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**NEWFOUNDLAND AND LABRADOR  
REGULATION 3/99**

*Film and Video Industry Tax Credit Regulations*  
under the  
*Income Tax Act*  
(O.C. 98-646)

Amended by:

44/02  
72/04  
88/05  
55/09

**NEWFOUNDLAND AND LABRADOR  
REGULATION 3/99**

*Film and Video Industry Tax Credit Regulations*  
under the  
*Income Tax Act*  
(O.C. 98-646)

*(Filed January 13, 1998)*

Under the authority of section 32 of the *Income Tax Act*, the Lieutenant-Governor in Council makes the following regulations.

Dated at St. John's, November 25, 1998.

John R. Cummings, Q.C.  
Deputy Clerk of the Executive Council

**REGULATIONS**

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**Short title**

1. These regulations may be cited as the *Film and Video Industry Tax Credit Regulations*.

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**Interpretation**

2. (1) In these regulations

- (a) "associated corporation" has the meaning given the term by subsection 256(1) of the federal Act;
- (b) "eligible corporation" means a corporation that meets the criteria set out in section 3;
- (c) "eligible employee" means an employee who was resident in the province on December 31 of the taxation year or, if not a resident, for whom the residency requirement is waived by the minister under section 9;
- (d) "eligible individual" means an individual, other than a trust or estate, who was resident in the province on December 31 of the taxation year;
- (e) "eligible project" means a film, television program or series or video that is registered as an eligible project under section 4;
- (f) "eligible salaries" of a corporation for a taxation year in respect of an eligible project means the total of the following amounts to the extent that they are reasonable in the circumstances and included in the cost or, in the case of depreciable property, the capital cost to the corporation of the property:
- (i) the salary or wages of eligible individuals directly attributable to the production that are incurred, after these regulations come into force, in a taxation year, or the preceding taxation year, by the corporation for the stages of production of the property, from the first script stage to the end of the post-production stage, and paid by the corporation in the year or within 60 days after the end of the year, other than amounts incurred in that preceding year that were paid within 60 days after the end of that preceding year,
- (ii) that portion of the remuneration, other than salary or wages and other than remuneration that relates to services rendered in the preceding taxation year and that was paid within 60 days after the end of that preceding year, that is directly attributable to the production of the property, that relates to services rendered, after these regulations come into force, in a taxation year, or the preceding taxation year,

to the corporation for the stages of production, from the beginning of the first contracted script stage to the end of the post-production stage, and that is paid by the corporation in the year or within 60 days after the end of the year to

(A) an eligible individual who is not an employee of the corporation, to the extent that the amount paid

(I) is attributable to services personally rendered by the individual for the production of the property, or

(II) is attributable to and does not exceed the salary or wages of the individual's eligible employees for personally rendering services for the production of the property,

(B) another corporation, to the extent that the amount paid is attributable to and does not exceed the salary or wages of the other corporation's eligible employees for personally rendering services for the production of the property,

(C) another corporation, all of the issued and outstanding shares of the capital stock of which, except directors qualifying shares, belong to an eligible individual and the activities of which consist principally of the provision of the individual's services, to the extent that the amount paid is attributable to services rendered personally by the individual for the production of the property, or

(D) a partnership that is carrying on a business in Canada, to the extent that the amount paid

(I) is attributable to services personally rendered by an eligible individual who is a member of the partnership for the production of the property, or

(II) is attributable to and does not exceed the salary or wages of the partnership's eligible employees for personally rendering services for the production of the property, and

(iii) where

(A) the corporation is a wholly-owned subsidiary corporation of another corporation, in this subparagraph referred to as the "parent", and

(B) the corporation and the parent have agreed that this subparagraph applies in respect of the production,

the reimbursement made by the corporation in the year, or within 60 days after the end of the year, of an expenditure that was incurred by the parent in a particular taxation year of the parent in respect of that production and that would be included in the eligible salaries of the corporation in respect of the property for the particular taxation year under subparagraph (i) or (ii) if

(C) the corporation had such a particular taxation year, and

(D) the expenditures were incurred by the corporation for the same purpose as they were by the parent and were paid at the same time and to the same person or partnership as it was by the parent;

(g) "government assistance" means the amount of assistance which the corporation receives or is entitled to receive from a government, municipality or other public authority whether as a grant, subsidy, forgivable loan, deduction from tax, investment allowances or other form of assistance, other than the film and video industry tax credit under the Act or under the federal Act in respect of total production costs but does not include

- (i) government equity investment provided by The Canada Television and Cable Production Fund, Telefilm Canada, Enterprise Newfoundland and Labrador Corporation or Newfoundland and Labrador Film Development Corporation that is recoupable or repaid, and
  - (ii) an amount received or receivable under The Canada Television and Cable Production Fund Licence Fee Program;
- (h) "post-production stage" means the period of time from the date of the end of filming or taping to the date on which a corporation delivers, or is ready to deliver, an eligible project to a distributor or purchaser;
- (i) "tax credit" means the tax credit established in section 7; and
- (j) "total production costs" means all outlays or expenses made or incurred by the corporation, including all outlays, leases or replacements of capital, for the purpose of producing an eligible project less the value of government assistance.
- (2) For the purpose of these regulations, section 256(1.2) of the federal Act applies to determine whether one corporation is controlled by another.
- (3) For the purpose of the definition "eligible salaries" in subsection (1),
- (a) remuneration does not include remuneration determined by reference to profits or revenues;
  - (b) salary or wages do not include an amount determined by reference to profits or revenues;
  - (c) where the value of remuneration, salary or wages may include an amount determined by reference to profits or revenues, the minister may establish a value for that portion of the eligible salaries; and
  - (d) "services referred to in subparagraph (1)(f)(ii) of the definition "eligible salaries" that relate to post-production stage of the production include only the services that are rendered at that stage by a person who performs the duties of animation cameraman, assistant colourist, assistant editor, assistant mixer, assistant sound-effects technician, boom operator, colourists, computer graphics designer, developing technician, director of post-production, dubbing technician, encoding technician, inspection technician-clean-up mixer, music supervisor, optical effects technician, picture editor, printing technician, projectionist, recording technician, senior editor, sound editor, sound-effects technician, special effects editor, subtitle technician, tinner, videographer or videotaping technician, or other similar duties.

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### **Application for registration**

**3.** (1) To qualify as an eligible corporation, a corporation shall, at the time of registration of an eligible project and throughout the production of the eligible project meet the following criteria:

- (a) it shall be incorporated under the *Corporations Act* or an Act of the Parliament of Canada or of the legislature of a province;
- (b) it shall have a permanent establishment in the province;

- (c) [Rep. by 88/05 s1]
- (d) it shall primarily carry on the business of film, television or video production;
- (e) it shall not be a corporation all or a part of whose income is exempt from taxation under Part I of the federal *Income Tax Act*;
- (f) it shall not
  - (i) hold a broadcasting licence issued by the Canadian Radio-Television and Telecommunications Commission, or
  - (ii) deal at non-arm's length with a corporation that holds a licence referred to in subparagraph (i);
- (g) [Rep. by 88/05 s1]

(2) A corporation shall apply in the manner that the minister may require and on the form provided by the minister for registration of an eligible project, and shall provide the following information:

- (a) the estimated total production costs;
- (b) the estimated eligible salaries;
- (c) the estimated value of the tax credit;
- (d) a financing plan including recoupment schedule;
- (e) expected revenue from the sale of the production;
- (f) a script; and
- (g) the other information the minister may require.

(3) A corporation shall meet the criteria set out in subsection (1) at the time of registering an eligible project in order to be eligible to register the project under these regulations.

- (4) [Rep. by 88/05 s1]

[3/99 s3; 88/05 s1](#)

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### **Criteria for eligible project**

**4.** (1) The minister may register a project as an eligible project where, prior to the beginning of production

- (a) an application in accordance with section 3 is received; and
  - (b) the proposal is intended for a film, television program or series or video program and the subject of the proposal is drama, variety, animation, children's programming, music programming, an informational series or a documentary.
- (2) The following are not eligible projects:
- (a) news, current events or public affairs programming, or programs that include weather or

market reports;

- (b) talk shows;
- (c) sports events or activities;
- (d) gala presentation or awards shows;
- (e) projects that solicit funds;
- (f) pornography;
- (g) advertising;
- (h) projects produced primarily for industrial, corporate or institutional purposes;
- (i) projects, other than documentaries, all or substantially all of which consist of stock footage;
- (j) projects for which public financial support would, in the opinion of the minister, be contrary to public policy; and
- (k) other projects that the minister determines are not eligible.

[3/99 s4](#)

#### **Application for tax credit**

**5** An eligible corporation shall apply for a tax credit certificate in the manner that the minister may require and on the form provided by the minister and shall provide the following information:

- (a) its financial statements for the preceding taxation year and the financial statements of a corporation referred to in subsection 6(4);
- (b) a statement detailing the total production costs for the eligible project;
- (c) a list of eligible employees, including the employees names, social insurance numbers, eligible salaries, occupations and addresses;
- (d) a statement in a form satisfactory to the minister and signed by an authorized officer of the corporation that the information contained in the application is true and correct; and
- (e) other information that the minister may require.

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#### **Eligibility**

- 6.** (1) To be eligible to receive a tax credit, a corporation shall meet the following criteria:
- (a) at least 25% of salaries and wages paid by the corporation with respect to an eligible project shall be paid in the province to eligible employees; and
  - (b) the corporation shall be producing an eligible project as determined under section 4.
- (2) For the purpose of paragraph (1)(a),

- (a) "paid in the province to eligible employees" means paid to eligible employees for work performed in the province on an eligible project; and
- (b) "salaries and wages" means salaries and wages paid by the corporation in the taxation year.

(3) Where a corporation meets the criteria in subsection (1), except for paragraph (1)(b), and the corporation is controlled by 2 or more corporations that are not associated and at least one of those corporations meets the criteria in subsection (1), the minister may consider total production costs to be equal to total production costs less the investment of a corporation that does not meet the criteria in subsection (1).

(4) If 2 or more of the controlling corporations referred to in subsection (3) meet the criteria in subsection (1), the value of total production costs calculated in accordance with subsection (3) and the total amount of the eligible salaries shall be prorated among those corporations according to their share of the investment in the eligible project.

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### **Tax credit**

7. (1) An eligible corporation that produces an eligible project in the province and has received a tax credit certificate may deduct from the tax otherwise payable under the Act an amount for a taxation year equal to 40% of eligible salaries paid in the taxation year to residents of the province for each eligible project.

(2) A tax credit applies with respect to eligible salaries incurred after these regulations come into force and before January 1, 2014 .

(3) A tax credit shall not exceed 25% of the total production costs of an eligible project.

(4) The maximum tax credit that may be received by an eligible corporation, together with all corporations associated with that corporation, in respect of all eligible projects commenced within a 12 month period is \$3,000,000.

[3/99 s7](#); [44/02 s1](#); [72/04 s1](#); [88/05 s2](#); [55/09 s1](#)

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### **Deduction**

8. For the purpose of section 7, the amount by which the tax credit exceeds the corporation's tax payable for the taxation year calculated without reference to this section may be applied by the minister to pay

- (a) any tax, interest or penalty owing by the corporation for that or a prior taxation year under the Act, the corporation income tax of an agreeing province or the federal Act;
- (b) any contribution, interest or penalty owing by the corporation for that or a prior taxation year as a result of payments required from the corporation under the Canada Pension Plan; and
- (c) any premium, interest or penalty owing by the corporation for that or a prior taxation year under the *Employment Insurance Act* ( Canada ),

and a part of the amount not so applied shall be paid to the corporation.

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### **Waiver of residency**

**9.** (1) The minister may on the application of a corporation waive the residency requirement for an eligible employee providing services to an eligible corporation in respect of an eligible project.

(2) The residency requirement shall not be waived except where

(a) a qualified resident person is not available; and

(b) the non-resident person serves as a mentor of a resident of the province.

(3) Where the minister has waived the residency requirements under subsection (1), the eligible salary of the non-resident person shall be the greater of

(a) 75% of the actual salary of the non-resident person; and

(b) the salary of the mentored employee.

(4) Notwithstanding subsection (3), where the salary of the mentored employee is greater than the actual salary of the non-resident person, the eligible salary of the non-resident person shall be his or her actual salary.

[3/99 s9; 88/05 s3](#)

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### **Change in circumstances**

**10.** A corporation that registers a project as an eligible project and that applies or intends to apply for a tax credit with respect to the eligible project shall immediately notify the minister of

(a) a change in circumstances that might affect the continued eligibility of the project to be registered; and

(b) a change in the corporation's status that causes it to not meet the criteria set out in sections 3, 4 and 6.

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### **Suspension or cancellation of registration**

**11.** (1) The minister may suspend or cancel the registration of a project where the minister believes

(a) there has been a change in circumstances relating to the project that affects its continued eligibility to be registered; or

(b) the corporation no longer meets the criteria set out in sections 3, 4 and 6 because of a change in its status.

(2) Before suspending or cancelling the registration of a project the minister shall give the



corporation that registered the project an opportunity to be heard.

[3/99 s11](#)

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