

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

UPDATE – DECEMBER 22, 2009

On November 23, 2009, Governor Chet Culver announced that he was partially lifting his suspension of the Iowa Film, Television, and Video Project Promotion Program (“Film Program”). On that date, Attorney General Tom Miller announced how the partial suspension would be administered with respect to registered film projects with contracts and registered film projects without contracts. The Attorney General also announced that no new film projects would be registered under the Film Program until the Legislature and the Governor had an opportunity to review and reevaluate the program next year.

The Iowa Department of Economic Development (“IDED”) sent letters to registered film projects with contracts stating that IDED would proceed in accordance with the law and the contract and would expect registered projects with contracts to do the same. IDED also asked these projects to provide a report on the status of the project.

IDED also sent a letter to registered projects without contracts stating that IDED was lifting the suspension of contracting. IDED stated that, if these projects were interested in entering into contract discussions, they needed to notify IDED of this fact no later than December 21, 2009. IDED stated that any contract resulting from these contract discussions would be in accordance with the law and administrative rules.

Attached is an explanation and set of Frequently Asked Questions (FAQs) designed to provide accurate information with respect to the Film Program consistent with Iowa law. This explanation and FAQs were prepared in consultation with the Iowa Department of Revenue, the State Auditor’s Office and the Iowa Attorney General’s Office. Be aware, however, the explanation and FAQs do not constitute legal advice. Each person using this program has the responsibility to seek his or her own legal advice with respect to the provisions of this program. *Sullivan v. Iowa Beer and Liquor Dept.*, 325 N.W.2d 923 (Iowa Ct. App. 1982). The final and official verification of the amount of any tax credits to be awarded to a film project under the Film Program will occur only after tax credits are applied for in the manner described in the explanation and FAQ.

It should be noted that some previous oral and written advice offered by employees of IDED and other state employees relative to the Film Program has been inaccurate and contrary to the statutory provisions authorizing the program. However, the Iowa Supreme Court has held that representations of a state employee do not bind the State when there is not a statutory basis for the representations. *Drainage District No. 119 v. Spencer*, 268 N.W.2d 493 (Iowa 1978). This is even more the case when taxes are at issue. *S & M Finance Co. v. Iowa State Tax Commission*, 162 N.W.2d 505 (Iowa 1969).

Any additional inquiries about the provisions of the Film Program should be directed in writing to Amy Johnson at IDED.

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**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 IDED 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, IDED 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.