

PROPOSED REGULATION OF THE OFFICE OF ECONOMIC DEVELOPMENT WITHIN THE OFFICE OF THE GOVERNOR

LCB File No. R120-13

AUTHORITY: 2013 Statutes of Nevada (SB 165)

DRAFT REGULATION: Transferable Tax Credit for Producers of Qualified Film or other production pursuant to S.B. 165

Section 1. Purpose:

The 2013 legislature enacted S.B. 165 to amend Nevada Revised Statutes Chapter 360 to authorize producers of film, television and other media productions in the State of Nevada, to apply to the Office of Economic Development for a certificate of transferable tax credits. S.B. 165 requires The Office to approve such applications if certain specified conditions are met, requires audits of productions granted certificates, identifies the types of expenditures and costs that may serve as the basis for transferable tax credits, and provides guidance on the calculation of the transferable tax credits. S.B. 165 also includes provisions authorizing the governing body of a city or county to grant abatements of certain permitting and licensing fees to a Producer of a Qualified Production. S.B. 165 further specifies the fees and taxes to which the transferable tax credits may be applied, and requires coordination of transferable tax credit activities among The Office, the Department of Taxation and the Gaming Control Board.

The purpose of this draft regulation is to set forth how The Office will carry out its responsibilities pursuant to S.B. 165. These draft regulations do not address the responsibilities under this statute of the Department of Taxation or the Gaming Control Board, or those of governing bodies of cities or counties.

Section 2. Definitions:

As used in these regulations, the following terms shall have the following definitions, unless the context requires otherwise:

- 1. "Above-the-line Personnel" include the positions listed in Section 2.5 of 2013 Statutes of Nevada ___ (SB 165) and such other positions as are approved for inclusion by The Office, which are set forth in Attachment 1 of these Regulations.*
- 2. "Below-the-line Personnel" include the positions listed in Section 3.5 of 2013 Statutes of Nevada ___ (SB 165) and such other positions as are approved for inclusion by The Office, which are set forth in Attachment of these Regulations.*
- 3. "Department of Taxation" means the State of Nevada Department of Taxation*
- 4. "Gaming Control Board" means the State of Nevada Gaming Control Board.*
- 5. "The Office" means the State of Nevada Governor's Office of Economic Development.*
- 6. "Executive Director" means the Executive Director of The Office.*

7. *“Nevada Business” has the meaning set forth in Section 4 of 2013 Statutes of Nevada ___ (SB 165).*
8. *“Nevada Resident” has the meaning set forth in NRS 361.015, as amended from time to time, which in part states, is a person who has (i) established a residence in the State of Nevada, and (ii) actually resided in this state for at least 6 months, or has a valid driver’s license or identification card issued by the Nevada Department of Motor Vehicles.*
9. *“NRS” means Nevada Revised Statutes*
10. *“Producer” has the meaning set forth in Section 6 of 2013 Statutes of Nevada ___ (SB 165).*
11. *“Other Visual Media Production” has the meaning set forth in Section 7(l) of 2013 Statutes of Nevada ___ (SB 165), which may be appended by The Office.*
12. *“Qualified Production” has the meaning set forth in Section 7 of 2013 Statutes of Nevada ___ (SB 165), which includes Other Visual Media Productions, as interpreted by The Office in its consideration of an application pursuant to these regulations.*
13. *“Principal Photography” means the phase of production during which the Qualified Production commences in Nevada.*
14. *“Principal Development” means the phase of production during which Other Visual Media Production commences in Nevada.*

Section 3. Requirement for The Office approval of certificate of eligibility for transferable tax credits

The Office must approve an application for a certificate of eligibility for transferable tax credits before a producer can apply such credits in tax returns filed in the State of Nevada. The transferable tax credits may be applied to:

1. *Any financial institution or business tax imposed by chapters 363A and 363B of NRS, respectively;*
2. *The gaming license fees imposed by the provisions of NRS 463.370;*
3. *Any insurance tax imposed pursuant to chapter 680B of NRS; or*
4. *Any combination of the fees and taxes described in paragraphs 1, 2 and 3.*

Section 4. Eligibility to apply for certificate of eligibility for transferable tax credits

In order to be eligible to apply for a certificate of eligibility for transferable tax credits, a producer must:

1. *Submit an application in the form approved by The Office for a certificate of eligibility for transferable tax credits which:*
 - A. *meets the requirements in Section 5 below,*
 - B. *on or before December 31, 2017;*
 - not earlier than 90 days before the date of commencement of:*
 - i. *Principal Photography of the Qualified Production, if any; or,*
 - ii. *Principal Development of the Other Visual Media Production, if any.*
2. *In conjunction with, or as part of the application for a certificate of eligibility for transferable tax credits a Producer of a Qualified Production must:*

- A. *provide proof satisfactory to The Office that the production is in the economic interest of the State;*
 - B. *provide proof satisfactory to The Office that 50 percent or more of the funding for the production has been placed in an escrow account or trust account for the benefit of the production as set forth in Section 3 of 2013 Statutes of Nevada _____ (SB 165), which may be supplanted a binding financing commitment, commitment letter or investment letter as set forth in Section 4 of 2013 Statutes of Nevada _____ (SB 165), or suitable corporate credit rating of 'lower medium grade' or higher from agencies such as A.M. Best, Dun & Bradstreet, Standard & Poor's, Moody's or Fitch consistent with Sections 3 and 4 of 2013 Statutes of Nevada ____ (SB 165) as determined by The Office; and*
 - C. *provide proof satisfactory to The Office that at least 60 percent of the total qualified expenditures and production costs for the production, including pre-production and post-production, will be incurred in Nevada.*
3. *At the completion of the Qualified Production, provide The Office with an audit of the Qualified Production in the form and based on procedures approved by The Office which: (1) Shows that the Qualified Production incurred qualified expenditures and production costs in Nevada of \$500,000 or more; and (2) Is certified by an independent certified public accountant in Nevada who is approved by The Office;*

Section 5. Application Requirements

A Producer of a Qualified Production seeking a certificate of eligibility for transferable tax credits shall submit an application as set forth in Section 8.4 of 2013 Statutes of Nevada _____ (SB 165), in a form approved by The Office, which must contain:

- 1. *Script, storyboard or synopsis of the production;*
- 2. *The names of the producer, director and proposed cast;*
- 3. *An estimated timeline to complete the production;*
- 4. *A detailed budget for the entire production, including projected expenses incurred within and outside of Nevada;*
- 5. *Details regarding the proposed financing of the production, including without limitation, contact information for any investor, lender, guarantor, bonding company, or other knowledgeable party that can independently provide proof satisfactory to The Office that the Producer has the necessary financial resources to complete the proposed production;*
- 6. *An insurance certificate, binder or quote for general liability insurance of \$1,000,000 or more;*
- 7. *The business address, and contact information of the Producer, which must be an address in this State;*
- 8. *The names, addresses and other contact information of any authorized representatives of the Producer, on a form approved by The Office, in which the Producer grants a defined level and term of authorization for such agency representation for the Qualified Production;*
- 8. *Proof that the production meets or plans to meet any applicable requirements relating to workers' compensation insurance;*

9. *Proof that the Producer has or will secure all licenses, registrations and other filings required to do business in each proposed location in this State at which the production will be produced; and*
10. *Any other information required in the form approved by The Office, including without limitation:*
 - A. *name of the production;*
 - B. *description of the production;*
 - C. *planned rating for the production from nationally recognized rating associations or boards including without limitation the Motion Picture Association of America and the Entertainment Software Rating Board;*
 - D. *maximum compensation payable to any producer, employee, independent contractor or other person paid a wage or salary for labor services on the production;*
 - E. *job profile for the production, including without limitation:*
 - i. *number of jobs created,*
 - ii. *anticipated term of employment of each job,*
 - iii. *anticipated wage levels to be paid for each job, and*
 - iv. *fringe benefits to be provided to production employees;*
 - F. *proposed capital investment in and location of real property, equipment and other tangible personal property in the state; and*
 - G. *declaration of residency, on a form approved by The Office, for any Above the-line Personnel and Below the-line Personnel claimed by the Producer to have Nevada residency status as set forth Section 5 of 2013 Statutes of Nevada ____ (SB 165); and*
 - H. *acknowledgement of agreed upon audit procedures, on a form approved by The Office.*

Section 6. The Office procedures for consideration of applications for transferable tax credits pursuant to Section 8 (3)(d) of 2013 Statutes of Nevada ____ (SB 165)

1. *Upon receipt of an application for a certificate of eligibility for transferable tax credits, The Office staff shall evaluate whether the Application satisfies the requirements of 2013 Statutes of Nevada ____ (SB 165) and these regulations. If the Application meets these standards, then The Office staff shall develop a proposed order on the Application for consideration by the Executive Director. This order shall include a recommendation on the amount of transferable tax credits to be granted to the Producer, which shall be calculated in accordance with Section 8 below.*
2. *In considering an application for a certificate of eligibility for transferable tax credits, The Office shall give priority to applications:*
 - A. *in the economic interest of the State of Nevada as further defined by the State Plan for Economic Development, as determined by The Office, including without limitation:*
 - i. *advancement of state's target sectors;*
 - ii. *the number of high-quality permanent jobs for Nevadans;*
 - iii. *the quality of the capital investment in the state;*
 - B. *promote tourism in the State of Nevada;*

3. *The Office's Executive Director or his designee shall conduct a hearing on the proposed order on the application.*
4. *The Office's Executive Director or his designee shall issue a decision on an application for a certificate of eligibility for transferable tax credits not later than thirty days after the conclusion of the hearing on the application.*
5. *Upon approval of an application for a certificate of eligibility for transferable tax credits, The Office:*
 - A. *may execute a preliminary agreement with the Producer of the Qualified Production in a form determined by The Office;*
 - B. *shall forward a copy of the certificate of eligibility and preliminary agreement, if applicable, which identifies the estimated amount of the tax credits authorized for this application, to the Producer, the Department of Taxation and the State Gaming Control Board.*
6. *The Office may determine proportions of the available current fiscal year tax credits as set forth in Section 12 of 2013 Statutes of Nevada ____ (SB 165), to be approved in each period during that fiscal year by The Office*

Section 7. Failure to supply records in support of an application for transferable tax credits

A Producer applying for transferable tax credits shall provide copies to The Office of any records or other documents, including without limitation those requirements described in Section 4 and 5 of these regulations, to verify that the Qualified Production meets the requirements of these regulations. A failure to provide such records or other documents may result in the dismissal or denial of the application and after grant of an application may result in termination of the transferable tax credit eligibility.

Section 8. Calculation of the amount of transferable tax credits

The Office shall calculate the estimated amount of transferable tax credits available to a producer of a qualified production, in accordance with the _____ of sections 10, 11 and 12 of 2013 Statutes of Nevada ____ (SB 165), and the following additional requirements without limitation:

1. *For purposes of the calculation of the amount of transferable tax credits, and for application of those credits:*
 - A. *Above-the-line Personnel and Below-the-line Personnel shall include the positions listed in Attachment 1;*
 - B. *“Qualified expenditures and production costs” has the meaning set forth in Section 9 of 2013 Statutes of Nevada ____ (SB 165), which may include any other transaction, service or activity in the form adopted by The Office without limitation the items listed in Attachment 2; and*
 - C. *“Unqualified expenditures and production costs” shall include the items listed in Attachment 3.*
2. *The Office may amend Attachments 1, 2 and 3 from time to time in the future, following thirty days prior written notice provided to the Nevada Department of Taxation and the State Gaming Control Board.*

Section 9. Approval of Certificate of Eligibility for Transferable Tax Credits

- 1. The Office shall approve an application for a certificate of eligibility for transferable tax credits to a Producer of a Qualified Production that meets all applicable requirements, which includes the estimated amount of the tax credits available under the certificate.*
- 2. Once The Office issues a certificate of eligibility for transferable tax credits to a Producer of a Qualified Production, The Office shall forward a copy of the certificate of eligibility that includes the estimated amount of the tax credits available under the certificate, to the Producer, the Department of Taxation, and the State Gaming Control Board.*

Section 10. Production reporting and completion requirements

- 1. During the production of a Qualified Production, The Office may require, without limitation, the Producer provide a progress update to determine the continue eligibility of a certified production. Failure by the Producer to report*
- 2. Production of the Qualified Production must be completed within:*
 - A. one year of commencement of Principal Photography, if any; or,*
 - B. one year of commencement of Principal Development*

Section 11. Post-production submission of information by the producer of a qualified production

- 1. The Producer of a Qualified Production shall submit to The Office all required post-production financial data and other information, no later than 30 days from completion of a qualified production.*
- 2. If The Office, or the Department of Taxation determines that information provided pursuant to this section is incomplete, then The Office will notify the Producer of this determination. The Producer shall submit the remaining required information within thirty days of receipt of this notice.*

Failure to timely submit post-production information may result in termination of eligibility for transferable tax credits.

Section 12. Certification of the audit, post-certification duties of the producer of a qualified production, issuance of tax credits and transfer of the tax credits

- 1. If The Office certifies the audit and determines that all other requirements for the transferable tax credits have been met, The Office shall notify the producer that the transferable tax credits will be issued.*
- 2. Within 30 days after the receipt of the notice, the producer shall make an irrevocable declaration of the amount of transferable tax credits that will be applied to each fee or tax set as set forth in Section 8 of 2013 Statutes of Nevada ____ (SB 165)*
- 3. Upon receipt of the declaration, The Office shall issue to the Producer a certificate of transferable tax credits in the amount approved by The Office for the fees or taxes included in the declaration of the Producer.*

4. *A Producer granted transferrable tax credits must provide prior written notice to The Office of a proposed transfer of transferrable tax credits by completing a form approved by The Office. The notification required by this section shall include without limitation:*
 - A. *contact information for the current holder of the transferable tax credits and for the person or entity purchasing the credits;*
 - B. *the current state of residence of the holder of the transferable tax credits and for the person or entity purchasing the credits;*
 - C. *the dollar amount of the transfer of transferable tax credits;*
 - D. *the compensation received by seller of the transferable tax credits from the buyer of the credits; and*
 - E. *the proposed date of the transfer.*

Section 13. Repayment of taxes in the event of submission of false information and in other circumstances

1. *In the event that The Office determines that a Qualified Production is not entitled to transferrable tax credits because the Producer has submitted false information in any document submitted for transferrable tax credits, or because the Producer has become ineligible for transferrable tax credits after receiving them, then The Office shall require the Producer to repay the Department of Taxation or the State Gaming Control Board for any portion of the transferable tax credits to which the Producer is not entitled.*
2. *A good faith purchaser of transferable tax credits shall not be required to forfeit the credits unless this purchaser submitted fraudulent information in connection with the purchase.*

Section 14. The Office authority to reduce or withhold transferable tax credits under certain conditions

The Office may reduce or withhold transferable tax credits in the event that production activities result in damages to the State or any political subdivision of the State, and in the event of legal action in this state against a producer or involving a qualified production.

ATTACHMENT 1
Above-the-line Personnel and Below-the-line personnel

Following are the Above-the-line Personnel and Below-the-line Personnel authorized for inclusion in production costs, as of January 1, 2014. The Office may amend this list in the future, pursuant to paragraph 8(a)(2) of 2013 Statutes of Nevada ___(SB 165), following thirty days prior written notice provided to the Nevada Department of Taxation and the State Gaming Control Board.

1. “Above-the-line personnel” means a producer, director, writer, actor, other than an extra or other similar personnel whose compensation is negotiated before the start of the qualified production. The term does not include below-the-line personnel.

2. “Below-the-line personnel” means a person employed to work on a qualified production after production begins and before production is completed, including, without limitation, an animator, artist, audio designer, audio mixer, best boy, boom operator, boom person, camera loader, camera operator, assistant camera operator, compositor, developer, dialogue editor, digital imaging technician, dolly grip, editor, electric best boy, engineer, film editor, film editor, focus puller, Foley operator, Foley editor, gaffer, grip, key for hair, key for makeup, key for wardrobe, key grip, lighting crew, lighting board operator, lighting technician, modeler, music editor, programmer, propmaster, rigging grip, scenic foreperson, scripter, software engineer, sound editor, sound effects editor, sound mixer, steadicam operator, script supervisor, set construction foreperson, set dresser, special effects, systems designer, and other similar personnel. The term does not include above-the-line personnel.

ATTACHMENT 2
Qualified Expenditures and Production Costs

Following are the qualified expenditures and production costs as of January 1, 2014. The Office may amend this list in the future, pursuant to paragraph 8(a)(2) of 2013 Statutes of Nevada ___(SB 165), following thirty days prior written notice provided to the Nevada Department of Taxation and the State Gaming Control Board.

- A. Qualified expenditures and production costs that may serve as a basis for transferable tax credits issued pursuant to section 8 of 2013 Statutes of Nevada ___(SB 165), and pursuant to GOED's objectives set forth in NRS 231 must be:
1. Purchases of tangible personal property or services from a Nevada business;
 2. Purchases made on or after the date on which a Producer submits an application for the transferable tax credits;
 3. Purchases must be customary and reasonable; and,
 4. Must relate to:
 - a. Set construction and operation;
 - b. Wardrobe and makeup;
 - c. Photography, sound and lighting;
 - d. Filming, film processing and film editing;
 - e. The rental or leasing of facilities, equipment and vehicles;
 - f. Food and lodging;
 - g. Editing, sound mixing, special effects, visual effects and other postproduction services;
 - h. The payroll for Nevada residents or other personnel who provided services in this State;
 - i. Payment for goods or services provided by a Nevada business;
 - j. The design, construction, improvement or repair of property, infrastructure, equipment or a production or postproduction facility;
 - k. State and local government taxes to the extent not included as part of another cost reported pursuant to this section;
 - l. Fees paid to a producer who is a Nevada resident;
 - m. Airfare, if purchased through a Nevada travel agency or travel company;
 - n. Insurance costs and bonding, if purchased through a Nevada insurance agency;
 - o. Other direct costs of producing the project in accordance with generally accepted entertainment industry practices;
 - p. The design and development of art assets for interactive entertainment, including concept art, background art, character models, and sprites;
 - q. The programming of software related to interactive entertainment, including codebases, netcode, development and modification of source code, development and adaptation of game engine software, and game development tools;
 - r. Quality assurance for interactive entertainment including testing and tracking software bugs;

- s. Costs for motion capture for interactive entertainment, including costs for motion capture software, performers and participants, motion capture facilities and costs related to incorporating motion capture data into an interactive entertainment product; or
 - t. Any other transaction, service or activity authorized under discretionary authority as granted by GOED in conjunction with the Departments of Revenue and/or Taxation.
- B. Production expenditures incurred in this State. In order to be considered to have been incurred in this State, the following rules shall apply:
- 1. Production expenditures, which are attributable to the performance of services by individuals and companies directly at the filming site in Nevada who were not employees of the production company or qualified interactive entertainment production company, shall be attributed to Nevada in the same manner as salaries as provided in paragraph C of this Attachment 1.
 - 2. Except as otherwise provided in this regulation, expenditures for services which are not performed at the filming site (such as insurance, editing and related services, digital or tape editing, film processing, transfers of film to tape or digital format, sound mixing, computer graphics services, special effects services, animation services, etc.) will be allowed if the vendor is a Nevada vendor and will be attributed to Nevada if the service is rendered in Nevada. If the production company or qualified interactive entertainment production company is unable to track the actual time spent in Nevada, then some other reasonable method which approximates the actual time spent in Nevada may be used to determine the amount attributable to Nevada. In the event the services are subcontracted to a company that would not otherwise qualify and/or such subcontracted company renders the services outside Nevada, the expenditure for such services shall not be considered to have been incurred in this state.
 - 3. Purchases and rentals of property. In order to include production expenditures for purchases and rentals of property, the property must have been used in Nevada and purchased or rented from a Nevada vendor. Purchase receipts, invoices, contracts, or other documentation shall be used to determine this.
 - 4. A Nevada vendor is a vendor that:
 - a. Sells or rents property or provides a service not performed at the filming site, which is the subject of the production expenditure, in their ordinary course of business; and
 - b. Has a physical location in Nevada with at least one individual working at such location on a regular basis. Registering with the Nevada Secretary of State or appointing a registered agent in Nevada does not establish a physical location in Nevada.
 - c. A vendor that acts as a conduit to enable purchases and rentals to qualify that would not otherwise qualify shall not be considered a Nevada vendor with respect to such purchases and rentals.
- C. Salaries:

1. Total aggregate payroll includes bonuses, incentive pay, and other compensation paid to an employee who is included in the employees Form W-2 "Wage and Tax Statement".
2. Reimbursed expenses, per diems, or employer paid benefits and taxes are not included in aggregate payroll unless such amounts are included as wages, tips, or other compensation in the employee's Form W-2 "Wage and Tax Statement".
3. For purposes of this regulation, the term "employee" may include any officer of a corporation or any individual who, under the Internal Revenue Service rules applicable in determining the employer-employee relationship, has the status of an employee.
4. Except as otherwise provided in this paragraph, if the production company or qualified interactive entertainment production company is unable to track the actual time spent by an employee in Nevada, the production company or qualified interactive entertainment production company may calculate the total aggregate payroll in Nevada by multiplying the total payroll of employees who worked in Nevada by a ratio. Such ratio shall be computed by dividing the shooting days in Nevada in the state certified production by the total shooting days spent in the state certified production. For directors, producers, and other individuals who are paid a separate amount for preproduction, for actual production, and for post production, the amount that is incurred in Nevada shall be based on the amount paid for each such period and prorated based on the actual time spent in Nevada by the employee in each such period.

D. Fringe Benefits. The following benefits are attributed to Nevada in the same manner as salaries as provided in paragraph C of this Attachment 1:

1. SUI (state unemployment insurance);
2. FUI (federal unemployment insurance);
3. FICA (employer portion);
4. Pension and welfare if the amounts are paid as part of pension, health, and welfare plans (these would not be required to be paid to a Nevada vendor);
5. Health insurance premiums if these amounts are paid as part of pension, health, and welfare plans (these would not be required to be paid to a Nevada vendor); and
6. Service fees paid to a payroll company (this includes workers compensation) but only if the payroll company is a Nevada vendor.
7. Other Fringe Benefits. The following fringe benefits are attributed to Nevada as follows:
 - i. Meal per diems if incurred in Nevada; and
 - ii. Hotel per diems if incurred in Nevada.

ATTACHMENT 3

Unqualified Expenditures and Production Costs

Following are the qualified expenditures and production costs as of January 1, 2014. The Office may amend this list in the future, pursuant to paragraph 8(a)(2) of 2013 Statutes of Nevada

____(SB 165), following thirty days prior written notice provided to the Nevada Department of Taxation and the State Gaming Control Board.

Expenditures and costs will not be eligible to serve as a basis for transferable tax credits issued include expenditures and costs if they are:

1. Related to:
 1. The acquisition, transfer or use of transferable tax credits;
 2. Marketing and distribution of the qualified production;
 3. Financing, depreciation and amortization;
 4. The payment of any profits as a result of the qualified production;
 5. The payment for the cost of the audit required by section 8 of this act; and
 6. Payment for any goods or services that are not directly attributable to the qualified production;
2. Reimbursable, i.e. if reimbursement is received or reasonable expected to be received;
3. Passing through a benefit to a person who is not a Nevada resident; or,
4. If they have been claimed previously as a as a basis for transferable tax credits.