

**PROPOSED REGULATION OF THE
COMMISSION ON ECONOMIC DEVELOPMENT**

LCB FILE NO. R062-22I

**The following document is the initial draft regulation proposed
by the agency submitted on 05/04/2022**

Drafted Changes: ~~Deletions~~-Additions

TRANSFERABLE TAX CREDITS FOR FILM AND OTHER PRODUCTIONS

NAC 360.800 Definitions. (NRS 360.759) As used in NAC 360.800 to 360.865, inclusive, unless the context otherwise requires, the words and terms defined in NRS 360.7581 to 360.7586, inclusive, and NAC 360.805 to 360.820, inclusive, have the meanings ascribed to them in those sections.

(Added to NAC by Office of Economic Dev. by R120-13, eff. 12-23-2013)

NAC 360.805 “Certificate of eligibility” defined. (NRS 360.759) “Certificate of eligibility” means a certificate of eligibility for transferable tax credits.

(Added to NAC by Office of Economic Dev. by R120-13, eff. 12-23-2013)

NAC 360.807 “Transferable tax credit certificate” defined. “Transferable tax credit certificate” means a certificate of transferable tax credits issued by the Office.

NAC 360.810 “Executive Director” defined. (NRS 360.759) “Executive Director” means the Executive Director of the Office.

(Added to NAC by Office of Economic Dev. by R120-13, eff. 12-23-2013)

NAC 360.815 “Office” defined. (NRS 360.759) “Office” means the Office of Economic Development.

(Added to NAC by Office of Economic Dev. by R120-13, eff. 12-23-2013)

NAC 360.820 “Transferable tax credits” defined. (NRS 360.759) “Transferable tax credits” means transferable tax credits issued by the Office pursuant to NRS 360.759.

(Added to NAC by Office of Economic Dev. by R120-13, eff. 12-23-2013)

NAC 360.821 “Obscene” defined. “Obscene” means sexually explicit or overly gratuitous violence.

NAC 360.822 “Qualified production period” defined. “Qualified production period” is the preproduction, production and postproduction period as stated on the application for certificate of eligibility; the preproduction start date in this State must not be prior to 90 days from the date the application is submitted to the Office.

NAC 360.825 “Other visible media productions” interpreted. (NRS 360.759) For the purposes of determining whether a production is a qualified production pursuant to NRS 360.7586, the Office interprets the term “other visual media productions,” as used in paragraph (m) of subsection 1 of NRS 360.7586, to mean video games, mobile applications and other visual media productions determined to be visual media productions by the Office.

(Added to NAC by Office of Economic Dev. by R120-13, eff. 12-23-2013)

NAC 360.830 Certificate of eligibility: Application; priorities for approval; reasons for denial. (NRS 360.759)

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~~ *production company* must:

(a) Submit to the Office an application for a certificate of eligibility. The application must be on a form prescribed by the Office, *submitted prior to the start of principal photography*, 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) A *detailed summary* budget for the entire qualified production, including, without limitation, separate in-state and out-of-state subtotals for:

(I) Wages and salaries, including fringe benefits, for above-the-line personnel;

(II) Wages and salaries, including fringe benefits, for below-the-line personnel;

(III) Qualified expenditures and costs, as determined in accordance with NRS 360.7591 and NAC 360.855 and 360.860; and

(IV) Unless otherwise included in the information provided pursuant to subparagraphs (I), (II) and (III), the maximum compensation payable to any employee or independent contractor paid a wage, salary or fee as compensation for providing labor or services on the production of the qualified production and included as a basis for calculating the amount of transferable tax credit pursuant to NRS 360.7591 to 360.7594, inclusive, and NAC 360.855 and 360.860;

(5) A job summary 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 wages to be paid ~~for each such job~~; and

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

(6) The capital investment in this State proposed to be made in connection with the qualified production, *if applicable*;

(7) The anticipated location of real property and equipment and other tangible personal property in this State, *if applicable*;

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

(9) An acknowledgment to include a logo provided by the Office in the end screen credits of the production; and

(9) 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, as determined pursuant to subsection 5 of [NAC 360.835](#);

(2) ~~Fifty~~ *Seventy* 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 obtained in a manner approved by the Office,~~ or that the ~~producer~~ *production company* 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.~~

(I) Preproduction;

(II) Production; and

(III) If any direct production expenditures for postproduction will be incurred in this State, postproduction,

Will be incurred in this State.

~~(c) Not later than 30 270 days after the completion of the qualified production, unless the Office agrees to extend this period by not more than 90 days, 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~~

~~(1) A final jobs summary for the qualified production, including, without limitation:~~

~~(I) The total number of jobs created in this State by the qualified production;~~

~~(II) The total wages paid;~~

~~(III) The total fringes paid; and~~

~~(IV) The total hours worked~~

~~— For above-the-line Nevada residents, below-the-line Nevada residents, Nevada resident extras, above-the-line non-Nevada residents, and below-the-line non-Nevada residents who performed work in this State.~~

~~— (2) An audit of the qualified production, in a form approved by the Office, 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; and~~

~~(II) Includes 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~~

~~(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 [NAC 360.835](#).

(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, *not to be extended by more than 90 days*.

(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 [NAC 360.850](#).

~~(d) Production of the qualified production is not completed within 1 year *18 months* 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](#).

(f) The production contains material defined as obscene by the Office.

5. As used in this section:

(a) “Principal development” means the phase of a production that constitutes a qualified production pursuant to [NAC 360.825](#) in which sound, video, images, text or animation is integrated into a digital product.

(b) “Principal photography” means the phase of a film, television, video or other qualified production in which the production is filmed, videotaped or otherwise recorded using production equipment with actors on set or location.

(Added to NAC by Office of Economic Dev. by R120-13, eff. 12-23-2013)

NAC 360.835 Certificate of eligibility: Duties of Office; hearing; order approving application; factors for determining whether qualified production is in economic interest of State. (NRS 360.759)

1. Upon receipt of a completed application for a certificate of eligibility submitted pursuant to paragraph (a) of subsection 2 of [NAC 360.830](#) and the information required by paragraph (b) of subsection 2 of [NAC 360.830](#), 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 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~~ **10** 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 Nevada 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 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 *the application meets the qualifications as described in NAC 360.830 (2)(b)*:

~~(a) The qualified production is in the economic interest of this State, as determined pursuant to subsection 5;~~

~~—(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, 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;~~

→ the Office ~~will~~ **may** issue a final order 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 approved, a copy of the final order to the applicant, the Department and the Nevada Gaming Control Board.

4. If the Office approves an application for a certificate of eligibility, the Office will execute a memorandum of understanding with the producer of the qualified production on a form prescribed by the Office and include a copy of the memorandum of understanding with the copy of the final order approving the application which is

provided to the applicant, the Department and the Nevada Gaming Control Board pursuant to subsection 3.

5. For the purpose of determining whether a qualified production is in the economic interest of this State, the Executive Director shall consider:

(a) The economic factors set forth in subsection 2 of [NRS 231.053](#);

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

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

(d) Any other factors deemed relevant by the Executive Director.

(Added to NAC by Office of Economic Dev. by R120-13, eff. 12-23-2013)

NAC 360.840 ~~Certificate of eligibility~~ *Transferable Tax Credit Certificate*: Executive Director may request additional records; certification of audit. ([NRS 360.759](#))

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~~ *transferable tax credit certificate* which are set forth in [NRS 360.759](#) and [NAC 360.830](#), including, without limitation, information concerning the progress of the qualified production. The Office may deny ~~an application for a certificate of eligibility~~ *issuance of a Transferable Tax Credit Certificate* if the applicant fails to provide any records in compliance with this subsection.

2. Not later than ~~30~~ *270* days after completion of a qualified production, ~~unless the Office agrees to extend this period by not more than 90 days~~, an applicant for a certificate of eligibility shall submit to the Office the audit required by paragraph (c) of subsection 2 of [NAC 360.830](#) 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~~ *transferable tax credit certificate* which are set forth in [NRS 360.759](#) and [NAC 360.830](#), *including but not limited to:*

(a) A final jobs summary for the qualified production, including, without limitation:

(1) The total number of jobs created in this State by the qualified production;

(2) The total wages paid;

(3) The total fringes paid; and

(4) The total hours worked

For above-the-line Nevada residents, below-the-line Nevada residents, Nevada resident extras, above-the-line non-Nevada residents, and below-the-line non-Nevada residents who performed work in this State.

(b) An audit of the qualified production, in a form approved by the Office, which includes an itemized report of qualified expenditures and production costs and which:

(1) Shows that the qualified production incurred qualified expenditures and production costs in this State of \$500,000 or more; and

(2) Includes 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

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

3. 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. The Office may deny certification of the audit if: ~~the applicant fails to provide any financial data, accountings or other information in compliance with this subsection.~~

(a) the applicant fails to provide any financial data, accountings or other information in compliance with this subsection.

(b) Production of the qualified production is not completed within 18 months after the date of the commencement of principal photography or principal development of the qualified production, whichever is applicable.

(Added to NAC by Office of Economic Dev. by R120-13, eff. 12-23-2013)

NAC 360.845 Issuance of transferable tax credits; notice of transfer. (NRS 360.759)

1. Within ~~14~~ **60** business days after receipt of the audit of the qualified production required by paragraph (c) of subsection 2 of NAC 360.830 and any other financial data, accountings or other information required by the Office, the Office will determine whether to certify the audit and will make a final determination of whether to issue a certificate of transferable tax credits. If the Office determines that it will certify the audit, the Office will notify the ~~producer~~ **production company** of the qualified production of the certification of the audit and the Office's intent to issue transferable tax credits.

2. Not later than 30 days after receipt of notice of the Office's intent to issue transferable tax credits, the ~~producer~~ **production company** 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.

3. Upon receipt of the declaration required by subsection 2, the Office will issue a certificate of transferable tax credits in the amount approved by the Office for the fees and taxes set forth in the declaration. The Office will notify the Department and the

Nevada Gaming Control Board of all transferable tax credits issued by the Office, as set forth in subsection 6 of [NRS 360.759](#).

4. Before transferring tax credits for which a certificate of transferable tax credits has been issued, the ~~producer~~ *production company*, or any subsequent purchaser of the transferable tax credits, 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~~ *entity* 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~~ *entity* to whom the transferable tax credits will be transferred;

(c) Whether the transfer is occurring through a broker and, if so, the name of the broker and any fees paid in connection with the transfer;

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

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

(f) The proposed date of the transfer.

(Added to NAC by Office of Economic Dev. by R120-13, eff. 12-23-2013)

NAC 360.847 Issuance, transfer and application of transferable tax credits: Required notices to Department. ([NRS 360.759](#))

1. If the Office certifies the audit provided by a ~~producer~~ *production company* pursuant to paragraph (e) of subsection 3 of [NRS 360.759](#) and determines that all other requirements for transferable tax credits have been met, at the same time that the Office notifies the ~~producer~~ *production company* that transferable tax credits will be issued, the Office shall notify the Department that the transferable tax credits will be issued. The notice must provide the name of the ~~producer~~ *production company* and the amount of transferable tax credits that will be issued.

2. Upon receipt of the irrevocable declaration filed by a ~~producer~~ *production company* pursuant to subsection 6 of [NRS 360.759](#) to declare the amount of transferable tax credits that will be applied to each tax or fee set forth in subsection 1 of [NRS 360.759](#), the Office shall forward to the Department a copy of the ~~certificate of eligibility tax credit certificate~~ which:

(a) Identifies the amount of transferable tax credits to be applied to the taxes imposed by [chapters 363A](#), [363B](#) and [680B](#) of NRS, segregated by the amount of credit to be applied to each of those taxes; and

(b) Accounts for all of the credits which will be applied to those taxes.

3. Within 5 calendar days after receiving notice from a ~~producer~~ *production company* of the transfer of transferable tax credits pursuant to subsection 6 of [NRS 360.759](#), the Office shall notify the Department of all transferable tax credits

transferred, segregated by each credit applied to the taxes imposed by [chapter 363A](#), [363B](#) or [680B](#) of NRS. The notification must include, without limitation:

(a) Contact information for the current holder of the transferable tax credits and each **person entity** to whom the transferable tax credits will be transferred;

(b) The current state of residence of the current holder of the transferable tax credits and each **person entity** to whom the transferable tax credits will be transferred;

(c) The dollar amount of the transfer; and

(d) The proposed date of the transfer.

4. A holder of the transferable tax credits, other than a **producer production company**, who intends to transfer any credit applied to the taxes imposed by [chapter 363A](#), [363B](#) or [680B](#) of NRS must notify the Department of all such credits to be transferred, segregated by each credit applicable to the taxes set forth in [chapters 363A](#), [363B](#) and [680B](#) of NRS. The notification must include, without limitation:

(a) Contact information for the current holder of the transferable tax credits and each **person entity** to whom the transferable tax credits will be transferred;

(b) The current state of residence of the current holder of the transferable tax credits and each **person entity** to whom the transferable tax credits will be transferred;

(c) The dollar amount of the transfer; and

(d) The proposed date of the transfer.

5. A holder of transferable tax credits who is applying such a credit to an amount of taxes due pursuant to [chapter 363A](#), [363B](#) or [680B](#) of NRS shall include with the applicable return a form provided by the Department that indicates the amount of credit applied to the taxes due for that return.

6. A return in which any transferable tax credits are applied to a tax due pursuant to [chapter 363A](#), [363B](#) or [680B](#) of NRS must be mailed to the Department at the following address:

Film Tax Credit Return Processing
Nevada Department of Taxation
1550 College Parkway, Suite 115
Carson City, NV 89706

7. The amount of credit claimed in a single tax return may not exceed the amount of tax due for that return.

(Added to NAC by Tax Comm'n by R134-13, eff. 10-24-2014)

NAC 360.850 Apportionment of transferable tax credits. ([NRS 360.759](#))
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.

(Added to NAC by Office of Economic Dev. by R120-13, eff. 12-23-2013)

NAC 360.855 Calculation of amount of transferable tax credits: Qualified expenditures and production costs eligible to serve as basis for calculation. (NRS 360.759)

1. For the purpose of calculating the amount of transferable tax credits available to an eligible ~~producer~~ *production company* 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 NAC 360.830~~ *during the qualified production period*;

(b) Be customary and reasonable;

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

(d) Be:

(1) Purchases *or rentals* of tangible personal property or services from a Nevada business, *as defined in NRS 360.7583*.

(2) The payroll for Nevada residents or other personnel who provided services in this State, as calculated pursuant to NAC 360.860 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.~~

(a) Lodging, meal and incidental per diems incurred in this State

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

includes travel to and/or from Nevada. As used in this section, a Nevada travel agency or agent is defined as a company or person licensed in Nevada whose primary business function is to offer the service of booking travel.

(k) Insurance coverage and **bonding** if purchased through a Nevada insurance agency, **or** 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 and 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, and NAC 360.800 to 360.865, inclusive, the expenditure or cost is not eligible to serve as a basis for transferable tax credits issued pursuant to NRS 360.759. Pursuant to paragraph (e) of subsection 2 of NRS 360.7591, an expenditure or cost is ineligible to serve as a basis for transferable tax credits if the Office determines that the expenditure or cost provides a pass-through benefit to a person who is not a Nevada resident. Except as otherwise provided in this section and NRS 360.7591, expenditures or costs related to:~~

~~(a) A pass-through benefit which provides a benefit to a person or business who is not a Nevada resident or business;~~

~~(b) Additional airline fees, including but not limited to baggage fees, change fees, or any other fees determined unqualified by the Office;~~

~~(c) Box or kit rentals paid to a non-Nevada resident;~~

~~(d) Penalties associated with law infractions, including but not limited to parking tickets, speeding tickets, or legal fees;~~

~~(e) Publicity costs;~~

~~(f) Bank fees;~~

Are not qualified direct production expenditures and are not eligible to serve as a basis for transferable tax credits issued pursuant to NRS 360.759.

4. If any tangible personal property is acquired by the production company as an asset:

(a) any proceeds from the sale of an asset must be deducted from the qualified amount;

(b) Assets purchased for less than \$10,000 are qualified if the purchase is otherwise a qualified cost per NRS 360.7591 and NAC 360.855.

(c) If the purchase price of the asset retained by the production company, or otherwise given to an individual or donated, is \$10,000 or more, the qualified amount is calculated as:

(1) Fifty percent of the purchase price; or

(2) the net cost of the asset after sales proceeds

Whichever is less;

(d) If the asset is destroyed as part of the production, the full cost can be qualified if destruction can be proven in a manner approved by the Office.

(Added to NAC by Office of Economic Dev. by R120-13, eff. 12-23-2013)

NAC 360.860 Calculation of amount of transferable tax credits: Expenditures for wages and salaries. (NRS 360.759)

1. For the purpose of calculating the amount of transferable tax credits available to ~~an~~ eligible ~~producer~~ *labor* 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 NAC 360.855.

~~(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. The amount, including wages and salaries, fringe benefits, per diems and other fees, does 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.~~

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~~. *As used in this section, “fringe benefits” does not include payroll handling fees, which is a qualified fee only if the payroll company meets the definition of a Nevada business per NRS 360.7583.*

3. *For the purpose of calculating the allowable compensation payable to all producers per NRS 360.7594 subsection 3, a producer includes, without limitation,*

an executive producer, producer, associate producer, or any other producer determined by the Office to be subject to the cap.

(Added to NAC by Office of Economic Dev. by R120-13, eff. 12-23-2013)

NAC 360.865 Reduction or withholding of credits under certain circumstances; repayment of amount of credits under certain circumstances; circumstances under which Office will not require forfeiture of credits purchased in good faith. (NRS 360.759)

1. In calculating the amount of transferable tax credits available to an eligible ~~producer~~ *production company* 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, inclusive, and NAC 360.855 and 360.860 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.~~

(1) Until any pending legal action in this State against a production company or involving a qualified production is resolved.

(2) If a production company violates any state or local law.

(3) If a production company is found to have submitted any false statement, representation, or certification in any document submitted for the purpose of obtaining transferable tax credits.

2. If the Office finds that a ~~producer~~ *production company* is ineligible for transferable tax credits because the ~~producer~~ *production company* 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 Nevada 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~~ *an entity* who purchases transferable tax credits in good faith to forfeit the transferable tax credits unless ~~the person~~ *the entity* submitted fraudulent information in connection with the purchase.

(Added to NAC by Office of Economic Dev. by R120-13, eff. 12-23-2013)