

**PROPOSED REGULATION OF THE
OFFICE OF ECONOMIC DEVELOPMENT**

LCB File No. R120-13

November 15, 2013

EXPLANATION – Matter in *italics* is new; matter in brackets ~~omitted material~~ is material to be omitted.

AUTHORITY: §§1-15, NRS 360.759.

A REGULATION relating to taxation; adopting provisions governing the approval and issuance of transferable tax credits to a producer that produces a qualified film or other production in this State; adopting provisions governing the calculation of the amount of such credits; and providing other matters properly relating thereto.

Section 1. Chapter 360 of NAC is hereby amended by adding thereto the provisions set forth in sections 2 to 15, inclusive, of this regulation.

Sec. 2. *As used in sections 2 to 15, inclusive, of this regulation, unless the context otherwise requires, the words and terms defined in NRS 360.7581 to 360.7586, inclusive, and sections 3 to 6, inclusive, of this regulation have the meanings ascribed to them in those sections.*

Sec. 3. *“Certificate of eligibility” means a certificate of eligibility for transferable tax credits.*

Sec. 4. *“Executive Director” means the Executive Director of the Office.*

Sec. 5. *“Office” means the Office of Economic Development.*

Sec. 6. *“Transferable tax credits” means transferable tax credits issued by the Office pursuant to NRS 360.759.*

Sec. 7. 1. Transferable tax credits may not be applied to any of the fees and taxes specified in NRS 360.759 unless the Office has issued a certificate of eligibility.

2. To obtain a certificate of eligibility, a producer must:

(a) Submit to the Office an application for a certificate of eligibility. The application must be on a form prescribed by the Office and, in addition to the information required by NRS 360.759, contain the following information:

(1) The name of the qualified production;

(2) A description of the qualified production;

(3) The planned rating for the qualified production from a nationally recognized rating association or board, including, without limitation, a rating from the Motion Picture Association of America, or its successor organization, or the Entertainment Software Rating Board, or its successor organization, if applicable;

(4) The maximum compensation payable to any producer, employee, independent contractor or other person paid a wage or salary for labor services on the production of the qualified production;

(5) A detailed budget for the entire qualified production, including, without limitation, separate subtotals for expenditures and costs to be incurred in this State and outside this State, as determined in accordance with section 11 of this regulation, and separate subtotals for expenditures and costs that may and may not serve as a basis for calculating the amount of transferable tax credits, as determined pursuant to NRS 360.7591 to 360.7594, inclusive, and sections 13 and 14 of this regulation;

(6) A job profile for the qualified production, including, without limitation:

(I) An estimate of the number of jobs that will be created in this State by the qualified production;

(II) The anticipated term of employment of each such job;

(III) The anticipated wage to be paid for each such job; and

(IV) The fringe benefits provided to employees for each such job;

(7) The capital investment in this State proposed to be made in connection with the qualified production;

(8) The anticipated location of real property and equipment and other tangible personal property in this State;

(9) An acknowledgment of audit procedures on a form prescribed by the Office; and

(10) Any other information required by the application form prescribed by the Office.

(b) Provide with the application for a certificate of eligibility proof satisfactory to the Office that:

(1) The qualified production is in the economic interest of this State;

(2) Fifty percent or more of the funding for the qualified production has been placed in an escrow account or trust account for the benefit of the qualified production, that, with respect to the qualified production, the producer has obtained a binding financing commitment, commitment letter or investment letter deemed suitable by the Office or that the producer has a corporate credit rating of “lower medium grade” or higher from a credit rating agency found suitable by the Office; and

(3) At least 60 percent of the total qualified expenditures and production costs for the production, including preproduction and postproduction, will be incurred in this State, as determined pursuant to section 11 of this regulation.

(c) Not later than 30 days after the completion of the qualified production, provide the Office with:

(1) A declaration of residency on a form prescribed by the Office for any above-the-line personnel and below-the-line personnel whom the producer of the qualified production claims to be Nevada residents; and

(2) An audit of the qualified production which includes an itemized report of qualified expenditures and production costs and which:

(I) Shows that the qualified production incurred qualified expenditures and production costs in this State of \$500,000 or more, as determined pursuant to section 11 of this regulation; and

(II) Is certified by an independent certified public accountant in this State who is approved by the Office.

3. In considering applications for certificates of eligibility, the Office will give priority to qualified productions that will:

(a) Be in the economic interest of this State, as determined pursuant to subsection 5 of section 8 of this regulation.

(b) Promote tourism in this State.

4. The Office will deny an application for a certificate of eligibility if:

(a) The application is received by the Office on or after January 1, 2018.

(b) The applicant does not commence principal photography or principal development of the qualified production, whichever is applicable, within 90 days after submitting the application to the Office.

(c) Approval of the application would cause the total amount of transferable tax credits to exceed:

(1) The amount of transferable tax credits available for approval during the current fiscal year, as determined pursuant to NRS 360.7594.

(2) The portion of the amount of transferable tax credits available for approval during the current fiscal year that has been apportioned by the Office to the current period of that fiscal year pursuant to section 12 of this regulation.

(d) Production of the qualified production is not completed within 1 year after the date of the commencement of principal photography or principal development of the qualified production, whichever is applicable.

(e) The qualified production is not eligible for transferable tax credits pursuant to this section and NRS 360.759.

Sec. 8. 1. *Upon receipt of a completed application for a certificate of eligibility submitted pursuant to paragraph (a) of subsection 2 of section 7 of this regulation and the information required by paragraph (b) of subsection 2 of section 7 of this regulation, the staff of the Office shall:*

(a) Evaluate the application and supporting information; and

(b) Prepare a proposed order containing a recommendation of whether to grant or deny preliminary approval of the application and an estimate of the amount of transferable tax credits available to the applicant if a certificate of eligibility is issued.

2. *A hearing on an application for a certificate of eligibility must be conducted by the Executive Director or his or her designee not later than 60 days after the Office receives the application. Not later than 30 days before the date of the hearing, the Office will provide*

notice of the date, time and location of the hearing and a copy of the proposed order prepared pursuant to subsection 1 to:

- (a) The applicant;*
- (b) The Department; and*
- (c) The State Gaming Control Board.*

3. Not later than 30 days after the conclusion of the hearing on the application for a certificate of eligibility, the Executive Director or his or her designee will determine whether to preliminarily approve the application for a certificate of eligibility. If, after the conclusion of the hearing, the Executive Director or his or her designee finds that:

- (a) The qualified production is in the economic interest of this State;*
- (b) Fifty percent or more of the funding for the qualified production has been placed in an escrow account or trust account for the benefit of the qualified production, that, with respect to the qualified production, the producer has obtained a binding financing commitment, commitment letter or investment letter deemed suitable by the Office, or that the producer has a corporate credit rating of “lower medium grade” or higher from a credit rating agency found suitable by the Office; and*

(c) At least 60 percent of the total qualified expenditures and production costs for the qualified production, including preproduction and postproduction, will be incurred in this State, as determined pursuant to section 11 of this regulation,

↳ the Office will issue a final order preliminarily approving the application for a certificate of eligibility and determining an estimate of the amount of transferable tax credits available if a certificate of eligibility is issued. The Office will provide notice of its determination and, if the

application is preliminarily approved, a copy of the final order to the applicant, the Department and the State Gaming Control Board.

4. If the Office preliminarily approves an application for a certificate of eligibility, the Office will execute a preliminary agreement with the producer of the qualified production on a form prescribed by the Office and include a copy of the preliminary agreement with the copy of the final order provided to the applicant, the Department and the State Gaming Control Board pursuant to subsection 3.

5. For the purpose of determining whether a qualified production is eligible for a certificate of eligibility, a qualified production is in the economic interest of this State if the qualified production is consistent with the State Plan for Economic Development developed by the Executive Director pursuant to subsection 2 of NRS 231.053. The following factors will be considered when determining whether a qualified production is consistent with the State Plan for Economic Development:

(a) Whether the qualified production will advance the State's target sectors;

(b) The number of high-quality permanent jobs created for residents of this State as a result of the qualified production; and

(c) The quality of the capital investment in this State as a result of the qualified production.

Sec. 9. 1. The Executive Director may request that an applicant for a certificate of eligibility furnish him or her with copies of any records necessary to verify that the applicant meets the requirements for a certificate of eligibility which are set forth in NRS 360.759 and section 7 of this regulation, including, without limitation, information concerning the progress of the qualified production.

2. Not later than 30 days after completion of a qualified production, an applicant for a certificate of eligibility shall submit to the Office the audit required by paragraph (c) of subsection 2 of section 7 of this regulation and any financial data, accountings and other information required by the Office or the Department for the purpose of determining whether the applicant satisfies the requirements for a certificate of eligibility which are set forth in NRS 360.759 and section 7 of this regulation. If the Office determines that any information submitted pursuant to this subsection is incomplete, the Office will notify the applicant of its determination and, not later than 30 days after receiving the notice, the applicant must provide to the Office any additional information required by the Office.

3. The Office may deny an application for a certificate of eligibility if the applicant fails to provide any financial data, accountings or other information in compliance with this section.

Sec. 10. 1. Within 14 business days after receipt of the audit of the qualified production required by paragraph (c) of subsection 2 of section 7 of this regulation and any other financial data, accountings or other information required by the Office, the Office will determine whether to certify the audit and issue a certificate of eligibility. If the Office determines that it will certify the audit and issue a certificate of eligibility, the Office will notify the producer of the qualified production that a certificate of eligibility will be issued.

2. Not later than 30 days after receipt of notice that the Office will issue a certificate of eligibility, the producer of the qualified production must submit to the Office an irrevocable declaration of the amount of transferable tax credits that will be applied to each tax or fee set forth in subsection 1 of NRS 360.759. Upon receipt of the declaration, the Office will issue a certificate of eligibility in the amount approved by the Office for the fees and taxes set forth in the declaration.

3. *Before transferring tax credits for which a certificate of eligibility has been issued, the producer must provide to the Office written notice of the proposed transfer on a form prescribed by the Office. The notice must include, without limitation:*

(a) Contact information for the current holder of the transferable tax credits represented by the certificate of eligibility and the person to whom the transferable tax credits will be transferred;

(b) The current state of residence of the current holder of the transferable tax credits represented by the certificate of eligibility and the person to whom the transferable tax credits will be transferred;

(c) The dollar amount of the transferable tax credits to be transferred;

(d) The amount of compensation received by the seller of the transferable tax credits from the purchaser of the transferable tax credits; and

(e) The proposed date of the transfer.

Sec. 11. *For the purpose of determining whether an applicant is eligible for transferable tax credits pursuant to NRS 360.759 and section 7 of this regulation, the following constitute qualified expenditures and production costs incurred in this State:*

1. A production expenditure attributable to the performance of a service directly at a filming site in this State. In determining the amount of such an expenditure, if the amount of the expenditure is unable to be determined because it is impossible or impracticable to track the amount of time spent in this State performing the service, the expenditure may be apportioned to this State in an amount equal to the total amount of production expenditures multiplied by the ratio of filming days in this State to total filming days.

2. Except as otherwise provided in this subsection, an expenditure for a service which is not attributable to the performance of a service directly at a filming site in this State, including, without limitation, insurance coverage, editing, digital or tape editing, computer graphics, special effects and animation, if the service is purchased from a Nevada business or performed in this State. In determining the amount of such an expenditure, if the amount of the expenditure is unable to be determined because it is impossible or impracticable to track the amount of time spent in this State performing the service, the producer may apportion the expenditure to this State using a reasonable apportionment method which approximates the amount of time spent performing the service in this State. An expenditure for a service purchased from a Nevada business which is not performed in this State and which is subcontracted to a person who is not a Nevada resident or a Nevada business is not incurred in this State.

3. A purchase or rental of property that is used in this State to produce the qualified production, including, without limitation, property that is used in preproduction or postproduction in this State.

Sec. 12. *The Office may apportion the amount of transferable tax credits available in a fiscal year, as determined pursuant to NRS 360.7594, to periods within that fiscal year as the Office deems advisable.*

Sec. 13. 1. *For the purpose of calculating the amount of transferable tax credits available to an eligible producer pursuant to NRS 360.7591 to 360.7594, inclusive, except as otherwise provided in subsection 3, qualified expenditures and production costs that may serve as a basis for transferable tax credits must:*

(a) Be expenditures made on or after the date on which the eligible producer submits an application for a certificate of eligibility pursuant to paragraph (a) of subsection 2 of section 7 of this regulation;

(b) Be customary and reasonable;

(c) Relate to a category of qualified expenditures and costs listed in subsection 2; and

(d) Be:

(1) Purchases of tangible personal property or services from a Nevada business.

(2) The payroll for Nevada residents or other personnel who provided services in this State, as calculated pursuant to section 14 of this regulation and included in the calculation of the amount of transferable tax credits in accordance with NRS 360.7591 to 360.7594, inclusive.

(3) Fees paid to a producer, as included in the calculation of the amount of transferable tax credits in accordance with subsection 3 of NRS 360.7594.

2. Except as otherwise provided in this section and NRS 360.7591, expenditures or costs may serve as a basis for calculating the amount of transferable tax credits issued pursuant to NRS 360.759 only if the expenditure or cost relates 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 design, construction, improvement or repair of property, infrastructure, equipment or a production or postproduction facility.

(i) State and local government taxes to the extent not included as part of another cost or expenditure included in the calculation of the amount of transferable tax credits pursuant to this section and NRS 360.7591 to 360.7594, inclusive.

(j) Commercial airfare if purchased through a Nevada travel agency or travel company for travel that is directly attributable to the qualified production.

(k) Insurance coverage and bonding if purchased through a Nevada insurance agency, broker or bonding agent.

(l) The design and development of art assets for interactive entertainment, including, without limitation, concept art, background art, character models and sprites.

(m) The programming of software related to interactive entertainment, including, without limitation, codebases, netcode, development and modification of source code, development and adaptation of game engine software and game development tools.

(n) Quality assurance for interactive entertainment, including, without limitation, testing and tracking software bugs.

(o) Motion capture for interactive entertainment, including, without limitation, costs for motion capture software, performers and participants, motion capture facilities and costs related to incorporating motion capture data into an interactive entertainment product.

(p) Any other direct costs of producing a qualified production, including preproduction and postproduction, in accordance with generally accepted industry practice.

3. Expenditures and costs must not be included in the calculation of the amount of transferable tax credits pursuant to this section and NRS 360.7591 to 360.7594, inclusive, if,

pursuant to NRS 360.7591 to 360.7594, inclusive, the expenditure or cost is not eligible to serve as a basis for transferable tax credits issued pursuant to NRS 360.759.

Sec. 14. 1. *For the purpose of calculating the amount of transferable tax credits available to an eligible producer pursuant to NRS 360.7591 to 360.7594, inclusive, expenditures for wages and salaries, including fringe benefits, paid to Nevada residents or other personnel who provided services in this State may be included in the calculation:*

(a) Only if the expenditures are qualified expenditures and production costs that may serve as a basis for transferable tax credits in accordance with NRS 360.7591 to 360.7594, inclusive, and section 13 of this regulation.

(b) In the case of an employee who is a Nevada resident, in the amount stated as wages, tips and other compensation on the Form W-2 received by the employee, plus the amount paid by the employer for the fringe benefits of the employee, except that the amount included in the calculation for compensation payable to an employee for providing labor services on the production of the qualified production must not exceed \$750,000.

(c) In the case of an employee who is not a Nevada resident, in the amount determined in accordance with NRS 360.7593 and subsection 3 of NRS 360.7594 and calculated by applying the provisions of subsections 1 and 2 of section 11 of this regulation to determine whether the wage and salary, including fringe benefits, was paid to the employee for services provided in this State.

2. *As used in this section, “fringe benefits” has the meaning ascribed to it in NRS 360.7593 and includes, without limitation, payments by an employer for unemployment insurance, FICA, pension and welfare benefits, health insurance premiums and meal and hotel per diems incurred in this State.*

Sec. 15. 1. *In calculating the amount of transferable tax credits available to an eligible producer pursuant to NRS 360.7591 to 360.7594, inclusive, the Office may:*

(a) Reduce the cumulative amount of transferable tax credits that are calculated pursuant to NRS 360.7591 to 360.7594 and sections 13 and 14 of this regulation by an amount equal to any damages incurred by the State or any political subdivision of this State as a result of a qualified production that is produced in this State.

(b) Withhold transferable tax credits, in whole or in part, until any pending legal action in this State against a producer or involving a qualified production is resolved.

2. *If the Office finds that a producer is ineligible for transferable tax credits because the producer has submitted any false statement, representation or certification in any document submitted for the purpose of obtaining transferable tax credits or if the Office finds that a producer has otherwise become ineligible for transferable tax credits after receiving a certificate of eligibility, the Office will require the producer to repay to the Department or the State Gaming Control Board, as applicable, any portion of the transferable tax credits to which the producer is not entitled.*

3. *The Office will not require a person who purchases transferable tax credits in good faith to forfeit the transferable tax credits unless the person submitted fraudulent information in connection with the purchase.*