and operations;
- Editing and related services;
- Photography;
- Sound synchronization;
- Lighting;
- Wardrobe, makeup, and accessories;
- Film processing;
- Sound mixing;
- Special and visual effects;
- Music;
- Location fees;
- Purchase and rental of facilities and equipment;
- Licensing, registration, and permitting fees;
- Costs associated with the independent certified public accountant's report; and
- Any other production expenses for which taxes are assessed or imposed by the state, and that are approved by the VFO.

Example of non-qualifying expenses include:

- Development costs;
- Marketing promotion expenses;
- Distribution expenses;
- Any expenses incurred prior to pre-production or after post-production of a feature film, television production or video game; and
- Any expenditures made or incurred outside of Virginia.

The credit is computed based on all of a production company's qualifying expenses that were incurred with respect to a motion picture production, not just the qualifying expenses incurred during the taxable year when production was completed.

Application Process and Procedures

The application process for the Motion Picture Production Tax Credit is as follows:

- The production company must submit its application to the VFO no later than 30 days prior to the planned beginning of production;
- The production company must begin production within 90 days of the approval of the application;

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- Final accounting documents must be submitted to the VFO within 120 days after the completion of principal photography;
- Upon receipt of all agreed upon final accounting documents, the VFO has 30 days to review such materials and determine the amount of credits such production company is eligible to receive; and
- Upon approval of the final accounting documents, the VFO has 30 days to furnish the tax credit certificate to the production company.

Initial Application

Production companies meeting the minimum eligibility requirements outlined above must submit an initial application to the VFO at least 30 days prior to beginning production. The application must include any documentation required by the VFO. Applications can be found on the VFO's website, at <http://www.FilmVirginia.org>.

Processing of Applications by the VFO

The VFO will review each application to ensure that it is complete. The VFO will not review any incomplete applications. If an application is incomplete, the VFO will contact the production company to request any missing information, and will only review the application upon receiving such information.

Completed applications will be reviewed by the VFO to determine whether a production company is eligible for the credit, the total cost of production, the estimated amount of qualified expenses, and the amount of credits to allocate to the production company. The VFO will determine which applications to approve based on any or all of the following factors:

- The amount of in-state production spending;
- Whether the motion picture production involves physical production within Virginia;
- The number of residents of Virginia that will be employed by the motion picture production and the level of compensation they will be paid;
- The extent to which the motion picture production will contribute to the support and expansion of existing production companies in Virginia;
- The extent to which the motion picture production will impact existing local businesses and the local economy;
- The extent to which the motion picture production will involve existing and new companies located in Virginia;
- The extent to which the motion picture production provides employment at facilities physically located within Virginia; and
- Any other relevant considerations as determined by the VFO.

Motion picture productions will only be considered for credit allocation when funding is available. As funding is limited, it is possible that all of the funds will have been reserved by earlier motion picture productions at the time a production company submits its initial application. In this case, the VFO will inform the production company of the next date when a review of the motion picture production may be performed.

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If the next review date is more than six months after the date the production company submitted its application, such application will expire and the production company will be required to submit a new application to the VFO for the motion picture production to be considered for credit allocation. The VFO will inform a production company when an application has expired. A production company may request a waiver allowing its application to remain eligible for credit allocation for more than six months by submitting such request in writing to the VFO.

The allocation of available credit funding is at the sole discretion of the VFO and its decisions as to credit eligibility and the amount of credit funding are final. Production companies that are rejected by the VFO for a particular motion picture production may apply in the future for tax credits regarding other motion picture productions.

Initial Credit Notification

The VFO intends to approve or deny completed applications within 10 business days of receiving an application, but reserves the right to take up to 30 days to respond.

A decision to potentially grant credits to a production company will be confirmed by a Credit Allocation Letter of Intent that will include:

- The maximum amount of credits allotted;
- The date that eligibility for qualifying expenses begins; and
- The date that eligibility for qualifying expenses ends.

After receipt of the Credit Allocation Letter of Intent, the production company will enter into a memorandum of understanding with the VFO outlining the requirements the production company must meet in order to receive the credits. At a minimum, each memorandum of understanding will include the following:

- The estimated amount of money to be spent in Virginia;
- The estimated number of Virginia resident hires;
- The timeline for completing production in Virginia; and
- The maximum amount of credits to be allocated to the production company.

By signing a memorandum of understanding, the production company forfeits any right to contest the amount of credits that has been allocated to it and agrees that, while the amount of credits granted upon the completion of production may be lower than the maximum amount listed on the memorandum of understanding based on the amount of qualifying expenses, it may not exceed such allocation.

After receipt of the Credit Allocation Letter of Intent, the production company is required to begin production within 90 days. Production companies must receive a Credit Allocation Letter of Intent from the VFO before making or incurring any qualifying expenses in order for those expenses to be eligible for the credit.

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Requirements During Production

Production companies must keep proper books, records, and papers related to the accredited motion picture production in accordance with generally accepted accounting principles. Such documentation must remain available for reasonable inspection and audits by the Department, 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 motion picture production. This must include all vendor receipts substantiating the production company's qualifying expenses.

If physical production extends beyond one calendar year, the production company must file a report with the VFO that verifies the progress of production. The report shall include a detailed account of amounts spent in Virginia at the current stage of production and provide proof that it is moving forward.

Credit Approval After Production

Within 120 days of the completion of principal photography, the production company must submit to the VFO proof of the amount spent in Virginia, any additional documentation required by the VFO and the Department, and a form approved by the VFO and signed by a licensed independent certified public accountant ("CPA"). The CPA must certify that (i) he or she has reviewed the expenses claimed by the production company, (ii) such expenses meet the definition of qualifying expenses, and (iii) such expenses were incurred in Virginia by the production company in connection with a motion picture production filmed in Virginia. After receiving all agreed upon final accounting documents, the VFO has 30 days to review such materials.

Upon approval of the final accounting documents, the VFO shall issue a Certification Letter to the production company within 30 days indicating the amount of credits allocated to such production company. The Certification Letter will include the name of the motion picture production, a description of the motion picture production, and the amount of qualifying expenses.

Extension of Deadlines

A production company may request an extension of any of the above deadlines in the "Application Process and Procedures" section by submitting such request in writing to the VFO.

How to Claim the Credit

Upon receiving copies of the Certification Letter from the VFO, the taxpayer must file its Virginia income tax return and attach any required documentation in order to receive the Motion Picture Production Tax Credit. All taxpayers must claim the credit for the taxable year in which production was completed.

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Example 2:

Taxpayer B is a production company and a calendar year filer. Taxpayer B began a motion picture production on July 1, 2014 and completed production on December 1, 2014. Taxpayer B may claim any Motion Picture Production Tax Credits related to such motion picture production on its Virginia income tax return for Taxable Year 2014.

Example 3:

Taxpayer C is a production company and a calendar year filer. Taxpayer C began a motion picture production on December 1, 2014 and completed production on January 31, 2015. Taxpayer C may claim any Motion Picture Production Tax Credits related to such motion picture production on its Virginia income tax return for Taxable Year 2015.

Example 4:

Taxpayer D is a production company with a taxable year that begins on July 1 and ends on June 30 (i.e., a fiscal year filer). Taxpayer D began a motion picture production on March 1, 2015 and completed production on June 1, 2015. Taxpayer D may claim any Motion Picture Production Tax Credits related to such motion picture production on its Virginia income tax return for Taxable Year 2014.

Example 5:

Assume the same facts as in Example 4, except that Taxpayer E completed production on August 1, 2015. Taxpayer E may claim any Motion Picture Production Tax Credits related to such motion picture production on its Virginia income tax return for Taxable Year 2015.

Any taxpayer claiming this credit must maintain any information or records related to the credit and provide such documentation to the Department upon request.

Pass-Through Entities

Credits granted to a pass-through entity are generally required to be allocated to the partners, members, or shareholders in proportion to their ownership interest in the entity, or in accordance with a written agreement entered into by such individual partners, members, or shareholders. If a pass-through entity wishes to claim this credit at the entity level without allocating the credit its owners, the pass-through entity must so designate by entering the amount of the credit authorized by Virginia Film Office in their certification letter as indicated on Form 502.

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Department's Annual Report on the Motion Picture Production Tax Credit

The Department, in consultation with the VFO, must publish a report by November 1 of each year for the 12-month period ending the preceding December 31. This report will include the following information:

- Location of sites used in a motion picture production for which a Motion Picture Production Tax Credit was claimed;
- Qualifying expenses for which a credit was claimed, classified by whether the expenses were for goods, services, or compensation paid by the production company;
- Number of people employed in Virginia in connection with the motion picture production for which the credits were claimed; and
- The total cost to Virginia's general fund of the credits claimed.

Pursuant to 2014 House Bill 460, the Department is required to publish the information in such report regardless of how many taxpayers claim the credit in a taxable year.

Requesting Official Guidance Regarding the Credit

To request official written guidance from the Tax Commissioner regarding the Motion Picture Production Tax Credit, submit a letter to the Department in which you explain the issues you would like to receive guidance on and the relevant facts.

Additional Information

These Guidelines and rules are available on-line in the [Laws, Rules & Decisions](#) section of the Department's website. For additional information, please contact either the Department of Taxation at (804) 367-8037 (www.tax.virginia.gov) or the Virginia Film Office at (804) 545-5530 (<http://www.FilmVirginia.org>).

Approved:



Craig M. Burns
Tax Commissioner