

STATE OF WISCONSIN
DEPARTMENT OF COMMERCE

**NOTICE OF PUBLIC HEARING
AND
HEARING DRAFT OF PROPOSED RULES**

NOTICE IS HEREBY GIVEN that pursuant to section 560.206 of the *Wisconsin Statutes*, the Department of Commerce will hold a public hearing on proposed rules in chapter Comm 133 of the *Wisconsin Administrative Code*, relating to implementing a film production accreditation program.

The public hearing will be held as follows:

Date and Time:

Tuesday
July 17, 2007
Commencing at 9:00 a.m.

Location:

Thompson Commerce Center, Third Floor, Room 3B
201 West Washington Avenue
Madison, Wisconsin

Interested persons are invited to appear at the hearing and present comments on the proposed rules. Persons making oral presentations are requested to submit their comments in writing, via e-mail. Persons submitting comments will not receive individual responses. The hearing record on this proposed rulemaking will remain open until July 20, 2007, to permit submittal of written comments from persons who are unable to attend the hearing or who wish to supplement testimony offered at the hearing. All written comments should be submitted by e-mail to srockweiler@commerce.state.wi.us. If e-mail submittal is not possible, written comments may be mailed to Sam Rockweiler, Department of Commerce, Division of Environmental and Regulatory Services, P.O. Box 14427, Madison, WI 53708-0427.

This hearing will be held in an accessible facility. If you have special needs or circumstances that may make communication or accessibility difficult at the hearing, please call Sam Rockweiler at (608) 266-0797 or (608) 264-8777 (TTY) at least 10 days prior to the hearing date. Accommodations such as interpreters, English translators, or materials in audio tape format will, to the fullest extent possible, be made available upon a request from a person with a disability.



State of Wisconsin \ Department of Commerce

HEARING DRAFT OF PROPOSED RULES

Rule No.: Chapter Comm 133

Relating to: Film Production Accreditation Program

**ORDER OF THE
DEPARTMENT OF COMMERCE**

CREATING RULES

The Wisconsin Department of Commerce proposes an order to create chapter Comm 133, relating to implementing a film production accreditation program, and affecting small business.

Rule Summary

1. Statutes Interpreted.

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

2. Statutory Authority.

Sections 227.11 (2) (a) and 560.206 (1) and (4).

3. Explanation of Agency Authority.

Sections 560.206 (1) and (4) of the Statutes require the Department to promulgate rules for implementing and administering a program to accredit film productions for the purposes of sections 71.07 (5f) and (5h), 71.28 (5f) and (5h), and 71.47 (5f) and (5h) of the Statutes. Section 227.11 (2) (a) of the Statutes authorizes the Department to promulgate rules interpreting the provisions of any Statute administered by the Department.

4. Related Statute or Rule.

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

5. Plain Language Analysis.

The proposed rules specify (1) the eligibility requirements for film productions to become accredited; (2) the documentation that must be submitted to receive accreditation and to receive acceptance of incurred expenses that are related to tax credits for producing a film production in Wisconsin; (3) the documentation that must be submitted to receive acceptance of incurred expenses that are related to tax credits for establishing a film production company in Wisconsin; (4) the Department's response to the submitted documentation; and (5) use of the Department's response when filing claims with the Department of Revenue for the corresponding tax credits.

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

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

7. Comparison With Rules in Adjacent States.

Michigan

In Michigan, rebates range from 12 to 20 percent, depending on the amount of the production spending in the state. According to the Director of the Michigan Film Office, there are no administrative rules for the program, but guidelines are available through the Office's Web site at http://www.michigan.gov/hal/0,1607,7-160-17445_19275_37781---,00.html.

Minnesota

Minnesota offers exemptions from sales and lodging taxes, and a rebate of 15 percent for eligible production costs incurred in the state. An Internet based search did not reveal any administrative rules for the program, but guidelines are available through the following Web site: <http://www.mnfilmtv.org>.

Iowa

Iowa enacted legislation on May 17, 2007, that (1) offers producers a transferable income tax credit of 25 percent of qualified in-state expenditures, (2) offers investors the same credit, and (3) offers Iowa-based companies or Iowa residents a 100-percent income exclusion for monies earned from certified projects. No administrative rules have been developed yet for this program. Further information is available through the following Web site: <http://www.traveliowa.com/film/incentives.html>.

Illinois

In Illinois, rules for the Illinois Film Production Services Tax Credit Program are contained in Title 14, Chapter I, Part 528 of the Illinois Administrative Code, and can be viewed through the following Web site: <http://www.ilga.gov/commission/jcar/admincode/014/01400528sections.html>.

Section 528.20 of the rules defines "Illinois resident" as "an individual who is domiciled in this State during the accredited production. Except in a case where the applicant has actual knowledge, as shown in its books and records, that an individual is not an Illinois resident, the possession by an individual of a driver's license or other identification issued by this State prior to the commencement of the accredited production shall be sufficient proof that the individual is an Illinois resident and the address on the license or identification shall be deemed correct." The proposed Wisconsin rules do not include a definition of resident, but require residents to meet Department of Revenue residency criteria.

Under section 528.30, an applicant must file a written statement or other documentation showing that receiving the tax credits was essential to the decision to locate the accredited production in Illinois. According to the rules, “The documentation must show that the applicant has multi-state or international location options and could reasonably locate outside the State, or can demonstrate that at least one other state or nation is being considered for the accredited production, or other documentation showing that the receipt of the credit is a major factor in the applicant's decision to locate the accredited production in Illinois.” The proposed Wisconsin rules require that in order for a production to become accredited, the production would not occur in Wisconsin without the tax benefits.

Under section 528.40, an application must be submitted at least 24 hours prior to the start of principal filming or taping. The proposed Wisconsin rules do not specify a submittal deadline prior to filming or taping. Section 528.40 also clarifies whether one or more applications can be filed for television shows with two or more episodes. The proposed Wisconsin rules do not differentiate for television shows with multiple episodes.

Section 528.50 gives an applicant 30 days to correct any deficiencies in the application, and provides 30 days to amend and re-submit an application after a denial. There are no similar timing deadlines in the proposed Wisconsin rules. Also in Section 528.50, Illinois will consider, in its evaluation of the application, whether awarding the credit will result in an overall positive impact to Illinois. Under the general eligibility criteria in the proposed Wisconsin rules, an accredited production must enhance economic development in Wisconsin.

Section 528.62 requires an applicant to quarterly submit economic impact data on jobs created and retained, and production costs. There is no such reporting requirement in the proposed Wisconsin rules, other than the information and documentation that must be submitted following completion of the accredited production, for the Department’s verification and release of the tax credits.

Section 528.65 describes issuance of an “accredited production certificate” upon approval of an application. Section 528.70 details the procedures for the applicant to request a “tax credit certificate,” certifying the actual amount of the credit awarded to the applicant at any time following the completion of the accredited production, but in no event later than two years following the completion of the production. This process is similar to what is described in the proposed Wisconsin rules, other than the two-year restriction. The Illinois rules also require attestation by a certified public accountant supporting the expenditures incurred by the applicant, which is not required in the Wisconsin rules.

Section 528.75 specifies the amount and duration of the tax credits. The amounts consist of (1) for productions commencing before May 1, 2006, a credit of 25 percent of the approved Illinois labor expenditures, plus an additional 10 percent for employees who earn more than \$1,000 on the production and who live in geographic areas of high poverty or high unemployment; and (2) for productions commencing on or after May 1, 2006, a credit of 20 percent of the approved Illinois labor expenditures, plus an additional 15 percent for employees who earn more than \$1,000 on the production and who live in geographic areas of high poverty or high unemployment. For tax years ending prior to July 11, 2005, the credit cannot be carried forward or back. For tax years ending on or after July 11, 2005, any excess credits may be carried forward for five years. The Wisconsin amounts differ by including (1) a credit of 25 percent of the salary

or wages for all employees of the claimant – but capped at \$25,000 per employee, and not including the two highest paid employees; (2) a credit of 25 percent of the production expenditures; and (3) a credit of 100 percent of the sales or use taxes paid for tangible personal property and taxable services that are used directly in producing an accredited production. The Wisconsin duration differs by (1) not allowing any credits to be carried forward, but (2) allowing unlimited refund of any unused credits for production expenditures.

Section 528.85 provides details for the transfer of the tax credits. The Wisconsin rules and legislation do not allow any transfer of credits.

The Illinois rules do not include any requirement that is similar to the proposed Wisconsin requirement that the production must not conflict with a desired brand image of Wisconsin.

8. Summary of Factual Data and Analytical Methodologies.

The data and methodology for developing these rules were derived from and consisted of (1) incorporating the criteria in 2005 Wisconsin Act 483; (2) incorporating applicable best practices the Department has developed in administering similar programs for economic development, business development, and tax-credit verification; (3) soliciting and utilizing input from the Department of Revenue, and from representatives of the stakeholders who are expected to participate in this program; and (4) reviewing Internet-based sources of related federal, state, and private-sector information. Particular attention was focused on input from producers of advertisement commercials that they need very quick responses to submitted estimates of expenses.

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

The primary document that was used to determine the effect of the proposed rules on small business was 2005 Wisconsin Act 483. This Act requires the Department to implement a program to accredit film productions for the purposes of sections 71.07 (5f) and (5h), 71.28 (5f) and (5h), and 71.47 (5f) and (5h) of the Statutes, and requires the Department to promulgate rules for administering the program. This Act applies its private-sector requirements only to film productions and to film production companies, for which a corresponding tax credit is desired.

10. Effect on Small Business.

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

11. Agency Contact Person.

Steven Sabatke, Wisconsin Department of Commerce, Bureau of Business Development, P.O. Box 7970, Madison, WI, 53707-7970; telephone (608) 267-0762; e-mail ssabatke@commerce.state.wi.us.

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

Comments on the proposed rules may be submitted by e-mail to srockweiler@commerce.state.wi.us, no later than July 20, 2007. If e-mail submittal is not possible, written comments may be mailed, by the same date, to Sam Rockweiler, Department of Commerce, Division of Environmental and Regulatory Services, P.O. Box 14427, Madison, WI 53708-0427.

File reference: Comm 133/rule analysis, ph

SECTION 1. Chapter Comm 133 is created to read:

Chapter Comm 133
FILM PRODUCTION ACCREDITATION PROGRAM
Subchapter I – Purpose, Scope and Authority.

Comm 133.10 Purpose, scope and authority. (1) The purpose and scope of this chapter is to establish the procedures for obtaining any of the following from the department, for use in claiming corresponding tax credits:

- (a) Accreditation of a production.
- (b) A determination of the amount of expenditures that are directly used to produce an accredited production.
- (c) Certification of expenses that are related to establishing a film production company in Wisconsin.

(2) This chapter is promulgated under the authority of s. 560.206 (4), Stats.

Subchapter II – Accreditation of Productions

Comm 133.20 Definitions. In this subchapter:

(1) The definitions in s. 71.07 (5f) (a) 1. to 3., Stats., shall apply.

Note: Sections 71.07 (5f) (a) 1. to 3., Stats., read as follows:

“1. ‘Accredited production’ means a film, video, electronic game, broadcast advertisement, or television production, as approved by the department of commerce, for which the aggregate salary and wages included in the cost of the production for the period ending 12 months after the month in which the principal filming or taping of the production begins exceeds \$100,000 for a production that is 30 minutes or longer or \$50,000 for a production that is less than 30 minutes. ‘Accredited production’ does not include any of the following, regardless of the production costs:

- a. News, current events, or public programming or a program that includes weather or market reports.
- b. A talk show.
- c. A production with respect to a questionnaire or contest.
- d. A sports event or sports activity.
- e. A gala presentation or awards show.
- f. A finished production that solicits funds.
- g. A production for which the production company is required under 18 USC 2257 to maintain records with respect to a performer portrayed in a single media or multimedia program.
- h. A production produced primarily for industrial, corporate, or institutional purposes.

2. ‘Claimant’ means a film production company that operates an accredited production in this state, if the company owns the copyright in the accredited production or has contracted directly with the copyright owner or a person acting on the owner’s behalf and if the company has a viable plan, as determined by the department of commerce, for the commercial distribution of the finished production.

3. ‘Production expenditures’ means any expenditures that are incurred in this state and directly used to produce an accredited production, including expenditures for set construction and operation, wardrobes, make-up, clothing accessories, photography, sound recording, sound synchronization, sound mixing, lighting, editing, film processing, film transferring, special effects, visual effects, renting or leasing facilities or equipment, renting or leasing motor vehicles, food, lodging, and any other similar expenditure as determined by the department of commerce. ‘Production

expenditures' include expenditures for music that is performed, composed, or recorded by a musician who is a resident of this state or published or distributed by an entity that has its headquarters in this state; air travel that is purchased from a travel agency or company that has its headquarters in this state; and insurance that is purchased from an insurance agency or company that has its headquarters in this state. 'Production expenditures' do not include salary or wages or expenditures for the marketing and distribution of an accredited production."

Note: 18 USC 2257, as referenced above in s. 71.07 (5f) (a) 1. g., relates to sexual exploitation and other abuse of children.

Note: "Production expenditures" do not include salary or wages paid directly by a claimant to the claimant's employees.

(2) "Department" means the department of commerce.

(3) "Incurred" means funds equal to the total cost have been dispersed by a claimant.

(4) "Person" includes natural persons, fiduciaries, and corporations, unless the context requires otherwise.

Comm 133.30 General eligibility criteria. A production shall meet all of the following general criteria in order to be eligible for becoming an accredited production:

(1) The production would not occur in Wisconsin without the tax benefits that are enabled under this chapter.

(2) The production would enhance economic development in Wisconsin.

(3) The production would enhance the potential for increasing the film, video or electronic game industry in Wisconsin.

(4) The production would not conflict with a desired brand image of Wisconsin.

Comm 133.31 Ineligible public programming. Public programming of a civic or governmental function is not eligible for becoming an accredited production.

Comm 133.32 Eligible and ineligible sports activities. (1) A travel promotion that addresses a sports event or sports activity is eligible for becoming an accredited production.

(2) A sports event or sports activity that is exclusively competitive in nature is not eligible for becoming an accredited production.

Comm 133.34 Obtaining accreditation. (1) APPLICATION. A potential claimant shall submit a separate accreditation application for each production, to the department, on a valid, department-prescribed form.

Note: The application form that is currently valid can be obtained from the department at P.O. Box 7970, Madison, WI, 53707; and may be available by accessing the department's Web site at www.commerce.wi.gov, and searching for the film production accreditation program.

Note: Under s. 560.206 (1), Stats., application for accreditation must be made to the department in each taxable year for which accreditation is desired.

(2) APPROVAL. A production shall become accredited upon issuance of a written approval from the department, to the claimant, reflecting that the submitted application complies with this chapter and any other factors which the department deems relevant.

(3) REVOCATION. The department may revoke any approval issued under sub. (2) if the supporting information is found to be inaccurate or significantly misleading.

Note: In accordance with s. 560.206 (3), Stats., the department will notify the department of revenue of every production accredited under this section, and of any such accreditation that is revoked.

Comm 133.36 Determination of production expenditures, resident salary or wages, and sales or use taxes. (1) To obtain the department's determinations in sub. (2), and prior to filing for tax benefits, a claimant shall submit all of the following to the department, in writing:

- (a) A list and description of the production expenditures incurred during the taxable year.
- (b) A list of the salary or wages that were paid as specified in sub. (2) (b), and a description of the corresponding services.
- (c) Attestation that the employees who received the salary or wages as specified sub. (2) (b) met department of revenue residency criteria, at the time of being paid.

Note: The application form that is referenced under s. Comm 133.34 (1) is accompanied with instructions that describe the department of revenue's residency criteria.

(d) Verification that the \$50,000 or \$100,000 threshold under s. Comm 133.20 (1) was exceeded.

(e) An itemized list of the sales or use taxes paid in the taxable year, under ss. 77.52 and 77.53, Stats., corresponding to an itemized list of purchased tangible personal property and taxable services that were used directly in producing an accredited production, including all stages from the final script stage to the distribution of the finished production.

(f) Demonstration that the claimant either owns the copyright in the accredited production or has contracted directly with the copyright owner or a person acting on the owner's behalf.

(g) A viable plan for commercial distribution of the finished production.

(h) Any subsequent clarification requested by the department.

(2) The department shall determine the following amounts, after accrediting a production, and shall notify the claimant of those amounts, in writing:

(a) The production expenditures, as defined in s. Comm 133.20 (1), that were incurred during the taxable year.

(b) The salary or wages that were paid during the taxable year by the claimant to those employees of the claimant who met both of the following criteria:

1. Rendered services in this state to produce an accredited production.
2. Were residents of this state at the time they were paid.

(c) The sales or use taxes which were paid during the taxable year and which comply with the criteria in sub. (1) (e).

(3) (a) The department may increase the amount specified in a notification issued under sub. (2), after a claimant submits adequate written justification for that increase.

(b) The department may decrease the amount specified in a notification issued under sub. (2), after determining that the information on which the amount was based is inaccurate or significantly misleading.

(c) The department shall notify a claimant, in writing, of any increase or decrease established under this subsection.

Note: In accordance with s. 560.206 (3), Stats., the department will notify the department of revenue of the production expenditures that are verified under this section.

Subchapter III – Tax Credits for Establishing a Film Production Company

Comm 133.60 Definitions. In this subchapter:

(1) The definitions in s. 71.07 (5h) (a) 1. to 4., Stats., shall apply.

Note: Sections 71.07 (5h) (a) 1. to 4., Stats., read as follows:

“1. ‘Claimant’ means a person who files a claim under this subsection and who does business in this state as a film production company.

2. ‘Film production company’ means an entity that creates films, videos, electronic games, broadcast advertisement, or television productions, not including the productions described under s. 71.07 (5f) (a) 1. a. to h.

3. ‘Physical work’ does not include preliminary activities such as planning, designing, securing financing, researching, developing specifications, or stabilizing property to prevent deterioration.

4. ‘Previously owned property’ means real property that the claimant or a related person owned during the 2 years prior to doing business in this state as a film production company and for which the claimant may not deduct a loss from the sale of the property to, or an exchange of the property with, the related person under section 267 of the Internal Revenue Code.”

(2) “Department” means the department of commerce.

(3) “Incurred” means funds equal to the total cost have been dispersed by a potential claimant.

(4) “Person” includes natural persons, fiduciaries, and corporations, unless the context requires otherwise.

Comm 133.70 Certification of expenses relating to establishing a film production company. (1) (a) To obtain the department's preliminary approval in sub. (2), a potential claimant shall submit all of the following to the department, in writing:

1. A valid, department-prescribed application form.

Note: The application form that is currently valid can be obtained from the department at P.O. Box 7970, Madison, WI, 53707; and may be available by accessing the department's Web site at www.commerce.wi.gov, and searching for the film production accreditation program.

2. A preliminary, estimated list of the expenses referenced in sub. (4).

3. A description of how the estimated expenses will relate to establishing a film production company in Wisconsin.

4. Documentation showing that the expenses will comply with the limitations in s. 71.07 (5h) (c) 1. to 3., Stats.

Note: Sections 71.07 (5h) (c) 1. to 3., Stats., read as follows:

“Limitations. 1. A claimant may claim the credit under par. (b) 1. [for the purchase price of depreciable, tangible personal property], if the tangible personal property is purchased after December 31, 2007, and the personal property is used for at least 50 percent of its use in the claimant's business as a film production company.

2. A claimant may claim the credit under par. (b) 2. for an amount expended to construct, rehabilitate, remodel, or repair real property, if the claimant began the physical work of construction, rehabilitation, remodeling, or repair, or any demolition or destruction in preparation for the physical work, after December 31, 2007, or if the completed project is placed in service after December 31, 2007.

3. A claimant may claim the credit under par. (b) 2. for an amount expended to acquire real property, if the property is not previously owned property and if the claimant acquires the property after December 31, 2007, or if the completed project is placed in service after December 31, 2007.”

5. Documentation showing that the film production company would not be established in Wisconsin without the tax benefits which are enabled under this chapter.

6. Documentation showing that the film production company would enhance economic development in Wisconsin.

7. Documentation showing that the film production company would enhance the potential for increasing the film, video or electronic game industry in Wisconsin.

(b) A potential claimant shall provide any subsequent clarification requested by the department.

(2) If the department determines that the expenses submitted under sub. (1) are likely to comply with s. 71.07 (5h) (c) 1. to 3., Stats., and that the film production company is likely to meet the conditions in sub. (1) (a) 5. to 7., the department shall issue a preliminary approval to the potential claimant.

(3) To obtain the department's certification in sub. (4), and prior to filing for tax benefits, a potential claimant shall submit a finalized, incurred list of the expenses referenced in sub. (4), along with an explanation for any of the expenses which differ from the preliminary list under sub. (1).

(4) In accordance with s. 71.07 (5h), 71.28 (5h), and 71.47 (5h), Stats., the department shall certify, in writing to a potential claimant, expenses that the department determines are related to establishing a film production company in Wisconsin.

(5) (a) The department may increase the amount specified in a certification issued under sub. (4), after a potential claimant submits adequate written justification for that increase.

(b) The department may decrease the amount specified in a certification issued under sub. (4), after determining that the information on which the amount was based is inaccurate or significantly misleading.

(c) The department shall notify a potential claimant, in writing, of any increase or decrease established under this subsection.

(d) The department shall notify the department of revenue, in writing, of any decrease established under this subsection.

Subchapter IV – Submittal of Claims

Comm 133.90 Claims. (1) A claimant, as defined in subch. II or III, may file for tax benefits under this chapter using forms acceptable to the department of revenue.

(2) Claims for tax credits for film production services or film production company investments shall include at least all of the following:

(a) A copy of the determination or certification issued by the department under s. Comm 133.36 or 133.70.

(b) The state employer tax identification number.

(c) The North American Industry Classification System code (NAICS) for the film production company, as defined in subch. III.

(3) No person, as defined in subch. II, may file for tax benefits under this chapter without the written approval of the department.

(END)

EFFECTIVE DATE

Pursuant to s. 227.22 (2) (intro.), Stats., these rules shall become effective on the first day of the month commencing after publication in the Wisconsin administrative register.

File reference: Comm 133 /rules 2006ph