DEPARTMENT OF STATE REVENUE
Commissioner's Directive #36
July 2008

DISCLAIMER: Commissioner's Directives are intended to provide nontechnical assistance to the general public. Every attempt is made to provide information that is consistent with the appropriate statutes, rules and court decisions. Any information that is not consistent with the law, regulations, or court decisions is not binding on either the Department or the taxpayer. Therefore the information provided herein should serve only as a foundation for further investigation and study of the current law and procedures related to the subject matter covered herein.

SUBJECT: Media Production Expenditure Sales Tax Exemption and Income Tax Credit

EFFECTIVE DATE: January 1, 2007 and July 1, 2008

REFERENCES: IC 6-2.5-5-41 and IC 6-3.1-32

INTRODUCTION: HEA 1380-2006, HEA 1388-2007 and HEA 1125-2008 enacted and amended the media production sales tax exemption and income tax credit. HEA 1380-2006 enacted a sales tax exemption for media production expenditures. HEA 1388-2007 amended the sales tax exemption and created the multimedia production income tax credit. HEA 1388-2007 was vetoed by the Governor and the veto was overridden by the General Assembly during the 2008 legislative session. HEA 1125-2008 further amended the sales tax exemption and the income tax credit.

SALES TAX EXEMPTION: The sales tax exemption was effective on Jan. 1, 2007 and applied to the purchase of tangible personal property involved in the making of a motion picture production or television series, program or feature. Through June 30, 2008, the sales tax exemption applies to the direct use of tangible personal property involved in the person's direct use in a motion picture production or television series. The following items are not eligible for the sales tax exemption:

- Food and beverage services;
- A vehicle or other means of transportation used to transport actors, crew members, or any individual involved in a motion picture production;
- Fuel, parts, supplies or other consumables used in a vehicle or other means of transportation;
- Lodging; and
- Packaging materials.

The sales tax exemption that is effective on July 1, 2008 applies to a qualified media production as defined in IC 6-3.1-32-5 and includes:

- A feature length film, including a short feature, an independent or studio production, or a documentary;
- A television series, program or feature;
- A digital media production that is intended for reasonable commercial use:
- An audio recording or a media video;
- An advertising message broadcast on radio or television; and
- A media production concerning training, external marketing, or communications.

The term does not include a production that is obscene or television coverage of the news or athletic events.

A person is not entitled to the sales tax exemption if the expenditure is a qualified expenditure for the media production income tax credit and the person claims the income tax credit. No purchases of tangible personal property are eligible for the sales tax exemption after Dec. 31, 2011.

MULTIMEDIA PRODUCTION INCOME TAX CREDIT

HEA 1388-2007 was vetoed by the Governor and the veto was overridden by the General Assembly during the 2008 session. HEA 1125-2008 was passed by the General Assembly and amended by HEA 1388-2007. All provisions of the multimedia production income tax credit take effect on July 1, 2008.

DEFINITIONS

A qualified applicant includes any person, corporation, partnership, limited liability partnership, limited liability company or other entity that is engaged in the business of making qualified media productions in Indiana.

Pass-through entities include S corporations, partnerships, limited liability partnerships and limited liability companies.

A qualified media production includes the following:

- A feature length film, including a short feature, an independent or studio production, or a documentary;
- A television series, program, or feature;

- A digital media production that is intended for reasonable commercial exploitation;
- An audio recording or music video;
- An advertising message broadcast on radio or television; and
- A media production concerning training, external marketing, or communications.

A qualified media production includes preproduction, production and postproduction work; however, it does not include a production in any medium that is obscene or television coverage of the news or athletic events.

Qualified production expenditure means any of the following expenses incurred in Indiana or expenditures in Indiana made in the direct production of a qualified media production in Indiana:

- The payment of wages, salaries, and benefits to Indiana residents;
- Acquisition costs for a story or scenario used in the qualified media production;
- Acquisition costs for locations, sets, wardrobes, and accessories;
- Expenditures for materials used to make sets, wardrobes, and accessories;
- Expenditures for photography, sound synchronization, lighting, and related services;
- Expenditures for editing and related services;
- Facility and equipment rentals;
- Food and lodging;
- Legal services if purchased from an attorney licensed to practice law in Indiana; and
- Any other production expenditure for which taxes are assessed or imposed by the state.

Any qualified expenditure for which the person claimed the sales tax exemption at the time of purchase is not considered to be a qualified media production expenditure for purposes of claiming an income tax credit for a qualified media production.

State tax liability means a taxpayer's total tax liability for the adjusted gross income tax, the financial institutions tax, or the insurance premium tax.

REQUIREMENTS TO QUALIFY FOR THE CREDIT

A qualified applicant is required to make qualified production expenditures of at least $100,000 for a feature length film, including a short feature; an independent or studio production; a documentary; and a television series, program, or feature, to qualify for the credit. The minimum qualified production expenditure for a digital media production, an audio recording, a music video, an advertising message broadcast on radio or television, or a media production concerning training or external marketing or communications is $50,000.

A taxpayer who proposes to claim a tax credit shall, before incurring or making the qualified production expenditures, apply to the Indiana Economic Development Corporation (IEDC) for approval of the tax credit.

When the IEDC receives an application, the IEDC may enter into an agreement with the applicant for the tax credit if the IEDC determines that the applicant's proposed media production is economically viable and will increase economic growth and job creation in Indiana.

The agreement entered into by the IEDC and the applicant shall specify the following:

- That the percentage to be used in determining the amount of the tax credit may not be more than 15 percent of the qualified media production expenditures for the production;
- Any requirements or restrictions that the applicant shall satisfy before the applicant can claim the credit;
- That the applicant will file an Indiana income tax return for at least the first 5 years that the taxpayer has income from the qualified media production;
- That an applicant cannot sell, assign, convey, or otherwise transfer the tax credit;
- That the applicant is not entitled to a tax credit for tangible personal property that is a qualified production expenditure, and for which the applicant claims a sales tax exemption;
- That if the applicant fails to satisfy any condition of the agreement or IC 6-3.1-32, the IEDC may disallow the use of all or part of any unused tax credit granted to the applicant, recapture all or part of any tax credit that has been applied to the state tax liability of the applicant, or both disallow any unused credit and recapture any credit claimed;
- That the applicant will be subject to the jurisdiction of Indiana courts;
- That the applicant consents to the service of process in accordance with Indiana Rules of Trial Procedure; and
- That the applicant consents that any civil action related to the provisions of the tax credit will be heard in an Indiana court.

DETERMINATION OF INDIANA INCOME

A corporation or a nonresident person shall apportion the income from the qualified media production for adjusted gross income tax purposes. The income is determined by multiplying the income from the media production by a percentage equal to the amount of qualified production expenditures for which the tax credit was granted divided by the total production expenditures for the qualified media production.

EXAMPLE: A production company has income of $100,000,000 from a qualified media production that had total production costs of $20,000,000. The qualified Indiana media production costs were $5,000,000. The Indiana percentage (25%) is multiplied by the total income from the qualified media production ($100,000,000). The Indiana income subject to the adjusted gross income tax is $25,000,000.

CLAIMING THE INCOME TAX CREDIT

The maximum amount of tax credit allowed for all taxpayers in a state fiscal year is $5,000,000. If the amount of the tax credit awarded to a taxpayer in a taxable year exceeds the taxpayer's state tax liability for the taxable year, the taxpayer is entitled to a refund of the excess tax credit.

The taxpayer shall claim the credit on the taxpayer's annual state tax return. The taxpayer shall include a copy of the certification of qualified media production expenses provided to the taxpayer by the IEDC. Failure to include the certification will cause the credit to be disallowed.

A pass-through entity entitled to the media production expense tax credit that does not have state tax liability against which the credit may be applied shall apply the credit to a shareholder, partner, or member of the pass-through entity based on the percentage of the pass-through entity's distributive income to which the shareholder, partner, or member is entitled multiplied by the amount of the credit.

A tax credit may not be awarded for a taxable year ending after Dec. 31, 2011.

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Commissioner

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