

TITLE 14: COMMERCE
CHAPTER I: DEPARTMENT OF COMMERCE AND ECONOMIC OPPORTUNITY

PART 528
ILLINOIS FILM PRODUCTION SERVICES TAX CREDIT PROGRAM

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28 AUTHORITY: Implemented and authorized by the Film Production Services Tax Credit Act of
29 2008 [35 ILCS 16].

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31 SOURCE: Adopted by emergency rulemaking at 28 Ill. Reg. 957, effective December 26, 2003;
32 emergency expired May 23, 2004; adopted at 28 Ill. Reg. 14506, effective October 22, 2004;
33 amended at 31 Ill. Reg. 2256, effective January 18, 2007; amended at 37 Ill. Reg. 12010,
34 effective July 12, 2013; amended at 45 Ill. Reg. 5342, effective April 12, 2021; amended at 47
35 Ill. Reg. 3693, effective March 1, 2023; amended at 48 Ill. Reg. _____, effective

36 _____.

37
38 **Section 528.20 Definitions**

39
40 The following definitions are applicable to this Part:

41
42 "Above-the-Line-Salaries" or "ATL Salaries" means all salary, wages, fees, fringe
43 benefits paid for services such as those of a producer, executive producer,

44 coproducer, director, screenwriter, lead cast, supporting cast, day players, and
45 other services of job positions performed by personnel of the production that are
46 associated with the creative or financial control of a production and customarily
47 considered as above the line services in the film and television industry.
48

49 "Accredited Production" means:

50
51 *for productions commencing before May 1, 2006, a film, video,*
52 *commercial, or television production that has been certified by the*
53 *Department in which the aggregate Illinois labor expenditures included in*
54 *the cost of the production exceed \$100,000 for productions of 30 minutes*
55 *or longer, or \$50,000 for productions of less than 30 minutes;*
56

57 *for productions commencing on or after May 1, 2006, a film, video,*
58 *commercial, or television production that has been certified by the*
59 *Department in which the aggregate Illinois production spending included*
60 *in the cost of the production exceeds \$100,000 for productions of 30*
61 *minutes or longer, or \$50,000 for productions of less than 30 minutes.*
62

63 "Accredited Production" does not include a production that:

64
65 *is news, current events, or public programming, or a program that*
66 *includes weather or market reports;*
67

68 *is a talk show produced for local or regional markets;*
69

70 ~~*is a production in respect of a game, questionnaire, or contest;*~~
71

72 *is a sports event or live activity;*
73

74 *is a gala presentation or awards show;*
75

76 *is a finished production that solicits funds;*
77

78 *is a production produced by a film production company if records, as*
79 *required by 18 U.S.C. 2257, are to be maintained by that film production*
80 *company with respect to any performer portrayed in that single media or*
81 *multimedia program; or*
82

83 *is a production produced primarily for industrial, corporate, or*
84 *institutional purposes. (Section 10 of the Act)*
85

86 *"Accredited Production Certificate" means a certificate issued by the Department*
87 *certifying that the production is an accredited production that meets the*
88 *guidelines of the Act. (Section 10 of the Act)*
89

90 "Act" means the Film Production Services Tax Credit Act [35 ILCS 16].
91

92 *"Applicant" means a taxpayer that is a film production company or a taxpayer*
93 *working in association with a film production company that is operating or has*
94 *operated an accredited production located within the State of Illinois and that:*
95

96 *owns the copyright in the accredited production throughout the Illinois*
97 *production period; or*
98

99 *has contracted directly with the owner of the copyright in the accredited*
100 *production or a person acting on behalf of the owner to provide services*
101 *for the accredited production, when the owner of the copyright is not an*
102 *eligible production corporation. (Section 10 of the Act)*
103

104 "Below-the-Line-Salaries" or "BTL Salaries" means salary, wages, fees, fringe
105 benefits paid for services performed by a person in a position that is off camera
106 and who provides technical services during the physical production of a film.
107 "Below-the-Line-Salaries" does not include a person who is a producer, executive
108 producer, coproducer, director, screenwriter, lead cast, supporting cast, day
109 players, and other services of job positions performed by personnel of the
110 production that are associated with the creative or financial control of a
111 production and customarily considered as above the line services in the film and
112 television industry.
113

114 *"Business Owned by a Person with a Disability" means a business concern that is*
115 *at least 51% owned by one or more persons with a disability and the management*
116 *and daily business operation of which are controlled by one or more of the*
117 *persons with disabilities who own it. A not-for-profit agency for persons with*
118 *disabilities that is exempt from taxation under section 501 of the Internal Revenue*
119 *Code of 1986 is also considered a "business owned by a person with a disability".*
120 *[30 ILCS 575/2(A)(4.1)]*
121

122 "Commencement or Start of Principal Filming or Taping" means the date on
123 which filming, taping, or photographing of principal actors or action of an
124 accredited production commences. In the case of an animated production, the
125 commencement or start of filming or taping is the date on which the creation of
126 artwork to be used in actual frames of the film begins.
127

128 "Commercial Domicile" means the principal place from which the trade or
129 business of a person is directed or managed.

130
131 "*Credit*" or "*Tax Credit*" means, for an accredited production commencing on or
132 after January 1, 2009, the amount equal to:

133
134 *30% of the Illinois production spending for the taxable year; plus*

135
136 *15% of the Illinois labor expenditures generated by the employment of*
137 *residents of geographic areas of high unemployment determined by*
138 *census tracts where the unemployment rate is at least 150%~~150 percent~~ of*
139 *the State's annual average.*

140
141 "Department" means the Illinois Department of Commerce and Economic
142 Opportunity.

143
144 "Director" means the Director of the Department.

145
146 "Diversity Data or Information" means data pertaining to gender, race, ethnicity
147 and of all employees of the applicant.

148
149 "Diversity Plan" means a written document through which the applicant assures
150 the Department that minorities and females will have equal opportunities in
151 recruitment, selection, appointment, promotion, training, and related employment
152 areas in the accredited production. The diversity plan must also describe the
153 manner in which the applicant plans on hiring vendors certified by the Business
154 Enterprise Council under the Business Enterprise for Minorities, Females, and
155 Persons with Disabilities Act [30 ILCS 575] with respect to the accredited
156 production. The diversity plan must also detail the manner in which the applicant
157 proposes to achieve its goals to ensure employment of protected classes to
158 achieve a diverse workforce, rather than merely to assure nondiscrimination.

159
160 "Economic Impact Data" means data pertaining to the types of jobs (production,
161 talent and vendor) created and retained in Illinois, as well as the total amount an
162 applicant spends in Illinois on the accredited production.

163
164 "Employee of the Applicant" or "Employee", for accredited productions
165 commencing on or after May 1, 2006, means only an individual who is an
166 employee of the applicant for purposes of employment taxes imposed under
167 subtitle C of the Internal Revenue Code (26 U.S.C. subtitle C).

168

169 "Entry Level Positions" means the lowest level of a hierarchy in a production,
170 including untrained or unskilled labor working on a production, such as a
171 production assistant.
172

173 *"Illinois Labor Expenditure" means salary or wages paid to employees of the*
174 *applicant for services on the accredited production. To qualify as an Illinois*
175 *labor expenditure, the expenditure must be:*

176
177 *reasonable in the circumstances;*

178
179 *included in the federal income tax basis of the property. For purposes of*
180 *this provision, an expenditure that is immediately expensed as an*
181 *advertising cost under Treasury Regulations section 1.162-1(a) (26 CFR*
182 *1.162-1(a)) or as a qualified film, television or commercial production cost*
183 *under section 181 of the Internal Revenue Code (26 U.S.C. 181) shall be*
184 *treated as included in the federal income tax basis of the accredited*
185 *production if the expenditure would be required to be capitalized under*
186 *section 263A of the Internal Revenue Code (26 U.S.C. 263A) if that*
187 *section applied to the accredited production;*

188
189 *incurred by the applicant for services on or after January 1, 2004;*

190
191 *incurred for the production stages of the accredited production, from the*
192 *final script stage to the end of the post-production stage;*

193
194 *limited to the first \$25,000 of wages paid or incurred to each employee of*
195 *an accredited production commencing before May 1, 2006 and the first*
196 *\$100,000 of wages paid or incurred to each employee of an accredited*
197 *production commencing on or after May 1, 2006 and prior to July 1, 2022.*
198 *For productions commencing on or after July 1, 2022, limited to the first*
199 *\$500,000 of wages paid or incurred to each nonresident or resident*
200 *employee of a production company or loan out company that provides in-*
201 *State services to a production, whether those wages are paid or incurred*
202 *by the production company, loan out company, or both, subject to*
203 *withholding payments provided for in Article 7 of the Illinois Income Tax*
204 *Act. For purposes of calculating Illinois labor expenditures for a*
205 *television series, the nonresident wage limitations provided under this*
206 *subparagraph are applied to the entire season;*

207
208 *for an accredited production commencing before May 1, 2006, exclusive of*
209 *Illinois gross wages and benefits paid to or incurred for the 2 highest paid*
210 *employees of the accredited production;*
211

212 *directly attributable to the accredited production;*

213
214 *Prior to July 1, 2022, paid to persons residing in Illinois at the time the*
215 *payments were made. For a production commencing on or after July 1,*
216 *2022, paid to persons resident in Illinois and nonresidents at the time the*
217 *payments were made. For purposes of this subparagraph, only wages paid*
218 *to nonresidents working in the following positions shall be considered*
219 *Illinois labor expenditures: Writer, Director, Director of Photography,*
220 *Production Designer, Costume Designer, Production Accountant, VFX*
221 *Supervisor, Editor, Composer, and Actor, subject to the limitations set*
222 *forth under this subparagraph. For an accredited Illinois production*
223 *spending \$25,000,000 or less, no more than 2 nonresident actors' wages*
224 *shall qualify as an Illinois labor expenditure. For an accredited*
225 *production with Illinois production spending of more than \$25,000,000,*
226 *no more than 4 nonresident actor's wages shall qualify as Illinois labor*
227 *expenditures;*~~and~~

228
229 *paid for services rendered in Illinois;* (Section 10 of the Act)

230
231 qualified labor expenditures for above-the-line-salaries provided by
232 related parties are limited to 12% of total Illinois production spending;

233
234 expenses for below-the-line-salaries paid to a related party shall be limited
235 to the fair market value as established through comparable transactions
236 between other unrelated parties for substantially similar services
237 considering the geographic market and other pertinent variables; and

238
239 "Illinois Labor Expenditure" does not include above-the-line-salaries that
240 exceed 40% of Illinois production spending.

241
242 *"Illinois Production Spending" means the expenses incurred by the applicant that*
243 *are reasonable under the circumstances and directly attributable to the accredited*
244 *production, including, without limitation, all of the following:*

245
246 *expenses to purchase, from vendors within Illinois, tangible personal*
247 *property that is used in the accredited production in Illinois;*

248
249 *expenses to acquire services, from vendors in Illinois, for film production*
250 *and post-production (which includes editing and processing) in Illinois;*

251 ~~and~~

252
253 *for a production commencing before July 1, 2022, compensation, not to*
254 *exceed \$100,000 for any one employee of the applicant, for contractual or*

255 *salaried employees who are Illinois residents performing services with*
256 *respect to the accredited production in Illinois. (Section 10 of the Act) For*
257 *a production commencing on or after July 1, 2022, the compensation, not*
258 *to exceed \$500,000 for any one employee, for contractual or salaried*
259 *employees who are Illinois residents or nonresident employees, subject to*
260 *the limitations set forth under Section 10 of the Act; and;*

261
262 for goods and services such as studio and equipment rental, and visual
263 effects packages, production spending is limited to fair market value as
264 established through comparable transactions between unrelated parties for
265 substantially similar goods and services considering the geographic market
266 and other pertinent variables. For goods and services provided by related
267 parties, production spending is limited to fair market value as established
268 through the submission of a minimum of three competitive bids and or
269 studio rate cards.

270
271 "Illinois Production Spending" does not include any monetary prize or the
272 cost of any non-monetary prize awarded pursuant to a production in respect of
273 a game, questionnaire, or contest.

274
275 "Illinois Resident" means an individual who is domiciled in this State during the
276 accredited production. Except in a case in which the applicant has actual
277 knowledge, as shown in its books and records, that an individual is not an Illinois
278 resident, the possession by an individual of a driver's license or other
279 identification issued by this State prior to the commencement of work by the
280 individual on the accredited production shall be sufficient proof that the
281 individual is an Illinois resident and the address on the license or identification
282 shall be deemed correct.

283
284 "Jobs Created and Retained" shall be measured in full-time equivalent jobs. In
285 the case of a person hired as an "extra", each person hired for each day shall be
286 deemed a full-time equivalent job for that day, based on the film industry standard
287 equivalency of a "hire", which is a per day, per person standard. In other words,
288 when the film industry hires an "extra" it considers each "extra" position to be a
289 one day job that was created to fill a particular position for a particular purpose
290 for a particular time.

291
292 "*Loan Out Company*" means a personal service corporation or other entity that is
293 under contract with the taxpayer to provide specified individual personnel, such
294 as artists, crew, actors, producers, or directors for the performance of services
295 used directly in a production, but does not include entities contracted with by the
296 taxpayer to provide goods or ancillary contractor services such as catering,
297 construction, trailers, equipment, or transportation. (Section 10 of the Act)

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"Management Position" means anyone in a supervisory or managerial position who has control over other employees who report to that individual. Management roles include, but are not limited to, coordinators, directors, managers, supervisors, producers, masters and department heads.

"Minority" means a person who is a citizen or lawful permanent resident of the United States and who is:

American Indian or Alaska Native (a person having origins in any of the original peoples of North and South America, including Central America, and who maintains tribal affiliation or community attachment);

Asian (a person having origins in any of the original peoples of the Far East, Southeast Asia, or the Indian Subcontinent, including, but not limited to, Cambodia, China, India, Japan, Korea, Malaysia, Pakistan, the Philippine Islands, Thailand, and Vietnam);

Black or African American (a person having origins in any of the black racial groups of Africa);

Hispanic or Latino (a person of Cuban, Mexican, Puerto Rican, South or Central American, or other Spanish culture or origin, regardless of race);
or

Native Hawaiian or Other Pacific Islander (a person having origins in any of the original peoples of Hawaii, Guam, Samoa, or other Pacific Islands). [30 ILCS 575/2(A)(1)].

"Minority Owned Business" means a business concern:

that is at least 51% owned by one or more minority persons; or

in the case of a corporation, at least 51% of the stock in which is owned by one or more minority persons; and

the management and daily business operations of which are controlled by one or more of the minority individuals who own it. [30 ILCS 575/2(A)(3)].

"Personal Service Corporation" means a corporation the principal activity of which is the performance of personal services and such services are substantially performed by employee-owners.

341 "Production Staff and Crew" means office and production staff, including, but not
342 limited to, accountants, coordinators, secretaries, camera, casting, construction,
343 costume, electric, grip, location, hair, make-up, props, swing gang, set decorating,
344 sound, and transportation.

345
346 "Post-Production" means editing or processing of original content employing
347 traditional, emerging or new editing or processing techniques used for picture,
348 sound and music editorial, rerecording and mixing, visual effects, graphic design,
349 original scoring, animation, and musical composition.

350
351 "Post-Production Staff and Crew" means post-production staff, including, but not
352 limited to, film editor, post-production supervisor, colorist, visual effects
353 producer, visual effects creative director, visual effects supervisor, visual effects
354 editor, compositor, rotoscope artists, matte painter, sound designer, dialogue
355 editor, sound editor, re-recording mixer, music supervisor, composer, foley artist,
356 mixer, and music editor.

357
358 "Related Party Transaction" means a transaction between parties deemed to be
359 related by common ownership or control according to generally accepted
360 accounting standards, ("GAAS") and generally accepted accounting principles
361 ("GAAP"), and any party deemed to be a material investor.

362
363 "State" means the State of Illinois.

364
365 "Talent Related Positions" means any speaking, background or extra roles that
366 appear in front of the camera. Talent refers to on screen performers holding these
367 positions.

368
369 "Tax Credit Certificate" means the tax credit certificate issued by the Department
370 to the applicant certifying that it has complied with all statutory requirements of
371 the Act and this Part and that it is entitled to a credit under the Act.

372
373 "Taxpayer" means any person defined by, and subject to, the tax imposed by the
374 Illinois Income Tax Act [35 ILCS 5/1501(a)(18) and (a)(24)].

375
376 "Treasury Regulations" means the rules of the U.S. Internal Revenue Service
377 published at Title 26 of the Code of Federal Regulations.

378
379 "Vendor in Illinois". Expenditures for purchases of tangible personal property or
380 services from a vendor in Illinois shall mean:

381
382 Purchases of tangible personal property for use in Illinois on an accredited
383 production from a person who is registered under the Illinois Retailers'

384 Occupation Tax Act (ROTA) [35 ILCS 120]. A copy of the purchase
385 receipt showing that the purchase was made at an Illinois location and that
386 Illinois Retailers' Occupation Tax was paid shall be sufficient proof that
387 the purchase was made from a vendor in Illinois. For tangible personal
388 property ordered by mail, telephone or internet, a copy of the seller's
389 ROTA registration certificate, along with a receipt showing that Illinois
390 Use Tax was collected by the vendor, shall be sufficient proof that the
391 purchase was made from a vendor in Illinois. Documentation that shows
392 that Illinois Use Tax was collected by the vendor, but either does not show
393 an Illinois address for the sale or is not accompanied by a ROTA
394 registration certificate, shall not be sufficient proof that the purchase was
395 made from a vendor in Illinois.

396
397 The lease or rental of real property located in Illinois for use in an
398 accredited production, including hotels or other lodging for employees
399 working on the accredited production.

400
401 The lease or rental of an automobile (as defined in the Illinois Automobile
402 Renting Occupation and Use Tax Act [35 ILCS 155]) for use in an
403 accredited production on which the rentor collects the Illinois Automobile
404 Renting Occupation and Use Tax from the rentee.

405
406 The lease or rental of other tangible personal property for use in an
407 accredited production if the owner of the property has paid Illinois Use
408 Tax on the property. A copy of the invoice or receipt for the lease or
409 rental showing an Illinois address for the lessor, and showing that no other
410 state's sales tax is collected from the lessee, shall be sufficient proof that
411 the transaction was with a vendor in Illinois.

412
413 The purchase of financial services (including insurance and the borrowing
414 of funds) from a lender or insurer whose commercial domicile is in this
415 State.

416
417 The purchase of other services with respect to an accredited production
418 from an Illinois resident or from a person whose commercial domicile is in
419 this State. For purposes of this provision only, the commercial domicile of
420 a person is their business address (as shown in the records of the
421 applicant) in this State.

422
423 A vendor in Illinois that is a corporation, limited partnership, limited liability
424 company, or limited liability partnership must register and remain an entity in
425 good standing with the Illinois Secretary of State, Department of Business
426 Services, throughout the duration of the production.

427
428 "Vendor Related Positions" means jobs obtained or created through a
429 subcontractor, which includes but is not limited to security, janitorial, printing,
430 florist, dry cleaners, and limousine services.

431
432 "Wages" means all compensation paid for services rendered by an employee in
433 connection with an accredited production, including health, life, and disability
434 insurance premiums, FICA taxes, pension contributions, expense reimbursement,
435 and accrued vacation and sick pay.

436
437 "*Woman*" means a person who is a citizen or lawful permanent resident of the
438 United States and who is of the female gender. [30 ILCS 575/2(A)(2)]

439
440 "*Women Owned Business*" means a business concern:

441
442 *that is at least 51% owned by one or more women; or*

443
444 *in the case of a corporation, at least 51% of the stock in which is owned*
445 *by one or more women; and*

446
447 *the management and daily business operations of which are controlled by one*
448 *or more of the women who own it. [30 ILCS 575/2(A)(4)]*

449
450 (Source: Amended at 48 Ill. Reg. _____, effective _____)

451
452 **Section 528.70 Request for Tax Credit Certificate**

453
454 The applicant may request a tax credit certificate from the Department certifying the actual
455 amount of the credit awarded to the applicant at any time following the completion of the
456 accredited production, but in no event later than two2 years following the completion of the
457 production. In a case in which a single application was filed for two or more productions, a
458 single tax credit certificate may, at the request of the applicant, be issued for more than one
459 production. The tax credit will be issued upon the Department's verification that all costs
460 submitted qualify as the applicant's Illinois production spending and verification that the
461 applicant has met or made good-faith efforts in achieving the goals of the diversity plan (see
462 Section 528.20) included with its application.

463
464 a) If an accredited production is not completed prior to the close of the applicant's
465 taxable year, at the election of the applicant, a tax credit certificate dated as of the
466 last day of the taxable year may be used for:

467
468 1) Illinois labor expenditures incurred during that taxable year or within 60
469 days after the close of that taxable year; or

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- 2) Illinois production spending (see Section 10 of the Act) incurred during that taxable year.

- b) In the case of an accredited production commencing on or after May 1, 2006 in which some Illinois production spending is incurred in a taxable year of the applicant and some is incurred after the close of that taxable year:
 - 1) The applicant may request a single tax credit certificate for all Illinois production spending incurred; or
 - 2) The applicant may submit a separate request for a tax credit certificate for each taxable year in which Illinois production spending is incurred.

- c) With each request for a tax credit certificate filed on or after January 18, 2007, the applicant shall provide:
 - 1) An itemized statement of the Illinois labor expenditures or Illinois production spending for which the credit is claimed and of Illinois labor expenditures generated by the employment of residents of geographic areas of high poverty or high unemployment for which additional credit is claimed;
 - 2) Copies of the books and records of the applicant for the accredited production, showing the Illinois labor expenditures or Illinois production spending for which the credit is claimed, all documentation necessary to support its computation, and detailed vendor cost documentation for post-production services, including but not limited to, a listing of all Illinois resident post-production staff and crew who worked on the production and their respective wages and fringe benefits, and payments made to sub-vendors domiciled in Illinois, if post-production spending represents more than 50% of qualifying Illinois spending. Only Illinois resident wages and fringe benefits (up to \$100,000 per resident) and payments made to Illinois domiciled sub-vendors are qualified;~~and~~
 - 3) Disclosure of all related party transactions including:
 - A) The name of the related party;
 - B) The nature of the relationship between the related party and the accredited production;
 - C) The nature of the transaction; and

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D) The amount of the transaction;

43) An attestation by a licensed certified public accountant (CPA), in the form prescribed by the Department, that the computations are supported by the copies of the books, records and other documents of the applicant that are attached to the request and that the licensed CPA has examined the books, records and other documents according to procedures agreed upon by the Department and an opinion stating that there are no related party transactions or that material transactions of related party relationship are properly reported and accounted for as required by Section 527.70(c)(3). An examination of the books, records or other documents must be performed by the licensed CPA quarterly or at the conclusion of production if production lasted less than a quarter. The attestation and examination must be performed by a licensed CPA:

- A) who is qualified and independent of the applicant under the professional standards established by the American Institute of Certified Public Accountants, specifically the Statements on Standards of Attestation Engagements at AT Sec. 101 (Attest Engagements) and AT Sec. 201 (Agree-Upon Procedures Engagements); and
- B) whose engagement to provide the attestation was approved by the Department before work on the engagement was commenced; ~~and-~~

5) A sworn affidavit by the applicant that, to the best of the affiant's knowledge, information and belief all accounts, documents, records, and other information provided to the CPA and Department were true and correct and that all related party transactions were accurately reported in accordance with Section 528.70(c)(3).

(Source: Amended at 48 Ill. Reg. _____, effective _____)