

Register \_\_\_\_\_, \_\_\_\_\_ 2014 REVENUE

15 AAC 20.260 is repealed

**15 AAC 20.260. Film Production Tax Credit.** Repealed. (Eff. 12/22/2010, Register 196; am 3/4/2011, Register 197; repealed \_\_/\_\_/\_\_\_\_, Register \_\_\_\_)

3 AAC 188 is repealed

**3 AAC 188. Alaska Film Production Incentive Program.** Repealed. (Eff. 6/18/2009, Register 190; repealed \_\_/\_\_/\_\_\_\_, Register \_\_\_\_)

15 AAC is amended to add a new chapter

#### **Chapter 44. Alaska Film Office.**

**15 AAC 44.100. Qualification Period.** When calculating the 36-month qualification period under AS 44.25.115(a)(1), the qualification period commences on the date indicated on the application by the producer provided that the date is not prior to the date a completed application was received by the film office. If no date is indicated by the producer on the application form or if the date indicated on the application by the producer is prior to the date the completed application was received by the film office, the qualification period begins on the date the film office receives a completed application from the producer pursuant to AS 44.25.120(a). (Eff. \_\_/\_\_/\_\_, Register \_\_\_\_)

Authority: AS 44.25.115 AS 44.25.120 AS 44.25.140

**15 AAC 44.110. Qualification application process.**

(a) The following restrictions apply to film producers applying for qualification under AS 44.25.120:

(1) only one producer per production is eligible for qualification;

(2) only one production is permissible for each application except for

(A) television series in which one season counts as one production if it is completed within a 36-month period; or

(B) multiple music videos that are marketed together as one product.

(b) The film office will review completed qualification applications in the order that they are received. The film office will determine the order by the date stamp placed on the completed qualification application on the day it is received into the film office. The priority for reviewing an incomplete qualification application will be determined by the date stamp placed on the documents or materials needed to make the qualification application complete.

(c) If the qualification application is incomplete or is not accompanied by all required materials, including the information required by AS 44.25.120 and 15 AAC 44.130(e), the film office will notify the producer that the qualification application requires additional information, materials, or documentation. The producer may then work with the film office to provide the additional information, materials, or documentation to the film office.

(d) If a majority of the film commission votes to approve an application, the film office will issue a notice of qualification to the producer that states the estimated amount of the film production tax credit and the 36-month qualification period during which the producer may incur expenditures for which the producer may claim a credit. The qualification period cannot be modified. The issuance of a notice of qualification of a production is not a guarantee of receiving

a credit under the Alaska Film Production Incentive program, nor does it guarantee the amount of a credit that may be awarded under the program.

(e) If the film office receives a completed application for qualification for a production that does not appear to qualify under AS 44.25.115 or 44.25.120, the executive director will complete the review and submit to the film commission for consideration with a recommendation to reject. If a majority of the film commission votes to reject an application, the film office will issue a notice of rejection to the producer.

(f) A producer who is notified by the film office that a production does not qualify for the tax credit may reapply and pay a new application fee. However, the film office will treat reapplication as a new application for purposes of (b) of this section.

(g) A producer who is denied a notice of qualification may request an administrative hearing by filing a notice of appeal within 30 days after the date of the denial notice. The notice of appeal must be in writing and will be considered filed on the date it is received by the film office. The notice of appeal must clearly state each objection to the denial, the justification for each objection, and the reasons why the applicant is entitled to a notice of qualification under AS 44.25.120 and this chapter. Appeals will be referred to the Office of Administrative Hearings. A hearing will be conducted under AS 44.62.

(h) Productions are required to disclose all transactions with a related party including executives, associates, investors, actors, and their family members.

(i) When the amount of the notices of qualification issued by the film office equals the \$200,000,000 in-the-aggregate limit established in AS 43.98.030(f)(2), the film office will cease to issue notices of qualification. Qualification notices sent to productions that fail to submit a

final application within the specified time limit under 15 AAC 44.130 shall not be included in calculating the \$200,000,000 in-the-aggregate limit established in AS 43.98.030. (Eff. \_\_/\_\_/\_\_, Register \_\_)

Authority: AS 44.25.120 AS 44.25.140 AS 44.25.150  
AS 44.25.125

**15 AAC 44.120. Qualified expenditures.** (a) Expenditures for real property, tangible personal property, fees or services are ordinary, reasonable, and not in excess of fair market value under AS 44.25.130(a) if they are:

- (1) necessary and non-extravagant;
- (2) common and accepted in the producer's trade or business;
- (3) comparable to equivalent expenditures by similarly sized productions; and
- (4) verifiable by independent means.

(b) An expenditure is directly related to the production if it is for the direct costs of the actual production that is necessary and would not have been incurred independent of the production. Indirect expenses that support an expenditure directly related to production are not considered directly related to production.

(1) Studio teachers, if required, are considered qualified expenditures if the studio teacher is an Alaska resident.

(2) Parents of child actors are not considered directly related to the production.

(c) Expenditures incurred in a related party transaction may only qualify if

(1) they are reasonable in the circumstances, included in the cost of the production, and directly related to the production with a clear link to specific work performed on the production.

(2) they are for the cost of services such as wages, salaries or fees paid to individuals,

(A) wages must be paid directly by the producer, production company, or payroll services company;

(B) the actual amount paid to the individual corresponds with and is in accordance with the employment or engagement contract signed with the employer;

(C) the allocation of time devoted to the production is reasonable, appropriate, and supported by documentation such as employment contracts, time sheets, or call sheets specifying the production title and similar supporting evidence;

(D) the amount paid to the individual is similar to the amount paid to other unrelated individuals performing the same or similar work; and

(E) the amount paid to producers, directors, writers, and principal actors is similar to the amount they would have been paid on similar productions elsewhere in the country;

(3) they are for the cost of goods, services and other assets owned by related parties or a related company, including space in a building, camera and sound equipment, post-production services and facilities, computers and related material, vehicles, office

equipment and furniture, expenditures will be accounted for using the actual cost paid by the related party to a third party or, if the actual cost cannot be determined, at an amount equal to what the production would have paid to an unrelated third party.

(d) The producer is responsible for providing sufficient and adequate documentation to support the stated amounts. The film office reserves the right to revise the admission criteria in cases of abuse of application or if certain amounts are unsubstantiated or deemed unreasonable.

(e) If tangible personal property is purchased, leased, or rented for direct use in the state in a film production for which a notice of qualification has been issued, and if the producer does not return, dispose of, or sell the property as of the completion of its use in the film production,

(1) only a portion of the depreciation expense will be allowed for the property;

(2) the allowable depreciation expense is an amount equal to the portion of the depreciation expense attributable to direct use of the property in the state in the film production; and

(3) the allowable depreciation expense will be the annual depreciation calculated under 26 U.S.C. 167 (Internal Revenue Code) multiplied by the ratio of the number of days in the state that the tangible personal property was in qualified use in the production over 365.

(f) The purchase price of a screenplay is a qualified expenditure if:

(1) payment for the screenplay is made during the 36-month qualification period set out in AS 44.25.115(a)(1), as that period is determined under 15 AAC 44.100;

(2) at least one writer is an Alaska resident or Alaska business; and

(3) the full rights of the screenplay, in accordance with industry standards, have been transferred to the producer, and the writer cannot sell the same screenplay to another buyer.

(g) Only qualified expenditures that are incurred during the 36-month qualification period set out in AS 44.25.115(a)(1), as that period is determined under 15 AAC 44.100, will be considered in determining whether the producer has met the \$75,000 minimum in AS 44.25.115(a)(1), and in determining the amount of a tax credit.

(h) In addition to qualified expenses included under AS 44.25.130(a), the following production costs will be considered qualified expenditures:

(1) fifty percent of interstate travel costs if travel begins or ends in a location within Alaska, if provided by an Alaska business;

(2) fifty percent of the costs to ship goods to and from Alaska;

(3) usage rights and reproduction costs for archival materials, if they are procured from an Alaska educational or non-profit organization;

(4) wages, salaries, fees, and other compensation paid through “loan-out” companies are qualified if the loan-out company has an Alaska business license. All loan-out companies working with a production must be identified and disclosed with all application materials.

(i) In addition to the production costs excluded under AS 44.25.130(b), the following production costs will not be considered qualified expenditures:

(1) Materials for use in electronic press kits and other marketing materials, including still and video photography;

(2) Agency fees paid to non-Alaska agents;

(3) Intellectual property rights, including usage rights, fees for stock footage, and costs for licensing if procured from commercial sources or private individuals;

(4) Application fee under AS 44.25.120(d);

(5) Certified public accountant fees for providing the verification services under AS 44.25.125(d); and

(6) Costs associated with acquiring an Alaska business license.

(j) For purposes of the additional twenty percent credit under AS 44.25.125(c)(1), qualified expenditures will be considered to be “wages paid to Alaska residents” only if they are for wages paid to statutory or common-law employees of the production. Payments made to independent contractors or sub-contractors are not eligible for this additional twenty percent credit.

(k) For purposes of the additional six percent credit under AS 44.25.120(c)(2), qualified expenditures will be considered to have been made in a rural area if they are for

(1) services provided in a rural area, from a citizen or Alaska business of that area;

(2) the purchase or use of real property located in a rural area; or

(3) tangible personal property purchased, leased, or rented in a rural area from an Alaska business that maintains a physical presence in that rural area.

(l) For purposes of the additional two percent credit under AS 44.25.125(c)(3), qualified expenditures will be considered to have been made in the state between October 1 and March 30 if they are for

(1) services provided during that period; or

(2) real property or tangible personal property purchased, leased, or rented from an Alaska business used during that period. (Eff. \_\_/\_\_/\_\_, Register \_\_\_\_)

Authority: AS 44.25.125 AS 44.25.130 AS 44.25.140

**15 AAC 44.130. Approval of tax credits.** (a) Within 60 days after the end of the 36-month period set out in AS 44.25.115(a)(1), as that period is determined under 15 AAC 44.100, the producer must submit a final application to the film office, on a form or in a format provided by the film office, for the award of a film production tax credit under AS 44.25.125. The producer submitting the final application, and receiving the final credit, must be the same producer receiving qualification under AS 44.25.120.

(b) Before the film office makes a recommendation under AS 44.25.150(c) with respect to the approval of a film production tax credit, the producer must submit a rough assembly of the production to the film office for review. The film office will refuse to make a recommendation to approve a tax credit if the rough assembly of the production:

- (1) does not bear a reasonable resemblance to what was proposed in the documents that the producer provided under AS 44.25.120;
- (2) is contrary to the best interests of the state under AS 44.25.115(b); or
- (3) is determined to contain content expressly prohibited by AS 44.25.115(c).

(c) The verification of qualified expenditures required under AS 44.25.125(d) must be prepared by a certified public accountant who:

- (1) holds a current license issued under AS 08.04 by the Board of Public Accountancy;
- (2) holds a current business license issued under AS 43.70;
- (3) is an independent third party, not related to the producer or involved in any way with the production;
- (4) has a place of business in Alaska; and
- (5) is approved by the film office.

(d) A producer may apply under AS 44.25.120 for a tax credit that exceeds the estimated film production tax credit provided in the notice of qualification issued for the production under AS 44.25.120. Productions with an increase of greater than fifteen percent of the estimated credit under AS 44.25.120 must notify the film office prior to final application. The film commission may approve a larger tax credit if

- (1) all the expenditures claimed by the producer
  - (A) are qualified expenditures under AS 44.25.130 and this chapter; and
  - (B) were incurred during the 36-month period set out in AS 44.25.115(a)(1), as that period is determined under 15 AAC 100(a) ; and
- (2) at the time the determination is made, the sum of the following amounts does not exceed the \$200,000,000 in-the-aggregate limit established in AS 43.98.030:
  - (A) the total amount of the tax credits estimated for all producers in outstanding notices of qualification issued under AS 44.25;

(B) the total amount of tax credits already provided under AS 43.98.030 to all producers; and

(C) the amount of the increase that the producer requests under this subsection.

(e) In addition to the items required by AS 44.25.120 and this section, a producer must submit:

(1) documentation providing the names of the production company, related parties, and production title, to include an identification of television series season, if applicable;

(2) a copy of the Alaska business license valid during production;

(3) a detailed budget and cost report breaking down total and Alaska expenses;

(4) a detailed list of all personnel working in Alaska including dates and wages or salaries earned while in Alaska and payroll services company or loan-out used by the production;

(5) a completed residency affidavit on a form provided by the film office for every resident being paid wages;

(6) a detailed list of all related party transactions, including the name of the related party, amount of the transaction, the type of transaction, and the relationship the individual or entity has to the producer or any person with a significant investment in the production;

(7) a detailed list of all Alaska principal filming days and locations;

(8) a detailed list of names and address of entities whose qualified expenses were included jointly with those of the company in this application, as well as a detailed list of all such expenditures including payroll service company, loan-out company and/or contractors/sub-contractors;

(9) a detailed list of any tangible personal property for which costs were included and the tangible personal property was not transferred or otherwise disposed of at the end of production; and

(10) a sworn certification provided by the department that the producer and the production have fully complied with all applicable state laws and regulations during the production and have complied with all state permit requirements, that neither the producer nor the production is the subject of an investigation or administrative proceeding concerning alleged violations by the producer or the production of the laws or regulations of this state, and that neither the producer nor the production is involved in a legal action filed in a federal court or a court in this state concerning alleged violations by the producer or the production of the laws or regulations of this state.

(A) If the producer or the production, after submission of the sworn certification, becomes the subject of an investigation or administrative proceeding described in this subsection, or becomes involved in a legal action described in this subsection, the producer shall immediately notify the film office. Failure to comply with this subsection may result in a tax credit not being awarded to the producer.

(B) If the producer or the production is or becomes the subject of an investigation or administrative proceeding described in this subsection, or is or becomes involved in a legal action described in this subsection, the film office will suspend determination of eligibility for a tax credit pending resolution of that investigation, administrative proceeding, or legal action.

(C) Producers shall exercise due diligence to ensure that personnel adhere to relevant state and federal laws and requirements on screen.

(D) The sworn certification must be notarized, including sworn statements from entities from outside the United States.

(f) Adequate documentation must be provided for the film office to verify the qualification of claimed expenditures. The film office may request any records or documents deemed necessary to determine qualification of expenses claimed under the tax credit. In the event that adequate documentation is not provided, the film office will deny the tax credit for unverified expenses.

(g) A producer who receives notice from the film office that it will not approve all the tax credits for which the producer applied may request an administrative hearing by filing a notice of appeal within 30 days after the date of the denial notice. The notice of appeal must be in writing and will be considered filed on the date it is received by the film office. The notice of appeal must clearly state each objection to the denial, the justification for each objection, and the reasons why the producer is entitled to the amount of the tax credit for which the producer applied. Appeals will be referred to the office of administrative hearings. A hearing will be conducted under AS 44.62.

(h) Upon a final determination under AS 44.25.130 on the approval and amount of a film production tax credit, the film office will notify the Department of Revenue and request the issuance under AS 43.98.030 of a transferable tax credit certificate in that amount.

(i) If a transferee purchases a film production tax credit certificate in an arm's-length transaction, and the state seeks, after the transfer, to recover an amount of the credit under AS 44.25, the state will not hold the transferee liable for any portion of the credit that the state seeks to recover, and will seek recovery from the producer to whom the tax credit certificate was originally provided. (Eff. \_\_/\_\_/\_\_, Register \_\_\_\_)

Authority: AS 44.25.115 AS 44.25.125 AS 44.25.140  
AS 44.25.120 AS 44.25.130 AS 44.25.150

**15 AAC 44.140. Issuance of Credit.** (a) To use a film production tax credit provided under AS 44.25.110 to offset taxes imposed under AS 21.09.210, AS 21.66.110, AS 43.20, AS 43.55, AS 43.56, AS 43.65, AS 43.75, and AS 43.77, the current holder of the film production tax credit certificate must use the credit no later than six years after the date on which the department initially issued the certificate. On the certificate, the department will identify the date of initial issuance, transfer date, if applicable, and the expiration date. If the current holder is the first person to whom the certificate was issued, the credit may be taken on one or more of the returns required under the applicable tax types for a tax period that occurred, in whole or in part, no earlier than the date on which the department initially issued the certificate and no later than the date on which the certificate expires. If the current holder acquired the certificate through a transfer, the credit may be taken on one or more of the returns required under the tax types mentioned in this section for a tax period that occurred, in whole or in part, no earlier than the

date on which the department transferred the certificate to the current holder and no later than the date on which the certificate expires. The current holder must attach a copy of the original certificate to the tax return on which the credit is claimed. If the original certificate is lost, stolen or misplaced, an affidavit signed under penalty of perjury stating that the original certificate was lost, stolen or misplaced must be attached to the tax return on which the credit is claimed.

(b) Transfer under AS 43.98.030(b) of a film production tax credit is subject to department approval under this subsection and (d) of this section. To request approval, the transferor must:

(1) make a request for transfer on a form or in a format prescribed by the department, and must include on the request:

(A) the number assigned by the department of the film production tax credit certificate being transferred;

(B) the transferor's name, address, and federal tax identification number;

(C) the transferee's name, address, and federal tax identification number;

(D) the date of the transfer; and

(E) the amount of the credit being transferred;

(2) include with the request the original film production tax credit certificate or, if the original certificate is lost, stolen, or misplaced, an affidavit signed under penalty of perjury stating that the original certificate was lost, stolen, or misplaced; and

(3) Upon request by the department, if the transferor is the producer, provide a sworn certification that neither the producer nor the production is the subject of an investigation or administrative proceeding concerning alleged violations by the producer

or the production of the laws or regulations of this state, and that neither the producer nor the production is involved in a legal action filed in a federal court or a court in this state concerning alleged violations by the producer or the production of the laws or regulations of this state.

(c) The department will approve a request for transfer if

(1) the transferor provides the information and items required under (b) of this section; and

(2) in the case of a transferor that is a producer, there is not

(A) a filed, but unresolved, legal action in the state involving the producer or production; or

(B) an outstanding liability due to the state or a political subdivision of the state as a result of damages caused by an act or omission of the producer or production.

(d) Upon approval of the request for transfer, the department will issue a film production tax credit certificate to the transferee. The department will also issue a certificate to the transferor to the extent that the transferor retains a portion of the film production tax credit. The transfer of the credit in whole or in part does not extend the six-year period during which the credit may be used.

(e) A film production tax credit is subject to reduction, withholding, or recovery under AS 44.25.135. However, the department will not reduce the amount of a credit transferred in a transaction in which the transferor and transferee act independently and do not have a relationship to each other.

**15 AAC 44.990. Definitions.** In AS 44.25.100 - 44.25.190 and this chapter:

- (1) "Alaska business" has the meaning given in AS 44.25.190(1).
- (2) "Alaska musician" means an Alaska resident who is a musician.
- (3) "Alaska resident" or "resident" means an individual who meets the residency requirements of AS 01.10.055.
- (4) "arms-length transaction" means a transaction in which the buyers and sellers of a service or product act independently and are not considered a related party under this chapter.
- (5) "cast" means hired actors, top spotlighted talent, athletes, or any other persons, excluding extras, featured in a film or documentary.
- (6) "fees" means amounts charged for services, use or access.
- (7) "film office" has the meaning given in AS 44.25.190(3).
- (8) "incurred in the state" means an activity performed in the state to include costs paid, services rendered, or goods utilized in state.
- (9) "leasing of vehicles" means rentals and leases of vehicles registered in the state by an Alaska business.
- (10) "loan-out company" is a type of personal service company that is wholly owned by one person, the sole function of which is to loan out the services of the owner, the sole employee, to a production company or motion-picture studio, under contract, in exchange for money or other services. The loan-out company is responsible for paying payroll taxes rather than the production company.

(11) "payroll" is the distribution of paychecks (physical or electronic) to employees each payday for wages/salaries including withholding, deductions, bonuses, pay for time not worked such as holidays, vacations, sick time, and other items on employee paychecks. Payroll can include a list of a company's employees and the amount of wages and salaries they are to be paid. Payroll should reflect that all employees are paid accurately and timely with the correct withholdings and deductions, and to ensure that the withholdings and deductions are remitted in a timely manner. Payroll can be administered through the production company or a third party. Costs of payroll services by a third party are considered a qualified expense only if the payroll company meets the requirement of an Alaskan business pursuant to AS 44.25.190(1).

(12) "person" means an individual, company, partnership, limited liability company, joint venture, joint agreement, limited liability partnership, association, corporation, estate, trust, receiver, trustee, syndicate or any combination acting as a unit.

(13) "proprietary information" is data the production keeps confidential in order to preserve the potential value of the production in the marketplace, it may include: script, synopsis or treatment; budget and spending plan; business, distribution and marketing plans, personnel lists and salary structure; contracts; the "rough assembly of the production" required under 15 AAC 44.130(b) and other similar information.

(14) "real property" means land and things permanently attached to the land and includes trees already attached to the land, buildings, and stationary mobile homes already attached to the land.

(15) "related party" means

(A) family members, including brothers and sisters, half-brothers and half-sisters, spouse, ancestors, such as parents and grandparents, and lineal descendants, such as children and grandchildren;

(B) a partnership in which the producer or any person with a significant investment in the production directly or indirectly owns more than fifty percent of the capital interest or the profits interest;

(C) a corporation in which the producer or any person with a significant investment in the production directly or indirectly owns more than fifty percent in value of the outstanding stock; and

(D) any other business entity in which the producer or any person with a significant investment in the production directly or indirectly owns more than fifty percent of the profits of the entity.

(16) "related party transaction" means the transfer of economic resources or obligations between related parties, or the provision of services by one party to a related party, regardless of whether any consideration is exchanged. The parties to the transaction are related prior to the transaction. When the relationship arises as a result of the transaction, the transaction is not one between related parties.

(17) "rough assembly of the production" means a sequencing of scenes that will eventually be refined into the final version of the production.

(18) "rural area" has the meaning given in AS 44.25.190(5).

(19) "salary" is a regularly paid amount of money, constituting all or part of an employee's wages, paid on a weekly or less frequent basis that is not subject to reduction due to the quality or quantity of work performed.

(20) "significant investment" means a commitment of funds through a direct cash or cash equivalent payment, a loan, or other financial arrangement with the promise of receiving twenty percent or more of the profits of the production;

(21) "services" means work performed as an occupation or business by an Alaska resident or Alaska business.

(22) "statutory or common-law employee" means an employee who is covered, or required to be covered, by the employer's workers' compensation insurance and who therefore has no independent tort claim against the employer for unintentional injuries suffered on the job.

(23) "photography" refers to still or motion-picture and includes film as defined in AS 44.25.190(2).

(24) "tangible property" or "tangible personal property" means personal property that is movable or transferable and can be seen or touched; "tangible property" or "tangible personal property" does not include real property.

(25) "television" means an electronic system of transmitting transient images of fixed or moving objects together with sound over a wire or through space, including over the Internet and via satellite, by apparatus that converts light and sound into electrical waves and reconverts them into visible light rays and audible sound.

(26) "wages" are an expense that is remuneration paid for services rendered by an individual, including the cash value of all remuneration paid in any medium other than cash that is in the form of a regular payment including salaries, benefits and other forms of compensation but excluding payments for contracted services or loan-out payment situations. Wages are processed directly through the producer's payroll system or administered through a third party payroll company and have been subjected to payroll taxes including state and federal withholdings. A typical employee/employer relationship commonly recognized under Internal Revenue Service rules must be present and should include the production company receiving W-4s and completing I-9s. (Eff. \_\_/\_\_/\_\_, Register \_\_\_)

Authority: AS 44.25.140 AS 44.25.190