

Iowa Film, Television and Video Project Promotion Program Update: A Year in Review

The Iowa Department of Economic Development (Department) currently administers the Iowa Film, Television and Video Project Promotion (IFTVPPP). The purpose of this program is to assist and encourage the production of film, television and video projects within the State of Iowa. This report is intended to summarize and update the Economic Development Board of program improvements made in recent months.

By August 2009, approximately \$32 million dollars in film tax credits were issued to 22 registered film projects enrolled in the IFTVPPP. However, the Department discovered a lack of oversight and potential problems with the accounting procedures. As such, the Department issued an informal competitive solicitation for a Certified Public Accountant to review expenditures associated with the 22 film projects. The Department selected Clifton Gunderson to conduct the expenditure review.

In September 2009, Governor Culver suspended the IFTVPPP and requested the Attorney General, State Auditor and the Iowa Department of Revenue to assist in a review of the IFTVPPP.

In October 2009, Clifton Gunderson issued the Consulting Engagement Report. The intention of the report was to determine compliance with Iowa Code sections 15.391—15.393 and 261 Iowa Administrative Code chapter 36. After review of project files, Clifton Gunderson summarized various issues within the IFTVPPP, including, but not limited to: Department procedures not followed; film project files maintained in a disorganized fashion; vendor invoices not submitted for approximately 20 film projects; and executed contracts amended without the Director's Office knowledge. *See Appendix A for additional information.*

In November 2009, Governor Culver partially lifted the suspension on the film tax credit program. Attorney General Miller provided guidance with respect to how the partial suspension would be administered to registered film projects. Under this partial suspension, the Department would not accept new applications, but projects that received an "application approved" status prior to September 18th would be allowed to engage in contract discussions and continue through the contracting process.

In December 2009, the Economic Development Board reduced the tax credit cap allocated to the IFTVPPP to an amount needed to cover only those film projects that had been "application approved" prior to the suspension. As such, the Department issued a Frequently Asked Questions designed to provide guidance regarding the IFTVPPP. *See Appendix B for additional information.*

The 2010 General Assembly suspended the IFTVPPP until July 1, 2013, pursuant to 2010 Iowa Acts, Senate File 2380. Hence, the Department currently does not have financial assistance or tax credits available for new film projects and is not accepting applications for new film projects at this time.

Since March 2010, the Department has made significant changes to the IFTVPPP, including outlining a new, standardized process that conforms to applicable state laws and has built-in checks and balances. The Department has worked collaboratively with the Attorney General's Office and the Iowa Department of Revenue to audit every project prior to tax credit issuance, and is providing consistent and accurate guidance to production companies interested in filming in Iowa.

Other improvements to the IFTVPPP include utilizing the database initially created for tracking the progress of film projects, creating one location for all film office project files, developing an inventory of all film projects submitted to the IFTVPPP and using standardized documentation.

As of August 2010, there have been approximately 158 projects that have participated in the IFTVPPP. Film projects can currently be categorized as follows: 30 film projects with an application approved but have not contracted with the Department; 45 film projects have an executed contract with the Department but tax credits have not been issued; 59 film projects have had the registration revoked; and 24 film projects have had tax credit certificates issued. See Appendix C for additional information.

Appendix A



**Iowa Department of Economic Development
Des Moines, Iowa**

**Consulting Engagement
August 19, 2009 – September 30, 2009**



Iowa Department of Economic Development
Mr. Richard Oshlo
Interim Director
200 East Grand Avenue
Des Moines, Iowa 50309

Dear Mr. Oshlo:

In connection with our consulting engagement, we have attached the following comments for the consideration of management of the Iowa Department of Economic Development (IDED). This report covers procedures performed at various times during August 19, 2009 through September 30, 2009.

Our engagement to perform these procedures was conducted as a consulting service engagement. We performed our engagement in accordance with the *Statement on Standards for Consulting Services of the American Institute of Certified Public Accountants*. The engagement is also subject to contract 10-BD-01. We were not engaged to, and did not, conduct an audit, the objective of which would be the expression of an opinion on any financial statement elements, accounts and items, or the internal control over financial reporting of IDED. Accordingly, we do not express any such opinion. In addition, we did not perform any management functions or make any management decisions as a result of this engagement.

Our engagement consisted of performing procedures as listed in the following report and agreed to by management of IDED. Procedures were performed at the IDED office in Des Moines, Iowa, solely to assist in department administration and operations. The sufficiency of the procedures is solely the responsibility of IDED management. Consequently, we make no representation regarding the sufficiency of the procedures, either for the purpose for which has been requested or for any other purpose.

The procedures performed were limited, and therefore, our findings may not necessarily disclose all significant matters. If we were to perform additional procedures, other matters might come to our attention that would have been reported to you.

These comments are intended solely for the information and use of the IDED management, and others within IDED and are not intended to be and should not be used by anyone other than these specified parties.

Clifton Gunderson LLP

West Des Moines, Iowa
October 1, 2009

Initially Requested Scope of Engagement

The original procedures to be performed were as follows:

A review of all Film, Television, and Video Project Promotion project files where tax credit certificates have been issued. Review of the 22 project files will be performed in a manner to determine compliance with Iowa Code Sections 15.391- 15.393 and Iowa Administrative Code Chapter 261-36.

The review will consist of, but not be limited to, the following:

1. Comparison of budgeted expenditures with actual receipts submitted by the recipient with a notation of discrepancies in the amount and type of expenditures such as:
 - a) Capital Expenditures – items such as aircraft, vehicles, audio and visual equipment.
 - b) Salary and Fringe Costs – including whether costs are in conformance with guidelines set forth in Iowa Code Section 15.393.
 - c) Types of expenditures (lease versus purchase of capital items)
2. Review of all other expenditures as budgeted and submitted by recipient.

Consultation Procedures Performed

We started the engagement as outlined above by the Iowa Department of Economic Development (IDED). However, we quickly discovered that we did not have sufficient information to perform the requested procedures. For example, vendor invoices were only received for two of the twenty-two projects. We expediently met with IDED management to discuss our initial findings and received approval of the changes in the scope of the engagement. The revised procedures were as follows:

1. Request all electronic information from the Iowa Film Office Manager, Tom Wheeler.
2. Develop electronic and paper files for each project.

3. Identify any situations that may require additional interpretation.
4. Request information from the production companies to verify the certificate value.

We contacted Mr. Wheeler to begin organizing the files and obtain background information on the projects. Mr. Wheeler provided to us what we were told was all available information. Mr. Wheeler was responsible for approval of applications, review of expenditures, calculation of qualifying expenditures, and issuance of certificates. The Director, Michael Tramontina, and the Deputy Director, Vince Lintz, were responsible for signing and reviewing all contracts as well as issued certificates.

The amount of time initially budgeted to perform the review was greatly exceeded. The files provided to us had limited information, and were inadequate to perform the review. A data base that was designed to track the status of the projects had not been used. The majority of the documentation was in e-mail format, with thousands of e-mails being reviewed. Until recently, we did not anticipate issuing a formal consulting report. The construction and review of files was a very time consuming process.

Due to the significant change in scope of the engagement, many meetings were held with management to discuss the various issues that needed to be addressed. The lack of invoices, signatures, proof of payment, and overall documentation caused an alteration to our procedures on a number of occasions.

Findings

Our findings from steps 1, 2, and 3, are summarized below. There are a number of different areas or items that appear unclear, or that may be questionable to qualify under Iowa statutes. It appears many of these areas may need policy clarification, or potential legislation depending on the intent of the legislation. In addition, we identified certain IDED procedures that were not followed, or may need to be revised. Furthermore, in consultation with management, it was decided that various issues needed to be resolved prior to completing step 4.

Due to confidentiality concerns and lack of complete documentation, we have not cited specific production companies related to the various questions that we have listed

below. For clarification purposes, some general examples are listed in some of the areas we identified.

Incomplete or Inadequate Records

Film Office files for all projects were maintained in a disorganized fashion. Despite being engaged to review all 22 projects which received tax credits, we found that vendor invoices and/or receipts had been received by the Film Office for only 2 of these 22 projects. We also noted that the custom-made data base that IDED had developed for tracking the status of the projects had not been used.

Contracts

Upon review, various inconsistencies with the contracts were noted. Contracts were apparently being changed and not identified as amended/revised contracts. The Director or Deputy Director did not appear to have been notified of the changes. The primary change in the contracts was the budget being increased. The contract often had the same date as the original contract. We were unable to identify any contracts formally labeled as amended. In certain instances, it appeared that the signature and review documents signed by IDED management were moved from the original IDED contract to the revised contract. We did not identify any communication or documentation by IDED management that the signature pages were to be moved from the original to the revised contract. There were also instances where we were unable to locate documents signed by management identifying that the contracts had been through the review process.

Broker's Fees

Often, the tax certificates awarded to the investors and producers were transferred to other taxpayers. The tax credits are purchased by the taxpayer from the investors and producers at a negotiated discount. Brokers are used to find buyers for the tax credits. Fees are paid to the brokers by the investors and producers, usually structured on a contingent fee basis of 3 to 4 percent of the certificate value. In many cases, the broker's fees were included as qualifying Iowa expenditures used to calculate the Iowa

credits, even though the certificates had not yet been issued. Thus, the expenditure for broker's fees actually occurred after the issuance of the certificate.

We identified amounts for broker's fees included in the qualifying expenditures which exceed \$100,000 for certain films. The total amount of broker's fees included in the productions exceeded \$500,000, generating in excess of \$250,000 in tax credits.

Pass Through Entities

In certain instances, limited liability companies (LLC's) were established as Iowa-based companies to purchase property and services from in-state and out-of-state companies, as well as labor. By passing these costs through the Iowa-established business, the expenditures were claimed as qualifying Iowa expenditures. However, there were instances where the majority of the purchases of property and labor appeared to have originated from out-of-state sources. In certain instances, we were unable to verify that all the entities had been established as Iowa based business and/or were registered with the Iowa Secretary of State's office incorporated in Iowa.

In certain films the total amount of expenditures that were run through Pass Through entities exceeds 40% of the total qualifying expenditures, with some totaling more than one million dollars.

Out of State Expenditures

In certain circumstances, expenditure reports submitted by producers included some detail related to purchases. Some of the purchases listed on the report clearly indicated an out-of-state address; however, they were included as qualified Iowa expenditures.

For instance, two of the out-of-state purchases for a certain production were \$1,000,000 each, accounting for over 50% of the total qualifying expenditures for that specific production.

Possible Non-qualified Labor

Director, producers, and principal talent are specifically excluded from qualified expenditures according to Iowa Law. We noted instances where the individuals identified in the contracts/applications for the non-qualifying positions, were paid for other services, or an entity that appears to be owned by those individuals was paid for other services. These other services were claimed as qualifying expenditures, and some of the expenditures exceeded \$100,000. However, we were unable to verify what was paid to those individuals for the non-qualifying services of producer or director. We did not locate documentation verifying the expenses related to each role.

In one of the productions, it appeared that the total amount of expenditures that may be non-qualifying exceeded \$300,000, and in another production the non-qualifying amounts approved exceeded \$650,000.

Deferred Payments

In certain films, we identified many expenditures that were claimed as qualifying expenditures that were referred to as "deferred payments". Some of the amounts listed on the invoice were clearly marked as "deferred" and appear that they were not paid until after certificates were brokered to cash. Though some or all of the amounts were deferred, the entire amount was claimed as qualifying Iowa expenditure. Often the invoices appeared to be printed by the production company and signed only by the production company. We identified more than a 100 expenditures classified as deferred, with some amounts exceeding \$100,000.

Often these expenditures were accompanied a "Deal Memo". These memos indicated that the payment due to the vendor will be paid when the tax incentives vouchers are brokered into cash.

In two of the productions, the amounts identified as deferred exceeded 50% of the total qualifying expenditures. In those two productions, we identified over 25 invoices with the majority of the individual amounts deferred exceeding \$100,000.

Sponsorships/Advertising

Organizations were contracted by production companies to provide advertising for the films, often referred to as "sponsorships". In return, the sponsoring organization would generally receive advertising from the production company in the film or on merchandise related to the production. In these situations, no cash was exchanged, but the amount was included as an Iowa qualifying expenditure. In certain productions, we indentified this situation multiple times, with some amounts exceeding \$1,000,000 for each sponsorship.

A specific production had 4 sponsorships at \$1,250,000 each, totaling more than 75% of the total qualifying expenditures. We were able to identify a total of 12 sponsorships exceeding \$1,000,000 or more for each sponsorship, all of which were listed as qualifying Iowa expenditures totaling \$13,400,000.

Possible Non-production Related Expenditures

It appears possible that some of the expenditures included as qualifying Iowa expenditures may not have directly been involved with the film production. We were not able to determine that these expenditures were questioned by Mr. Wheeler in the review process. Examples include, but would are not limited to, luxury vehicles, as well as items donated to non-profit organizations. These included large expenditures with some exceeding \$50,000 each. However, due to lack of invoices or other documentation, it was not possible to quantify how many purchases could be considered non-production related expenditures.

Similar Relationships Between Entities

It appears various Iowa entities were established for certain key roles in the production such as investor, production company, producer, accountant, and broker. In certain instances, individuals or family members would have sole or partial ownership in these entities. Some of these individuals or entities were paid for services claimed as qualified expenditures. These expenditures varied in amounts, but many exceed \$50,000, with specific expenditures exceeding \$300,000.

Certificates

We were unable to locate all signed certificates. In addition, there were certain productions we were unable to locate the documentation identifying total qualifying Iowa expenditures which equals the amount used to calculate the tax credit certificates. According to Iowa Rule (36.7(1) b), "the tax credit shall not exceed 25 percent of the qualified expenditures on a project". This is referred to as an Expenditure Credit. The tax credit shall not exceed 25 percent of the investment in the project, according to Iowa Rule (36.8 (1) b). This is referred to as an Investment Credit. Of the twenty-two projects, six were issued a 50% Expenditure Credit, and three a 50% Investment Credit. However, no projects were noted that the total value of the certificates issued exceeded 50%. In addition, some of the certificates were not issued to the investor or the producer. Instead, they were issued directly to the transferees.

Appendix B

**IOWA DEPARTMENT OF ECONOMIC DEVELOPMENT
IOWA FILM, TELEVISION, AND VIDEO PROJECT
PROMOTION PROGRAM**

**EXPLANATION AND FREQUENTLY ASKED QUESTIONS
(FAQs)**

December 22, 2009

**THREE TYPES OF TAX ASSISTANCE AVAILABLE
Qualified Expenditure Tax Credit, Investment Tax Credit, Reduction in AGI**

There are three types of tax assistance available under the Iowa Film, Television, and Video Project Promotion Program ("Film Program") statute. There are two sections in the statute that provide a twenty-five percent (25%) credit for two different sets of expenditures. There is also a section in the statute that provides a reduction in adjusted gross income for taxpayers who receive certain payments related to film projects.

1. Qualified Expenditure Tax Credit. The first 25% credit is the "*qualified expenditure tax credit.*" As will be explained in greater detail below, the qualified expenditure tax credit is limited in three primary ways. First, a qualified expenditure must be a payment. Iowa Code § 15.393(2)(a)(2). Further, the qualifying expenditures must be of the type authorized by the statute. Iowa Code § 15.393(2)(a)(2). Also, a qualified expenditure must be paid to an Iowa based business or an Iowa resident. Iowa Code § 15.393(2)(a)(2). To meet the test of a qualified expenditure all of these limitations must be met.

2. Investment Tax Credit. The second 25% credit is the "*investment tax credit.*" As will be explained in greater detail below, the investment tax credit is limited in three primary ways. First, the expenditures used to form the basis of the investment tax credit must not have been used to form the basis of the qualified expenditure credit. Iowa Code § 15.393(2)(b)(1). Further, the amount of the investment tax credit cannot exceed the amount of the qualified expenditure credit for the same project. Iowa Code § 15.393(2)(b)(1). Also, some expenditures including those that occur before or after the Iowa film production project is commenced or finished are beyond the scope of this credit. Other items that are not truly expenditures are not to be included in this credit.

3. Examples of Tax Credits. The following examples demonstrate how the two credits work:

Example 1. Film Project A has a total budget of \$10 million. The Producers have \$8 million in qualified expenditures. The Producers receive a 25% qualified expenditure tax credit of \$2 million. Additional expenditures of \$2 million are made with money provided by investors for costs that are not "qualified expenditures" under the statute

(such as payments to businesses not Iowa-based). The investors receive a 25% investor tax credit of \$500,000. The total credits issued for the project are \$2.5 million.

Example 2. Film Project B has a total budget of \$10 million. The Producers have \$5 million in qualified expenditures. The Producers receive a 25% qualified expenditure tax credit of \$1.25 million. Additional expenditures of \$5 million are made with money provided by investors for costs that are not “qualified expenditures” under the statute (such as payments to businesses not Iowa-based). The investors receive a 25% investor tax credit of \$1.25 million. The total tax credits issued for the project are \$2.5 million.

Example 3. Film Project C has a total budget of \$10 million. The Producers have \$2 million in qualified expenditures. The Producers receive a 25% qualified expenditure tax credit of \$500,000. Additional expenditures of \$8 million are made with money provided by investors for costs that are not “qualified expenditures” under the statute (such as payments to businesses not Iowa-based). The investors receive an investment tax credit for the \$8 million of non-qualified expenditures. But the investment tax credit cannot be greater than the amount of the qualified expenditure tax credit. So in this case, the investors receive a \$500,000 investment tax credit. The total tax credits issued for the project are \$1 million.

4. Reduction in Adjusted Gross Income. For projects registered before July 1, 2009, the Film Program statute also provides “a reduction in adjusted gross income for purposes of taxes imposed in chapter 422, division II [personal income tax] and III [business tax on corporations] for payments received from the sale, rental, or furnishing of tangible personal property or services directly related to the production of a project registered under this section which meets the criteria of a qualified expenditure under [the statute].” Iowa Code §15.393(2)(c) (2008).

For projects registered on or after July 1, 2009, the statute provides “[f]or the tax year in which a qualified expenditure occurred, and for the ensuing three tax years, a taxpayer may claim a reduction in adjusted gross income not to exceed in a tax year twenty-five percent of the amount of the qualified expenditure for purposes of taxes imposed in chapter 422, divisions II and III, for payments received from the sale, rental, or furnishing of tangible personal property or services directly related to the project registered under [the statute] which meets the criteria of a qualified expenditure under [the statute].” Iowa Code §15.393(2)(c) (2009). See Senate File 480 (2009).

WHAT IS A "QUALIFIED EXPENDITURE" ?

1. Must be a "Payment." The first test of a qualified expenditure is that it must be a payment. Iowa Code § 15.393(2)(a)(2).

FAQs Re: "Payment"

1. Are Deferred Payments qualified expenditures? No, the statute requires "payments," not promises to pay.
2. Are In-kind Amounts qualified expenditures. No, In-kind amounts are not "payments."

2. Must be Authorized Type of Expenditure. The next test is that the expenditure must be for a type of expenditure authorized by the statute. Iowa Code section 15.393(2)(a)(2) provides a list of qualified expenditures:

A qualified expenditure by a taxpayer is a payment . . . for the sale, rental, or furnishing of tangible personal property or for services directly related to the registered project including but not limited to aircraft, vehicles, equipment, materials, supplies, accounting, animals and animal care, artistic and design services, graphics, construction, data and information services, delivery and pickup services, labor and personnel, lighting, makeup and hairdressing, film, music, photography, sound, video and related services, printing, research, site fees and rental, travel related to Iowa distant locations, trash removal and cleanup, and wardrobe.

Iowa Code § 15.393(2)(a)(2).

An amendment to the statute in 2009, expanded the definition of "labor and personnel" to include "compensation paid to the principal producer, principal director, and principal cast members if the principal producer, principal director, or principal cast member is an Iowa resident or an Iowa-based business." These are referred to in the film industry as "above-the-line" or "ATL" expenses. The amounts of these expenses are capped by the provisions of the amendment. This amendment only applies to projects registered on or after July 1, 2009. For projects registered before July 1, 2009, ATL expenses are not qualified expenditures.

For items not on the statutory list, the burden is on the taxpayer to show the expenditure was for the sale, rental, or furnishing of tangible personal property or for services directly related to the registered project. The FAQs below offer some guidance as to whether or not certain items or services will be considered qualified expenditures.

FAQs RE: Authorized Types of Expenditures

1. Are sponsorships paid by the film makers to other organizations qualified expenditures? No, these sponsorships are not services directly related to the registered project. Further, the concept of the film maker paying the sponsor rather than the other way around turns the definition of sponsor on its head and raises issues as to the legitimacy of the entire transaction. Also, many sponsorship arrangements fail to meet the "payment" requirement of the statute.
2. Are "Marketing Fees" for Actors qualified expenditures? No, the use of marketing fees for actors is a way to avoid application of the pre-July 1 prohibition against labor and personnel payments to actors being included as qualified. Allowing such fees to count as qualified expenditures would circumvent the plain meaning of the statute.
3. Are Promotion and Advertising Costs to Market the Film qualified expenditures? No, this is a film production tax credit program not an advertising agency tax credit program.
4. Are Accounting and Legal Fees qualified expenditures? The statute specifically mentions accounting fees. As long as the accounting fees are directly related to the production of the film project, and paid to an Iowa-based business or an Iowa resident the fees generally should be considered a qualified expenditure. Even though Legal Fees are not specifically enumerated in the statute, the same analysis generally should apply. Legal and accounting fees that are not directly related to the production of the project, such as fees related to the financing, promotion, advertising, or distribution of the project, are not qualified expenditures.
5. Are vehicles qualified expenditures? Vehicles are listed among the specifically enumerated items of personal property that qualify as qualified expenditures. However, the purchase of a vehicle for short-term use of a member of the film crew or cast while the project is filming in Iowa is not appropriate and is not a qualified expenditure. The rental of a vehicle for the use by a crew or cast member during the Iowa production is most likely a qualified expenditure, if the rental is directly related to the project.
6. Are bank financing fees or interest payments or other financing for the film projects qualified expenditures? No, these fees and payments are not services directly related to the film project.

7. Are Tax Credit Brokerage Fees qualified expenditures? No, these fees are not for services directly related to the film project.
8. Are expenditures for Infrastructure qualified expenditures? No, the statute talks about "qualified expenditures . . . for the sale, rental, or furnishing of tangible personal property or for services directly related to the registered project including. . . ." There may be other IDEED programs that can help with infrastructure improvements related to the film industry.

3. Iowa Resident or Iowa-Based Business. The third requirement is that qualified expenditure payments must be made to Iowa-based businesses or Iowa residents. These are terms of art in Iowa law.

WHAT IS AN "IOWA-BASED BUSINESS"?

1. The Law. Under Iowa law, IDEED may grant film tax credits for "qualified expenditures" made by registered film projects. Iowa Code § 15.393(2)(a)(1). "Qualified expenditures" are certain payments to "an Iowa resident or an Iowa-based business." Iowa Code § 15.393(2)(a)(2). The term "Iowa-based business" means "a business whose commercial domicile is in Iowa." 261 Iowa Admin. Code 36.2(15); see Iowa Code § 422.32(3). The term "commercial domicile," in turn, is defined to mean "the principal place from which the trade of business is directed or managed." 261 Iowa Admin. Code 36.2(15). In order to be an "Iowa-based business" for film tax credit purposes, therefore, a company must be "directed or managed" from Iowa.

A person applying for a qualified expenditure tax credit must identify the individual(s) who directed or managed the Iowa-based business. Further, the applicant must substantiate the actions and activities of the individual(s) that demonstrate the business was directed or managed from Iowa. Obviously, the less established the Iowa based business is, the more important this test becomes.

FAQs Re: "Iowa-based Business"

1. Are purchases from Iowa businesses such as paint from a local hardware store qualified expenditures? Yes, these stores are commercially domiciled in Iowa and are directed or managed from the state. As long as payment is made and the item being purchased is authorized as a qualified expenditure.
2. Are purchases such as supplies from Iowa branches of National Chains qualified expenditures? Yes, these stores are commercially domiciled in Iowa and are directed or managed from the state. As long as payment is made and the item being purchased is authorized as a qualified expenditure.

3. Are online, phone order or mail order purchases such as supplies from National Chains or other stores ordered from an Iowa computer, phone or mailing address qualified expenditures? It depends on where the supplies are delivered. If the supplies are delivered to an Iowa store and picked up for use in the state, then the purchases may be qualified expenditures, as long as payment is made and the item being purchased is authorized as a qualified expenditure.
4. Are purchases or rentals of cameras by out-of-state Businesses for use in Iowa qualified expenditures? No, these businesses are not commercially domiciled in Iowa. They are not directed or managed from Iowa. This is true even if the items to be purchased or rented are not available in Iowa.
5. Are purchases made by new Iowa companies specifically created to facilitate purchases for the particular film projects qualified expenditures? The test is whether or not these new companies are commercially domiciled in Iowa, specifically whether or not they are directed or managed from Iowa. This is a fact intensive analysis. Each situation will need to be examined on its own merits. The burden to demonstrate that the business is an Iowa-based business is a heavy burden and shall be carried by the person claiming an expenditure tax credit.

Factors that are relevant to determine whether a business is directed or managed from Iowa include the following: (a) Are the directors of the film corporation or members/managers of the film LLC, Iowa residents? Do the directors or managers spend a significant amount of time in Iowa working on the film? (b) Does the film company have employees based in Iowa who are authorized to manage or direct the business? Are the employees full-time? Are they permanent or temporary? How many employees are based in Iowa? (c) Does the film company have an office in Iowa? What type of physical presence does the company have in Iowa? Is it a storefront? Is it a P.O. Box? Is it the office of a law firm or accountant? (d) Does the film company have other ties to Iowa?

Of course, if these companies were determined to be Iowa-based businesses, the purchases they made would need to be paid for and the items or services purchased would need to qualify as authorized purchases to be qualified expenditures. Even if these new companies are found not to be Iowa-based businesses, their purchases from Iowa-based businesses would still be considered qualified expenditures if (a) the other criteria in the subsection were met and (b) adequate documentation is provided to IDED demonstrating the Iowa-based status of the businesses from which the purchases are made.

6. Are purchases made by Production Service Companies located in Iowa qualified expenditures? Again, if the Production Service Company is directed or managed from Iowa and the other criteria under the qualified expenditure subsection are met, then these purchases will most likely be qualified expenditures. A significant factor in determining whether a Production Service Company is independent of a film maker and is truly managed or directed from Iowa is whether the Production Service Company charges the film maker a standard mark-up for goods and services. Even if these Production Service Companies are found not to be Iowa-based businesses, their purchases from Iowa-based businesses would still be considered qualified expenditures if the other criteria in the subsection were met.

7. Are payments made by an Iowa Payroll Service to non-Iowa residents a qualified expenditure? The fees paid to the Iowa Payroll Service are qualified expenditures. The issue of whether or not the payments passed through to the non-Iowa residents by the Payroll Service is a closer, fact intensive question. If the Payroll Service company performs a ministerial function of accounting and tax management similar to what an in-house accountant or fiscal agent would do, the payments to the non-residents would not be qualified expenditures. On the other hand, if the Payroll Service also had the authority to direct or manage the non-resident workers, the payments to those workers most likely would be qualified expenditures.

WHAT IS AN "IOWA RESIDENT" ?

1. The Law. The term Iowa Resident is defined under the tax law of the state through 701 Iowa Admin. Code 38.17.

701—38.17(422) Resident determination. For Iowa individual income tax purposes, an individual is a "resident" if: (1) the individual maintains a *permanent place of abode* within the state, or (2) the individual is *domiciled* in the state. An individual who is determined to be a "resident" of Iowa is subject to Iowa income tax on all of the individual's income for the taxable year, no matter whether the income is earned within Iowa or outside of Iowa, except when an item of income is specifically exempted from taxation by a provision of federal or Iowa law.

38.17(1) Permanent place of abode. The establishment of a permanent place of abode requires the maintenance of a place of abode over a sufficient period of time to create a well-settled physical connection with a given locality. Significant factors, among others, to be considered in determining whether an individual maintains such a permanent place of abode are: (1) the amount of time the individual spends in the locality; (2) the nature of the individual's place of abode; (3) the individual's activities in the locality; and (4) the individual's intentions with regard to the length and nature of the individual's stay.

There is a rebuttable presumption that an individual is maintaining a "permanent place of abode" if the individual maintains a place of abode within this state and spends more than 183 days of the tax year within this state. The term "place of abode" includes a house, apartment, condominium, mobile home, or other dwelling place maintained or occupied by the individual whether or not owned or rented by the individual. Situations where presence in the state for 183 days of the tax year may not cause an individual to be considered to be maintaining a "permanent place of abode" would include situations where presence in the state is not voluntary, such as confinement to a correctional facility or an extended hospital stay.

38.17(2) Domicile. An individual is "domiciled" in this state if the individual intends to permanently or indefinitely reside in Iowa and intends to return to Iowa whenever the individual may be absent from this state. Individuals who have moved into this state are domiciled in Iowa if the following three elements exist: (1) a definite abandonment of a former domicile; (2) actual removal to, and physical presence in this state; and (3) a bona fide intention to change domicile and to remain in this state permanently or indefinitely. *Julson v. Julson*, 255 Iowa 301, 122 N.W.2d 329, 331 (1963).

Every person has one and only one domicile. Domicile, for purposes of determining when an individual is "domiciled in this state," is largely a matter of intention which must be freely and voluntarily exercised. The intention to change one's domicile must be present and fixed and not dependent upon the happening of some future or contingent event. Because it is essentially a matter of intent, precedents are of slight assistance and the determination of the place of domicile depends upon all the facts and circumstances in each case.

Once an individual is domiciled in Iowa, that status is retained until such time as the individual takes positive action to become domiciled in another state or country, relinquishes the rights and privileges of residency in Iowa, and meets the criteria set forth from *Julson v. Julson*, 255 Iowa 301, 122 N.W.2d 329, 331 (1963). The director may require an individual claiming domicile outside the State of Iowa to provide documentation supporting establishment of another domicile. Absence from the state for 183 days of the tax year or for any other extended period of time does not alone show abandonment of an Iowa domicile.

- a. There is a rebuttable presumption that an individual is domiciled in Iowa if the individual meets the following factors:
- (1) Maintains a residence or place of abode in Iowa, whether owned, rented, or occupied, even if the individual is in Iowa less than 183 days of the tax year, and either
 - (2) (a) Claims a homestead credit or military tax exemption on a home in Iowa, or
 - (b) Is registered to vote in Iowa, or
 - (c) Maintains an Iowa driver's license, or

(d) Does not reside in an abode in any other state for more days of the tax year than the individual resides in Iowa.

b. There is a rebuttable presumption that an individual is not domiciled in Iowa if the individual meets all of the following factors:

- (1) Does not claim a homestead credit or military exemption on a home in Iowa,
- (2) Is not registered to vote in Iowa,
- (3) Does not maintain an Iowa driver's license,
- (4) Is in Iowa less than 183 days of the tax year; and
- (5) The individual maintains a place of abode outside of Iowa where the individual resides for at least 183 days of the tax year.

c. In addition to the factors listed for the above rebuttable presumptions for "permanent place of abode" or "domicile," some of the nonexclusive factors to consider in determining whether an individual is a resident of Iowa are as follows:

- (1) Maintains a place of abode in Iowa, whether owned, rented, or occupied.
- (2) Maintains an Iowa driver's license.
- (3) Maintains active membership in an Iowa church, club, or professional organization and participates as a result of such membership.
- (4) Documents, such as tax forms, legal documents, and correspondence, initiated during tax periods, use an Iowa address. Legal documents could include wills, deeds, or other contracts.
- (5) Immediate family members residing in Iowa who are claimed as dependents or rely, in whole or in part, on the taxpayer for their support.
- (6) Vehicles registered in Iowa.
- (7) Location of employment or active participation in a business within Iowa.

- (8) Active checking or savings accounts or use of safe deposit boxes located in Iowa.
- (9) Claims a benefit on the federal income tax return based upon an Iowa home being the principal place of residence. Examples include mortgage interest on principal residence and travel expenses while away from the principal place of residence.
- (10) Receives a number of services in Iowa from doctors, dentists, attorneys, CPAs or other professionals.

Unless shown to the contrary, married persons are presumed to have the same residence. Ordinarily, the residence of a minor is that of the person who has permanent custody over the minor.

An individual may qualify as a part-year resident of Iowa by: (1) not maintaining a permanent place of abode; and (2) not having a domicile in Iowa for the entire tax year. In determining part-year resident status, whether an individual is in or out of Iowa for 183 days may not be a factor.

Person applying for the qualified expenditure tax credit based on payments to Iowa residents should identify the residents and be prepared to substantiate that the individuals meet the tests for residency outlined in 701 Iowa Admin. Code 38.17.

FAQs Re: "Iowa Resident"

1. Are payments from Iowa-based businesses, which meet the tests put forth in the previous section, to non-residents qualified expenditures? Yes, if the business meets the test of commercially domiciled and directed or managed from Iowa the payments to non-residents as well as payments to Iowa residents are qualified expenditures.
2. Are payments from non-Iowa based businesses to Iowa residents qualified expenditures? Yes, payments to Iowa residents, who meet the tests outlined in 701 Iowa Admin. Code 38.17, are qualified expenditures whether or not they are paid by an Iowa-based business.
3. Are payments made to "loan-out companies" qualified expenditures? Payments to c-corporations established under Iowa law by actors (or other ATL personnel) who are not Iowa residents are not payments to a "Iowa resident" or an "Iowa-based business." This is particularly true if this is done to avoid the prohibition against, or the cap on, payments to ATL personnel. These payments will not be considered as qualified expenditures.

INVESTMENT TAX CREDIT

1. The Law. An investment tax credit is provided for 25% of a taxpayer's investment in a film project registered under the Film Program. An investment tax credit cannot be claimed for qualified expenditures for which a qualified expenditure tax credit is claimed. Additionally, the amount of the investment tax credit is capped at 25% of the amount of qualified expenditures on the film project. Iowa Code § 15.393(2)(b).

Many of the expenditures found not to be qualified expenditures based on the criteria outlined above still may be expenditures on which an investment tax credit can be applied. Examples include: (1) promotion and advertising expenditures; and (2) financing fees.

However, some expenditures are not legitimately part of the expenditures for the Iowa film production project and are not expenditures on which an investment tax credit can be applied. A non-exclusive list of these types of expenditures include: (1) sponsorships; (2) principal and interest on loans; and (3) tax credit brokerage fees and related discounts.

APPLYING FOR TAX CREDITS

Tax credits will only be issued under the following conditions: (1) The film project must be completed. (2) All payments used to claim a qualified expenditure tax credit or an investment tax credit have been made prior to submission. (3) All expenditures used to claim a qualified tax credit or an investment tax credit are submitted on a Form Z, along with any other documentation of payment requested by IDED. Documentation submitted includes schedule of Iowa cast, schedule of Iowa crew, schedule of Iowa vendors, payroll journal, accounts payable journal, general ledger, and proof of payment, such as cancelled checks or credit card statements, and corresponding invoices for everything listed on the Form Z. (4) If an investment tax credit is being requested, documentation includes proper verification of the amount of investment in the project and the use of the investment for the project. (5) A copy of the film is submitted to IDED. (6) A certification is attached to the Form Z stating that all outstanding bills and expenses directly related to the project have been made and none are in arrears. (7) Only one Form Z submission may be made with respect to a particular film project.

Appendix C

**Appendix C
Summary of Film Projects
August 2010**

		Budget	Estimated Iowa Spend ¹
Application Approved	30	\$ 135,879,663.00	\$ 115,428,106.60
Contracts	45	\$ 341,201,373.00	\$ 246,730,656.00

		Budget	Estimated Iowa Spend
Registration Revoked	59	\$ 464,040,610.00	\$ 354,948,800.00

		Budget	Estimated Iowa Spend
Credits Issued	24	\$ 69,276,039.00	\$ 50,476,173.00

¹ Please note, Estimated Iowa Spend does not equal the amount of tax credits issued. Further, the Estimated Iowa Spend is based on the amount included in the application, or contract, submitted by a production company.