



Department of Justice

Income Tax Act (R.S.C., 1985, c. 1 (5th Supp.))

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Film or Video Production Services Tax Credit

Definitions

125.5 (1) The definitions in this subsection apply in this section.

"accredited film or video production certificate"

« *certificat de production cinématographique ou magnétoscopique agréée* »

"accredited film or video production certificate", in respect of a film or video production, means a certificate issued by the Minister of Canadian Heritage certifying that the production is an accredited production.

"accredited production"

« *production agréée* »

"accredited production" has the meaning assigned by regulation.

"assistance"

« *montant d'aide* »

"assistance" means an amount, other than an amount deemed under subsection 125.5(3) to have been paid, that would be included under paragraph 12(1)(x) in computing the income of a taxpayer for any taxation year if that paragraph were read without reference to subparagraphs 12(1)(x)(v) to 12(1)(x)(vii).

"Canadian labour expenditure"

« *dépense de main-d'oeuvre au Canada* »

"Canadian labour expenditure" of a corporation for a taxation year in respect of an accredited production means, in the case of a corporation that is not an eligible production corporation in respect of the production for the year, nil, and in any other case, subject to subsection 125.5(2), the total of the following amounts in respect of the production to the extent that they are reasonable in the circumstances:

(a) the salary or wages directly attributable to the production that are incurred by the corporation after October 1997, and in the year or the preceding taxation year, and that relate to services rendered in Canada for the stages of production of the production, from the final script stage to the end of the post-production stage, and paid by it in the year or within 60 days after the end of the year to employees of the corporation who were resident in Canada at the time the payments were made (other than amounts incurred in that preceding year that were 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 preceding taxation year and that was paid within 60 days after the end of that preceding year) that is directly attributable to the production, that relates to services rendered in Canada after October 1997 and in the year, or that preceding year, to the corporation for the stages of production of the production, from the final script stage to the end of the post-production stage, and that is paid by it in the year or within 60 days after the end of the year to a person or a partnership, that carries on a business in Canada through a permanent establishment (as defined by regulation), and that is

(i) 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

(A) is attributable to services personally rendered by the individual in Canada in respect of the accredited production, or

(B) is attributable to and does not exceed the salary or wages paid by the individual to the individual's employees at a time when they were resident in Canada for personally rendering services in Canada in respect of the accredited production,

(ii) another corporation that is a taxable Canadian corporation, to the extent that the amount paid is attributable to and does not exceed the salary or wages paid to 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,

(iii) another corporation that is a 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, to the extent that the amount paid is attributable to services rendered personally in Canada by the individual in respect of the accredited production, or

(iv) a partnership, to the extent that the amount paid

(A) is 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

(B) is attributable to and does not exceed the salary or wages paid by the partnership to its employees at a time when they were resident in Canada for personally rendering services in Canada in respect of the accredited production, and

(c) where

(i) the corporation is a subsidiary wholly-owned corporation of another corporation that is a taxable Canadian corporation (in this section referred to as the "parent"), and

(ii) the corporation and the parent have filed with the Minister an agreement that this paragraph apply in respect of the production,

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 the production and that would be included in the Canadian labour expenditure of the corporation in respect of the production for the particular taxation year because of paragraph (a) or (b) if

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

(iv) the expenditure were incurred by the corporation for the same purpose as it was incurred by the parent and were paid at the same time and to the same person or partnership as it was paid by the parent.

"eligible production corporation"

« société de production admissible »

"eligible production corporation", in respect of an accredited production for a taxation year, means a corporation, the activities of which in the year in Canada 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 and that

(a) owns the copyright in the accredited production throughout the period during which the production is produced in Canada, or

(b) has contracted directly with the owner of the copyright in the accredited production to provide production services in respect of the production, where the owner of the copyright is not an eligible production corporation in respect of the production, except a corporation that is, at any time in the year,

- (c) a person all or part of whose taxable income is exempt from tax under this Part,
- (d) controlled directly or indirectly in any manner whatever by one or more persons all or part of whose taxable income is exempt from tax under this Part, or
- (e) prescribed to be a labour-sponsored venture capital corporation for the purpose of section 127.4.

“qualified Canadian labour expenditure”
 « *dépense de main-d’oeuvre admissible au Canada* »

“qualified Canadian labour expenditure” of an eligible production corporation for a taxation year in respect of an accredited production means the amount, if any, by which

- (a) the total of all amounts each of which is the corporation’s Canadian labour expenditure for the year or a preceding taxation year

exceeds the aggregate of

- (b) the total of all amounts, each of which is an amount of assistance that can reasonably be considered to be in respect of amounts included in the total determined under paragraph (a) in respect of the corporation for the year that, at the time of filing its return of income for the year, the corporation or any other person or partnership has received, is entitled to receive or can reasonably be expected to receive, that has not been repaid before that time pursuant to a legal obligation to do so (and that does not otherwise reduce that expenditure),

- (c) the total of all amounts, each of which is the qualified Canadian labour expenditure of the corporation in respect of the accredited production for a preceding taxation year before the end of which the principal filming or taping of the production began, and

- (d) where the corporation is a parent, the total of all amounts each of which is included in the total determined under paragraph (a) in respect of the corporation for the year and is the subject of an agreement in respect of the accredited production referred to in paragraph (c) of the definition “Canadian labour expenditure” between the corporation and its subsidiary wholly-owned corporation.

“salary or wages”
 « *traitement ou salaire* »

“salary or wages” does not include an amount described in section 7 or an amount determined by reference to profits or revenues.

Rules governing Canadian labour expenditure of a corporation

(2) For the purpose of the definition “Canadian labour expenditure” in subsection 125.5(1),

- (a) remuneration does not include remuneration determined by reference to profits or revenues;

- (b) services referred to in paragraph (b) of that definition that relate to the post-production stage of the accredited production include only the services that are rendered at that stage by a person who performs the duties of animation cameraman, assistant colourist, assistant mixer, assistant sound-effects technician, boom operator, colourist, computer graphics designer, cutter, developing technician, director of post production, dubbing technician, encoding technician, inspection technician — clean up, mixer, optical effects technician, picture editor, printing technician, projectionist, recording technician, senior editor, sound editor, sound-effects technician, special effects editor, subtitle technician, timer, video-film recorder operator, videotape operator or by a person who performs a prescribed duty;

- (c) that definition does not apply to an amount to which section 37 applies; and

- (d) for greater certainty, that definition does not apply to an amount that is not a production cost including an amount in respect of advertising, marketing, promotion, market research or an amount related in any way to another film or video production.

Tax credit

(3) An eligible production corporation in respect of an accredited production for a taxation year is deemed to have paid on its balance-due day for the year an amount on account of its tax payable under this Part for the year equal to 16% of its qualified Canadian labour expenditure for the year in respect of the production, if

- (a) the corporation files with its return of income for the year
 - (i) a prescribed form containing prescribed information in respect of the production,
 - (ii) an accredited film or video production certificate in respect of the production, and
 - (iii) each other document prescribed in respect of the production; and
- (b) the principal filming or taping of the production began before the end of the year.

Canadian film or video production

(4) Subsection 125.5(3) does not apply in respect of a production in respect of which an amount is deemed to have been paid under subsection 125.4(3).

When assistance received

(5) For the purposes of this Act other than this section, and for greater certainty, the amount that a corporation is deemed under subsection 125.5(3) to have paid for a taxation year is assistance received by the corporation from a government immediately before the end of the year.

Revocation of certificate

(6) An accredited film or video production certificate in respect of an accredited production may be revoked by the Minister of Canadian Heritage where

- (a) an omission or incorrect statement was made for the purpose of obtaining the certificate, or
- (b) the production is not an accredited production,

and, for the purpose of subparagraph 125.5(3)(a)(ii), a certificate that has been revoked is deemed never to have been issued.

NOTE: Application provisions are not included in the consolidated text; see relevant amending Acts. 1998, c. 19, s. 145.1; 2001, c. 17, s. 116; 2003, c. 15, s. 80.

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