

Canadian Audio-Visual
Certification Office
(CAVCO)

**Film or Video Production
Services Tax Credit
(PSTC)**

Guidelines

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Film or Video Production Services Tax Credit

Guidelines

These guidelines have been prepared to assist in the completion of the application form for a Film or Video Production Services Accreditation Certificate. Such certificates are issued by the Department of Canadian Heritage through the Canadian Audio-Visual Certification Office (CAVCO).

The legislation which governs the Film or Video Production Services Tax Credit is set out in section 125.5 of the *Income Tax Act* (the "Act") of Canada and draft section 9300 of the Regulations to the Act (the "Regulations"). Section 125.5 of the Act received Royal Assent on June 18, 1998. The Act and the Regulations take precedence over these guidelines.

Introduction

1. Overview of the Tax Credit

The Film or Video Production Services Tax Credit ("PSTC") is jointly administered by the Department of Canadian Heritage through the offices of CAVCO and by the Canada Revenue Agency. In order to receive a PSTC pursuant to section 125.5 of the Act, an eligible applicant must first obtain an "Accredited Film or Video Production Certificate" (the "Accreditation Certificate")¹ from CAVCO. The Accreditation Certificate will be issued where a production initially meets all the requirements of draft Regulation 9300 of the Act. That certificate, along with a "prescribed form" (T1177, *Claiming a film or video production services tax credit*) and any prescribed documentation, must be filed with the corporate tax return for the year of an "eligible production corporation".² The Canada Revenue Agency will then review the claim by the corporation, ensure that it continues to meet all of the eligibility requirements of the program and determine the amount of the PSTC which the corporation is entitled to receive.

Generally, the PSTC is available at a rate of 16 per cent of "qualified Canadian labour expenditures" incurred after February 18, 2003 (11 per cent between October 1997 and February 18, 2003) by an "eligible production corporation" for services provided in Canada by Canadian residents or taxable Canadian corporations (for amounts paid to employees who are Canadian residents) for the production of an "accredited production". The "qualified Canadian labour expenditure" for a production refers to all amounts which are "Canadian labour

¹ Subsection 125.5 (1) of the Act, under the definition of "accredited film or video production certificate".

² Subsection 125.5 (3) of the Act.

expenditures" less assistance³ (as defined in section 125.5 of the Act) received for those Canadian labour expenditures (such as other provincial tax credits). The PSTC may be calculated by multiplying the "qualified Canadian labour expenditure" by 16 per cent.⁴ There is no cap on the amount of PSTC which can be received in respect of any production and it is completely refundable. The PSTC is not available where the production has received a tax credit in respect of section 125.4 of the Act (a Canadian Film or Video Production Tax Credit).⁵

The provision of eligible services to the production may be provided by any number of "eligible production corporations". However, CAVCO will issue a single certificate with respect to the production to the copyright owner, whether that entity is an "eligible production corporation" or not. It is therefore incumbent on the service provider(s) to ensure that the copyright owner will apply to CAVCO for an Accreditation Certificate and will provide them with a copy of such certificate so that they may claim the relative portion of the PSTC in computing their income for the year.

A capital cost allowance, up to the cost of the accredited production (net of the credit and assistance), may also be available to some "eligible production corporations" to the extent that they are also the owners of the copyright in the production.⁶

Official treaty co-productions between Canada and another country (as administered by Telefilm Canada) are eligible. However, those productions may access either the PSTC program or the Canadian Film or Video Production Tax Credit Program (as provided for under section 125.4 of the Act), not both.

2. How the PSTC works

The PSTC is a mechanism designed to encourage the employment of Canadians, by a corporation (a taxable Canadian corporation or a foreign-owned corporation), the activities of which in the year are primarily the carrying on through a permanent establishment in Canada of a film or video production business or a film or video production services business. In return for hiring Canadian residents to perform work in Canada, the "eligible production corporation" may be entitled to a credit against taxes payable in Canada.

The tax credit is available on a yearly basis for labour-related expenditures incurred in respect of an "accredited production" and may be claimed by the "eligible production corporation" when it files its corporate tax return for the year. The tax credit amount will be in respect of eligible amounts paid in that year or

³ Subsection 125.5 (1) of the Act, under the definition of "qualified Canadian Labour Expenditure".

⁴ 11 per cent for qualified labour expenditures incurred between October 1997 and February 19, 2003.

⁵ Subsection 125.5 (4) of the Act.

⁶ Class 10(s) asset.

within 60 days after the end of that year for labour incurred in that year. Where a corporation has no taxes payable in the particular taxation year in question, the amount deemed as a credit under the PSTC is refundable to the corporation. In such a case, a cheque will be issued to the corporation after an assessment by the Canada Revenue Agency.

Administrative and Accreditation Process

1. Role of CAVCO

a) Confirm Initial Eligibility of the Production

It is the responsibility of the Department of Canadian Heritage (through CAVCO) to issue an Accreditation Certificate in respect of a production which confirms that the production initially meets all the requirements of draft Regulation 9300 of the Act. This certificate will be evidence that a production initially meets the requirements of draft Regulation 9300 and will confirm the copyright owner of a production for purposes of the PSTC at the time it is issued.

b) Revoke Accreditation Certificates When Required

An Accreditation Certificate may be revoked by the Minister of Canadian Heritage in accordance with subsection 125.5 (6) of the Act, if an omission or incorrect statement was made for the purpose of obtaining the certificate, or if the production is not an "accredited production". Where an Accreditation Certificate has been revoked, it is deemed never to have been issued and any tax credits already received by an eligible production corporation in respect of a revoked production must be repaid.

2. Procedures to Follow for Accreditation through CAVCO

a) Who Should Apply

The copyright owner(s) must apply to CAVCO using a copy of the application form (attached as Appendix I). For administrative convenience, the copyright owner(s) may appoint an agent known as the "Official Designee" (e.g. the Canadian service provider, a law firm, etc.) to apply for accreditation on its behalf. Where an Official Designee is appointed, the copyright owner(s) must sign and have notarized the Official Designee Affidavit (attached as Appendix II) and provide the requisite documentation confirming copyright ownership to the Official Designee for transmission to CAVCO.

b) What Qualifies as Copyright Ownership

The copyright owner(s) may vary throughout the course of a production. In fact, for the purposes of Canadian copyright law, there may be several copyright owners in respect of various aspects of a production from literary rights to music rights. For the purposes of the PSTC, the copyright owner will be the person(s) or entity(s) which has the rights to produce the accredited production (based on the acquisition of underlying rights

sufficient to produce the production) and retains legal copyright ownership of the production. Where, for example, a character previously exists, the owner would not have to acquire all the rights to that character. To be the copyright owner for the PSTC, one would, at minimum, have to acquire a licence to produce a production based on that character and retain legal copyright ownership of the finished production.

CAVCO will require documentation which demonstrates chain-of-title ownership from the initial developer of the story idea to the writing of the final script. The types of documents required are option agreements, transfer agreements, licence agreements, script purchase agreements and script writing agreements. A detailed legal opinion (citing the relevant documents, their contents and the dates on which they were entered into) may be provided in lieu of the chain-of-title documentation. This legal opinion may be provided by independent or in-house counsel licensed to practice in any jurisdiction where the copyright owner (or Official Designee) carries on business. However, CAVCO reserves the right to require all of the chain-of-title documentation to be submitted where the legal opinion is deemed unsatisfactory.

c) What Happens if Copyright Ownership Changes

i) Before Accreditation

The sale of the copyright ownership, after final script stage but before the completion of production in Canada, may pose some complications for application for the PSTC and will vary depending upon the nature of the ownership.

In the case where the copyright owner is also an "eligible production corporation", then copyright ownership must remain with that entity during the time that the corporation is producing the production in Canada. However, the eligible production corporation may sell the production (after the time at which production in Canada is completed) without affecting its eligibility for the PSTC.

In the case where the copyright owner is not an "eligible production corporation", to be eligible for the PSTC, the "eligible production corporation(s)" must contract directly with the copyright owner. For CAVCO purposes, the copyright owner at the time of the application must apply to CAVCO. Any changes in ownership up to that time will be evidenced in the chain-of-title documentation or detailed legal opinion submitted with the application.

The Accreditation Certificate will be issued with the name of the copyright owner at the time of application. However, any previous

copyright owner(s) who contracted with an "eligible production corporation" will also be noted on the certificate where this information is provided at the time of filing.

ii) After Accreditation

If ownership has changed after the Accreditation Certificate has been issued and where work on the production is continuing in Canada, work on the production has not yet begun in Canada or the new copyright owner has entered into additional contracts with eligible production corporations, then an amendment application must be made to CAVCO by the new copyright owner (or their Official Designee). Included with that application will be the original Accreditation Certificate and any sale documentation. An Amended Accreditation Certificate will be issued and the Canada Revenue Agency will be advised of the change of ownership. The original Accreditation Certificate would continue to be valid up to the change of ownership date, after which time, an Amended Accreditation Certificate will be required.

Please note that where work is continuing in Canada or work has not yet begun in Canada, but the work is to be done by the same service provider(s) as contracted by any previous copyright owner, the new copyright owner should enter into a new contract with the service provider(s) or arrange for an assignment of any previous contracts, in order for the service provider(s) to claim a tax credit for work performed after the change in ownership. This action should be considered whether the change of ownership has occurred before or after accreditation by CAVCO.

d) When Should the Copyright Owner Apply to CAVCO

The copyright owner may apply to CAVCO any time after the budget for the production or series is locked and a detailed synopsis of the production or series can be provided. Where the copyright owner is not also the eligible production corporation, and a sale of copyright ownership is contemplated, it may be advisable to wait until after that sale to apply for an Accreditation Certificate to minimize any administrative inconvenience.

However, please note that an Accreditation Certificate is required before an eligible production corporation may apply for any tax credit from the Canada Revenue Agency.

e) Is there a Fee Required

CAVCO operates under a cost recovery system. In keeping with that mandate, there will be an administration fee of \$5,000 Cdn payable in

respect of each application for an Accreditation Certificate for a production or for a series of episodes.⁷ As only the copyright owner (or an Official Designee) can apply for the certificate, that entity will be responsible for paying the fee. Please note that no analysis will be done until the required fee is paid in full.

Where the aggregate tax credit received in respect of an application is less than \$25,000 Cdn (excluding amounts which may reduce the tax credit receivable, such as taxes owing), the applicant may be entitled to a partial rebate of the administrative fees payable for accreditation. The rebate entitlement is based on the table below. In order to access the rebate, the applicant must pay the full fee at the time of application. Once all of the tax credit has been claimed in respect of a production or a series of episodes, the applicant may apply to CAVCO for a rebate. The applicant must file a CAVCO Fee Rebate Form (currently being developed) and a copy of all the Canada Revenue Agency tax assessments in respect of the production or series. CAVCO will then confirm the amount of entitlement through confirmation from the Canada Revenue Agency.

Aggregate Tax Credit	Fee	Rebate
\$25,001 +	\$5,000	\$ 0
\$20,001 - \$25,000	\$4,000	\$1,000
\$15,001 - \$20,000	\$3,000	\$2,000
\$10,001 - \$15,000	\$2,000	\$3,000
\$ 0 - \$10,000	\$1,000	\$4,000

An additional amendment fee of \$1,000 Cdn is required where copyright ownership has changed after an Accreditation Certificate has been issued and an Amended Accreditation Certificate is required. This amount is not subject to the rebate provision.

f) How to Qualify for an Accreditation Certificate

In order to qualify as an "accredited production", the film or video production or series must meet the requirements of draft Regulation 9300 of the Act. There is a two-fold requirement process: a production must meet a cost minimum and must be an eligible genre.

Generally the cost for a production for the 24 month period after principal

⁷

An application for a series of episodes includes only those episodes produced for one broadcast season. If a pilot episode is applied for under a separate application, an application for the remainder of the episodes in that broadcast season is subject to an additional application fee. Similarly, if episodes for one season are split among applications, a separate fee is payable for each application made.

photography has begun must exceed \$1,000,000 Cdn, except in the case of a series consisting of two or more episodes or a pilot for such a series. The cost for each episode in a series, which has a running time of less than 30 minutes, must exceed \$100,000 Cdn per episode. The cost for episodes with a longer running time must exceed \$200,000 Cdn per episode.

To be an eligible genre, the production cannot be one of the following:

- i) news, current events or public affairs programming, or a programme that includes weather or market reports;
- ii) a talk show;
- iii) a production in respect of a game, questionnaire or contest;
- iv) a sports event or activity;
- v) a gala presentation or an awards show;
- vi) a production that solicits funds;
- vii) reality television;
- viii) pornography;
- ix) advertising; or
- x) a production produced primarily for industrial, corporate or institutional purposes.

Please note that each episode in a series is treated as an individual production and must qualify both as to cost minimum and eligible genre. CAVCO is currently drafting criteria in order to define some of the above-named genres of production.

g) What Documentation is Required⁸

The following documentation must be submitted to CAVCO where an **Accreditation Certificate** is requested:

- i) **Application Form:** a copy of the application form (attached as Appendix I), completed in full, signed and dated;
- ii) **Administration Fee:** a cheque in the amount of \$5,000 Cdn made payable to the Receiver General for Canada;
- iii) a) **Chain of Title Documentation:** option agreement, transfer agreement, writers' agreement(s), which identify the copyright owner at the time of the application;

OR

⁸

Please note that any documentation submitted to CAVCO in respect of the PSTC application is subject to the restrictions of section 241 of the Act and will be treated in the strictest confidence.

- iii) b) **Legal Opinion in respect of Copyright Ownership:** may be provided in lieu of the Chain of Title Documentation, it must be detailed in nature and reference all those documents which would otherwise be submitted to CAVCO for review. CAVCO reserves the right to require the submission of all Chain of Title Documentation where the legal opinion is deemed unsatisfactory;
- iv) a) **Budget for a Single Production:** summary of the locked budget, signed by the producer; where the production is already completed, a copy of the final cost report summary, signed by the producer;⁹

OR

- iv) b) **Budgets for a Series:** summary of the locked budget for the entire series, summary of a locked episodic budget (one model only) and summary amortization budget, all signed by the producer; where the series has been completed, a copy of the final cost report summaries, signed by the producer;¹⁰
- v) **Synopsis:** of the production or of the series as a whole; and
- vi) **Official Designee Affidavit:** an original (signed and notarized) of the CAVCO-approved affidavit, where required (attached as Appendix II).

CAVCO reserves the right to require any additional information, affidavits or sworn statements that it deems necessary in order to issue an Accreditation Certificate.

Applicants will be notified of any deficiencies in their applications. Applications are processed on a first-come, first-served basis, with complete applications being given priority.

The following documentation must be submitted to CAVCO where an **Amended Accreditation Certificate** is requested:

⁹ A full summary budget for the worldwide production costs need not be submitted where it can be shown that the production costs in Canada in respect of the accredited production will exceed the minimum requirement. In that case, only the Canadian portion of the budget need be submitted. However, a total for the global estimated cost of production will be required on the application form.

¹⁰ Same as for a production. However, the model episodic budget and amortized budget, Canadian portions only, need be submitted, where costs spent in Canada exceed the minimum requirements.

- i) **Application Form:** a copy of the application form (attached as Appendix I) must be submitted by the new copyright owner or Official Designee, completed in full, signed and dated;
- ii) **Administration Fee:** a cheque in the amount of \$1,000 Cdn made payable to the Receiver General for Canada;
- iii) a) **Sale Documentation in respect of Copyright Ownership:** any agreements relating to the sale and chain of title transfer since the original application;

OR

iii) b) **Legal Opinion in respect of Copyright Ownership:** may be provided in lieu of Sale Documentation, but must be detailed in nature and reference any changes since the original application. CAVCO reserves the right to require the submission of Sale Documentation where the legal opinion is deemed unsatisfactory;
- iv) **Budgets:** same as original application but only where this has changed significantly (i.e. where the budget minimums are not met);
- v) **Synopsis:** only where this has changed significantly; and
- vi) **Official Designee Affidavit:** an original (signed and notarized) of the CAVCO-approved affidavit, where required (attached as Appendix II).

As with the original application, CAVCO reserves the right to require any additional information, affidavits or sworn statements that it deems necessary in order to issue an amended Accreditation Certificate.

Applicants will be notified of any deficiencies in their applications. Applications are processed on a first come-first served basis, with complete applications being given priority.

3. Role of the Canada Revenue Agency

The role of the Canada Revenue Agency with respect to the PSTC is to: interpret and apply section 125.5 of the Act and all other provisions of the Act and Regulations that may have an impact on the PSTC; review and audit the PSTC claim; assess the *T2 Corporate Income Tax Return* (T2 Return) required to be filed by each corporation; and issue refund cheques, where appropriate.

a) Confirm Continuing Eligibility of the Production

It is the responsibility of the Canada Revenue Agency to confirm that a corporation which applies for the PSTC remains an eligible production corporation throughout the year in which a tax credit is claimed; that the production budget continues to meet the regulatory minimums, and, where a production is completed, that it continues to be of an eligible genre. In the latter case, where there is any concern over the eligibility of the genre, the Canada Revenue Agency will seek the expertise of CAVCO. In those instances, a VHS tape of the production (or three representative episodes in a series) must be made available to the Canada Revenue Agency or directly to CAVCO for that purpose.

b) Filing of PSTC Claim

Under the Act, each corporation must file a T2 Return at the end of each taxation year. In order to claim the PSTC in respect of an "accredited production", an eligible production corporation must complete Form T1177, *Claiming a film or video production services tax credit* (see Appendix III) and attach it to its T2 Return, along with the Accreditation Certificate, or a copy thereof. The eligible production corporation must file a separate Form T1177 for each production for which it is claiming a PSTC. However, the Canada Revenue Agency will accept one form for all episodes in a series that is certified as an accredited production.

c) Issuing Refund Cheque, if any

Any PSTC receivable by a corporation for a particular year will be reduced by any other taxes owing by the corporation, including corporate income tax, payroll source deductions and Goods and Services Tax (GST). Where there is a surplus credit, a refund cheque will be issued.

4. Processing of the PSTC Claim by the Canada Revenue Agency

If Form T1177 and/or the CAVCO Accreditation Certificate are attached to your T2 Return, your file is considered complete and the Tax Centre will immediately forward your file to the contact person in your Tax Services Office to be selected for review or audit. The objective of the Canada Revenue Agency is to deliver the PSTC to the eligible production corporations within a reasonable time, once the claim is complete. The Canada Revenue Agency's policy is that when no audit is necessary, the cheque will normally be issued within 60 days following receipt of a complete claim. However, when an audit is necessary, the Canada Revenue Agency will normally issue the cheque within 120 days following receipt of a complete claim.

Legislative Requirements

The following is a brief overview of the legislative requirements which apply in respect of the PSTC. These are the primary areas of review performed by the Canada Revenue Agency audit process. The following notes have been prepared by CAVCO. The final determination with respect to these issues rests with the Canada Revenue Agency and, where required, a court of competent jurisdiction.

1. Eligible Production Corporation

The Canada Revenue Agency is charged with the legislative requirement of determining if the corporation which claims a PSTC is an "eligible production corporation" throughout the taxation year in which production occurs. "Eligible production corporation" for a taxation year means a corporation (a taxable Canadian corporation or a foreign-owned corporation), the activities of which in the year are primarily the carrying on through a permanent establishment (as defined by regulation) in Canada of a film or video production business or a film or video production services business.¹¹

It is important to note that the corporation's primary activity must be in relation to the production of "films or videos" or the provision of film or video "production services". "Primarily" is generally determined to be 50 per cent or more. Consequently, if the business of a corporation includes other activities such as the distribution of films and videos, it may not be considered an "eligible production corporation" for the purposes of the PSTC. It is therefore conceivable that a corporation may be denied the tax credit by reason of its activities in the year. Production companies should seek to ensure that they are eligible for the PSTC program by contacting the Canada Revenue Agency - Income Tax Rulings and Interpretations Directorate (see Addresses).

Furthermore, to be an "eligible production corporation", the corporation cannot be exempt from tax under Part I of the Act (i.e. a non-profit corporation or a charitable corporation), controlled directly or indirectly in any manner whatsoever by one or more persons, all or part of whose taxable income is exempt from tax under Part I of the Act or a prescribed labour-sponsored venture capital corporation for the purpose of section 127.4 of the Act.¹²

2. Canadian Labour Expenditures

The copyright owner of a production may contract with a number of different eligible production corporations for the provision of services to the production. In such a situation, each of those eligible production corporations may claim the portion of the tax credit related to the amount of "qualified Canadian labour

¹¹ Subsection 125.5 (1) of the Act, under the definition of "eligible production corporation".

¹² Ibid.

expenditure" incurred by each. The first step in determining the "qualified Canadian labour expenditure" of a corporation is to determine the amount of "Canadian labour expenditure" incurred by each.

a) Criteria to Qualify as Canadian Labour

There are a number of different attributes which will assist eligible production corporations in determining whether an amount will be a Canadian labour expenditure. To qualify as a Canadian labour expenditure, an amount incurred must be:

- i) reasonable in the circumstances;
- ii) directly attributable to the production;
- iii) incurred after October 1997;
- iv) incurred for the stages of production from the final script stage to the end of the post-production stage;
- v) paid in the year or within 60 days after the end of the year;
- vi) paid to persons who were resident in Canada at the time the payments were made; and
- vii) paid for services provided in Canada.¹³

b) Total Canadian Labour Expenditure

The total Canadian labour expenditure for any eligible production corporation is the total of the following three amounts:

i) Salary or Wages Paid to Employees of the Corporation

Salary or wages paid to employees of the eligible production corporation must meet all of the requirements noted above. They must be:

- (A) reasonable in the circumstances;
- (B) directly attributable to the production;
- (C) incurred after October 1997;
- (D) incurred for the stages of production from the final script stage to the end of the post-production stage;
- (E) paid in the year or within 60 days after the end of the year;
- (F) paid to persons who were resident in Canada at the time the payments were made; and
- (G) paid for services provided in Canada.

Salary and wages are defined in section 248(1) of the Act (e.g. income from an office or employment). Only benefits that are

¹³ Subsection 125.5 (1) of the Act, under the definition of "Canadian labour expenditure".

taxable in the employees' hands would qualify (e.g. 4 per cent vacation pay, Registered Retirement Savings Plans, but not company pension plans). Specifically excluded from the definition of salary and wages are amounts described in section 7 of the Act (e.g. stock options); an amount determined by reference to profits or revenues; and other benefits paid by the employer but not taxed to the employee (e.g. catering, transportation, employer's portion of payroll source deductions). Eligible production corporations may consult representatives of the Canada Revenue Agency, Audit Directorate, with respect to this matter (see Addresses).

ii) *Remuneration (other than salary or wages)*

The portion of the remuneration, other than salary or wages, that is directly attributable to the production, related to services rendered in Canada, after October 1997, for the stages of production from the final script stage to the end of post-production, paid in the year or within 60 days after the end of the year and paid to a person or a partnership, that carries on business in Canada through a permanent establishment, is considered to be a Canadian labour expenditure where the amount is paid to:

- (A) An individual resident in Canada at the time the amount is paid and who is not an employee of the corporation, to the extent that the amount paid either is attributable to services personally rendered by the individual in Canada in respect of the accredited production, or is attributable to and does not exceed the salary and wages of the individual's employees, at the time they were resident in Canada for personally rendering services in Canada in respect of the accredited production.

Please note: If the payment to these non-employees includes a non-labour component (e.g. goods provided by the service provider, profit margin or the employer's share of government deductions), this portion does not form part of the remuneration. Only the labour component is eligible for the calculation of the labour expenditure.

- (B) Another taxable Canadian corporation to the extent that the amount paid is attributable to and does not exceed the salary or wages of the other corporation's employees at a time when they were resident in Canada for personally rendering services in Canada in respect of the accredited production.

As discussed above, only the labour portion of the invoice sent to the production company, net of any profit margin, materials or the employer's share of government deductions, may be included as a labour expenditure. Technically, the salary or wages must be paid to the corporation's employees. The corporation must be Canadian and taxable. Please note that some Canadian broadcasters are not taxable corporations (e.g. Radio-Québec, TVOntario, Knowledge Network, SCN).

- (C) Another taxable Canadian corporation all the issued and outstanding shares of the capital stock of which (except directors' qualifying shares) belong to an individual who was resident in Canada and the activities of which consist principally of the provision of the individual's services (i.e. a loan-out corporation or personal services corporation), to the extent that the amount paid is attributable to services rendered personally in Canada by the individual in respect of the accredited production.
- (D) A partnership that is carrying on business in Canada, to the extent that the amount paid is either attributable to services personally rendered in respect of the accredited production by an individual who is resident in Canada and who is a member of the partnership, or is attributable to and does not exceed the salary or wages of the partnership's employees at a time when they were resident in Canada for personally rendering services in Canada in respect of the accredited production.

iii) *Reimbursement by a Wholly-Owned Corporation to its Parent*

To qualify for the reimbursement provision, the eligible production corporation must be a wholly-owned subsidiary of another taxable Canadian corporation (referred to as a "parent"), and the eligible production corporation and the parent must have filed an agreement with the Minister of Revenue that the reimbursement provision applies. The reimbursement must be made by the eligible production corporation in the year, or within 60 days after the end of the year. The expenditure that was incurred by the parent in that taxation year must be in respect of the production and would otherwise qualify as a Canadian labour expenditure in the same manner as noted above for individuals, taxable Canadian corporations, loan-out corporations and partnerships. In addition, the expenditure incurred by the parent would have to have been incurred by the eligible production corporation for the same purpose

as it was incurred by the parent.¹⁴

If all the criteria of the reimbursement provision are not met, payments to the parent company will become payments to another taxable Canadian corporation (as described above). Consequently, only the Canadian labour expenditure with respect to the salary or wages of the parent corporation's employees will qualify. The Canadian labour expenditure that has been paid to a subcontractor will not qualify. Likewise, if the provision does not apply, the eligible production corporation would not be entitled to include costs paid by the parent, other than eligible Canadian labour expenditures, in the total cost of production for CCA purposes.

c) Labour Expenditure During Post-Production

The Act provides a specific rule governing Canadian labour expenditures of a corporation incurred during the post-production stage. When the post-production is done in-house, payments are made in the form of salary or wages and are treated as payments made to employees. When Canadian labour expenditures are paid to another taxable Canadian corporation, eligible production corporations may only include those services that are rendered by a person who performs a function during post-production, that is directly attributable to the production of a property (not, for instance, legal, financial, accounting or other such services).¹⁵

Eligible production corporations should request that post-production service entities break down the labour component of their invoices, as this information may be requested by the Canada Revenue Agency auditors.

3. Determination of the Qualified Canadian Labour Expenditure

The "qualified Canadian labour expenditure" for an eligible production corporation for the year will be the total of all Canadian labour expenditures for that year minus assistance received, or reasonably expected to be received, in respect of those expenditures.¹⁶ Assistance means financial assistance any source, including grants, subsidies, provincial tax credits, forgivable loans, contributions, services or certain advances and any other similar forms of assistance.¹⁷ The Canada Revenue Agency has the responsibility to determine whether an amount received by the eligible production corporation represents assistance that should reduce the tax credit to which it is entitled. Please note that the Act provides for

14 Ibid.

15 Paragraph 125.5 (2)(b) of the Act.

16 Subsection 125.5 (1), under the definition of "qualified Canadian labour expenditure".

17 Assistance is defined in paragraph 12(1)(x) of the Act.

the repayment of assistance under certain conditions.¹⁸

Please note that the calculation of the PSTC is done on an annual basis, according to the fiscal year end of the eligible production corporation. Consequently, any amounts claimed in previous years in respect of the Canadian labour expenditures will not be eligible for the year. Likewise, where there has been a reimbursement by a wholly-owned subsidiary to its parent, the parent may not then claim such amounts as "qualified Canadian labour expenditures" to the extent that those same amounts are claimed by the wholly-owned subsidiary.¹⁹

4. Calculation of the PSTC

In order to determine the amount of PSTC to which an eligible production corporation is entitled to receive in respect of an accredited production in a particular year, the corporation need only determine its "qualified Canadian labour expenditure" for the year subtract any assistance amount(s) and then multiply the subtotal by 16 per cent.²⁰

¹⁸ Subsection 125.5 (1)(b), under the definition of "qualified Canadian labour expenditure".

¹⁹ Subsections 125.5 (1)(c) and (d) of the Act, under the definition of "qualified Canadian labour expenditure".

²⁰ Subsection 125.5 (3) of the Act.

Addresses**Canadian Audio-Visual Certification Office (CAVCO)**

Department of Canadian Heritage
4th Floor – 100 Sparks Street
Ottawa, Ontario K1A 0M5
Telephone: 1-888-433-2200 or (613) 946-7600
Fax: (613) 946-7602
Website: www.canadianheritage.gc.ca/cavco

Canada Revenue Agency (CRA)

International Tax Directorate
Film Industry Services Division
6th Floor - 344 Slater Street
Ottawa, Ontario K1A 0L5
Telephone: (613) 952-7815
Fax: (613) 941-2614
Contact: Brian Heatherington

Canada Revenue Agency (CRA)

Income Tax Rulings and Interpretations Directorate
Place de Ville "A"
16th Floor – 320 Queen Street
Ottawa, Ontario K1A 0L5
Telephone: (613) 957-8953
Fax: (613) 957-2088