

**MANITOBA FILM AND VIDEO PRODUCTION TAX CREDIT
MANITOBA COST-OF-SALARIES CREDIT**

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OVERVIEW: THE 9 STEPS OF THE TAX CREDIT PROCESS

| <u>Project Stage</u> | <u>The Tax Credit Process</u> |
|----------------------|--|
| Pre-production | <ol style="list-style-type: none"> 1. Ensure that the applicant corporation, through which you will be running Manitoba labour expenses: <ol style="list-style-type: none"> (a) Is a taxable Canadian corporation incorporated under the laws of Canada or of a province of Canada; (b) Has a permanent establishment in Manitoba (production trailers/office space in MB, employee or agent in MB who can contract on behalf of the corporation, and production equipment in MB); (c) Is producing an eligible film in the course of a film or video production business that is its primary business; and (d) Pays at least 25% of its “T4’able” salaries and wages for each fiscal year in question to “T4’able” eligible employees and “T4’able” employees who are eligible non-resident individuals, in relation to the eligible film for which the tax credit is claimed, for work performed in Manitoba on the eligible film (This clause refers to eligible employees appearing on the eligible applicant corporation’s T4 summary. Payments to contracted individuals and to corporations are not included in this calculation). For documentaries, the work does not need to be performed in Manitoba. (Please see Section N, bullet v, for more information). 2. <ol style="list-style-type: none"> (a) Prepare Request for Deeming and submit to Manitoba Film & Music (MFM) (if applicable). See Section H for more details. (b) Submit completed Part A Tax Credit Application to Manitoba Film & Music (<i>optional, but recommended for those unfamiliar with the program</i>) once the locked budget is in place. 3. Receive Part A Registration Certificate from MFM. |
| Production | <ol style="list-style-type: none"> 4. Collect necessary Residency Declarations for each eligible MB labour expense, as required. <ol style="list-style-type: none"> (a) For multi-year productions: submit application to MFM for an Advance Certificate of Eligibility after each fiscal year that ends prior to the end of post-production. (NOTE: It is at this point that one needs to decide whether to apply for the Cost-of-Salaries Credit or |

for the Cost-of-Production Credit. Once the application is made, the type of credit is locked in, and it is no longer possible to switch for the other credit.) When received from MFM, file the Advance Certificate of Eligibility with the T2 corporate income tax return to the Canada Revenue Agency (CRA), along with Form B(1) *Report of Eligible Manitoba Labour Expenditures*, Form D *List of Deemed Labour* and any other documentation listed on the Canada Revenue Agency Schedule 388, for each fiscal year that ends prior to the end of post production in accordance with CRA requirements.

Tax credits will not be awarded on eligible non-resident labour until the production is completed – the deeming cap can only be determined based on the total eligible Manitoba labour across the entire show, and final deeming can only be determined once all training has taken place. The tax credit on eligible non-resident labour will be issued when the Certificate of Completion is filed with CRA.

- | | |
|-----------------|--|
| Post-production | <p>5. (a) If applicable, the Actual List of Deemed Labour (Form D, Part B) is forwarded by the eligible applicant corporation to MFM for the unions/guild/FTM to sign off that the training took place.</p> <p>(b) Prepare costs and labour expenditures for audit or review, if applicable.</p> <p>(c) Must contact MFM for screen credit language and logo and obtain screen credit approval.</p> |
| Delivery | <p>6. Engage accountant (third party accountant when required), to prepare a cost report (reviewed or audited where appropriate) and a report of eligible Manitoba labour expenditures, as required (reviewed or audited where appropriate) – See Completion Checklist and Section O for more information.</p> <p>7. Submit application for Certificate of Completion to MFM for review, together with the required application fee. The application must be received by MFM within 30 months of the end of the taxation year in which principal photography began (unless a Waiver In Respect Of The Normal Reassessment Period – Form T2029 - has been filed with the Canada Revenue Agency, in which case the deadline is increased to 48 months after the end of the fiscal year in which principal photography began). Please note that once an Advance Application or a Completion Application has been made, the type of credit (Cost-of-Salaries or Cost-of-</p> |

Production) is locked in and can no longer be changed for the other credit. For multi-year productions, a Completion Application is required regardless of whether or not an Advance Certificate of Eligibility was previously issued.

8. Receive Certificate of Completion from MFM.
9. Submit complete audit package to the Canada Revenue Agency, including the Certificate of Completion, along with the annual corporate income tax return (T2). CRA will make the final determination of the value of the credit amount and will issue the cheque to the eligible applicant corporation.



MANITOBA FILM AND VIDEO PRODUCTION TAX CREDIT GUIDELINES

Manitoba Cost-of-Salaries Credit

This document is a general guide and may not be relied upon in order to determine eligibility or the amount of an anticipated credit. Please consult the Manitoba Film and Video Production Tax Credit legislation. Please note that a careful review of the legislation and regulations is recommended before you apply for the credit.

A. INTRODUCTION

The Legislation for the Manitoba Film and Video Production Tax Credit is found in sections 7.5 to 7.9 of The Income Tax Act (Manitoba); a copy is attached to this document as Appendix I for convenience purposes only. Where there is a conflict between the information contained in this package and the authoritative text of the legislation set out in the official volumes, the latter shall prevail.

Who do I contact for help with the program?

If you have any questions or need help in completing the application, please do not hesitate to call **Manitoba Film & Music (MFM)** for assistance. MFM will provide published documentation and general information on eligibility and calculation requirements.

Brian Clasper, Tax Credit Analyst
Manitoba Film & Music
410 – 93 Lombard Avenue
Winnipeg, MB R3B 3B1
Email: brian@mbfilmmusic.ca
Telephone: (204) 947-2040 ext. 25
Fax: (204) 956-5261
Web: www.mbfilmmusic.ca

B. HISTORY

The Manitoba Cost-of-Salaries Credit was introduced in the spring of 1997 to provide an incentive to the private film and television production industry to create economic development growth in the province. This refundable tax credit is calculated based on a

production's eligible Manitoba labour expenditures and eligible non-resident labour. Producers may use it to leverage financing for production budgets through interim-financing agreements with banks or other financial organizations.

In 1998 the Tax Credit was amended to include a Deeming Provision in order to develop a better-trained workforce (See Section H for more information).

The 2004 Manitoba Budget extended the program until March 1, 2008, introduced a 5% Frequent Filming Bonus and a 5% Rural Filming Bonus, and removed the restriction on applicants holding CRTC licenses.

The 2005 Manitoba Budget increased the base rate to 45%. The Budget also reduced the Rural Bonus limit to 35 km (22 miles) from the center of Winnipeg and introduced the following treatment for series under the Frequent Filming Bonus: 2 hours of airtime equals 1 frequent filming credit.

As of April 1, 2007, the Canada Revenue Agency (CRA) is co-administering the Manitoba Film and Video Production Tax Credit with Manitoba Film & Music on behalf of the Province of Manitoba. As a result of this administration change, the Manitoba credit will be more closely aligned with federal/CRA tax credit interpretations. Multi-year productions are able to apply for and receive their tax credit after each fiscal year, based on an Advance Certificate of Eligibility. Please see Section M for the list of responsibilities of each organization.

The 2007 Manitoba Budget extended the program until March 1, 2011.

The 2008 Manitoba Budget increased the Frequent Filming Bonus to 10%, introduced the 5% Manitoba Producer Bonus, increased the deeming cap to 30%, and eliminated the "supervision" requirement of the Deeming Provision.

The 2010 Manitoba Budget introduced the 30% Cost-of-Production Credit calculated on Eligible Manitoba Production Expenditures, including Manitoba labour and eligible non-resident labour, and extended the program until March 1, 2014.

NOTE: Productions have the option of choosing either the Manitoba Cost-of-Salaries Credit or the Manitoba Cost-of-Production Credit, whichever is the most beneficial for the production. The final, irreversible selection is made when an application is made with Manitoba Film & Music for an Advance Certificate of Eligibility or for a Completion Certificate. For guidelines relating to the Manitoba Cost-of-Production Credit, please see the Manitoba Film & Music website.

The 2013 Manitoba Budget extended the program until December 31, 2016.

The 2015 Manitoba Budget extended the program until December 31, 2019

| Principal Photography Start | Tax Credit Calculation |
|-----------------------------|--|
| After January 1, 1997 | 35% tax credit on Manitoba labour. |
| After March 6, 1998 | 35% tax credit on Manitoba labour & eligible non-resident labour. |
| After April 19, 2004 | 35% tax credit on Manitoba labour & eligible non-resident labour with 5% frequent filming and 5% rural bonuses available |
| After March 8, 2005 | 45% tax credit on Manitoba & eligible non-resident labour with 5% frequent filming and 5% rural bonuses available. |
| After April 1, 2007 | Allow multi-year productions to receive tax credits prior to year of completion based on an Advance Certificate of Eligibility. |
| After December 31, 2007 | 45% tax credit on Manitoba & eligible non-resident labour with 10% frequent filming, 5% rural bonus, and 5% Manitoba producer bonus. Deeming cap increased to 30% with 2 Manitoba Trainees required per eligible non-resident. |
| After March 31, 2010 | Option of applying for the 30% Cost-of-Production Credit on Eligible Manitoba Expenditures, including MB labour and eligible non-resident labour. |
| After April 17, 2012 | Accommodation costs incurred and paid up to \$300 per night per unit, inclusive of taxes, can be claimed as eligible accommodation expenditures when calculating the Cost-of-Production Credit. |
| After April 1, 2017 | An Application Fee is required with a Completion Application for productions where principal photography begins after August 31, 2017. |

C. OVERVIEW

The Manitoba Film and Video Production Tax Credit is a refundable corporate income tax credit. It is available to qualifying producers of eligible Manitoba productions and co-productions. The tax credit is provided to the same extent for all taxpayers, regardless of their income level and marginal tax rate.

The Manitoba Tax Credit is compatible with the Canadian Film or Video Production Tax Credit (CPTC) and the Film or Video Production Services Tax Credit (PSTC), which are co-administered by the Canadian Audio-Visual Certification Office (CAVCO) and CRA.

The Cost-of-Salaries Credit provides production companies with a 45% tax credit based on eligible Manitoba labour expenditures and eligible non-resident labour. The eligible applicant corporation may qualify for a 50%, 55%, 60%, or 65% tax credit depending on its eligibility for some or all of the bonuses (see Sections G, I, J, and K).

The tax credit includes a “Deeming Provision,” whereby if a technical position is unable to be filled by a willing, available, and/or qualified Manitoba resident, the salary of a qualifying non-resident may be deemed eligible for the tax credit provided that there is at least one Manitoba Trainee on the production for every eligible non-resident being deemed (See Section H for more information, including caps).

The Manitoba Film and Video Production Tax Credit requires the payment of an Application Fee (see Section M, Number 4 for information on the Application Fee).

There are no corporate caps regarding the number of applications or the amount of tax credit that a corporation may apply for.

There are no Canadian broadcast requirements.

There are no minimum or maximum Manitoba production spend requirements.

There are no copyright ownership requirements.

There are no Manitoban or Canadian content requirements.

Non-Manitoba share ownership of the eligible applicant corporation does not affect the ability to claim the credit.

D. REQUIRED SCREEN CREDIT

Eligible applicant corporations must contact the Tax Credit Analyst at Manitoba Film & Music in order to receive the correct logo for inclusion in the production's screen credits (and billing block, if applicable) and detailed placement requirements.



Brian Clasper
Tax Credit Analyst
Email: brian@mbfilmmusic.ca
Phone: (204) 947-2040 ext.25

E. WHO CAN APPLY?

An eligible applicant corporation must:

- a) be a taxable Canadian corporation, incorporated under the laws of Canada or a province of Canada;
- b) have a permanent establishment in Manitoba;
- c) be producing an eligible film in the course of a film or video production business that is its primary business; and
- d) pay at least 25% of its "T4'able" salaries and wages for each fiscal year of the production to "T4'able" eligible employees and "T4'able" eligible non-resident individuals, in relation to the eligible film for which the tax credit is claimed, for

work performed in Manitoba on the eligible film, except for documentaries where the work can be performed anywhere (Please see Section N, bullet v, for more information).

For reference, the income tax act defines “permanent establishment” with three criteria. A production can satisfy the requirements by having production trailers/office space on site (“fixed place of business”), having producers on site (“employee or agent established in a particular place with a general authority to contract on behalf of the corporation”), and having production equipment on site (“uses substantial machinery or equipment in a particular place in a province”).

Co-Productions and/or Co-Ventures are eligible. The Manitoba Film and Video Production Tax Credit is designed to encourage outside collaboration with non-Manitoba producers.

F. WHAT PROJECTS ARE ELIGIBLE?

Eligible projects include fully financed scripted and documentary series, feature films, feature-length documentaries, television movies, documentary one-offs, variety, animation, children’s programming, music programming, and informational series. These productions can be released on media used for traditional film and video productions, as well as multimedia and digital. For a list of INELIGIBLE productions, please see section 7.7(1)(c) of the tax credit legislation available at the end of this information package as Appendix I.

Special effects work on eligible film and video projects as listed above is eligible under the Manitoba Film and Video Production Tax Credit.

Filming outside of the province of Manitoba is allowable within the spirit and intent of the Act, recognizing that certain productions require shooting outside of Manitoba. However, 25% of the “T4’able” salaries and wages of the eligible applicant corporation for each fiscal year in question must be paid to “T4’able” eligible employees and “T4’able” employees who are eligible non-resident individuals, in relation to the eligible film for which the tax credit is claimed, for work performed in Manitoba on the eligible film. For documentaries, the work does not have to be performed in Manitoba (Please see Section N, bullet v, for more information).

Interactive digital media projects, including video games, do not qualify under the Manitoba Film and Video Production Tax Credit. Convergent and interactive digital media projects may be eligible under the Manitoba Interactive Digital Media Tax Credit program administered by Manitoba Growth, Enterprise and Trade. For information regarding this program, please contact:

Manitoba Growth, Enterprise and Trade
Ms. Avery Jodoin
Business Development Manager – Interactive Digital Media

1010 – 259 Portage Avenue
Winnipeg, Manitoba CANADA
R3B 3P4
Phone: (204) 945-0975
Email: avery.jodoin@gov.mb.ca
http://www.gov.mb.ca/jec/busdev/sibd/idm_taxcredit.html

G. CALCULATION

The Cost-of-Salaries Credit provides eligible applicant corporations with a 45% base tax credit calculated on eligible Manitoba labour expenditures and eligible non-resident labour. The eligible applicant corporation may qualify for a 50%, 55%, 60%, or 65% tax credit depending on if it qualifies for some or all of the bonuses. These include the Frequent Filming Bonus (5% before January 1, 2008, 10% thereafter), the Manitoba Producer Bonus (5%), and the Rural Bonus (5%).

The appropriate rate will be applied to the eligible Manitoba labour expenditures and eligible non-resident labour after deduction of any deferrals and any government assistance received by the eligible applicant corporation.

Government assistance is defined as 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 allowance or any other form of assistance, other than:

- (a) any film and video production tax credit under this Act or under the federal Act;
- (b) government amount paid or payable to the corporation by The Canada Media Fund, Telefilm Canada or Manitoba Film and Sound Recording Development Corporation that is recoupable or repaid;
- (c) any amount received or receivable under The Canada Media Fund Licence Fee Program;
- (d) the amount of a credit under section 10.1 (paid work experience tax credit); and
- (e) any other amount prescribed by regulation.

1) Criteria

Labour expenses must satisfy the following three criteria in order to be eligible

a. Reasonable in the circumstances

The dollar value of the labour expense must conform to industry standards, and the type of the labour expense must be generally recognized as being essential to the production of the film. If the amount is unreasonable, only the excessive amount is disallowed. This is a general description.

b. Directly attributable to the production (of the eligible film or video)

The production of the film must be the immediate cause of the labour expense. For claims received by the CRA after April 1, 2007, CRA's application policy FIS 2006-01, *Application of the phrase "directly attributable" that is found in the definition of "labour expenditure" in subsection 125.4(1) of the Income Tax Act and in the definition of "Canadian labour expenditure" in subsection 125.5(1) of the Act*, available at <http://www.cra-arc.gc.ca/tx/nnrsdnts/film/pstc-cisp/plcs/p2006-01-eng.html> will apply.

c. Eligible Time Period

i) Taxation/Fiscal Year

- a. Labour expenditures must be incurred and paid after 1996 and before January 1, 2020; and,
- b. Labour expenditures must be incurred and paid within 60 days of the end of the taxation year(s) of the production.

Amounts incurred in the eligible applicant corporation's taxation year but paid more than 60 days following the end of the taxation year, may not be claimed in the taxation year. However, such amounts may be claimed in the subsequent taxation year of the corporation if they are paid in the subsequent taxation year or within 60 days following the end of the subsequent year.

ii) Stages of Production

Labour expenditures must be incurred from the "Commencement of Production" to the end of post-production (delivery date) to be eligible.

"Commencement of Production" - To reduce uncertainties in interpretation, the commencement time for a production will be defined to allow the possibility for eligible costs to be incurred as early as two years before principal photography begins. Eligible labour expenditures will include those incurred after principal photography begins, plus those incurred after the latest of the following three times:

1. The time at which the eligible applicant corporation or its parent company first incurs development labour costs for the development

- of property of the corporation that is script material on which the production is based;
2. The first time at which the eligible applicant corporation or its parent company acquires a right in respect of the story that is the basis of the final script. Such rights might include a published literary work, play, or screenplay;
 3. Two years prior to the date on which principal photography begins.

It is intended that in-house development labour costs for an initial draft of a script, as well as the cost of modifications, should be eligible. These in-house costs could include the cost to hire an independent writer to create a script on the basis of some other story or literary work for which the corporation has acquired the rights.

Existing conditions on eligible labour expenditures will also apply to scriptwriting labour (e.g. the exclusion of amounts determined by reference to profits or revenues). However, the cost to acquire an initial script or any other right referred to above will, like other rights, not qualify. Such expenditures represent the cost of a property, not a labour expenditure.

“End of post-production” – Generally, the date of delivery. The date listed in the Application as “Answer Print/Master tape acceptance date” will be used to mark “the end of post-production.”

2) Calculating Eligible Labour Expenditures:

For any labour to be considered eligible labour in Manitoba, the person providing the services, regardless of how they were paid, needs to meet all of the criteria in Section G 1). In addition, the labour must be:

- paid to an individual who was resident of Manitoba on December 31st of the year of production or of the year prior to production, or to an eligible non-resident; and
- incurred in the taxation year and paid no later than 60 days after the end of the fiscal year.

Once the eligibility criteria listed in Section G 1) and the two points above have been satisfied, the eligible labour expenses are divided into the following five categories (see Form B and Form B(1) for required reporting format), and each labour expenditure reported on Form B(1) should be supported with an appropriate Declaration Form:

a. Eligible Labour Paid to Employees:

***Form Required: Personal Residency Declaration Form
(please ensure “province of residence” is filled in)***

Refers to anyone being paid salary and wages by the eligible applicant corporation where taxes are withheld at source. These individuals would normally be in receipt of a T4. The individual's Social Insurance Number (SIN) must be listed on Form B(1).

b. Eligible Labour Paid to Individuals:

***Form Required: Personal Residency Declaration Form
(please ensure "province of residence" is filled in)***

Refers to remuneration paid to a person who is self-employed (e.g., independent contractors, extras, cast & background performers, sole proprietors). The individual's Social Insurance Number (SIN) must be listed on Form B(1).

c. Eligible Labour Paid to Third-Parties:

Refers to remuneration paid to a Corporation or partnership with Manitoban eligible employees who provided labour on a particular production. The corporation's Business Number (BN) must be listed on Form B(1).

There are three categories of third-party labour:

(i) Wholly-Owned Corporation:

Form Required: NONE – CRA will confirm the ownership status.

The labour expense will be 100% eligible if:

- all of the issued and outstanding shares are owned by one individual resident of Manitoba, and
- the wholly owned corporation is principally engaged in the provision of that individual owner's services; and
- the amount claimed has been paid to the wholly owned corporation; and
- the amount claimed is for the services rendered personally by the individual owner, for that particular production.

If the service provider is not the individual owner but an employee of the wholly owned corporation, then that employee will be treated as an employee of an "Other Corporation" as described below.

(ii) Other Corporations:

Form Required: NONE

For corporations that do not qualify as Wholly Owned Corporations, **the amount claimed cannot exceed the salary or wages paid to the**

Manitoban employee for services rendered, which are directly attributable to the production.

The salary or wages must be paid to the corporation's employees, and the employees must be residents of Manitoba.

For payments made to multi-owned corporations, an amount for eligible labour that is equal to 65% of labour payments (made for “services” rendered) by these types of individuals can be claimed. A rate higher than 65% can be claimed if the corporation can substantiate a higher percentage is actually paid to the individual in salary and wages.

Be advised that evidence may be requested confirming the actual salaries paid.

Unless you know otherwise, it would be reasonable to assume that most of your corporate suppliers would be 65% eligible types.

When the actual amount of salary paid is not known, CRA's look-through approach may be applied. It is described in the Guide to Claiming a Canadian Film or Video Production Tax Credit at <http://www.cra-arc.gc.ca/E/pub/tg/rc4164/rc4164-17e.pdf>, or in the Guide to Claiming a Film or Video Production Services Tax Credit at <http://www.cra-arc.gc.ca/E/pub/tg/rc4385/rc4385-17e.pdf>. The CRA may also choose to audit a third party to determine amounts paid to employees.

(iii) Partnerships:

Payments made to partnerships where the amount paid is attributable to services rendered by a Manitoba resident who is a member of the partnership or an employee of the partnership would fall under the same treatment as “Other Corporation” above.

d. Eligible Non-Resident Labour:

Form Required: Personal Residency Declaration Form (please ensure “province of residence” is filled in)

This expense is paid to eligible non-resident individuals who have been “deemed” eligible for the tax credit through the Deeming Provision.

An “eligible non-resident individual” means an individual who provided technical services in Manitoba for the production of an eligible film as a member of a film production technical crew of which at least one other member was a Manitoba Trainee receiving eligible training.

All eligible non-resident salaries should be listed on the Form B(1); **however, the eligible amount is calculated as the lesser of a percentage of the “real” Manitoba labour or the actual eligible non-resident salaries (Section V of the Application Form).** Please refer to Section H under the heading “Deeming Provision” for further information regarding deeming.

3) Details on eligibility of expenses

- a) **"Excluded production expenditures"** that apply to the Cost-of-Salaries Credit include expenditures incurred for:
- (a) remuneration, salary or wages that are determined by reference to profit or revenue;
 - (b) anything for which an amount is included in computing a credit under any other section of this Act other than section 10.1 (paid work experience tax credit); and
 - (c) advertising, marketing, promotion, market research or anything else that relates in any way to any other film or video production.
- b) Eligible salaries may include the value of benefits which are taxable to the eligible employee, including vacation pay, holiday, and employer contributions to a registered retirement savings plan. Benefits paid by the employer but not taxable to the eligible employee, such as the employer's portion of payroll source deductions, would not be included in eligible salaries. Workers' compensation, CPP, and EI premiums are not eligible;
- c) Union and guild fringes paid on the production for eligible individuals may be included if they are taxable;
- d) Eligible labour may include payments to Manitoba police for on-set security services;
- e) Bulk Extras: In cases where more than 25 extras are hired locally for a production on any given day and the gross daily expense is less than \$150 per extra, the Form B(1) may include one line summaries including the number of bulk extras and their cost, but a detailed listing and Declarations of Residency **MUST BE AVAILABLE** upon request;

E.g.

| Budget Category | Position | Name of Manitoba Employee and/or Production Service Co. | Street Address of Manitoba Employee or Production Service Company | SIN | Amount Paid or Hours Worked | Qualified % of Salary or Hourly Rate | Total Eligible Labour Expense |
|--|----------|---|---|---------------------|-----------------------------|--------------------------------------|-------------------------------|
| Manitoba labour paid to Individuals | | | | | | | |
| 11.1 | Extra | Bulk Extras/Day 15; 400 extras | on file with ProdCo | on file with ProdCo | \$48,000 | 100% | \$48,000 |
| 11.1 | Extra | Jane Doe | 123 Easy Street | 123 456 789 | \$200 | 100% | \$200 |

- f) Kit rentals, cell phones, car rentals, and meal allowances qualify as eligible salaries if they are taxable in the hands of an eligible individual;
- g) Manitoba actor buyout payments are eligible at 100% of the expense, and must be listed individually by actor, as opposed to reporting a lump sum;
- h) Unit Publicist fees are eligible at 100% when paid to individuals during the eligible production period (i.e. not eligible during post-production);
- i) Courier and shipping fees will only be accepted where paid directly to courier and shipping companies with a head office in Manitoba. Re-bill charges (reimbursements) for courier and shipping expenses are ineligible, and fees paid to companies without Manitoba head offices (e.g. Air Canada, FedEx, etc.) will only qualify if invoices specifically identify the amount paid for Manitoba expenses;
- j) Legal and accounting fees may be eligible during production as follows:
 - Legal fees for negotiating contracts, licenses, and agreements qualify as eligible salaries (65% of costs paid to corporations and 100% of costs paid to eligible individuals). Incorporation fees for the eligible applicant corporation are **not** eligible;
 - Production Accounting Fees and Post-Production Accounting fees qualify as eligible salaries (65% of costs paid to corporations and 100% of costs paid to eligible individuals);
 - Accounting fees, paid prior to principal photography, to estimate and/or verify the tax credit amounts for financing purposes qualify as eligible salaries (65% of costs paid to corporations and 100% of costs paid to eligible individuals);
 - Accounting or consulting fees for performing the audit or preparing the tax credit applications are **not** eligible.
- k) Payroll services (labour only) that are directly attributable to the production of a film qualify (65% of costs paid to corporations and 100% of costs paid to eligible individuals);
- l) Maintenance labour costs, including security, are eligible as long as the production of the film is the immediate cause of the expense and the expense occurs during the eligible production period;
- m) Medicals are accepted at 65% as long as the production of the film is the immediate cause of the expense and the expense occurs during the eligible production period.

H. Deeming Provision

1) Introduction

If a technical position is unable to be filled by a willing, available, and qualified Manitoba resident, the legislation will encourage training by allowing the salary of an eligible non-resident individual to qualify for the tax credit for the work they perform in Manitoba, provided that during the time they are working on the production, there is at least one Manitoba resident receiving training in Manitoba on the production. There must be at least one Manitoba Trainee per eligible non-resident individual being deemed. **The Deeming Provision does not apply to producers, directors, actors, or any above-the-line position.**

A Manitoba Trainee is defined as an eligible individual who, as a member of a film production crew working on the production of an eligible applicant corporation's eligible film, received training or provided technical services for which the corporation has received or is eligible to receive a paid work experience tax credit under section 10.1.

Positions to be deemed must be identified and communicated to Manitoba Film & Music **before** the start of principal photography (positions identified during or after principal photography may be allowed depending on the circumstances).

Eligible non-resident individual salaries are capped at 30% of total eligible Manitoba salaries if there are two or more Manitoba residents being trained on the production per eligible non-resident individual being deemed or at 10% of total eligible salaries if there is only one Manitoba Trainee per eligible non-resident individual. The training ratio of eligible non-resident individuals to resident trainees for a production with more than one deemed individual is calculated based on the average for the production of the film and not on an individual basis.

The Deeming Provision was established to encourage training of Manitoba residents on local productions.

2) Delivery and Management of Training

Training which is required by the Deeming Provision will be coordinated and monitored by the applicable association or guild responsible for the training (IATSE 856, IATSE 669, DGC, ACTRA, and Film Training Manitoba (FTM)). Required training is flexible and may vary in experience level, from entry-level to position upgrades or specific skill enhancements. Once Manitoba Trainees have been identified and placed on a production, the applicable union/guild/association will monitor their progress. FTM and the unions may be able to subsidize some training costs, subject to available funding.

As mentioned previously, at least one Manitoba Trainee is required on the production per eligible non-resident being deemed. The training must occur during the course of the employment of the eligible non-resident individual and for the same duration. The eligible non-resident individual does not have to supervise the training. There are 7 ways that training can be facilitated to satisfy training requirements:

| | |
|----|--|
| 1. | Entry Level Placement (i.e. new crew member with no experience) |
| 2. | FTM Interns (FTM provides limited # of interns to various productions throughout the year – at FTM discretion) |
| 3. | Upgrade Placements |
| 4. | IATSE Trainees (i.e. non-members, non-permittees working at reduced wages) |
| 5. | Crew Observation Placements |
| 6. | Mentorships |
| 7. | Training workshops as approved by Unions/Guilds/FTM |

When deeming the Director of Photography, the Manitoba Trainee must be from the camera department, unless it can be proved that there is no available trainee(s) in this department. The labour organizations and FTM may work with the eligible applicant corporation to best match their deeming training requirements to the individual circumstances of the production.

Payments for Manitoba Trainees

| | Work Experience Training | How Work Experience Training is determined and paid |
|----|---------------------------------|---|
| 1. | Entry Level Placement | The eligible applicant corporation pays wages, Workers Compensation, Canada Pension Plan (CPP) and Employment Insurance (EI) benefits. FTM may make a financial contribution to offset <u>a portion</u> of the wages. |
| 2. | FTM Interns | FTM pays the Interns wages and benefits. |
| 3. | Upgrade Placements | The eligible applicant corporation pays wages, Workers Compensation, CPP, and EI benefits. FTM may make a financial contribution to offset <u>a portion</u> of the wages. |
| 4. | IATSE Trainees | Eligible applicant corporation is responsible for wages, fringes, and payroll taxes, and the provisions called for in the union contract. |
| 5. | Crew Observation Placements | Observers are not paid. |
| 6. | Mentorships | Mentors are not members of the crew. FTM pays the Mentor. The eligible applicant corporation pays the crewmember. |
| 7. | Training Workshops | Determined on a case-by-case basis |

Note: The eligible applicant corporation is required to provide craft service and catering to all types of trainees.

3) Deeming Application Process

The deeming application process is coordinated by MFM and is intended to occur during the pre-production phase. The Request for Deeming should be completed **prior** to the start of Principal Photography (positions identified during or after principal photography may be allowed depending on the circumstances).

Step 1: Identify crewing needs

- After Manitoba residents have been contacted (and interviewed when available) the eligible applicant corporation determines the positions requiring eligible non-resident individuals.

Step 2: Contact Manitoba Film & Music

- The eligible applicant corporation contacts MFM to initiate a Request for Deeming. MFM will need to know the list of positions to deem, along with the names of the eligible non-resident individuals who will hold these positions in order to prepare the Forms C and D for the eligible applicant corporation. This **MUST** be done prior to the start of principal photography (positions identified during or after principal photography may be allowed depending on the circumstances).
- Requests for Deeming for non-union productions are also reviewed by the unions/guild and Film Training Manitoba. When submitting their Request for Deeming, non-union productions must include the list of positions to deem, the names of the eligible non-resident individuals who will hold these positions (with résumés), the list of Manitoba residents who normally hold these positions (with résumés) and the reason why they were not hired,
- MFM will schedule a Deeming Meeting between the Producers, the unions and guild, and Film Training Manitoba to initiate deeming discussions and identify the deeming and training needs. The local Producer, the off-shore Producer (if applicable), and the Production Manager are requested to attend the Deeming Meeting. This meeting is to occur during hard prep.

Step 3: MFM begins preparation of the Request for Deeming (Form C) and Projected List of Deemed Labour (Form D, Part A)

- Based on the list of positions to be deemed, MFM compiles a list of existing Manitoba crew for the positions and prepares the Form C. MFM will also prepare the Form D, Part A (Projected List of Deemed Labour).

- The Forms C and D are then sent to the eligible applicant corporation.
 - For Form C - The eligible applicant corporation will fill in the missing information, will indicate the time and date each Manitoba resident was contacted, the reasons for not employing existing Manitoba crew, and will sign the form before returning it to MFM.
 - For the projected Form D – The eligible applicant corporation will indicate which Manitobans will receive training (the résumé of each trainee may be requested).
- Once the eligible applicant corporation has completed Form C and D, it then sends the forms (and résumés) back to MFM who will forward them to the unions/guilds/FTM for approval.

Step 4: The Unions, Guilds, and FTM (when applicable) will verify the availability of Manitobans for the deemed positions and will also verify the proposed training.

- If the eligible applicant corporation has problems finding the appropriate Manitoba Trainees to complete the Projected Form D, the unions/guilds/FTM may offer assistance in finding appropriate trainees, but are not obligated to do so.
- Once the unions/guilds/FTM are satisfied that no Manitobans were available, qualified, and willing for the positions to be deemed, they will sign the Form C.
- Once the unions/guilds/FTM are satisfied that appropriate Manitoba Trainees are matched to each eligible non-resident individual, they will sign the Projected Form D.
- The signed Forms C and D are then returned to MFM.

Step 5: MFM issues a Part A Approved Deeming Letter accompanied by the supporting approved Projected List of Deemed Labour (Form D, Part A)

- Once deeming approvals have been received from the Labour Organizations and FTM, MFM will send a letter to the eligible applicant corporation, to the governing Labour Organizations (and to FTM if applicable); confirming the approved deeming request and the list of proposed matched trainees. Forms are kept on file at MFM in anticipation of issuing an Advance Certificate of Eligibility or a Certificate of Completion. All information relating to deeming must be treated as strictly confidential.
- If the unions or guilds have not approved a position, notice and explanation will be sent by MFM to the eligible applicant corporation, to the governing Labour Organizations, (and to FTM if applicable). If the eligible applicant corporation is

in disagreement with the decision, it may refer to the Deeming Dispute Resolution Process.

Step 6: The eligible applicant corporation submits Part A Tax Credit Application to Manitoba Film & Music (*optional*)

- The eligible applicant corporation submits the Part A - Application for Registration to MFM, which would include the estimated eligible non-resident salaries in the calculation.

Step 7: The eligible applicant corporation prepares the Actual List of Deemed Labour (Form D, Part B) and the Training Form for each Manitoba Trainee

- After the period of employment of the eligible non-resident individuals has ended, and the training has been completed, the eligible applicant corporation will prepare and send an **Actual List of Deemed Labour (Form D, Part B)** and a Training Form for each Manitoba Trainee that was matched for deeming purposes to MFM. The Training Form must be completed by the Production Manager. THIS MUST HAPPEN WITHIN 4 weeks of wrap. MFM will forward the form to the unions/guild/FTM to verify that the training actually took place. If in agreement, they will sign the Actual List of Deemed Labour and send it back to MFM.
- MFM will then verify that all required approvals have been received and will send to the eligible applicant corporation a Part B Deeming Approval Letter, along with the Actual List of Deemed Labour (Form D, Part B) that has been approved by the unions/guild/FTM. This will confirm to the eligible applicant corporation the positions and eligible non-resident individuals that have been approved for deeming.
- The eligible applicant corporation will include the approved eligible non-resident individuals in its detailed Report of Eligible Manitoba Labour Expenditures (Form B(1)) for each fiscal year and include the associated eligible labour expenditures in its tax credit application calculations.

Step 8: The eligible applicant corporation submits the Certificate of Completion Application to Manitoba Film & Music

- After completion of the project and final reporting, the eligible applicant corporation submits the Certificate of Completion application to Manitoba Film & Music. Approved deeming requests and actual lists of matched training should be on file at MFM.
- If additional positions have been required during the course of production, and the required training has been identified, MFM will work with the eligible applicant

corporation, the unions, guild, and FTM to complete the necessary approval process for the new positions.

- After review, MFM will issue a Certificate of Completion to be forwarded to CRA for a review/audit of the labour and for final payment of the tax credit.

I. Frequent Filming Bonus

Effective for productions that commence principal photography after April 19, 2004, an eligible applicant corporation may qualify for an additional 5% on the third film shot in Manitoba within a 2-year period. The eligible applicant corporation can claim the 5% bonus on subsequent projects by maintaining production activity so that three films are shot in Manitoba within any 2-year period. For productions where principal photography began after December 31, 2007, the frequent filming bonus rate is increased to 10%.

For series, projects will incur one frequent filming credit for every 2 hours of airtime. Therefore, after the first four hours, the series has the required credits to qualify for the frequent filming bonus. The bonus will be applied to the remainder of the series. Eligible applicant corporations do not have to track their expenses by episodes because the bonus will be applied to the total eligible Manitoba labour expenses pro-rated by the number of eligible hours.

1) Eligibility Criteria:

There are two factors that determine an eligible applicant corporation's eligibility for the frequent filming bonus:

- ownership of the eligible applicant corporation applying for the tax credits (referred to as the Principal Owner); and
- timing of principal photography for the three eligible films.

2) Principal Owner

There are three ways to declare the Principal Owner of a film:

a. Declaration under the Ownership of the Voting Shares of the Corporation:

By default, Principal Ownership is defined as a person or group of persons who owned, throughout the period of principal photography of the film, at least 50% of the voting shares of the eligible applicant corporation that claimed a tax credit for the film (Here "person" refers to a legal entity, which may be an individual or a corporation. Assuming that the corporation's shareholders are typically other corporations, the word "company" will be used in the following explanations to refer to parent companies).

Therefore, if a company owns more than 50% of the voting shares of the eligible applicant corporation, then it is considered the Principal Owner without further review.

If companies share ownership 50/50 in the eligible applicant corporation, or if the eligible applicant corporation has a structure where no one shareholder controls more than 50% of the voting shares, a Declaration of Principal Owner must be submitted identifying which shareholder will be recognized as the Principal Owner. When a group owns the eligible applicant corporation, shareholders representing at least 50% of the voting shares must sign the Declaration of Principal Owner. In the absence of a Declaration of Principal Owner, the entire group will be treated as the Principal Owner.

b. Declaration under the Producer Definition:

In certain circumstances the producer of the film may not own the eligible applicant corporation applying for the tax credit. In those cases, a Declaration of Principal Owner **Under the Producer Definition** must be submitted identifying whether the voting shareholders or the Producer of the film will be designated the Principal Owner.

For the Producer to be declared as the Principal Owner, he/she/it must satisfy the following definition:

Is Eligible for Principal Owner status under the definition of Producer:

because of their contribution to the development, creative and financial control, and exploitation of the film, having regard to their role in

- (i) the acquisition or development of the film's story;*
- (ii) commissioning the writing of the film's screenplay;*
- (iii) selecting, hiring or firing key artists and creative personnel;*
- (iv) preparing, revising and approving the film's budget;*
- (v) binding the production company to talent and crew contracts;*
- (vi) arranging production financing;*
- (vii) making final creative decisions;*
- (viii) making or authorizing production expenditures; and*
- (ix) banking arrangements for the production.*

So, if a company or individual falls within the definition above, it does not have to own the majority of the voting shares of the eligible applicant corporation in order to be declared the Principal Owner. Keep in mind; however, that a Declaration of Principal Owner Under the Producer Definition **MUST** be signed by both the Producer and the owner(s) of the voting shares for this to be possible. The

majority owner of the voting shares is still the Principal Owner by default and must agree if principal ownership is to be transferred.

c. Application under Regulations:

A person or group of persons may apply to be recognized as the film's Principal Owner because of the direct or indirect equity interest in the film held by the person or group throughout the period of principal photography. This process can allow companies with a common owner to pool their frequent filming credits under the parent organization. It can also allow the Producer of a film who doesn't own the eligible applicant corporation applying for the tax credits to be recognized as the Principal Owner. However, the majority owner of the voting shares is still the Principal Owner by default and must agree if principal ownership is to be transferred.

There are currently no requirements specifying the time when a Principal Owner must be declared, so eligible applicant corporations are free to choose to declare in advance or wait until a third project is eligible for the bonus.

3) Timing of Photography of the 3 Qualifying Films

The following three criteria must be satisfied:

- a. In order for the 3rd film to qualify, principal photography must have started after April 19, 2004 and after the start of principal photography for two other eligible films (each of which is referred to as a "prior film"); and
- b. In order for the 2 prior films to qualify, 50% or more of the principal photography for each prior film must have occurred after April 22, 2003; and
- c. In order for the frequent filming bonus to apply, some of the principal photography for the film and for each prior film must have occurred within the same two-year period.

For the Frequent Filming Bonus to be included on a production's Registration Certificate, the two Prior Films being referenced must have received Registration Certificates and/or Completion Certificates.

For the Frequent Filming Bonus to be included on a production's Advance Certificate of Eligibility or Completion Certificate, Completion Certificates must have been issued previously for the two Prior Films being referenced.

J. Rural and Northern Filming Bonus

Effective after April 19, 2004, an eligible applicant corporation can increase its tax credit by 5% by shooting at least 50% of its Manitoba production days at least 35 km (22

miles) from Winnipeg's center (measured by the most direct driving distance from the intersection of Portage Avenue and Main Street).

1) Eligibility Criteria:

There are three factors that determine an eligible applicant corporation's eligibility for the rural bonus:

- Principal photography started after April 19, 2004;
- At any time during principal photography, the eligible applicant corporation has a permanent establishment in Manitoba at least 35 km (22 miles) from Winnipeg; and
- 50% of the Manitoba shooting days took place at least 35 km (22 miles) from Winnipeg's center.

A rural day is defined as 7.5 hours of principal photography occurring in the rural location. Therefore, to calculate the number of rural days, take the total number of hours spent on principal photography in the rural area and divide that amount by 7.5.

K. Manitoba Producer Bonus

For productions where principal photography began after December 31, 2007, an eligible applicant corporation can increase its tax credit by 5% by having a Manitoba resident fill the role of Producer, Co-Producer, or Executive Producer.

In order to qualify, the Manitoba resident must receive a screen credit as a Producer, Co-Producer, or Executive Producer.

L. Reporting Eligible Labour Expenditures

The required report format is included in this package as Form B (Cost-of-Salaries Credit) and Form B(1) and is also referenced in the Audit Guidelines (Section O) and defined further in Section G 2).

Highlights of Report Requirements:

1. Make sure the report lists the start and end dates for the expenditures, and make sure these dates conform to the "commencement of production" and "delivery" dates as stated in your application;
2. Declarations of Residency with Social Insurance Numbers are required for labour paid to eligible employees and contracted eligible individuals. Business Numbers are required for all labour expenses being claimed for wholly-owned

and multi-owned corporations. Manitoba Driver's license numbers or Manitoba Medical Numbers should be collected in cases where a SIN or BN is not available. The applicant must maintain proper books and records, including any documentation to support the labour costs (contracts, invoices and proofs of payment);

3. The labour expenses must be reported in seven categories as set out in Section G 2):
 - i. Labour paid to eligible employees;
 - ii. Labour paid to eligible individuals;
 - iii. Labour paid to wholly-owned corporations;
 - iv. Labour paid to other corporations;
 - v. Labour paid to partnerships;
 - vi. Eligible non-resident Labour paid to "T4'able" employees; and
 - vii. Eligible non-resident Labour paid to non-employees (i.e. to individuals, corporations, and partnerships).
4. Labour expenses should be clearly labelled to identify the nature of the labour expense. E.g. "Fringes" is insufficient; a specific description of the fringe for each person is required, including the percentage claimed on gross and the dollar amount (i.e. Fringe – vacation pay, percentage, and dollar amount claimed).
5. A portion of the contingency, equal to the proportion of eligible Manitoba labour to total cost less contingency, can be included as eligible Manitoba labour costs in the calculation for the Part A Registration Certificate.

M. ADMINISTRATION AND PROCESS

General:

An application for a Registration Certificate (otherwise known as Part A), an Advance Certificate of Eligibility, and/or a Certificate of Completion (formerly called Part B) must be sent to Manitoba Film & Music.

Based on the information provided, Manitoba Film & Music will verify that:

- The production is an *eligible film*, in accordance with the Manitoba *Income Tax Act*;
- The corporation is eligible to apply for the tax credit, as per the Manitoba *Income Tax Act*:
 - o Applicant has a permanent establishment in Manitoba;
 - o Applicant is a taxable Canadian corporation primarily carrying on a business that is film or video production;
 - o A minimum of 25% of the corporation's "T4'able" employee salaries and wages are paid to eligible "T4'able" Manitoba employees for work performed in Manitoba based on the information provided in the application form;

- Corporation has provided adequate documentation if it is applying to qualify for the Frequent Filming Bonus, Manitoba Producer Bonus and/or Rural Bonus;
- Basic tax credit calculations are correct;
- A complete application has been received and approved;
- The Part A Registration Certificate is issued in accordance with the legislation (provided a Part A application is submitted);
- The Advance Certificate of Eligibility is issued in accordance with the legislation, if applicable;
- The application for Certificate of Completion was received within 30 months after the end of the fiscal year in which principal photography began (unless a waiver with respect to the normal re-assessment period was filed with CRA);
- The Completion Certificate is issued in accordance with the legislation.

CRA will verify that:

- An Advance Certificate of Eligibility is provided for each fiscal year for multi-year productions. Production companies may also opt to apply only for a Certificate of Completion for multi-year productions;
- A Certificate of Completion is provided for non-multi-year productions or multi-year productions in their completion year;
- Manitoba Film & Music has certified the Advance Certificate of Eligibility or Certificate of Completion indicating eligibility of the eligible applicant corporation and the film;
- The labour expenses claimed are reasonable under circumstances;
- The labour expenses claimed are directly attributable to production;
- The labour expenses claimed were incurred and paid before January 1, 2020;
- Review eligible salaries and wholly or multi-owned corporate status of service providers;
- Review/audit applications in accordance with CRA audit standards;
- Re-verify that the minimum eligibility requirement (25% of “T4’able” wages and salaries paid to “T4’able” eligible Manitoba employees) for the eligible applicant corporation is complied with for cases that meet criteria provided to CRA by the province of Manitoba.

Details:

1) Deeming Provision - Application Process

The deeming application process is coordinated by Manitoba Film & Music and is intended to occur during the pre-production phase. The Request for Deeming should be completed **prior** to Principal Photography (requests made during or after principal photography may be accepted depending on the circumstances). Please see Section H – Deeming Provision for more details.

2) Part A - Registration Application (optional)

An eligible applicant corporation wishing to register for the Manitoba Film and Video Production Tax Credit will submit the required application and documentation, including the Request for Deeming, if applicable to Manitoba Film & Music. MFM will analyze the complete application in a timely manner to verify eligibility of the film, eligibility of the applicant corporation, eligibility for the bonuses, and the reasonableness of the estimated eligible expenses and tax credit calculations. Manitoba Film & Music may then produce a Part A – Registration Certificate that reflects MFM's opinion based on the eligibility criteria and the reasonableness of expenses claimed. This registration certificate may then be used to demonstrate the production's Manitoba Tax Credit status with Manitoba Film & Music and other financiers.

Please note that a Part A Registration Certificate does not guarantee the eligibility, nor the amount of the tax credit, as the final determination of eligibility and the final calculations are determined by the Canada Revenue Agency at the advance stage and the completion stage.

The registration document will be filed at Manitoba Film & Music along with the submitted documentation.

Please note that for the Frequent Filming Bonus to be included on a production's Registration Certificate, the two Prior Films being referenced must have received Registration Certificates and/or Completion Certificates.

3) Application for Advance Certificate of Eligibility or Certificate of Completion

(a) Advance Certificate of Eligibility – for multi-year productions only (optional)

An eligible applicant corporation with a project spanning more than one fiscal year may submit a complete application, along with required documentation, to Manitoba Film & Music for an Advance Certificate of Eligibility after each fiscal year that ends prior to the delivery date. An Advance Certificate of Eligibility will be issued by Manitoba Film & Music after the eligibility of the film, the eligibility of the applicant corporation, and the eligibility for the bonuses have been confirmed. This document is to be attached to CRA's Schedule 388, which accompanies the T2 Corporate Income Tax Return filed with CRA.

Please note that an Advance Certificate of Eligibility does not guarantee the eligibility, nor the amount of the tax credit, as the final determination of eligibility and the final calculations are determined by the Canada Revenue Agency at the completion stage.

Please note that tax credits **will not** be awarded on eligible non-resident labour until the production is complete – the deeming cap can only be determined based on the total eligible Manitoba labour across the entire show, and final deeming can only be

determined once all training has taken place. The tax credit on eligible non-resident labour will be issued when the Certificate of Completion is filed with CRA.

Furthermore, for the Frequent Filming Bonus to be included on a production's Advance Certificate of Eligibility, Completion Certificates must have been issued previously for the two Prior Films being referenced.

Eligible applicant corporations of multi-year productions may also elect to apply for the tax credit only in the year of completion. In this case, only an application for Certificate of Completion is required.

(b) Application for Certificate of Completion – **mandatory** for all productions (single or multi-year)

The required Application Fee must be included with the Completion Application for MFM to review the application (see section 4 below for information on the Application Fee).

When a registered project is completed, the applicant will submit the Completion Certificate application, documentation and required Application Fee to Manitoba Film & Music, including the Actual List of Deemed Labour (Form D, Part B), if applicable. The complete application will be reviewed in a timely fashion. A Certificate of Completion will be issued by Manitoba Film & Music after the eligibility of the film, the eligibility of the eligible applicant corporation, and the eligibility for the bonuses have been confirmed. Applicants will then submit an audit package, including labour lists and the Certificate of Completion, along with their T2 corporate income tax return to CRA.

CRA will review/audit the application, including the reasonableness of expenses claimed, and will determine the final value of the tax credit, including eligible non-resident labour, after which the tax refund will be issued and sent to the eligible applicant corporation.

Please note that for the Frequent Filming Bonus to be included on a production's Completion Certificate, Completion Certificates must have been issued previously for the two Prior Films being referenced.

Note:

- i. **Where an eligible applicant corporation is engaged in more than one production in a given taxation year, separate applications and registrations for each production must be submitted.**
- ii. **Where a production spans more than one taxation year, separate certificates for each taxation year will be issued:** Advance Certificates of Eligibility for years prior to the delivery date and/or Certificate of Completion for the year-end in which delivery occurred. **An eligible applicant corporation may also elect to apply**

only for a Certificate of Completion for such productions; however, the Form B(Cost-of-Salaries Credit) and the Form B(1) Report of Eligible Manitoba Labour Expenditures must still be separated by fiscal year.

- iii. **All productions must submit a Completion Application.** Productions that have received a tax credit refund through an Advance Certificate of Eligibility must provide a Completion Application to MFM upon completion of the project. Failure to do so will result in CRA recovering the tax credit from the applicant corporation. Once a Completion Certificate has been issued, there shall be no further applications accepted by MFM for the same production.

4) Application Fee

For all productions where principal photography begins after August 31, 2017, an Application Fee is charged with respect to each Completion Application submitted to Manitoba Film & Music. The required Application Fee is determined in part based on the final cost of production. The Application Fee schedule is:

- A minimum of CAD\$350, regardless of the level of the final production costs; plus
- 0.05% of the production's final total cost of production that exceeds CAD\$20,000;
- to a maximum of CAD\$5,000.

The final cost of production is all final costs paid through the applicant corporation. Please note that in the case of co-productions and co-ventures where production costs have been split between separate single-purpose corporations (one for Manitoba costs and another for non-Manitoba costs), the final total cost of production will be based on costs that are paid through the applicant corporation only.

The Application Fee is payable by cheque or money order made payable to Manitoba Film & Music at the time the Completion Application is submitted to MFM. Separate cheques or money orders are required for each Completion Application. In no circumstance shall the Application Fee be reimbursed to the applicant. Please note that the Application Fee is required in order for the application to be reviewed. Completion Certificates will not be issued until cheques have cleared. There is no fee charged for a Registration Application (Part A). There is no fee charged for an Advance Certificate of Eligibility Application.

5) Receiving the Tax Credit Refund

CRA processes the income tax return and will issue a refund to the eligible applicant corporation for the value of the Manitoba Tax Credit, provided that the corporation does not have any federal or provincial liabilities outstanding (i.e. source deduction remittances, income tax payable).

If it has been determined that an overpayment of the tax credit has been made (or no Completion Certificate has been issued by MFM in the case where an advance has been received by the applicant), the excess (or the full advance) is recoverable from the corporation and is a debt due by the corporation to Her Majesty in right of Manitoba. If the situation arises where there are competing claims for the same expenses, then no tax credit will be issued for those expenses until an agreement signed by all parties is filed with the Minister.

It is industry standard that most productions are completed through single purpose companies, which allows for some manipulation of the timing of the year-end. Whenever possible, it is advantageous to have the eligible applicant corporation's year-end coincide with the completion of the production. This will help minimize turnaround time for the Tax Credit processing and will lessen interim financing costs.

N. USER GUIDELINES TO FILLING IN THE APPLICATION

- i. Manitoba Film & Music must receive the Certificate of Completion application **within 30 months after the end of the taxation year in which principal photography began** (unless a Waiver In Respect Of The Normal Reassessment Period – Form T2029 - has been filed with the Canada Revenue Agency, in which case the deadline is increased to 48 months after the end of the fiscal year in which principal photography began). Applications should be **submitted in the same order as the productions were shot**. The Application Fee must accompany the Completion Application in order for the application to be accepted and reviewed;
- ii. Ensure that you fill in all blanks. **Do not skip ANY spaces**, as the application will not be processed until this information has been provided, causing you unnecessary delays;
- iii. Where a production spans more than one taxation year, an Advance Certificate of Eligibility for each taxation year can be issued. **An eligible applicant corporation may also elect to apply only for a Certificate of Completion for such productions;**
- iv. Whenever a production spans more than one fiscal year, both the Form B (Cost-of-Salaries Credit) and the Form B(1): Report of Eligible Manitoba Labour Expenditures **MUST be separated by fiscal year;**
- v. Section II - Eligibility Requirements for an eligible applicant corporation:

In order to receive any level of tax credit certificate, eligible applicant corporations must satisfy eligibility requirements, namely that the eligible applicant corporation pays at least 25% of its "T4'able" salaries and wages to "T4'able" eligible employees and "T4'able" employees who are eligible non-resident individuals, in relation to the

eligible film for which the tax credit is claimed, for work performed in Manitoba on the eligible film.

Please be aware of the important distinction between “salaries and wages”, which refer exclusively to compensation paid to “T4’able” employees, and “eligible salaries” which includes compensation paid to third parties (individual contractors or otherwise) for services provided. **Close attention to this section is required, as an applicant corporation will not qualify for the tax credit if this requirement is not met.**

Section 7.5(1) of the Income Tax Act (Manitoba) under “eligible corporation” states (among other requirements): “eligible corporation”, in relation to an eligible film, means a corporation that pays, for each fiscal year, at least 25% of its salaries and wages

(i) to eligible employees and employees who are eligible non-resident individuals in relation to the eligible film for which the tax credit is claimed, and

(ii) except in the case of a documentary, for work performed in Manitoba on an eligible film.

For documentaries, the corporation would only be required to meet the minimum of 25% of “T4’able” salaries and wages paid to “T4’able” eligible Manitoba employees and “T4’able” employees who are eligible non-resident individuals, in relation to the eligible film for which the tax credit is claimed; the work does not need to be performed in Manitoba.

Note that “T4’able” employees who are eligible non-resident individuals in relation to the eligible film for which the tax credit is claimed, subject to the 30% cap, are included for purposes of meeting the minimum 25% requirement.

The formula for each fiscal year in question is calculated as follows:

Wages and salaries paid by the eligible applicant corporation to “T4’able” eligible **employees** who are residents of Manitoba, and to “T4’able” employees who are eligible non-resident individuals, in relation to the eligible film for which the tax credit is claimed, for work performed in Manitoba on the eligible film

All wages and salaries paid to “T4’able” **employees** of the eligible applicant corporation, regardless of where they reside or where they perform the work

Canada Revenue Agency defines the employer-employee relationship:

Where an **employer-employee** relationship exists, the employer must:

- register a Canada Revenue Agency Business Number (BN); and
- withhold income tax, Canada Pension Plan (CPP) or Quebec Pension Plan (QPP) contributions, and Employment Insurance (EI) premiums on amounts paid to employees; and
- remit the amounts withheld as well as the required employer's share of CPP/QPP contributions and EI premiums to Revenue Canada (and *le ministère du Revenu du Québec* if applicable); and
- report the employees' income and deductions on the appropriate information return; and
- give the employees copies of their T4 slips **by the end of February of the following calendar year.**

For more information, please visit the following Canada Revenue Agency webpage:

<http://www.cra-arc.gc.ca/tx/bsnss/tpcs/pyrll/hwpyrllwrks/stps/menu-eng.html>

- vi. Ensure that an authorized signing officer of the eligible applicant corporation (as determined in the corporation's by-laws and resolutions) signs the application form;
- vii. Declarations of Residency are required for all labour expenses being claimed for employees and contracted individuals. These declarations are not required to be submitted to CRA, but **MUST BE AVAILABLE** upon request.

O. AUDIT GUIDELINES

1) Introduction

| |
|---|
| It is the producer's responsibility to ensure that all required information is provided. |
|---|

- a. **When Manitoba Film & Music is an equity investor**, producers will need to provide an audited statement of production costs and an audited Summary of Eligible Manitoba Labour Expenditures (Form B - Cost-of-Salaries Credit) prepared by a certified accountant independent of the eligible applicant corporation for productions with a budget greater than \$500,000. For productions with budgets ranging from \$200,000 to \$500,000, a review engagement report for production costs and labour costs will suffice. For productions with a budget of less than \$200,000, Manitoba Film & Music will request only that the producer sign an approved affidavit (Form E) attesting to the cost of production and the value of the Manitoba labour expenditures being claimed.

- b. ***When Manitoba Film & Music is NOT an equity investor***, there is no requirement for a production cost audit. Instead, producers will need to provide the Summary of Eligible Manitoba Labour Expenditures (Form B – Cost-of-Salaries Credit) accompanied by a Manitoba Film & Music approved notarized affidavit (Form F).

2) General

- The auditor must be a member in good standing with its Provincial Institute/Order or Association, having obtained approval for the provision of assurance services under its applicable governing body and must be an independent third party, not related to the producer;
- The auditor's report must be addressed to the party that has engaged the auditor, that is, to the Directors of the eligible applicant corporation or to the producer of the production;
- The auditor's name, address and telephone number must be evident;
- The auditor's report must be dated as at the completion of the audit fieldwork;
- The audit must be performed in accordance with Canadian generally accepted auditing standards and with principles generally recognized in the film and television industry;
- The auditor must have sufficient knowledge of the film and television industry and be familiar with the operations of the eligible applicant corporation being audited;
- The auditor must have sufficient knowledge of sections 7.5 to 7.9 of the Manitoba Income Tax Act (entitled Film and Video Production Tax Credit) as well as applicable Manitoba Regulations .

3) Identification of the Production

- The title of the production and, when applicable, the episode numbers, must be disclosed.

4) Cost Report

- The cost report must be in Canadian dollars and conform as much as possible to the industry standard model (as required by Telefilm and CAVCO);
- Only expenditures that were incurred for the production can be recorded as production costs; these must be charged to the proper budgetary item;
- Refunds and credit notes received for discounts, rebates, invoicing errors, and purchase returns must be credited to the production costs; similarly, proceeds from the sale of props and other production assets must be deducted from the costs presented in the cost report. In cases where props and other production assets are kept in inventory for future productions, they must also be deducted, at fair market value, from the costs presented in the cost report;
- Completion bond expenditures must reflect any "no-claims rebate" received (the amount reported must be net after rebate);
- Amortization of series costs must be allocated to specific cost categories.

5) Notes to the Cost Report

i. Sources of Funds

All sources of funds that were used to finance the production must be disclosed, including any non-monetary transactions (as defined in Section 3830 of the CICA Handbook) that were included in the cost of production.

Non-monetary transactions must be disclosed at fair market value as at the ending date of the cost report. The nature of the services provided and the consideration given in exchange for the services must be disclosed. The methodology used to determine the fair market value of these transactions must be outlined.

If there were no non-cash transactions, the statement must include a note to that effect. Note that non-monetary transactions with respect to eligible salaries are not claimable for tax credit purposes.

ii. Accounts Payable, Accrued Charges, Provisions, and Deferrals

The amounts of accounts payable, accrued charges, provisions, and deferrals must be presented separately as at the ending date of the cost report.

If there are no accounts payable, accrued charges, provisions, or deferrals, the cost report must include a note to that effect.

iii. Related Party Transactions

The notes to the Statement of Production Costs must provide a breakdown of all related party transactions (as defined in Section 3840 of the CICA Handbook), and include:

- a) the name of the related party; and
- b) the nature of the relationship between the related party and the eligible applicant corporation; and
- c) the nature of the transaction; and
- d) the amount of the transaction.

The methodology used to determine the fair market value of these transactions must be outlined.

If there are no related party transactions, the statement must include a note to that effect.

6) Report of Eligible Manitoba Labour Expenditures – Summary (Form B – Cost-of-Salaries Credit) and Detailed (Form B(1))

- The summary report – Form B (Cost-of-Salaries Credit) – is submitted to Manitoba Film & Music;
- The detailed report – Form B(1) – is submitted to Canada Revenue Agency;
- Both the summary and detailed reports of eligible Manitoba labour expenditures must be in Canadian dollars and be presented in the format provided in Form B (Cost-of-Salaries Credit) and Form B (1) to the application;
- Labour expenditures claimed must comply with the definition of “eligible salaries” contained in the legislation (Appendix I);
- The Report of Eligible Manitoba Labour Expenditures (Form B(1)) must be sub-divided into the following categories:
 - Labour paid to Employees;
 - Labour paid to Individuals (actors, extras, etc...);
 - Labour paid to Wholly-owned corporations;
 - Labour paid to Other Corporations;
 - Labour paid to Partnerships;
 - Labour paid to Eligible non-resident employees; and
 - Other Eligible non-resident labour.
- For Form B(1):
 - Labour expenses being claimed must be identified by position and budget category, and must include the payee’s name (indicating individual or corporation), address, and Social Insurance Number. For corporations, the Business Number must be included;
 - The calculation of the eligible qualified percentage or hourly rate must be shown.
- Where labour expenses span more than one taxation year, the report must break down labour expenses so that a **separate report is provided for each taxation year**.

7) Notes to the Summary of Eligible Manitoba Labour Expenditures (Form B – Cost-of-Salaries Credit);

The auditor is not required to confirm residency status.

1. The auditor must verify that the calculation of eligible labour expenditures conforms to the definition of “eligible salaries” as presented in sections 7.5(1) to 7.5(2) of the Income Tax Act.
2. For corporations, where the claim is for more than 65% of service fees charged as labour, the auditor must specifically verify that expenses claimed do not exceed the actual salaries of the individuals for that period. The auditor does not have to verify proof of payment to owners of wholly owned corporations.
3. The auditor must confirm that all labour expenses being claimed have been:

- i. incurred between “Commencement of Production” and the delivery date as these dates have been reported; and
 - ii. paid within 60 days of the corporation’s year-end.
4. If eligible labour expenses remain unpaid at 60 days after year-end, these expenses should be noted as per the format provided in both Form B (Cost-of-Salaries) and Form B(1) to the application. If no labour expenses remain unpaid, the statement must include a note to that effect.

8) List of Shareholders of the Corporation

For eligible applicant corporations claiming the frequent filming bonus, the auditor must include a list of the shareholders of the corporation, listing their percentage of ownership.

Please consult the Manitoba Film & Music website at www.mbfilmmusic.ca for current application checklists, application forms and templates.

Template for Audit/Review Engagement Report

Statement of Production Costs / Summary of Eligible Manitoba Labour Expenditures for
The Production Entitled "ABC"

For the period of _____(commencement of production) to _____(delivery
date)

The Production Co. Inc.

Auditor's Report / Review Engagement Report

To the Directors of
The Production Co. Inc.

We have **audited/reviewed** the **statement of production costs/summary of eligible Manitoba labour expenditures** applicable to the production entitled "ABC" for the period from _____ to _____. This financial information is the responsibility of the producers. Our responsibility is to express an opinion on this financial information based on our **audit/review**.

For Audit:

We conducted our audit in accordance with generally accepted auditing standards. Those standards require that we plan and perform an audit to obtain reasonable assurance whether the financial information is free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial information. An audit also includes assessing the accounting principles used and significant estimates made by the producers, as well as evaluating the overall presentation of financial information.

For Review Engagement:

Our review consisted primarily of enquiry, analytical procedures and discussion related to information supplied to us by the production's management. A review does not constitute an audit and consequently we do not express an audit opinion on this financial information.

In our opinion, this schedule presents fairly, in all material respects, the production costs/eligible Manitoba labour expenditures of the production entitled "ABC" for the period ended _____ in accordance with the Guidelines for the Manitoba Film & Video Production Tax Credit.

Name of accounting firm
(City, Canada)
(Date)

MANITOBA FILM AND VIDEO PRODUCTION TAX CREDIT

Deeming Dispute Resolution Process

In order to deem a non-resident for the purposes of the Manitoba Film and Video Production Tax Credit, agreement from both the eligible applicant corporation and the Labour Organization is required*. If the parties do not agree, the disputing party must follow the steps listed below within fourteen (14) business days of receiving notification that the deeming request was denied. If a party disputes a position for deeming and does not follow the steps listed below within (14) business days, the dispute will then become null and the deeming process will continue as if both parties have agreed.

The Labour Organizations participate in this process as a service to the industry that is separate from, and independent of, any Collective Bargaining. Whether a production or position is under a Collective Bargaining Agreement or not does not affect how the Labour Organizations treat this process.

This process has been designed to encourage Labour Organizations and eligible applicant corporations to self-mediate disputes over deemable positions. At any time prior to mediation the eligible applicant corporation can withdraw its request for deeming and hire non-resident labour with the understanding that this individual is not eligible for the tax credit. Labour Organizations can also withdraw their opposition to a request for deeming at any time prior to mediation, and may consider recommending individuals from its membership for possible training opportunities under the disputed position.

If this process goes to mediation, the disputing parties must select and mutually agree on a professional mediator. The decision of the mediator must be binding and cannot be appealed. Any costs incurred with respect to the mediation will be split equally between the eligible applicant corporation and the Labour Organization.

Deeming Request Procedure:

- 1) The eligible applicant corporation must supply the relevant labour organization with the following documents prior to hiring an eligible non-resident individual:
 - Résumé of the eligible non-resident individual;
 - Job Description of the eligible non-resident individual's classification;
 - List of Manitoba candidates who were considered and who would normally fill the position;
 - Resumes of Manitoba candidates who were considered and who would normally fill the position;
 - Reasons why the Manitoba candidates were not hired;
 - Names of the individuals who will be provided with training opportunities, along with training plans.
- 2) The Labour Organization, at its sole discretion, and without setting precedent, may waive its requirements for any of the above documents.

The Process for Deeming Dispute Resolution

1. The eligible applicant corporation must express its concern in writing in the form of a “Notice of Objection” to the applicable Labour Organization within fourteen (14) business days of receiving notification that the deeming request was denied. A copy must be sent to **Manitoba Film & Music (MFM) at the same time;**
2. Should a resolution not be reached following the Notice of Objection, the disputing party must contact MFM within an additional seven (7) business days in order to facilitate a meeting between the two parties in order to discuss possible resolutions;
3. Should a resolution not be reached following a meeting between the eligible applicant corporation and the Labour Organization, the disputing parties must select and mutually agree on a professional mediator and begin mediation proceedings. Equal deposits from the eligible applicant corporation and from the labour organization must be provided to Manitoba Film & Music to cover the costs of the mediation. If the deposits are insufficient to cover the expenses, the difference will be split between the two parties. On the other hand, if the deposits exceed the cost of the mediation, the difference will be reimbursed equally to the two parties. The mediator’s decision will be given in writing to the two parties, with a copy to Manitoba Film & Music, within the timeline agreed upon by the parties and the mediator. If it is determined that the position is deemable, both parties will follow the usual steps for deeming. If the position is determined not to be deemable, it will not be included in the tax credit calculations.

*Note: This process applies to union and non-union productions.

Appendix I: Manitoba Film and Video Production Tax Credit Legislation

DISCLAIMER: Although the Government of Manitoba updates the online versions of Manitoba statutes regularly, only the printed version from the Queen's Printer – Statutory Publications is the official version. The text provided below may differ from the online or official versions of the legislation.

<http://web2.gov.mb.ca/laws/statutes/ccsm/i010e.php#7.5>

FILM AND VIDEO PRODUCTION TAX CREDIT

Definitions and Interpretation

Definitions

7.5(1) The following definitions apply in this section and sections 7.6 to 7.9.

"accommodation unit" means a residence or a hotel room, regardless of the number of people staying in the residence or hotel room. (« unité d'hébergement »)

"certifying authority" means Manitoba Film and Sound Recording Development Corporation. (« autorité chargée de la délivrance des certificats »)

"cost-of-production credit", in relation to an eligible film for a taxation year, is the amount determined for that film for that year under subsection 7.6(6). (« crédit pour les coûts de production »)

"cost-of-salaries credit", in relation to an eligible film for a taxation year, means the amount determined for that film for that year under subsection 7.6(2). (« crédit pour les coûts des traitements »)

"eligible accommodation expenditure" of a corporation for a taxation year in relation to an eligible film means the total of all amounts each of which is the lesser of

(a) the amount paid; or

(b) \$300;

for each night's use of an accommodation unit in Manitoba, during the year, for the temporary accommodation of one or more individuals whose presence in Manitoba is required for the film's production. (« dépense d'hébergement admissible »)

"eligible corporation", in relation to an eligible film, means a corporation that

(a) is a taxable Canadian corporation incorporated under the laws of Canada or of a province of Canada;

(b) has a permanent establishment in Manitoba;

(c) is producing an eligible film in the course of a film or video production business that is its primary business; and

(d) pays at least 25% of its salaries and wages

(i) to eligible employees and employees who are eligible non-resident individuals in relation to the eligible film for which the tax credit is claimed, and

(ii) except in the case of a documentary, for work performed in Manitoba on an eligible film. (« corporation admissible »)

"eligible employee", in relation to a taxation year of a corporation for which the corporation is claiming a tax credit, means an employee who was resident in Manitoba on December 31 of the taxation year or of the immediately preceding taxation year. (« employé admissible »)

"eligible film" means a film or video that is registered as an eligible film under subsection 7.7(1). (« film admissible »)

"eligible individual", in relation to a taxation year of a corporation for which the corporation is claiming a tax credit, means an individual (other than a trust or estate) who was resident in Manitoba on December 31 of the taxation year or of the immediately preceding taxation year. (« particulier admissible »)

"eligible non-resident individual", in relation to a taxation year of a corporation for which the corporation is claiming a tax credit, means an individual (other than a trust, estate or eligible individual) who, in that taxation year or the immediately preceding taxation year, provided technical services in Manitoba for the production of an eligible film as a member of a film production technical crew of which at least one other member was a Manitoba trainee receiving eligible training. (« non-résident admissible »)

"eligible salaries" of a corporation for a taxation year in respect of an eligible film means the total of the following amounts to the extent that they are reasonable in the circumstances:

(a) the salary or wages of eligible individuals that

(i) are directly attributable to the production of the film,

(ii) are incurred by the corporation for the stages of production from the production commencement time to the end of the post-production stage, and

(iii) were incurred in the year or the immediately preceding taxation year, and paid by the corporation within the year or 60 days after the end of the year,

but not including salaries and wages that were incurred in the immediately preceding year and paid within 60 days after the end of that preceding year;

(b) that portion of the remuneration — other than salary or wages and other than remuneration that relates to services rendered in the immediately preceding taxation year and was paid within 60 days after the end of that preceding year — that is directly attributable to the production of the film, that relates to services rendered in the year or the immediately preceding taxation year to the corporation for the stages of production from the production commencement time 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

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

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

(B) 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 film,

(ii) 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 film,

(iii) another corporation,

(A) all of the issued and outstanding shares of the capital stock of which, except directors' qualifying shares, belong to an eligible individual, and

(B) the activities of which consist principally of the provision of the services rendered by that individual,

to the extent that the amount paid is attributable to services rendered personally by the individual for the production of the film, or

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

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

(B) 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 film;

(c) where

(i) the corporation is a subsidiary wholly-owned corporation of another corporation (the "parent"), and

(ii) the corporation and the parent have agreed that this clause apply in respect of the production of the film,

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 film for the particular taxation year under clause (a) or (b) if

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

- (iv) 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;

(d) the lesser of

- (i) the total increase in the amounts that would be included under clause (a) or (b) if the amounts paid by the corporation for services provided in Manitoba by eligible non-resident individuals were paid for services provided by eligible individuals, but no amount were included in respect of the benefits or allowances that are included (or would be included if they were employees resident in Canada) in the income of the eligible non-resident individuals under section 6 of the federal Act, and
- (ii) the following percentage of the total of the amounts determined under clauses (a) to (c) for the taxation year:
 - (A) 30%, if at least two individuals participated, as Manitoba trainees, in the film production technical crew in which the eligible non-resident individual provided services, or
 - (B) 10%, if only one individual participated, as a Manitoba trainee, in the film production technical crew in which the eligible non-resident individual provided services;

(e) any additional amount that, according to the regulations, may be claimed as eligible salaries. (« traitements admissibles »)

"eligible service contract expenditure" of a corporation in relation to an eligible film means an amount paid

- (a) to an eligible individual, other than an employee of the corporation, for services performed in Manitoba in respect of the eligible film by the individual or the individual's employees at a time when they were eligible individuals;
- (b) to a taxable Canadian corporation for services performed in Manitoba in respect of the eligible film by that corporation's employees at a time when they were eligible individuals;
- (c) to a taxable Canadian corporation,
 - (i) all the issued and outstanding shares of the capital stock of which belong to an eligible individual, and
 - (ii) the activities of which consist principally of the provision of services rendered by that individual,

for services rendered personally by that individual in Manitoba in respect of the eligible film; or

- (d) to a partnership, each member of which is an eligible individual or a taxable Canadian corporation, for services performed in Manitoba in respect of the eligible film by an eligible individual who is a member of the partnership or by the partnership's employees at a time when they were eligible individuals;

and any other amount that, according to the regulations, may be claimed as an eligible service contract expenditure. (« dépense admissible en contrats de services »)

"eligible tangible property expenditure" of a corporation for a taxation year in relation to an eligible film means the total of the following amounts:

- (a) the total of all amounts each of which is the portion of the corporation's lease cost of a tangible property used in making the film that can reasonably be attributed to the use in Manitoba of that property in the taxation year in the course of producing the film;
- (b) the total of all amounts each of which is the amount determined by the following formula in respect of a depreciable property owned by the corporation:

$$C \times R \times D/365$$

In this formula,

C

is the corporation's undepreciated capital cost of the property at the beginning of the year or, if the property was acquired by it in the year, the corporation's cost of the property,

R

is the capital cost allowance rate for the property under Schedule II of the federal regulations,

D

is the number of days in the taxation year that the property was available for immediate use, in Manitoba, in producing the film. (« dépense admissible en biens corporels »)

"excluded production expenditure", in relation to an eligible film, means an expenditure incurred for

- (a) meals or entertainment, other than food and non-alcoholic beverages provided to individuals working on the eligible film at a studio or location set on a day that filming takes place;
- (b) alcoholic beverages;
- (c) [repealed] S.M. 2012, c. 1, s. 28;
- (d) living expenses other than eligible accommodation expenditures;
- (e) remuneration that is determined by reference to profit or revenue;
- (f) anything for which an amount is included in computing a credit under any other section of this Act other than section 10.1 (paid work experience tax credit); or
- (g) advertising, marketing, promotion, market research or anything else that relates in any way to any other film or video production. (« dépense de production exclue »)

"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 allowance or any other form of assistance, other than

- (a) any film and video production tax credit under this Act or under the federal Act;
- (b) government amount paid or payable to the corporation by The Canada Media Fund, Telefilm Canada or Manitoba Film and Sound Recording Development Corporation that is recoupable or repaid;
- (c) any amount received or receivable under The Canada Media Fund Licence Fee Program;
- (d) the amount of a credit under section 10.1 (paid work experience tax credit); and
- (e) any other amount prescribed by regulation. (« aide gouvernementale »)

"Manitoba trainee" means an eligible individual who, as a member of a film production crew working on the production of an eligible corporation's eligible film, received training or provided technical services for which the corporation has received or is eligible to receive a paid work experience tax credit under section 10.1. (« stagiaire manitobain »)

"parent-subsidiary amount", in relation to a taxation year of a corporation, means an amount that

- (a) is paid by the corporation, within the taxation year or 60 days after the end of the year, to another corporation (the "parent") in relation to which it is a subsidiary wholly-owned corporation; and
- (b) is paid as a reimbursement of an expense of the parent that
 - (i) the corporation and the parent have agreed to treat as an expenditure of the corporation, and
 - (ii) would be an eligible service contract expenditure of the corporation for the taxation year in which it was incurred by the parent if
 - (A) the corporation's taxation year were the same as the parent's taxation year, and
 - (B) the expenditure were incurred by the corporation for the same purpose as it was incurred by the parent, and were paid by the corporation at the same time and to the same person as it was paid by the parent. (« remboursement à la corporation mère »)

"tax credit" means the tax credit established in section 7.6. (« crédit d'impôt »)

Limitations re eligible salaries

7.5(2) For the purpose of the definition "eligible salaries" in subsection (1),

- (a) remuneration does not include remuneration determined by reference to profit or revenue;

- (b) salary or wages do not include an amount determined by reference to profit or revenue;
- (c) where the value of remuneration, salary or wages may include an amount determined by reference to profits or revenues, the minister may deem a value for that portion of the eligible salaries;
- (d) services referred to in clause (b) of the definition that relate to the 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, colourist, 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, timer, videographer or videotaping technician, or any other duties prescribed by regulation; and
- (e) an expense may be included in eligible salaries only if it is incurred and paid before January 1, 2020.

Eligible training

7.5(3) For the purpose of the definition "eligible non-resident individual" in subsection (1), an individual is receiving eligible training if the training is designed to improve his or her technical film production skills and is authorized or approved by

- (a) Film Training Manitoba;
- (b) the Directors Guild of Canada;
- (c) the International Alliance of Theatrical Stage Employees, Moving Picture Technicians, Artists and Allied Crafts of the United States, Its Territories and Canada;
- (d) the Alliance of Canadian Cinema, Television and Radio Artists; or
- (e) any other person or organization prescribed by regulation.

Limitation re eligible tangible property expenditure

7.5(4) An expenditure may be included in an eligible corporation's eligible tangible property expenditure in relation to an eligible film for a taxation year only if all of the following conditions that apply are satisfied:

- (a) the property is used in Manitoba in a manner that is directly attributable to the making of the film;
- (b) the property is used during the stages of production of the film from the production commencement time to the end of the post-production stage;
- (c) the expenditure is incurred by the corporation in the year or the immediately preceding taxation year;
- (d) the expenditure is reasonable in the circumstances;

- (e) in the case of a lease cost,
- (i) the cost is incurred in the taxation year and was paid within the year or 60 days after the end of the year,
 - (ii) the lessor carries on, at a permanent establishment in Manitoba, the business of leasing tangible property of the type leased to the corporation, and
 - (iii) at the time of payment of the lease cost, the lessor is
 - (A) a taxable Canadian corporation that is not related to the eligible corporation or controlled by any of its employees,
 - (B) an individual resident in Manitoba who is not an employee of the eligible corporation, or
 - (C) a partnership each member of which is a corporation described in paragraph (A) or an individual described in paragraph (B).

S.M. 1997, c. 49, s. 19; S.M. 1998, c. 30, s. 29; S.M. 2000, c. 39, s. 34; S.M. 2001, c. 41, s. 26; S.M. 2002, c. 19, s. 28; S.M. 2003, c. 4, s. 45; S.M. 2004, c. 43, s. 51; S.M. 2005, c. 40, s. 36; S.M. 2007, c. 6, s. 39; S.M. 2008, c. 3, s. 28; S.M. 2010, c. 29, s. 20; S.M. 2012, c. 1, s. 28; S.M. 2013, c. 55, s. 22; S.M. 2015, c. 40, s. 16.

Tax Credit

Refundable film and video production tax credit

7.6(1) An eligible corporation is deemed to have paid on its balance-due day for a taxation year, on account of its tax payable under this Act for that year, such of the following amounts as are claimed by the corporation in its return for the year:

- (a) its cost-of-salaries credit for that year for an eligible film for which the principal photography commenced before April 1, 2010;
- (b) either
 - (i) its cost-of-salaries credit for that year, or
 - (ii) its cost-of-production credit for that year,

for an eligible film for which the principal photography commenced on or after April 1, 2010.

Cost-of-salaries credit

7.6(2) Subject to subsections (7) and (8), an eligible corporation's cost-of-salaries credit for a taxation year for an eligible film produced by it in Manitoba is the amount determined by the following formula:

$$\text{credit} = 0.45A + 0.1B + 0.05(C + D)$$

In this formula,

A

is the amount, if any, by which

(a) the corporation's eligible salaries for the film for the year,

exceeds

(b) the amount of any government assistance received or to be received by the corporation in connection with those salaries;

B

is nil, unless

(a) the principal photography for the eligible film commenced after the commencement of the principal photography for two other eligible films,

(b) the same person or group of persons is the principal owner of each of the three films, and

(c) some of the principal photography for each of the three films took place within the same two-year period,

in which case B is the amount determined for A;

C

is nil, unless

(a) the corporation has, at any time during principal photography for the film, a permanent establishment in Manitoba at least 35 kilometres from Winnipeg, and

(b) the principal photography for the film took place in Manitoba at least 35 kilometres from Winnipeg for at least 1/2 of the days that principal photography took place in Manitoba,

in which case C is the amount determined for A;

D

is nil, unless a person who is resident in Manitoba in the year in which principal photography ends, or in the immediately preceding year, receives credit as a producer, co-producer or executive producer of that film, in which case D is the amount determined for A.

Principal owner

7.6(3) Subject to subsection (4), a film's principal owner for the purpose of subsection (2) is a person or group of persons

(a) who owned, throughout the period of principal photography of the film, at least 50% of the voting shares of the corporation that claimed a tax credit for the film;

(b) whom the certifying authority, upon application in a form and containing the information required by the authority, recognizes as the film's principal owner because of the direct

or indirect equity interest in the film held by the person or group throughout the period of principal photography; or

- (c) whom the certifying authority, upon application in a form and containing the information required by the authority, recognizes as the film's principal owner because of their contribution to the development, creative and financial control, and exploitation of the film, having regard to their role in
 - (i) the acquisition or development of the film's story,
 - (ii) commissioning the writing of the film's screenplay,
 - (iii) selecting, hiring or firing key artists and creative personnel,
 - (iv) preparing, revising and approving the film's budget,
 - (v) binding the production company to talent and crew contracts,
 - (vi) arranging production financing,
 - (vii) making final creative decisions,
 - (viii) making or authorizing production expenditures, and
 - (ix) banking arrangements for the production.

Only one principal owner

7.6(4) If a film would otherwise have more than one principal owner, it is deemed to have no principal owner other than

- (a) the one principal owner identified in an agreement filed with the certifying authority and signed by each person who
 - (i) is or would otherwise be a principal owner, or
 - (ii) is a member of a group that is or would otherwise be a principal owner; or
- (b) if no such agreement is filed, the person or group of persons recognized as the film's principal owner for the purpose of a tax credit previously allowed under subsection (2).

Frequent filming bonus involving series

7.6(5) In determining the amount for B in the formula in subsection (2) in respect of an eligible film,

- (a) a cycle of a commercially exploitable series may be treated as an eligible film, regardless of the combined running length of its episodes;
- (b) episodes with a combined running length of two hours within the same cycle of a commercially exploitable series may be treated as a prior film;

- (c) the remaining episodes in a cycle that are not treated as a prior film under clause (b) may be treated as a separate eligible film if, as a separate eligible film, the amount determined for it under B in that formula would not be nil; and
- (d) the amount determined for A for the separate eligible film under clause (c) shall be that proportion of the amount determined for A for the cycle that the running length of the separate film is of the running length of the whole cycle.

For the purpose of this subsection, if the series is a television series, the running length of an episode is deemed to be its broadcast length and the running length of a cycle is the total running length of the episodes in that cycle.

Cost-of-production credit

7.6(6) An eligible corporation's cost-of-production credit for a taxation year in relation to an eligible film produced by the corporation is the amount determined by the following formula:

$$\text{credit} = 0.3(A - B)$$

In this formula,

A

is the total of

- (a) all amounts included under clauses (a) and (d) of the definition "eligible salaries" in subsection 7.5(1) in relation to the eligible film,
- (b) the corporation's eligible service contract expenditures in relation to the eligible film that are not included under clause (a),
- (c) the corporation's parent-subsidary amounts in relation to the eligible film that are not included under clause (a) or (b),
- (d) the corporation's eligible tangible property expenditures in relation to the eligible film that are not included under clause (a), (b) or (c), and
- (d.1) if production of the eligible film commenced after April 17, 2012, the corporation's eligible accommodation expenditure in relation to the film,

to the extent that those amounts

- (e) are reasonable in the circumstances and directly attributable to the production of the eligible film,
- (f) were incurred and paid before January 1, 2020,
- (g) were incurred in the taxation year or the immediately preceding taxation year for goods or services provided in either of those years,
- (h) were paid within the taxation year or 60 days after the end of the taxation year,
- (i) were not incurred within the immediately preceding taxation year and paid within the first 60 days after the end of that year,

- (j) relate to a stage of production of the eligible film from its production commencement time to the end of its post-production stage, and
- (k) are not excluded production expenditures;

B

is the total of all amounts each of which is an amount of government assistance that may reasonably be considered to relate directly to any amount included in A.

Application for credit

7.6(7) A corporation's tax credit under subsection (1) in respect of an eligible film is nil unless the corporation files with the minister an application for the credit in the form required by the minister and containing or accompanied by

- (a) the certificate of completion issued under subsection 7.7(3) for the completed production; and
- (b) all the information required by the minister to determine or verify the amount of the tax credit.

Duplicate claims

7.6(8) If any part of the tax credits claimed under this section by two or more corporations can reasonably be attributed to the same salary or service, the tax credit of each of them in respect of that salary or service is nil, unless they file with the minister an agreement signed by all of them that allocates among them the amounts that may be claimed in respect of that salary or service.

Interpretation

7.6(9) For the purpose of subsection (8), if an amount included in the eligible salaries or eligible service contract expenditures of one corporation is attributable to an amount paid by another corporation and included in that other corporation's eligible salaries or eligible service contract expenditures, the amounts so included by each of them are deemed to be attributable to the same salary or service.

S.M. 1997, c. 49, s. 19; S.M. 1999, c. 3, s. 8; S.M. 2001, c. 41, s. 27; S.M. 2002, c. 19, s. 29; S.M. 2003, c. 4, s. 46; S.M. 2004, c. 43, s. 52; S.M. 2005, c. 40, s. 37; S.M. 2006, c. 24, s. 41; S.M. 2007, c. 6, s. 40; S.M. 2008, c. 3, s. 29; S.M. 2010, c. 29, s. 20; S.M. 2012, c. 1, s. 29; S.M. 2013, c. 55, s. 23; S.M. 2015, c. 40, s. 17.

Registration and Certification

Registration as eligible film

7.7(1) The certifying authority, on receipt of an application in the form and containing the information and records required by the authority, may register a proposed production as an eligible film and issue a certificate of the registration to the applicant if, after reviewing the application, it is satisfied that the production

- (a) is intended for a television, cinema, video tape, digital, CD-ROM, multimedia or nontheatrical production;
- (b) will be a drama, variety show, animation, children's programming, music programming, informational series or documentary;
- (c) will not be a production
 - (i) of news, current events or public affairs programming, or a program that includes weather or market reports,
 - (ii) of one or more talk shows,
 - (iii) of a game, questionnaire or contest (unless the production is directed primarily at minors),
 - (iv) of one or more sports events or activities,
 - (v) of one or more gala presentations or awards shows,
 - (vi) that solicits funds,
 - (vii) of reality television,
 - (viii) of pornography,
 - (ix) of advertising,
 - (x) produced primarily for industrial, corporate or institutional purposes,
 - (xi) all or substantially all of which consists of stock footage, unless it is a documentary, or
 - (xii) for which public financial support would, in the opinion of the Minister of Finance for Manitoba, be contrary to public policy; and
- (d) satisfies any additional criteria prescribed by regulation.

Advance certificate of eligibility for credit

7.7(2) The certifying authority may, on receipt of an application in the form and containing the information and records required by the authority, issue a certificate confirming

- (a) the registration of the production as an eligible film;
- (b) the status of the applicant as an eligible corporation; and
- (c) that the applicant's estimate of the tax credit to be earned for the eligible film, assuming it will be produced as described in the application, is reasonable;

if it is satisfied, after reviewing the application, that the production is an eligible film, that the applicant is an eligible corporation and that the applicant's estimate of the tax credit is reasonable.

Certificate of completion

7.7(3) The certifying authority, on receipt of an application in the form and containing the information and records required by the authority, must issue a certificate of completion if

- (a) the corporation
 - (i) makes the application within 30 months after the end of the corporation's taxation year in which the principal photography for the film began, or
 - (ii) makes the application within 48 months after the end of the corporation's taxation year in which the principal photography for the film began and satisfies the authority that it filed with the minister, within the normal reassessment period, a waiver described in subparagraph 152(4)(a)(ii) of the federal Act in respect of the first two taxation years ending after the principal photography for the film began; and
- (b) after reviewing the application, the authority is satisfied that
 - (i) the production has been completed,
 - (ii) the completed production satisfies the criteria for an eligible film set out or referred to in subsection (1), and
 - (iii) the applicant is an eligible corporation.

Content of certificate of completion

7.7(4) A certificate of completion for an eligible film must identify the film and the corporation that produced it and confirm the following:

- (a) that the film is an eligible film;
- (b) that the corporation is an eligible corporation;
- (c) the tax credit rate that is to apply in determining the cost-of-salaries credit, taking into account whether the film qualifies for the frequent filming bonus, the rural filming bonus, the Manitoba producer bonus, or two or more of those bonuses;
- (d) if the cost-of-salaries credit or cost-of-production credit includes an amount for eligible non-resident individuals, the rate that is to apply under clause (d) of the definition "eligible salaries" in determining the cap on the amounts that may be included in respect of the amounts paid for their services.

S.M. 1997, c. 49, s. 19; S.M. 1998, c. 30, s. 30; S.M. 2001, c. 41, s. 28; S.M. 2004, c. 43, s. 53; S.M. 2008, c. 3, s. 30; S.M. 2010, c. 29, s. 20.

Revocation of registration or certificate

7.8(1) The registration of a production as an eligible film, or a certificate issued under section 7.7 in respect of a production or proposed production, may be revoked by the certifying authority or the Minister of Finance for Manitoba if

- (a) an omission or incorrect statement was made for the purpose of obtaining the registration or certificate;

- (b) the production fails to meet the criteria for an eligible film;
- (c) the corporation in whose name the production was registered, or to whom the certificate was issued, ceases to be an eligible corporation; or
- (d) an application for a certificate of completion is not made within the applicable period specified in clause 7.7(3)(a), or a certificate of completion is not issued in response to an application for it made within that period.

Effect of revocation

7.8(2) If the registration of a production is revoked, the production is deemed never to have been registered, and if a certificate is revoked, it is deemed never to have been issued.

S.M. 1997, c. 49, s. 19; S.M. 2002, c. 19, s. 30; S.M. 2008, c. 3, s. 31; S.M. 2010, c. 29, s. 20.

Regulations

Regulations

7.9 The Lieutenant Governor in Council may make regulations for the purpose of sections 7.5 to 7.8, including regulations

- (a) defining terms that are not defined in section 7.5;
- (b) prescribing additional expenditures that may be claimed as eligible salaries;
- (c) prescribing additional expenditures that may be claimed as eligible service contract expenditures;
- (d) prescribing amounts to be excluded from the definition "government assistance";
- (e) prescribing additional duties for the purpose of clause 7.5(2)(d);
- (f) prescribing additional persons or organizations for the purpose of subsection 7.5(3);
- (g) prescribing additional criteria for eligible films for the purpose of clause 7.7(1)(d);
- (h) respecting the registration of a film or video production as an eligible film, and the application for such a registration;
- (i) respecting certificates that may be issued in respect of an eligible film, and applications for those certificates;
- (j) respecting the application for a tax credit;
- (k) prescribing recordkeeping requirements for a corporation that claims a tax credit, and respecting access to its records by the certifying authority;
- (l) respecting any matter that the Lieutenant Governor in Council considers necessary or advisable for the administration or enforcement of those sections.

S.M. 1997, c. 49, s. 19; S.M. 2002, c. 19, s. 31; S.M. 2010, c. 29, s. 20.

7.10 to 7.12[Repealed]

S.M. 1997, c. 49, s. 19; S.M. 1998, c. 30, s. 31; S.M. 2002, c. 19, s. 32 and 33; S.M. 2003, c. 4, s. 47; S.M. 2008, c. 3, s. 32; S.M. 2010, c. 29, s. 20.