

**Clearinghouse Rule 10-116**

**ORDER OF THE  
DEPARTMENT OF COMMERCE**

**CREATING RULES**

The Wisconsin Department of Commerce proposes an order to repeal Comm 133.20 (1) Note [3], 133.32, 133.70 (2) (a), and 133.90 (2) (b) and (c);

to renumber Comm 133.34 (1), 133.36 (1) (h), and 133.90 (2) (a) 1. and 2.;

to renumber and amend Comm 133.70 (1) (a) 4. and Note and (2) (b) and (c);

to amend Comm 133.10 (1) (c); 133.20 (1) Note [1] and (3); 133.36 (title), (1) (b) and (c), and (2) (b) (intro.); 133 subchapter III (title); 133.60 (1) Note and (3); and 133.70 (1) (a) 3., (3), and (5);

to repeal and recreate Comm 133.36 (1) (e) to (g) and (2) (c);

and to create Comm 133.34 (1) (b) and (c), 133.35, 133.36 (1) (h), and 133.70 (1) (a) 4. and Note, relating to administering a film production accreditation program, and affecting small business.

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**Rule Summary**

**1. Statutes Interpreted.**

Sections 71.07 (5f) and (5h), 71.28 (5f) and (5h), 71.47 (5f) and (5h), and 560.206.

**2. Statutory Authority.**

Sections 227.11 (2) (a) and 560.206 (4).

**3. Explanation of Agency Authority.**

Section 560.206 (4) of the Statutes requires the Department to promulgate rules for administering a program to accredit film productions for the purposes of sections 71.07 (5f) and (5h), 71.28 (5f) and (5h), and 71.47 (5f) and (5h) of the Statutes. Section 227.11 (2) (a) of the Statutes authorizes the Department to promulgate rules interpreting the provisions of any Statute administered by the Department.

**4. Related Statute or Rule.**

The Department has rules for several other programs associated with tax credits, but none of those rules specifically relate to accrediting film productions and to establishing or operating film production companies.

## **5. Plain Language Analysis.**

The proposed rule changes would update chapter Comm 133 to make it consistent with the portions of 2007 Wisconsin Act 20 and 2009 Wisconsin Act 28 that relate to tax credits for film production services and film production company investments. The changes include (1) modifying the definition of previously owned property; (2) extending the tax credits to operating a film production company, rather than only establishing it; (3) modifying the definition of claimant; (4) clarifying which expenses are ineligible; (4) requiring spending at least 35 percent of the total budget for an accredited production in Wisconsin; (5) requiring the purchase of tangible personal property or items, property, or goods to be sourced to Wisconsin; (6) requiring an application fee of 2 percent of the production expenditures or \$5,000, whichever is less; and (7) capping the total annual, aggregated credit at \$500,000.

## **6. Summary of, and Comparison With, Existing or Proposed Federal Regulations.**

A federal tax incentive program for film and television productions is available under Section 181 of the Internal Revenue Code. Under the program, investors in qualifying film and television productions may elect to immediately deduct the cost of qualifying film expenditures in the year the expenditures occur. The program is in effect for qualifying productions commencing before January 1, 2009. The federal deduction applies to qualifying productions up to \$15 million, or up to \$20 million if the production occurs in a qualifying distressed area. The incentive can be used in conjunction with any state film incentive. The Web site reference for the section in the Code is [http://www.law.cornell.edu/uscode/html/uscode26/usc\\_sec\\_26\\_00000181----000-.html](http://www.law.cornell.edu/uscode/html/uscode26/usc_sec_26_00000181----000-.html).

## **7. Comparison With Rules in Adjacent States.**

### *Michigan*

Michigan has a 40 percent refundable tax credit, across the board on Michigan expenditures. Claimants can claim an extra 2 percent if filming in one of the core communities in the state. The claimant must spend at least \$50,000 in Michigan to be eligible. There is also a 30 percent tax credit for non-resident, below-the-line crew members. There is a \$2,000,000 salary cap per employee per production. There is no other cap and no sunset. No corresponding administrative rules were found, but the corresponding Web site is <http://www.michiganfilmoffice.org/For-Producers/Incentives/Default.aspx>.

### *Minnesota*

Minnesota offers a reimbursement of up to 15 percent of production costs incurred in Minnesota by eligible productions that spend \$5,000,000 or less in Minnesota within 12 months from the date of project certification, and up to 20 percent for productions that spend in excess of \$5,000,000 in Minnesota within 12 months of project certification. Reimbursement of up to 20 percent of film production costs are made to productions that either (1) shoot 60 percent of production days outside of the metropolitan area as defined in section 473.121, subdivision 2 of the statutes within 12 months from the date of project certification; or (2) spend at least 60 percent of the total production budget outside of the metropolitan area as defined in section

473.121, subdivision 2 within 12 months from the date of project certification. No corresponding administrative rules were found, but the corresponding Web site is <http://www.mnfilmtv.org/incentives>.

#### *Iowa*

Iowa has suspended the Iowa Film Program until July 1, 2013, and does not have financial assistance or tax credits available for film projects. The corresponding Web site is <http://www.iowalifechanging.com/film/>.

#### *Illinois*

In December of 2008, Illinois passed the Illinois Film Production Tax Credit Act, which offers producers a credit of 30 percent of all qualified expenditures, including post-production, and has no sunset. This includes a 30 percent credit on Illinois salaries up to \$100,000 per worker. Applicants can receive an additional 15 percent tax credit on the salaries of individuals who live in an economically disadvantaged area. Illinois Production Spending includes tangible, personal property and services purchased from Illinois vendors, and compensation paid to Illinois resident employees. The claimant must spend at least \$50,000 in Illinois Production Spending for a project 29 minutes or under. The claimant must spend at least \$100,000 in Illinois Production Spending for a project 30 minutes or over. The corresponding Web site is <http://www.illinoisfilm.biz/>. Administrative rules are at <http://www.illinoisfilm.biz/IFO/tax/2007TaxCreditRules.pdf>.

### **8. Summary of Factual Data and Analytical Methodologies.**

The data and methodology for developing these rules were derived from and consisted of (1) incorporating the applicable criteria in 2007 Wisconsin Act 20 and in 2009 Wisconsin Act 28; (2) soliciting input from the Department of Revenue; and (3) reviewing Internet-based sources of related federal, state, and private-sector information.

### **9. Analysis and Supporting Documents Used to Determine Effect on Small Business or in Preparation of an Economic Impact Report.**

The primary documents that were used to determine the effect of the proposed rules on small business were 2007 Wisconsin Act 20 and 2009 Wisconsin Act 28. These Acts modified several provisions of sections 71.07 (5f) and (5h), 71.28 (5f) and (5h), and 71.47 (5f) and (5h) of the Statutes that relate to the Department's film production accreditation program. These Acts apply their private-sector requirements only to film productions and to film production companies, for which a corresponding tax credit is desired.

### **10. Effect on Small Business.**

The proposed rules are not expected to impose significant costs or other impacts on small businesses because the rules address submittal of documentation only by businesses that choose to pursue tax credits for producing film productions or for establishing or operating film production companies.

### **11. Agency Contact Person.**

Steven Sabatke, Wisconsin Department of Commerce, Bureau of Business Development, P.O. Box 7970, Madison, WI, 53707-7970; telephone (608) 267-0762; e-mail [steven.sabatke@wi.gov](mailto:steven.sabatke@wi.gov).

## **12. Place Where Comments Are to Be Submitted, and Deadline for Submission.**

Comments on the proposed rules may be submitted by e-mail to [sam.rockweiler@wi.gov](mailto:sam.rockweiler@wi.gov), no later than October 29, 2010. If e-mail submittal is not possible, written comments may be mailed, by the same date, to Sam Rockweiler, Department of Commerce, Division of Environmental and Regulatory Services, P.O. Box 14427, Madison, WI 53708-0427.

*File reference: Comm 133-10/rule analysis, ph*