

**Ontario Media Development Corporation (OMDC)
An Agency of the Ontario Ministry of Tourism, Culture and Sport**

**ONTARIO FILM AND TELEVISION TAX CREDIT
(OFTTC)**

GUIDELINES

Updated as of FEBRUARY 2017

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INTRODUCTION

The February 2017 version of the Guidelines has been updated to advise of the new tax credit administration fee structure, effective April 1, 2017.

The Guidelines

These guidelines have been prepared to assist producers in applying for the Ontario Film and Television Tax Credit (the "OFTTC").

Please note that the OFTTC legislation (section 91 of the *Taxation Act, S.O. 2007*) and OFTTC regulation (Ontario Regulation 37/09) take precedence over any provision of these Guidelines.

Overview of the OFTTC

This section sets out the key features of the OFTTC. For a complete list of the applicable requirements, please consult the subsequent sections of these Guidelines and the OFTTC legislation and regulation.

What Is It?

The OFTTC is a refundable tax credit based upon eligible Ontario labour expenditures incurred by a qualifying production company with respect to an eligible Ontario production. The OFTTC is generally "harmonized" with the Canadian Film or Video Production Tax Credit.

How Much Is the Tax Credit?

The OFTTC is generally calculated as 35% of the eligible Ontario labour expenditures incurred by a qualifying production company with respect to an eligible Ontario production.

An enhanced credit rate of 40% is available for first time productions. A bonus of 10% is available for regional Ontario productions.

The OFTTC is based only on Ontario labour expenditures, net of assistance reasonably related to these expenditures. Assistance includes grants, subsidies, and forgivable loans.

Productions that are shot in Ontario entirely outside the Greater Toronto area, or that have at least five location days in Ontario (or in the case of a television series, is at least equal to the number of episodes in the series), and at least 85% of the location days in Ontario are outside the Greater Toronto Area* receive a 10% bonus on all Ontario labour expenditures. Productions eligible for the bonus receive a tax credit rate of 45% on the production's total eligible Ontario labour expenditures. "Location days" are defined by the Legislation and consist of principal photography days done outside a film studio. Productions which are entirely animated are eligible to receive the regional bonus if at least 85% of their key animation days in Ontario take place outside of the Greater Toronto Area.

*The Greater Toronto Area is composed of the City of Toronto and the regional municipalities of Halton, Peel, York and Durham.

What Expenditures Are Eligible?

Eligible Ontario labour expenditures include salaries, wages and remuneration paid for the services of individuals who were resident in Ontario at the end of the calendar year prior to the commencement of principal photography.

Productions can claim eligible labour expenditures possibly as early as two years prior to the commencement of principal photography. This may include labour expenditures for script development.

Who Is Eligible?

A qualifying production company is a Canadian corporation which is Canadian-controlled, maintains a permanent establishment in Ontario, and files an Ontario corporate tax return. In addition, the individual producer of the production must have been an Ontario resident at the end of both of the two calendar years prior to the commencement of principal photography.

What Types of Production Are Eligible?

An eligible Ontario production is a production:

- which has six Canadian content points (international treaty co-productions are exempt from this requirement but must meet the applicable treaty requirements)
- for which 85% of the total number of days of principal photography or key animation is done in Ontario (documentaries and inter-provincial and international treaty co-productions are exempt from this requirement)
- for which at least 95% of the cost of post-production work for the production is carried out in Ontario (inter-provincial and international treaty co-productions are exempt from this requirement)
- which spends at least 75% of its total final costs on Ontario expenditures (in the case of inter-provincial and international treaty co-productions, 75% of total expenditures is in respect of the *Ontario* portion of the production)
- for which, in the case of an inter-provincial co-productions, not less than 20% for the cost of producing the production is in respect of the Ontario portion of the production
- which has an agreement with an Ontario-based distributor or a Canadian broadcaster to be shown in Ontario within two years of completion, and if for television, is guaranteed to be shown between 7:00pm and 11:00pm (an exception is made to the prime time requirement in the case of children's programming)
- which is not in an excluded genre (such as news or current affairs, talk shows, game shows, sports shows, awards shows, fundraising shows, reality television).

Structuring Provincial Co-productions

There are several corporate structures that can be used to undertake a co-production. Since the OFTTC is based on Ontario expenditures, it is very important that an inter-provincial coproduction distinguish and identify costs on the Ontario side of the coproduction. Coproduction structures in which separate corporations in each jurisdiction incur costs related to that jurisdiction provide a clearer distinction of costs. Although a jointly-owned production company may be eligible for the OFTTC, this structure lends itself to the greatest manipulation and is not encouraged as an acceptable structure.

How Is the Credit Administered?

The OFTTC is jointly administered by the Ontario Media Development Corporation (OMDC) and the Canada Revenue Agency. Application is made by the production company to the OMDC for an OFTTC Certificate of Eligibility. In order to claim the OFTTC, the production company then files the OFTTC Certificate of Eligibility with the Canada Revenue Agency. You must file both a Certificate of Eligibility and a corporate tax return to claim an OFTTC for a taxation year.

Incorporating a Business

Only a business that is incorporated - federally in Canada or in any Canadian province - may claim the OFTTC. Advice or information regarding incorporation is available from professional advisors (a lawyer, accountant, etc.); the Ministry of Government and Consumer Services (contact the Companies Branch, 393 University Avenue, Suite 200, Toronto, ON M5G 2M2; (416) 314-8880 or toll free (in Ontario) 1-800-361-3223); or from business services providers (see "Incorporating Companies" in the yellow pages or link from the Ministry of Government and Consumer Services website). To incorporate outside Ontario, contact the relevant government ministry or department in the jurisdiction of incorporation. The costs of incorporating a business may range from \$500 to \$2,500.

Is a Screen Credit required on the Production?

A screen credit recognizing financial support from the Ontario Government is available for the convenience of producers to recognize the Ontario tax credits contribution to their production. Although it is not required, due to the fact that tax credit information is considered confidential, a screen credit for an Ontario tax credit is certainly a welcome and appropriate way to acknowledge taxpayer support. The Ontario wordmark logo and accompanying guidelines can be downloaded from:



PROCESS

General

In order to claim an OFTTC, you need to file a Certificate of Eligibility and your corporate tax return with the Canada Revenue Agency. Application for a Certificate of Eligibility must be made to the Ontario Media Development Corporation (OMDC).

You can apply for a Certificate of Eligibility at any time during the production (from the start of principal photography or key animation) or after production activities have been completed. A Certificate issued before a production is completed can be filed with a tax return to claim an OFTTC for a taxation year. If the production spans more than one fiscal year, the Certificate can be used each year to claim an OFTTC. If a Certificate is issued before a production is completed, the Corporation is required to submit final documents to the OMDC to obtain a Letter of Confirmation confirming that all eligibility criteria were satisfied. If a production is determined to be ineligible based on the final documentation, a Certificate of Eligibility previously issued to the Corporation will be revoked and any tax credit paid to the Corporation must be repaid.

Application Deadlines

The applications for a Certificate of Eligibility **and** Letter of Confirmation must be submitted to the OMDC within 24 months from the end of the corporation's taxation year in which principal photography began. The Certificate of Eligibility and the Letter of Confirmation must be issued by the OMDC within six months of the application deadline, or no later than 30 months from the corporation's first taxation year end following the commencement of principal photography.

If the 24-month application deadline cannot be met, it may be extended by 18 months if the corporation files a valid Waiver in Respect of the Normal Reassessment Period (CRA form T2029 available at <http://www.cra-arc.gc.ca/E/pgb/tf/t2029/README.html>) with the CRA within its normal reassessment period. The completed Waiver should be sent to your local CRA Tax Services Office (CRA mailing addresses are available at <http://www.cra-arc.gc.ca/cntct/tso-bsf-eng.html>). If the corporation's income tax return(s) for the relevant taxation year(s) have **not yet been assessed**, a valid form T2029 Waiver cannot be filed with the CRA for those years. However, you may still extend the application deadline by 18 months by filing a completed OMDC Waiver Declaration form.

If you extend the application deadline by filing a valid, completed waiver, the applications for the Certificate of Eligibility **and** Letter of Confirmation must be submitted to the OMDC within 42 months from the date of the first taxation year end following the commencement of principal photography. The applications must also include a completed OMDC Waiver Declaration form for each production to confirm whether the corporation was required to file a Waiver in Respect of the Normal Reassessment Period with CRA. The Certificate of Eligibility and the Letter of Confirmation must be issued by the OMDC within six months of this application deadline, or no later than 48 months from the corporation's first taxation year end following the commencement of principal photography.

Please note that as of January 1, 2017 there is a fee for filing claims that are more than 24 months old.

OFTTC Application and Review Process

Set out below is an overview of the OFTTC application review process, from submission of your application to receipt of a Certificate of Eligibility and/or a Letter of Confirmation.

Stage 1: Online Application

In an effort to streamline our tax credit administration process, the OMDC has a mandatory policy that all OMDC tax credit applications must be submitted via our Online Application Portal (“OAP”). Please ensure that your application includes all of the required information and supporting documentation, as only complete applications can be transmitted through the OAP. Complete files are placed in the queue for review by a tax credits business officer and an acknowledgement of the application is sent via the OAP.

When you start an application on the OAP you can save your work and come back to it before submitting the application online. However, please note that once you have started the application on the OAP you have 90 days to submit it before the application expires.

Stage 2: Eligibility Review

The Eligibility Review consists of assessing the applicant and production for compliance with the eligibility requirements of the OFTTC and the Producer Control Guidelines and estimating the tax credit amount. The business officer assigned to your file may contact you with further questions or for additional information and documentation during the Eligibility Review. Although we endeavour to notify clients as soon as possible regarding the ineligibility of a production, in some cases we may not be in a position to determine eligibility until the Eligibility Review is completed.

Stage 3: Issuance of a Certificate of Eligibility and Letter of Confirmation

The OMDC will send you an original Certificate of Eligibility and Letter of Confirmation if the production is eligible for an OFTTC.

How Long Does the Process Take?

As noted above, the OMDC Tax Credits Department will only review complete applications on a first-come, first-served basis and processing time will depend on the volume of applications received. If you file an incomplete application you will be notified about deficiencies with the filing. Where significant delays are encountered in obtaining responses from applicants, the OMDC reserves the right to close the file after 30 days.

Claiming the Tax Credit

The OFTTC is jointly administered by the OMDC and the Canada Revenue Agency (CRA), as described below.

1. OMDC Role

(i) Issuance of Certificates of Eligibility

The OMDC is responsible for issuing Certificates of Eligibility, which the qualifying corporation files with the Canada Revenue Agency with its T2 Corporation Income Tax Return for the applicable taxation year in order to claim the OFTTC. A Certificate of Eligibility sets out (i) the eligibility of an applicant corporation; (ii) the eligibility of an applicant production; and (iii) the estimated amount of the OFTTC, which may be subject to verification by the Canada Revenue Agency as indicated below.

OMDC reserves the right to ask any question necessary to determine eligibility issues. As issues and fact patterns will differ depending on the specifics of any application, so too may the line of inquiry. Please note that receipt of a certificate for one production may not be relied upon as a guarantee of certification for subsequent filings.

(ii) Amendment and Revocation of Certificates of Eligibility

A Certificate of Eligibility may be amended to correct an error and under certain circumstances may be revoked by the OMDC. An amended Certificate of Eligibility replaces any Certificate of Eligibility previously issued for the production. If a Certificate of Eligibility is revoked by the OMDC, the revoked Certificate of Eligibility is treated as if it had never been issued and any OFTTC refund previously paid must be repaid.

Please note: Effective January 1, 2017 there is a fee of \$100 for amended Certificates that are requested.

2. Canada Revenue Agency Role

The Canada Revenue Agency (CRA) is responsible for the review or audit of the T2 Corporation Income Tax Return (T2 return) along with the Schedule T2SCH556 which must be filed by the qualifying corporation in order to claim the OFTTC. The CRA also processes T2 tax returns and issues notices of assessment and tax refunds.

(i) Filing of a Corporate Tax Return

The Canada Revenue Agency administers both Federal and Ontario corporate taxes for taxation years ending after December 31, 2008. A corporation must file its T2 return for a taxation year with the CRA within six (6) months after the end of the corporation's taxation year. To claim the OFTTC a qualifying corporation must file its T2 return with Schedule T2SCH556 and the Certificate of Eligibility with the CRA. Following its review or audit of the OFTTC claim, the CRA processes the T2 return and issues a notice of assessment and, if applicable, a refund. The amount of refund may be reduced by any of the qualifying corporation's outstanding federal and Ontario taxes.

The T2 Corporation Income Tax Return and applicable schedules are available on the CRA website at:
<http://www.cra.gc.ca/formspubs/menu-eng.html>

For additional information, visit the following CRA website: <http://www.cra.gc.ca/filmservices>

Inquiries should be directed to CRA's Toronto Film Services Unit at (416) 973-3407 or (416) 952-7349.

(ii) Payment of an OFTTC Refund

If the qualifying corporation is owed a tax refund (which may include an OFTTC) for the taxation year, a cheque or direct deposit may be issued by the CRA. The amount of refund may be reduced by any of the qualifying corporation's outstanding federal and Ontario taxes (such as corporate income taxes, retail sales tax, provincial sales tax, etc.).

Assistance in preparing a tax credit application to the OMDC

Should you require assistance in preparing your tax credit application, the OMDC can provide a list of companies that provide services with expertise in this area. Contact the Tax Credit Programs Officer for a copy of the list.

CONTACT INFORMATION

OMDC Tax Credits Department Who's Who

Listed below are the members of the Tax Credits Department who work on the OFTTC. For general information, forms or information on the status of an application, please contact the Programs Officer. For specific questions on eligibility, labour expenditure calculations, definitions or any issue concerning a specific project; please contact the Tax Credits Phone Duty line (416) 642-6659 or mailbox at taxcredits@omdc.on.ca. Please leave a detailed message including your name, company, phone number and which tax credit or file you are inquiring about. Phone calls and emails will be responded to within one business day. Policy issues may be addressed to the Director.

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OFTTC Administration Fees

A non-refundable administration fee is charged with respect to each OFTTC application submitted to the Ontario Media Development Corporation (OMDC) and is used to offset operating costs of the OFTTC program.

The amount of the administration fee is 0.06% of the total production budget to which the application relates. The minimum total administration fee is \$100 and the maximum total administration fee is \$5,000 per application. Please note that the administration fee is based on the Ontario side of the production budget in the case of co-productions.

For example, if the total locked production budget is \$5,725,000, the administration fee is \$3,435.00 ($5,725,000 \times 0.06\%$).

The administration fee is payable by cheque or money order made payable to the Ontario Media Development Corporation at the time the OFTTC application is submitted to the OMDC. Please note that the administration fee is required in order for the application to receive an Eligibility Review.

Please note: Effective April 1, 2017 there is a new administration fee structure for tax credits which will offset the costs of administering the program. The OFTTC administration fee will be calculated as 0.15% of eligible expenditures for the application. There is a minimum fee of \$500 per application and a maximum of \$10,000 per application.

As previously announced, effective January 1, 2017 there is an additional filing fee of \$100 applied to applications for Certificates of Eligibility received more than 24 months after the end of the first fiscal year in which principal photography began. Where a year-end has not been included in the application, the additional fee will be applied to applications submitted more than 24 months after the start of principal photography. As well, there is a fee of \$100 for each Amended Certificate requested.

OFTTC DOCUMENTS CHECKLIST

**It is the responsibility of the applicant to ensure that all documentation is current.
Please forward changes as they occur.**

- 1. BOTH:**
 - a) The completed OFTTC Application (submit through the OMDC Online Application Portal)**
 - AND**
 - b) the completed Canadian Film or Video Production Tax Credit Application**
- 2. Administration Fee** payable to the *Ontario Media Development Corporation* (0.06% of the locked production budget, minimum of \$100.00 and maximum of \$5,000.00 per application). Applies to the Ontario side of the production budget in the case of co-productions.
Effective January 1, 2017:
 - There is an additional filing fee of \$100 for applications that are submitted more than 24 months from the company's relevant year-end; and
 - There is a fee of \$100 for requests for amended Certificates.**Please note: Effective April 1, 2017 there is a new administration fee structure for tax credits which will offset the costs of administering the program.** The OFTTC administration fee will be calculated as 0.15% of eligible expenditures for the application. There is a minimum fee of \$500 per application and a maximum of \$10,000 per application.
- 3. Certificate of Incorporation for the applicant production company and all corporate owners**
(NOTE: If these documents are already on file with the OMDC Tax Credits, please provide any updates, amendments or revisions)
- 4. Either:**
 - a) Corporate Chart** (indicating percentages of shareholdings and nationality of shareholders for applicant company and all corporate owners, if applicable), **OR**
 - b) Private Company Declaration (less than 50 shareholders) (CAVCO form)** (for applicant company and all corporate owners, if applicable)
- 5. Signed Producer Residency Declaration forms for ALL controlling producers (producers, executive producers and co-producers)**
- 6. CAVCO Part A Certificate** (if available at this stage)
N.B. If the production is requesting courtesy credit exemptions for non-Canadian producer(s)/producer-related personnel, CAVCO 's Part A Certificate must be provided.
- 7. CAVCO Personnel Numbers for all producers, producer-related personnel (including production manager) and key creative personnel.**
- 8. Chain of Title Documentation** (including any legal opinion, writer agreements (for a series, a sample writer's agreement, etc.)
NOTE: Chain of Title Documentation is NOT required for international treaty co-productions.
- 9. Documents to support the applicant's Production Commencement Time (PCT date)**
- 10. Signed co-production deal memo** (if applicable)
- 11. Telefilm Canada's Preliminary Recommendation** (for International Treaty Co-productions only)

12.	Synopsis
13.	Either: a) Episodic Canadian content point breakdown (for series only), OR b) If production is completed, Final On-Camera Credit List (per episode, for series)
14.	Production Schedule (including start and end dates of shooting days and location of shooting).
15.	If applying for the Regional Bonus indicate exact locations in Ontario for all shoot days and provide supporting documentation such as daily production reports.
16.	Cast and Crew Lists (with residency addresses)
17.	Locked production budget in Telefilm (or similar) format (for International & Interprovincial co-productions, include a breakdown of the budgeted costs between the co-producing partners, i.e. Ontario/other) OR Final Cost Report , if production is completed
18.	Audited Statement of production costs , as per CAVCO's audit guidelines for productions with a final cost of \$500,000 or more; or Review Engagement Report for productions with a final cost of \$200,000 to \$499,999.
19.	Schedule of Ontario labour costs NOTE: (i) Please submit projected numbers based on the locked production budget if production is NOT complete. (ii) Please submit FINAL actual numbers based on the Audited Statement of Production costs if production is complete.
20.	Schedule of non-Ontario costs NOTE: (i) Please submit projected numbers based on the locked production budget if production is NOT complete. (ii) Please submit FINAL actual numbers based on the Audited Statement of Production costs if production is complete.
21.	Signed final financing, equity, assistance, distribution, licensing, sales agency, exploitation and co-production agreements NOTE: If only Deal Memos are available, please submit the completed and executed Long Form Agreements to the OMDC Tax Credits department once the production is completed.
22.	Financing Plan
23.	Guarantee from a Canadian broadcaster that the Production will be shown in Ontario between 7pm and 11pm within two years of completion (or proof that such broadcast has occurred) OR Guarantee from an Ontario distributor that the Production will be released in Ontario within two years of completion (or proof that such distribution has occurred) The guarantee may be included in the license/distribution agreement or in a letter from the broadcaster/distributor.
24.	FOR FIRST-TIME PRODUCTIONS ONLY: a copy of the Producer's current curriculum vitae including credits and a First Time Producer Declaration
25.	Standard DVD copy of the completed production (the version that will be shown in Ontario). If available at this stage. NOTE: For television series, please submit the last episode only.
26.	OMDC's Waiver Declaration form

SCHEDULE OF NON-ONTARIO COSTS

Title: _____

Date: _____ Based on budget/cost report dated: _____

Account No.	Description (Payable to whom/or what)	Amount (Specify currency)	Exchange Rate	Budget Amount in \$ Cdn.

Notes:

In calculating the OFTTC, please note that non-Ontario costs are not necessarily the same as non-Canadian costs (as per CAVCO). Non-Ontario costs are costs NOT paid to either Ontario residents or corporations with a permanent establishment in Ontario.

Instructions:

1. Identify all funds payable from the production budget to non-Ontario residents and to facilities and suppliers located and providing services outside Ontario.
2. Include non-cash arrangements such as deferrals, contra, barter and facilities arrangements.
3. If there are no non-Ontario costs, state: "Nil."

Applicants may use this form or submit the information in a Non-Ontario Cost Schedule of their own design.

NOTE: This OMDC consolidation is prepared for purposes of convenience only.
The authoritative text of the legislation is set out in the official volumes.

ONTARIO FILM AND TELEVISION TAX CREDIT LEGISLATION

Taxation Act, S.O. 2007, CHAPTER 11, SCHEDULE A

Current to January 1, 2017

91. (1) A corporation that is a qualifying production company for a taxation year and that complies with the requirements of this section may claim an amount for the year in respect of and not exceeding the corporation's Ontario film and television tax credit for the year.

Amount of tax credit

(2) The amount of a qualifying production company's Ontario film and television tax credit for a taxation year is the sum of the company's eligible credits for the year in respect of eligible Ontario productions.

Eligible credit for first-time production

(3) A qualifying production company's eligible credit for a taxation year in respect of a first-time production is the sum of the amounts determined under subsections (4) and (5) in respect of the production.

Pre-2008 expenditures

(4) The amount determined under this subsection in respect of a first-time production for the purposes of subsection (3) is the sum of the amounts determined under the following paragraphs for the portion of the qualifying production company's qualifying labour expenditure for the production that relates to expenditures incurred after December 31, 2004 and before January 1, 2008:

1. 40 per cent of the lesser of,
 - i. the amount, if any, by which \$240,000 exceeds the total of the company's qualifying labour expenditures for the production for previous taxation years, and
 - ii. the company's qualifying labour expenditure for the taxation year for the production.
2. 30 per cent of the amount, if any, by which the company's qualifying labour expenditure for the taxation year for the production exceeds the lesser of the amounts, if any, determined under subparagraphs 1 i and ii.
3. If the production is a regional Ontario production, 10 per cent of the company's qualifying labour expenditure for the taxation year for the production.

(4.1) Repealed

Post-2007 expenditures

(5) The amount determined under this subsection in respect of a first-time production for the purposes of subsection (3) is the sum of the amounts determined under the following paragraphs for the portion of the qualifying production company's qualifying labour expenditure for the production that relates to expenditures incurred after December 31, 2007:

1. 40 per cent of the lesser of,
 - i. the amount, if any, by which \$240,000 exceeds the sum of,
 - A. the sum of the company's qualifying labour expenditures for the production for previous taxation years, and
 - B. the lesser of the amounts, if any, determined under subparagraphs 1 i and ii of subsection (4) in respect of the production for the taxation year, and

- ii. the company's qualifying labour expenditure for the taxation year for the production.
- 2. 35 per cent of the amount, if any, by which the company's qualifying labour expenditure for the taxation year for the production exceeds the lesser of the amounts, if any, determined under subparagraphs 1 i and ii.
- 3. If the production is a regional Ontario production, 10 per cent of the company's qualifying labour expenditure for the taxation year for the production.

Exception, prescribed tax credit rate for first-time productions

[\(6\)](#) If a percentage is prescribed for the purposes of replacing a percentage set out in paragraph 1, 2 or 3 of subsection (5), the prescribed percentage and not the percentage that it replaces shall apply in determining an amount under that paragraph.

Small first-time productions, application of subs. (8)

[\(7\)](#) Subsection (8) applies to a first-time production if,

- (a) the total amount of a qualifying production company's qualifying labour expenditures for the first-time production, at the time the production is completed, is \$50,000 or less; and
- (b) a tax credit under this section or section 43.5 of the *Corporations Tax Act* in respect of those expenditures has not been claimed by the qualifying production company under subsection (3) or 43.5 (4.1) of the *Corporations Tax Act*.

Rules for small first-time productions

[\(8\)](#) Despite subsection (3), the corporation's eligible credit in respect of a first-time production for a taxation year is the lesser of the corporation's qualifying labour expenditure in respect of the production for the year and,

- (a) if the production is a regional Ontario production, the amount, if any, by which \$20,000 exceeds the total of all tax credits claimed and allowed for previous taxation years under this section or section 43.5 of the *Corporations Tax Act* in respect of the corporation's qualifying labour expenditures for the production; or
- (b) if the production is not a regional Ontario production, the amount, if any, by which \$15,000 exceeds the total of all tax credits claimed and allowed for previous taxation years under this section or section 43.5 of the *Corporations Tax Act* in respect of the corporation's qualifying labour expenditures for the production.

Production other than first-time or regional production

[\(9\)](#) Subject to subsection (10), the eligible credit of a qualifying production company for a taxation year in respect of an eligible Ontario production that is not a first-time production is the sum of,

- (a) 30 per cent of the company's qualifying labour expenditure for the year in respect of the production, as determined in relation to expenditures incurred after December 31, 2004 and before January 1, 2008 that are included in the Ontario labour expenditure for the year in respect of the production; and
- (a.1) Repealed
- (b) 35 per cent of the company's qualifying labour expenditure for the year in respect of the production, as determined in relation to expenditures incurred after December 31, 2007 that are included in the Ontario labour expenditure for the year in respect of the production.

Regional Ontario production other than first-time production

[\(10\)](#) The eligible credit of a qualifying production company for a taxation year in respect of an eligible Ontario production that is a regional Ontario production but is not a first-time production is the sum of,

- (a) 40 per cent of the company's qualifying labour expenditure for the year for the production, as determined in relation to expenditures incurred after December 31, 2004 and before January 1, 2008 that are included in the Ontario labour expenditure for the year in respect of the production; and
- (a.1) Repealed

- (b) 45 per cent of the company's qualifying labour expenditure for the year for the production, as determined in relation to expenditures incurred after December 31, 2007 that are included in the Ontario labour expenditure for the year in respect of the production.

Exception, prescribed tax credit rate

[\(11\)](#) If a percentage is prescribed for the purposes of replacing a percentage set out in subsection (9) or (10), the prescribed percentage and not the percentage that it replaces shall apply in determining an amount under that subsection in respect of the period to which the prescribed percentage applies.

Exception

[\(12\)](#) Despite subsections (3) to (11), a qualifying production company's eligible credit under this section for a taxation year in respect of an eligible Ontario production is nil if the company claims a tax credit in respect of the production for any taxation year under section 43.10 of the *Corporations Tax Act* or section 92.

Application for certificate

[\(13\)](#) In order to be eligible to claim an amount in respect of an Ontario film and television tax credit under this section with respect to a particular production, a qualifying production company shall apply to the Ontario Media Development Corporation, or to another person designated by the Minister of Culture, for certification that the production is an eligible Ontario production for the purposes of this section.

Same

[\(14\)](#) A qualifying production company that applies for certification shall provide the information specified for the purposes of this section by the Ontario Media Development Corporation or the person designated by the Minister of Culture to the person who specified that it be provided.

Certificate

[\(15\)](#) If the particular production is an eligible Ontario production for the purposes of this section, the Ontario Media Development Corporation or the person designated by the Minister of Culture shall issue to the qualifying production company a certificate and any amended certificates, with each certificate,

- (a) certifying that the particular production is an eligible Ontario production for the purposes of this section; and
- (b) certifying the estimated amount of the corporation's eligible credit for the production, for the purposes of this section.

Same

[\(16\)](#) In order to claim an amount under this section for a taxation year in respect of a particular production, a qualifying production company must deliver to the Ontario Minister with its return for the year the certificate most recently issued in respect of the production or a certified copy of it.

Revocation of certificate

[\(17\)](#) A certificate or amended certificate issued under subsection (15) may be revoked,

- (a) if an omission or incorrect statement was made for the purpose of obtaining the certificate;
- (b) if the production is not an eligible Ontario production;
- (c) if the corporation to which the certificate is issued is not a qualifying production company; or
- (d) if the corporation is issued a certificate in respect of the production under section 43.10 of the *Corporations Tax Act* or section 92.

Same

[\(18\)](#) A certificate that is revoked is deemed never to have been issued.

Definitions

[\(19\)](#) In this section,

“eligible Ontario production” means a film or television production that satisfies the prescribed conditions;
 (“production ontarienne admissible”)

“film studio” means,

- (a) a building in which sets are used for the purpose of making film or television productions and sound, light and human access are controlled, or
- (b) a building in which activities are carried out directly in support of animation if the production is an animated production or contains animated segments; (“studio”)

“first-time production” means an eligible Ontario production that is a first-time production under the prescribed rules; (“première production”)

“Greater Toronto Area” means the geographic area composed of the City of Toronto and the regional municipalities of Durham, Halton, Peel and York; (“Grand Toronto”)

“location day” means, in respect of an eligible Ontario production, a day on which principal photography for the production is done in Ontario outside a film studio; (“jour de tournage en extérieur”)

“Ontario labour expenditure” means the amount determined under the prescribed rules; (“dépense de main-d’oeuvre en Ontario”)

“principal photography” includes key animation if the film or television production is an animated production or contains animated segments; (“principaux travaux de prise de vues”)

“qualifying labour expenditure” means the amount determined under the prescribed rules; (“dépense de main-d’oeuvre admissible”)

“qualifying production company” means a corporation that satisfies the prescribed conditions; (“société de production admissible”)

“regional Ontario production” means an eligible Ontario production,

- (a) for which the principal photography in Ontario is done entirely outside the Greater Toronto Area,
- (b) for which the principal photography in Ontario is done in whole or in part outside a film studio, but only if,
 - (i) the number of location days in the Greater Toronto Area for the production does not exceed 15 per cent of the total number of location days in respect of the production, and
 - (ii) the number of location days for the production is at least five or, in the case of a production that is a television series, is at least equal to the number of episodes in the production, or
- (c) for which the principal photography in Ontario consists entirely of animation, but only if no more than 15 per cent of the principal photography in Ontario is done in the Greater Toronto Area. (“production régionale ontarienne”)

NOTE: This OMDC consolidation is prepared for the purposes of convenience only. The authoritative text of the Regulation is set out in the Ontario Gazette.

**ONTARIO FILM AND TELEVISION TAX CREDIT REGULATION
(O. Reg. 37/09 made under the *Taxation Act, 2007*)**

(Current to July 20, 2012)

Definitions

23. In this Division,

“Canadian”, when used in reference to a person or corporation other than a Canadian broadcaster, has the meaning assigned by subsection 1106 (1) of the Federal regulations;

“Ontario-based individual” means, in relation to a film or television production, an individual who was resident in Ontario at the end of the calendar year immediately before the calendar year in which principal photography for the production commences;

“parent” means a corporation that wholly owns another corporation;

“principal photography” includes key animation if the film or television production is an animated production or contains animated segments;

“producer” has the meaning assigned by the definition of that term in subsection 1106 (1) of the Federal regulations except that the reference to “film or video production” in that definition shall be read as “film or television production”;

“salary” and “wages” do not include an amount described in section 7 of the Federal Act or any amount determined by reference to profits or revenues;

“television series production” means, with respect to a cycle of a television series, the episode or group of episodes of the television series that is specified to be a production in an application for certification for the purposes of section 91 or 92 of the Act.

Qualifying production company

26. A corporation is a qualifying production company for a taxation year for the purposes of section 91 of the Act if, throughout the year,

- (a) it is a qualified corporation for the purposes of section 125.4 of the Federal Act;
- (b) it has a permanent establishment in Ontario;
- (c) it is not exempt from tax under Part III of the Act; and
- (d) it is not controlled directly or indirectly in any manner whatever by one or more corporations all or part of whose taxable income is exempt from tax under Part I of the Federal Act.

Eligible Ontario production

27. (1) A film or television production made by a qualifying production company is an eligible Ontario production for the purposes of section 91 of the Act if the following conditions are satisfied:

- 1. The production is not an excluded production for the corporation.

2. If the production is for television broadcast and is not intended primarily for children, the production or, if the production consists of two or more episodes, each episode of the production is suitable for initial broadcast in a standard television time slot of at least 30 minutes.
3. Neither the production nor any interest in any entity that has, directly or indirectly, an interest in the production is a tax shelter investment for the purposes of section 143.2 of the Federal Act.
4. The producer of the production or, if the production is an interprovincial co-production or treaty co-production, the producer of the Ontario portion of the production is at all times an individual who was resident in Ontario at the end of the last two calendar years ending before principal photography for the production commences.
5. If the production is not a treaty co-production, the Ontario Media Development Corporation or another person designated by the Minister of Culture has allotted (under the rules in subsection 1106 (5) of the Federal regulations) not less than six points,
 - i. to the production if it is not a television series production,
 - ii. to each episode if the production is a television series production.
6. Not less than 75 per cent of the cost of producing the production or, if the production is an interprovincial co-production or treaty co-production, not less than 75 per cent of the cost of producing the Ontario portion of the production, other than costs determined by reference to the amount of profits or revenue from the production, is for amounts payable to Ontario-based individuals or corporations for goods or services provided by the Ontario-based individuals or corporations in the course of carrying on their businesses at permanent establishments in Ontario.
7. If the production is not an interprovincial co-production or a treaty co-production,
 - i. at least 95 per cent of the cost of post-production work for the production was for post-production work carried out in Ontario, and
 - ii. if the production is not a documentary, the photography or key animation for the production was done in Ontario during at least 85 per cent of the total number of days during which photography or key animation was done for the production.
8. If the production is an interprovincial co-production, not less than 20 per cent of the cost of producing the production, other than costs determined by reference to the amount of profits or revenue from the production, is in respect of the Ontario portion of the production.
9. If the production is a treaty co-production and contains a Canadian portion that, if considered alone, would be an interprovincial co-production, not less than 20 per cent of the cost of producing the Canadian portion of the production, other than costs determined by reference to the amount of profits or revenue from the production, is in respect of the Ontario portion of the production.

(2) For the purposes of paragraph 1 of subsection (1), a film or television production is an excluded production with respect to a corporation,

- (a) if the corporation has not filed an application with the Ontario Media Development Corporation or another person designated by the Minister of Culture for a certificate of completion before the production's application deadline;
- (b) if a certificate certifying that the production has been completed has not been issued within six months after the application deadline for the production by the Ontario Media Development Corporation or such other person as may be designated by the Minister of Culture;
- (c) if, in the case where the production is not a treaty co-production, neither the corporation nor a prescribed taxable Canadian corporation related to the corporation,
 - (i) is, except to the extent of an interest in the production held by the prescribed taxable Canadian corporation as a co-producer of the production or by a person prescribed in subsection 1106 (10) of the Federal regulations, the exclusive worldwide copyright owner of the production for

all commercial exploitation purposes for the 25-year period that begins at the earliest time after the production is completed that the production is commercially exploitable, and

- (ii) controls the initial licensing of commercial exploitation of the production;
- (d) if there is no agreement in writing, for consideration at fair market value, to have the production shown in Ontario within the two-year period that begins at the earliest time after the production is completed that the production is commercially exploitable,
 - (i) with a corporation having a permanent establishment in Ontario that is a Canadian and is a distributor of film or television productions, or
 - (ii) with a Canadian broadcaster that is not associated with the corporation,
- (e) if distribution is made in Ontario by a person who is not a Canadian within the two-year period that begins at the earliest time after the production is completed that the production is commercially exploitable;
- (f) unless it is intended primarily for children, the initial broadcast of the production, if it is a television production, is not during prime time;
- (g) the production does not satisfy the requirements of the Producer Control Guidelines issued by the Department of Canadian Heritage; or
- (h) the production is described in any of subparagraphs (b) (i) to (xi) of the definition of “excluded production” in subsection 1106 (1) of the Federal regulations.

(3) For the purposes of subsection (1), a film or television production is an interprovincial co-production if the following conditions are satisfied:

1. The film or television production is jointly produced in accordance with a co-production agreement between one or more qualifying production companies and one or more other corporations.
2. All of the corporations referred to in paragraph 1 are Canadian.
3. With respect to each of the corporations referred to in paragraph 1 that is not a qualifying production company, less than 75 per cent of the cost to the corporation of producing its portion of the production, other than costs determined by reference to the amount of profits or revenue from the production, is for amounts payable by the corporation to,
 - i. Ontario-based individuals,
 - ii. one or more other corporations in respect of goods or services provided by Ontario-based individuals, or
 - iii. one or more corporations for goods or services provided in the course of carrying on their businesses at permanent establishments in Ontario.

(4) In this section,

“application deadline” means, in respect of an application for certification by a qualifying production company for a film or television production, the later of,

- (a) the day that is 24 months after the end of the qualifying production company’s taxation year in which the production’s principal photography began, or
- (b) the day that is 18 months after the day referred to in clause (a), if
 - (i) the qualifying production company has filed with the Ontario Minister a waiver described in subparagraph 152 (4) (a) (ii) of the Federal Act within the company’s normal reassessment period for its first and second taxation years ending after the production’s principal photography began, and
 - (ii) a copy of the waiver is provided to the Ontario Media Development Corporation or such other person as may be designated by the Minister of Culture;

“Canadian broadcaster” means a corporation that carries on a broadcasting undertaking licensed by the Canadian Radio-television and Telecommunications Commission under the *Broadcasting Act* (Canada);

“prescribed taxable Canadian corporation” means a taxable Canadian corporation that is a Canadian, other than,

- (a) a corporation that is controlled directly or indirectly in any manner whatever by one or more persons all or part of whose taxable income is exempt from tax under Part I of the Federal Act, or
- (b) a corporation that is a prescribed labour-sponsored venture capital corporation under section 6701 of the Federal regulations;

“prime time” means the period of four hours beginning at 7:00 p.m.;

“treaty co-production” means a film or television production whose production is contemplated under an instrument listed in any of paragraphs 1106 (3) (a) to (e) of the Federal regulations and to which the instrument applies.

First-time production

28. (1) A production is a first-time production for the purposes of section 91 of the Act if,

- (a) the producer of the production or, if the production is an interprovincial co-production or treaty co-production for the purposes of section 27, the producer of the Ontario portion of the production,
 - (i) has not more than one previous screen credit as a producer of a production commercially released or broadcast on television during prime time, and
 - (ii) has not participated as a producer of any other film or television production in respect of which a certificate has been issued under section 91 of the Act or 43.5 of the *Corporations Tax Act*; and
- (b) for the period starting immediately before principal photography for the production commenced and ending immediately after the date of issue of the last issued certificate for the production under subsection 91 (15) of the Act or subsection 43.5 (9) of the *Corporations Tax Act*, the corporation is not controlled directly or indirectly by,
 - (i) an individual with more than one previous screen credit as a producer of a production commercially released or broadcast on television during prime time, or who has participated as a producer of any other film or television production in respect of which a certificate has been issued under section 91 of the Act or section 43.5 of the *Corporations Tax Act* or
 - (ii) a corporation that is, or is associated with, a corporation to which a certificate in respect of any other film or television production has been issued under section 91 of the Act or section 43.5 of the *Corporations Tax Act*.

(2) In subsection (1),

“prime time” has the meaning assigned by subsection 27 (4).

Qualifying labour expenditure

29. (1) For the purposes of section 91 of the Act, a corporation’s qualifying labour expenditure for a taxation year in respect of an eligible Ontario production is the amount, if any, by which “A” exceeds “B” where,

“A” is the amount, if any, by which “C” exceeds “D” where,

“C” is the sum of,

- (a) the corporation’s Ontario labour expenditure for the year in respect of the production, and
 - (b) the amount by which the sum of all amounts each of which is the corporation’s Ontario labour expenditure for a previous taxation year in respect of the production exceeds the sum of all amounts each of which is a qualifying labour expenditure of the corporation in respect of the production for a previous taxation year before the end of which the principal filming or taping of the production began, and
- “D” is,

- (a) if the corporation is a not a parent, nil, or
- (b) if the corporation is a parent, the sum of all amounts each of which is determined in respect of the production under paragraph 3 of subsection 30 (1) as a consequence of an agreement referred to in that paragraph between the corporation and the subsidiary corporation it wholly owns, and
 - “B” is the sum of,
 - (a) all relevant assistance in respect of the production,
 - (i) that may reasonably be considered to be directly attributable to the amount of “A” for the year,
 - (ii) that, when it was required to file its return under the Act for the year, the corporation or any other person or partnership had received, was entitled to receive or was reasonably expected to receive, to the extent the assistance had not been repaid pursuant to a legal obligation to do so, and
 - (iii) that has not caused a reduction of the corporation’s Ontario labour expenditure for the year in respect of the production, and
 - (b) the amount calculated using the formula,

$$E \times A/F$$

in which,

- “A” is the amount of “A” for the year under this subsection,
- “E” is the amount, if any, determined under subsection (3), and
- “F” is the cost of the production.

(2) The amount of “A” in subsection (1) in respect of a production shall be determined without reference to any equity investment in the production held by a person prescribed under subsection 1106 (10) of the Federal regulations.

(3) The amount of “E” in clause (b) of the definition of “B” in subsection (1) is the amount, if any, by which “G” exceeds “H” where,

- “G” is the amount that would be determined under clause (a) of the definition of “B” in subsection (1) if that clause were read without reference to subclause (i) of that clause, and
- “H” is the amount determined under clause (a) of the definition of “B” in subsection (1).

(4) In this section,

“relevant assistance” means, in respect of an eligible Ontario production, an amount that is assistance for the purposes of section 125.4 of the Federal Act other than,

- (a) assistance provided, or deemed by the Federal Act to be provided, under subsection 127 (5) or (6) of the Federal Act or section 125.5 of that Act, and
- (b) assistance that is a tax credit under section 90, 91, 94 or 95 of the Act or section 43.5, 43.7, 43.8 or 43.12 of the *Corporations Tax Act*.

Ontario labour expenditure

30. (1) For the purposes of section 91 of the Act and subject to subsection (2), a qualifying corporation’s Ontario labour expenditure for a taxation year in respect of an eligible Ontario production is the sum of the following amounts to the extent that the amounts are reasonable in the circumstances and included in the cost or capital cost of the eligible Ontario production to the corporation or to another person or a partnership:

1. Salary and wages incurred in the year or the previous taxation year by the corporation that are directly attributable to the production of the eligible Ontario production for the stages of production from the production commencement time to the end of the post-production stage, if the salary and wages are paid by the corporation in the year or within 60 days after the end of the year to Ontario-based individuals, but not including salary or wages incurred in the previous taxation year that are paid within 60 days after the end of the previous taxation year.
2. That portion of the remuneration (excluding salary and wages and excluding remuneration that relates to services rendered in the previous taxation year for which the remuneration was paid within 60

days after the end of the previous taxation year) that is directly attributable to the production of the eligible Ontario production and relates to services rendered in the year or the previous taxation year for the stages of production from the production commencement time to the end of the post-production stage if the remuneration is paid by the corporation in the year or within 60 days after the end of the year to,

- i. an Ontario-based individual who is not an employee of the corporation, to the extent that the amount paid,
 - A. is attributable to services personally rendered by the individual for the production of the eligible Ontario production, or
 - B. is attributable to, and does not exceed the salary and wages of, Ontario-based individuals who are employees of the Ontario-based individual, to the extent the salary and wages are paid to the employees for personally rendering services for the production of the eligible Ontario production,
- ii. another taxable Canadian corporation, to the extent that the amount paid is attributable to, and does not exceed the salary and wages of Ontario-based individuals who are employees of the other corporation, if the salary and wages are paid to the employees for personally rendering services for the production of the eligible Ontario production,
- iii. another taxable Canadian corporation,
 - A. if all the issued and outstanding shares of the capital stock of that corporation (except directors' qualifying shares) belong to an Ontario-based individual and the activities of that corporation consist principally of the provision of the Ontario-based individual's services, and
 - B. to the extent the amount paid is attributable to services rendered personally by the Ontario-based individual for the production of the eligible Ontario production, or
- iv. a partnership that is carrying on business in Canada, to the extent that the amount paid,
 - A. is attributable to services personally rendered by a member of the partnership who is an Ontario-based individual and the services are rendered for the production of the eligible Ontario production, or
 - B. is attributable to, and does not exceed the salary and wages of Ontario-based individuals who are employees of the partnership, to the extent the salary and wages are paid to the employees for personally rendering services for the production of the eligible Ontario production.

3. If the corporation is a subsidiary of a parent that is a taxable Canadian corporation and the corporation and its parent have agreed that this paragraph applies in respect of the production, the reimbursement made by the corporation in the year, or within 60 days after the end of the year, of an expenditure that was incurred by the parent in a particular taxation year of the parent in respect of that production and that would be included in the corporation's Ontario labour expenditure in respect of the property for the particular taxation year because of paragraph 1 or 2 if,

- i. the corporation had had such a particular taxation year, and
- ii. the expenditure were incurred by the corporation for the same purpose as it was by the parent and were paid at the same time and to the same person or partnership as it was by the parent.

(2) For the purposes of determining the Ontario labour expenditure of a qualifying production company,

- (a) remuneration does not include remuneration determined by reference to profits or revenues;
- (b) an expenditure incurred in respect of an eligible Ontario production by a qualifying production company (in this clause referred to as the "co-producer") in respect of goods supplied or services rendered by another qualifying production company to the co-producer in respect of the production

is not a labour expenditure to the co-producer and, for the purpose of applying this section to the co-producer, is not a cost or capital cost of the production; and

(c) no amount shall be included to the extent section 37 of the Federal Act applies to the amount.

(3) In this section,

“production commencement time” means, in respect of a film or television production, the earlier of,

(a) the day when principal photography of the production begins, and

(b) the latest of,

(i) the day when a qualified production company that has an interest in the production, or the parent of the company, first makes an expenditure for salary, wages or other remuneration for activities of scriptwriters that are directly attributable to the development by the company of script material of the production,

(ii) the day when the company or the parent of the company acquires a property on which the production is based that is a published literary work, screenplay, play, personal history or all or part of the script material of the production, and

(iii) two years before the day on which principal photography of the production begins.

**NOTE: This OMDC version is prepared for the purposes of convenience only.
The authoritative text of the Act is set out in the official volumes.**

CANADIAN FILM OR VIDEO PRODUCTION TAX CREDIT REGULATIONS

Section 1106 of the Federal Income Tax Regulations

Certificates Issued by the Minister of Canadian Heritage

Current to December 8, 2016

1106. (1) The following definitions apply in this Division and in paragraph (x) of Class 10 in Schedule II.

“application for a certificate of completion”

« *demande de certificat d’achèvement* »

“application for a certificate of completion”, in respect of a film or video production, means an application by a prescribed taxable Canadian corporation in respect of the production, filed with the Minister of Canadian Heritage before the day (in this Division referred to as “the production’s application deadline”) that is the later of

(a) the day that is 24 months after the end of the corporation’s taxation year in which the production’s principal photography began, or

(b) the day that is 18 months after the day referred to in paragraph (a), if the corporation has filed, with the Canada Revenue Agency, and provided to the Minister of Canadian Heritage a copy of, a waiver described in subparagraph 152(4)(a)(ii) of the Act, within the normal reassessment period for the corporation in respect of the first and second taxation years ending after the production’s principal photography began.

“Canadian”

« *Canadien* »

“Canadian” means a person that is

(a) an individual who is

- (i) a citizen, as defined in subsection 2(1) of the [Citizenship Act](#), of Canada, or
- (ii) a permanent resident, as defined in subsection 2(1) of the [Immigration and Refugee Protection Act](#), or

(b) a corporation that is a Canadian-controlled entity, as determined under sections 26 to 28 of the [Investment Canada Act](#).

“Canadian government film agency”

« *agence cinématographique d’État* »

“Canadian government film agency” means a federal or provincial government agency whose mandate is related to the provision of assistance to film productions in Canada.

“certificate of completion”

« *certificat d’achèvement* »

“certificate of completion”, in respect of a film or video production of a corporation, means a certificate certifying that the production has been completed, issued by the Minister of Canadian Heritage before the day (in this Division referred to as “the production’s certification deadline”) that is six months after the production’s application deadline.

“copyright owner”

« titulaire du droit d’auteur »

“copyright owner”, of a film or video production, at any time means

(a) the maker, as defined in section 2 of the [Copyright Act](#), who at that time owns copyright, in relation to the production, within the meaning of section 3 of that Act; or

(b) a person to whom that copyright has been assigned, under an assignment described in section 13 of the [Copyright Act](#), either wholly or partially, by the maker or by another owner to whom this paragraph applied before the assignment.

“excluded production”

« production exclue »

“excluded production” means a film or video production, of a particular corporation that is a prescribed taxable Canadian corporation,

(a) in respect of which

- (i) the particular corporation has not filed an application for a certificate of completion before the production’s application deadline,
- (ii) a certificate of completion has not been issued before the production’s certification deadline,
- (iii) if the production is not a treaty co-production, a person (other than the particular corporation or a prescribed person)
 - (A) is a copyright owner of the production for any commercial exploitation purposes at any time during the 25-year period that begins at the earliest time after the production was completed that it is commercially exploitable, or
 - (B) controls the initial licensing of commercial exploitation,
- (iv) there is not an agreement in writing, for consideration at fair market value, to have the production shown in Canada within the 2-year period that begins at the earliest time after the production was completed that it is commercially exploitable,
 - (A) with a corporation that is a Canadian and is a distributor of film or video productions, or
 - (B) with a corporation that holds a broadcasting license issued by the Canadian Radio-television and Telecommunications Commission for television markets, or
- (v) distribution is made in Canada within the 2-year period that begins at the earliest time after the production was completed that it is commercially exploitable by a person that is not a Canadian, or

(b) that is

- (i) news, current events or public affairs programming, or a programme that includes weather or market reports,
- (ii) Repealed,

- (iii) a production in respect of a game, questionnaire or contest (other than a production directed primarily at minors),
- (iv) a sports event or activity,
- (v) a gala presentation or an awards show,
- (vi) a production that solicits funds,
- (vii) reality television,
- (viii) pornography,
- (ix) advertising,
- (x) a production produced primarily for industrial, corporate or institutional purposes, or
- (xi) a production, other than a documentary, all or substantially all of which consists of stock footage.

“producer”

« *producteur* »

“producer” means a producer of a film or video production, except that it does not include a person unless the person is the individual who

(a) controls and is the central decision maker in respect of the production;

(b) is directly responsible for the acquisition of the production story or screenplay and the development, creative and financial control and exploitation of the production; and

(c) is identified in the production as being the producer of the production.

“remuneration”

« *rémunération* »

“remuneration” means remuneration other than an amount determined by reference to profits or revenues.

“twinning arrangement”

« *convention de jumelage* »

“twinning arrangement” means the pairing of two distinct film or video productions, one of which is a Canadian film or video production and the other of which is a foreign film or video production.

Prescribed Taxable Canadian Corporation

(2) For the purposes of section 125.4 of the Act and this Division, “prescribed taxable Canadian corporation” means a taxable Canadian corporation that is a Canadian, other than a corporation that is

(a) controlled directly or indirectly in any manner whatever by one or more persons all or part of whose taxable income is exempt from tax under Part I of the Act; or

(b) a prescribed labour-sponsored venture capital corporation, as defined in section 6701.

Treaty Co-production

(3) For the purpose of this Division, “treaty co-production” means a film or video production whose production is contemplated under any of the following instruments, and to which the instrument applies:

- (a) a co-production treaty entered into between Canada and another State;
- (b) the Memorandum of Understanding between the Government of Canada and the Government of the Hong Kong Special Administrative Region of the People's Republic of China on Film and Television Co-Production;
- (c) the Common Statement of Policy on Film, Television and Video Co-Productions between Japan and Canada;
- (d) the Memorandum of Understanding between the Government of Canada and the Government of the Republic of Korea on Television Co-Production; and
- (e) the Memorandum of Understanding between the Government of Canada and the Government of the Republic of Malta on Audio-Visual Relations.

Canadian Film or Video Production

(4) Subject to subsections (6) to (9), for the purposes of section 125.4 of the Act, this Part and Schedule II, "Canadian film or video production" means a film or video production, other than an excluded production, of a prescribed taxable Canadian corporation in respect of which the Minister of Canadian Heritage has issued a certificate (other than a certificate that has been revoked under subsection 125.4(6) of the Act) and that is

(a) a treaty co-production; or

(b) a film or video production

- (i) whose producer is a Canadian at all times during its production,
- (ii) in respect of which the Minister of Canadian Heritage has allotted not less than six points in accordance with subsection (5),
- (iii) in respect of which not less than 75% of the total of all costs for services provided in respect of producing the production (other than excluded costs) was payable in respect of services provided to or by individuals who are Canadians, and for the purpose of this subparagraph, excluded costs are
 - (A) costs determined by reference to the amount of income from the production,
 - (B) remuneration payable to, or in respect of, the producer or individuals described in any of subparagraphs (5)(a)(i) to (viii) and (b)(i) to (vi) and paragraph (5)(c) (including any individuals that would be described in paragraph (5)(c) if they were Canadians),
 - (C) amounts payable in respect of insurance, financing, brokerage, legal and accounting fees, and similar amounts, and
 - (D) costs described in subparagraph (iv), and
- (iv) in respect of which not less than 75% of the total of all costs incurred for the post-production of the production, including laboratory work, sound re-recording, sound editing and picture editing, (other than costs that are determined by reference to the amount of income from the production and remuneration that is payable to, or in respect of, the producer or individuals described in any of subparagraphs (5)(a)(i) to (viii) and (b)(i) to (vi) and paragraph (5)(c), including any individuals that would be described in paragraph (5)(c) if they were Canadians) was incurred in respect of services provided in Canada.

(5) For the purposes of this Division, the Minister of Canadian Heritage shall allot, in respect of a film or video production

(a) that is not an animation production, in respect of each of the following persons if that person is an individual who is a Canadian,

- (i) for the director, two points,
- (ii) for the screenwriter, two points,

- (iii) for the lead performer for whose services the highest remuneration was payable, one point,
- (iv) for the lead performer for whose services the second highest remuneration was payable, one point,
- (v) for the art director, one point,
- (vi) for the director of photography, one point,
- (vii) for the music composer, one point, and
- (viii) for the picture editor, one point;

(b) that is an animation production, in respect of each of the following persons if that person is an individual who is a Canadian,

- (i) for the director, one point,
- (ii) for the lead voice for which the highest or second highest remuneration was payable, one point,
- (iii) for the design supervisor, one point,
- (iv) for the camera operator where the camera operation is done in Canada, one point,
- (v) for the music composer, one point, and
- (vi) for the picture editor, one point;

(c) that is an animation production, one point if both the principal screenwriter and the storyboard supervisor are individuals who are Canadians; and

(d) that is an animation production, in respect of each of the following places if that place is in Canada,

- (i) for the place where the layout and background work is done, one point,
- (ii) for the place where the key animation is done, one point, and
- (iii) for the place where the assistant animation and in-betweening is done, one point.

(6) A production (other than a production that is an animation production or a treaty co-production) is a Canadian film or video production only if there is allotted in respect of the production two points under subparagraph (5)(a)(i) or (ii) and one point under subparagraph (5)(a)(iii) or (iv).

(7) An animation production (other than a production that is a treaty co-production) is a Canadian film or video production only if there is allotted, in respect of the production,

(a) one point under subparagraph (5)(b)(i) or paragraph (5)(c);

(b) one point under subparagraph (5)(b)(ii); and

(c) one point under subparagraph (5)(d)(ii).

Lead performer/screenwriter

(8) For the purposes of this Division,

(a) a lead performer in respect of a production is an actor or actress who has a leading role in the production having regard to the performer's remuneration, billing and time on screen;

(b) a lead voice in respect of an animation production is the voice of the individual who has a leading role in the production having regard to the length of time that the individual's voice is heard in the production and the individual's remuneration; and

(c) where a person who is not a Canadian participates in the writing and preparation of the screenplay for a production, the screenwriter is not a Canadian unless the principal screenwriter is an individual who is otherwise a Canadian, the screenplay for the production is based upon a work authored by a Canadian, and the work is published in Canada.

Documentary Production

(9) A documentary production that is not an excluded production, and that is allotted less than six points because one or more of the positions referred to in paragraph (5)(a) is unoccupied, is a Canadian film or video production if all of the positions described in that paragraph that are occupied in respect of the production are occupied by individuals who are Canadians.

Prescribed Person

(10) For the purpose of section 125.4 of the Act and this Division, "prescribed person" means any of the following:

(a) a corporation that holds a television, specialty or pay-television broadcasting licence issued by the Canadian Radio-television and Telecommunications Commission;

(b) a corporation that holds a broadcast undertaking licence and that provides production funding as a result of a "significant benefits" commitment given to the Canadian Radio-television and Telecommunications Commission;

(c) a person to which paragraph 149(1)(l) of the Act applies and that has a fund that is used to finance Canadian film or video productions;

(d) a Canadian government film agency;

(e) in respect of a film or video production, a non-resident person that does not carry on a business in Canada through a permanent establishment in Canada and whose interest (or, for civil law, right) in the production is acquired to comply with the certification requirements of a treaty co-production twinning arrangement;

(f) a person

- (i) to which paragraph 149(1)(f) of the Act applies,
- (ii) that has a fund that is used to finance Canadian film or video productions, all or substantially all of which financing is provided by way of a direct ownership interest (or, for civil law, right) in those productions, and
- (iii) that, after 1996, has received donations only from persons described in any of paragraphs (a) to (e);

(g) a prescribed taxable Canadian corporation;

(h) an individual who is a Canadian; and

(i) a partnership, each member of which is described in any of paragraphs (a) to (h).

Prescribed Amount

(11) For the purpose of the definition "assistance" in subsection 125.4(1) of the Act, "prescribed amount" means an amount paid or payable to a taxpayer under the License Fee Program of the Canadian Television Fund or as a licence-fee top-up contribution from the Canada Media Fund.

Copyright Owner

(12) For the purpose of the definition “copyright owner” in subsection (1),

(a) the right of a person to share in the revenues from or proceeds of disposition of an interest or, for civil law, a right, in a film or video production is not, in and by itself, an interest or right as a copyright owner of the production; and

(b) for greater certainty, a grant of an exclusive licence, within the meaning assigned by the [Copyright Act](#), is not an assignment of a copyright.

NOTE: **This OMDC version is prepared for the purposes of convenience only.
The authoritative text of the Act is set out in the official volumes.**

CANADIAN FILM OR VIDEO PRODUCTION TAX CREDIT LEGISLATION

INCOME TAX ACT, PART I

Definitions

125.4 (1) The definitions in this subsection apply in this section.

“assistance”

« *montant d'aide* »

“assistance” means an amount, other than a prescribed amount or an amount deemed under subsection (3) to have been paid, that would be included under paragraph 12(1)(x) in computing a taxpayer’s income for any taxation year if that paragraph were read without reference to

(a) subparagraphs 12(1)(x)(v) to (viii), if the amount were received

- (i) from a person or partnership described in subparagraph 12(1)(x)(ii), or
- (ii) in circumstances where clause 12(1)(x)(i)(C) applies; and

(b) subparagraphs 12(1)(x)(v) to (vii), in any other case.

“Canadian film or video production”

« *production cinématographique ou magnétoscopique canadienne* »

“Canadian film or video production” has the meaning assigned by regulation.

“Canadian film or video production certificate”

« *certificat de production cinématographique ou magnétoscopique canadienne* »

“Canadian film or video production certificate” means a certificate issued in respect of a production by the Minister of Canadian Heritage certifying that the production is a Canadian film or video production in respect of which that Minister is satisfied that, except where the production is a treaty co-production (as defined in subsection 1106(3) of the [Income Tax Regulations](#)), an acceptable share of revenues from the exploitation of the production in non-Canadian markets is, under the terms of any agreement, retained by

(a) a qualified corporation that owns or owned an interest in, or for civil law a right in, the production;

(b) a prescribed taxable Canadian corporation related to the qualified corporation; or

(c) any combination of corporations described in paragraph (a) or (b).

“investor”

“investor” [Repealed]

“labour expenditure”

« *dépense de main-d'oeuvre* »

“labour expenditure”, of a corporation for a taxation year in respect of a Canadian film or video production, means, in the case of a corporation that is not a qualified corporation for the taxation year, nil, and in the case of a corporation that is a qualified corporation for the taxation year, subject to subsection (2), the total of the following amounts to the extent that they are reasonable in the circumstances and included in the cost to, or in the case of depreciable property the capital cost to, the corporation, or any other person or partnership, of the production:

(a) the salary or wages directly attributable to the production that are incurred after 1994 and in the taxation year, or the preceding taxation year, by the corporation for the stages of production of the property, from the production commencement time to the end of the post-production stage, and paid by it in the taxation year or within 60 days after the end of the taxation year (other than amounts incurred in that preceding taxation year that were paid within 60 days after the end of that preceding taxation year),

(b) that portion of the remuneration (other than salary or wages and other than remuneration that relates to services rendered in the preceding taxation year and that was paid within 60 days after the end of that preceding taxation year) that is directly attributable to the production of property, that relates to services rendered after 1994 and in the taxation year, or that preceding taxation year, to the corporation for the stages of production, from the production commencement time to the end of the post-production stage, and that is paid by it in the taxation year or within 60 days after the end of the taxation year to

- (i) an individual who is not an employee of the corporation, to the extent that the amount paid
 - (A) is attributable to services personally rendered by the individual for the production of the property, or
 - (B) is attributable to and does not exceed the salary or wages of the individual's employees for personally rendering services for the production of the property,
- (ii) another taxable Canadian corporation, to the extent that the amount paid is attributable to and does not exceed the salary or wages of the other corporation's employees for personally rendering services for the production of the property,
- (iii) another taxable Canadian corporation all the issued and outstanding shares of the capital stock of which (except directors' qualifying shares) belong to an individual and the activities of which consist principally of the provision of the individual's services, to the extent that the amount paid is attributable to services rendered personally by the individual for the production of the property, or
- (iv) a partnership that is carrying on business in Canada, to the extent that the amount paid
 - (A) is attributable to services personally rendered by an individual who is a member of the partnership for the production of the property, or
 - (B) is attributable to and does not exceed the salary or wages of the partnership's employees for personally rendering services for the production of the property, and

(c) where

- (i) the corporation is a subsidiary wholly-owned corporation of another taxable Canadian corporation (in this section referred to as the "parent"), and
- (ii) the corporation and the parent have agreed that this paragraph apply in respect of the production,

the reimbursement made by the corporation in the year, or within 60 days after the end of the year, of an expenditure that was incurred by the parent in a particular taxation year of the parent in respect of that production and that would be included in the labour expenditure of the corporation in respect of the property for the particular taxation year because of paragraph (a) or (b) if

- (iii) the corporation had had such a particular taxation year, and

- (iv) the expenditure were incurred by the corporation for the same purpose as it was by the parent and were paid at the same time and to the same person or partnership as it was by the parent.

“production commencement time”

« *début de la production* »

“production commencement time”, in respect of a Canadian film or video production, means the earlier of

(a) the time at which principal photography of the production begins, and

(b) the latest of

- (i) the time at which a qualified corporation that has an interest in, or for civil law a right in, the production, or the parent of the corporation, first makes an expenditure for salary or wages or other remuneration for activities, of scriptwriters, that are directly attributable to the development by the corporation of script material of the production,
- (ii) the time at which the corporation or the parent of the corporation acquires a property, on which the production is based, that is a published literary work, screenplay, play, personal history or all or part of the script material of the production, and
- (iii) two years before the date on which principal photography of the production begins.

“qualified corporation”

« *société admissible* »

“qualified corporation” for a taxation year means a corporation that is throughout the year a prescribed taxable Canadian corporation the activities of which in the year are primarily the carrying on through a permanent establishment (as defined by regulation) in Canada of a business that is a Canadian film or video production business.

“qualified labour expenditure”

« *dépense de main-d’oeuvre admissible* »

“qualified labour expenditure”, of a corporation for a taxation year in respect of a Canadian film or video production, means the lesser of

(a) the amount, if any, by which

- (i) the total of
 - (A) the labour expenditure of the corporation for the year in respect of the production, and
 - (B) the amount by which the total of all amounts each of which is the labour expenditure of the corporation for a preceding taxation year in respect of the production exceeds the total of all amounts each of which is a qualified labour expenditure of the corporation in respect of the production for a preceding taxation year before the end of which the principal filming or taping of the production began

exceeds

- (ii) where the corporation is a parent, the total of all amounts each of which is an amount that is the subject of an agreement in respect of the production referred to in paragraph (c) of the definition “labour expenditure” between the corporation and its wholly-owned corporation, and

(b) the amount determined by the formula

where

A

is 60% of the amount by which

- (i) the total of all amounts each of which is an expenditure by the corporation in respect of the production that is included in the cost to, or in the case of depreciable property the capital cost to, the corporation or any other person or partnership of the production at the end of the taxation year, exceeds
- (ii) the total of all amounts each of which is an amount of assistance in respect of that cost that, at the time of the filing of its return of income for the year, the corporation or any other person or partnership has received, is entitled to receive or can reasonably be expected to receive, that has not been repaid before that time pursuant to a legal obligation to do so (and that does not otherwise reduce that cost), and

B

is the total of all amounts each of which is the qualified labour expenditure of the corporation in respect of the production for a preceding taxation year before the end of which the principal filming or taping of the production began.

“salary or wages”

« *traitement ou salaire* »

“salary or wages” does not include an amount

(a) described in section 7;

(b) determined by reference to profits or revenues; or

(c) paid to a person in respect of services rendered by the person at a time when the person was non-resident, unless the person was at that time a Canadian citizen.

“script material”

« *texte* »

“script material”, in respect of a production, means written material describing the story on which the production is based and, for greater certainty, includes a draft script, an original story, a screen story, a narration, a television production concept, an outline or a scene-by-scene schematic, synopsis or treatment.

Rules governing labour expenditure of a corporation

(2) For the purposes of the definitions “labour expenditure” and “qualified labour expenditure” in subsection (1),

(a) remuneration does not include remuneration

- (i) determined by reference to profits or revenues, or
- (ii) in respect of services rendered by a person at a time when the person was non-resident, unless the person was at that time a Canadian citizen;

(b) services referred to in paragraph (b) of that definition that relate to the post-production stage of the production include only the services that are rendered at that stage by a person who performs the duties of animation cameraman, assistant colourist, assistant mixer, assistant sound-effects technician, boom operator, colourist, computer graphics designer, cutter, developing technician, director of post production, dubbing technician, encoding technician, inspection technician — clean up, mixer, optical effects technician, picture editor, printing technician, projectionist, recording technician, senior editor, sound editor, sound-effects technician, special effects editor, subtitle technician, timer, video-film recorder operator, videotape operator or by a person who performs a prescribed duty;

(c) that definition does not apply to an amount to which section 37 applies; and

(d) an expenditure incurred in respect of a film or video production by a qualified corporation (in this paragraph referred to as the “co-producer”) in respect of goods supplied or services rendered by another qualified corporation to the co-producer in respect of the production is not a labour expenditure to the co-producer or, for the purpose of applying this section to the co-producer, a cost or capital cost of the production.

Tax credit

(3) Where

(a) a qualified corporation for a taxation year files with its return of income for the year

- (i) a Canadian film or video production certificate issued in respect of a Canadian film or video production of the corporation,
- (ii) a prescribed form containing prescribed information, and
- (iii) each other document prescribed in respect of the production, and

(b) the principal filming or taping of the production began before the end of the year,

the corporation is deemed to have paid on its balance-due day for the year an amount on account of its tax payable under this Part for the year equal to 25% of its qualified labour expenditure for the year in respect of the production.

Exception

(4) This section does not apply to a Canadian film or video production if the production — or an interest in a person or partnership that has, directly or indirectly, an interest in, or for civil law a right in, the production — is a tax shelter investment for the purpose of section 143.2.

When assistance received

(5) For the purposes of this Act other than this section, and for greater certainty, the amount that a corporation is deemed under subsection 125.4(3) to have paid for a taxation year is assistance received by the corporation from a government immediately before the end of the year.

Revocation of certificate

(6) If an omission or incorrect statement was made for the purpose of obtaining a Canadian film or video production certificate in respect of a production, or if the production is not a Canadian film or video production,

(a) the Minister of Canadian Heritage may

- (i) revoke the certificate, or

- (ii) if the certificate was issued in respect of productions included in an episodic television series, revoke the certificate in respect of one or more episodes in the series;

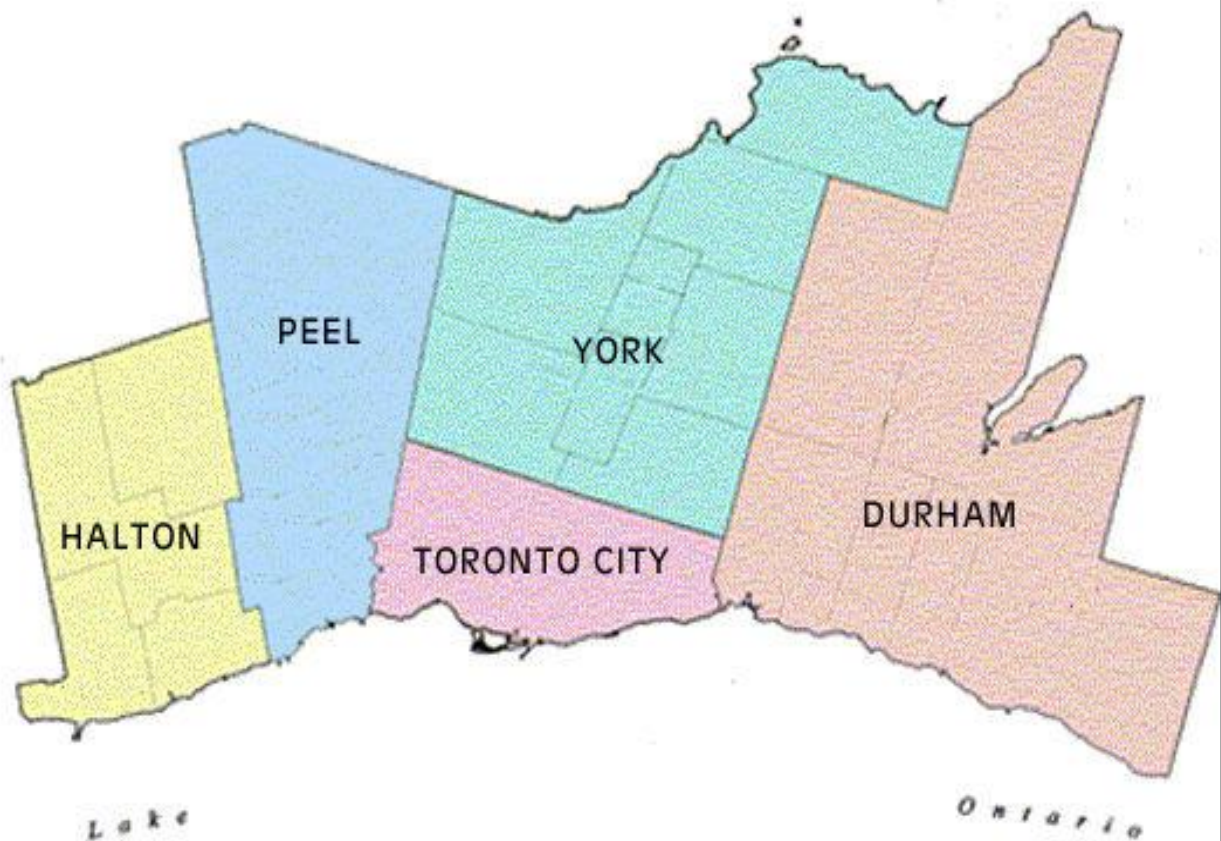
(b) for greater certainty, for the purposes of this section, the expenditures and cost of production in respect of productions included in an episodic television series that relate to an episode in the series in respect of which a certificate has been revoked are not attributable to a Canadian film or video production; and

(c) for the purpose of subparagraph (3)(a)(i), a certificate that has been revoked is deemed never to have been issued.

Guidelines

(7) The Minister of Canadian Heritage shall issue guidelines respecting the circumstances under which the conditions in the definition “Canadian film or video production certificate” in subsection (1) are satisfied. For greater certainty, those guidelines are not statutory instruments as defined in the [Statutory Instruments Act](#).

MAP OF THE GREATER TORONTO AREA (GTA)



- Region of Halton includes: Milton, Halton Hills, Burlington, Oakville
- Region of Peel includes: Mississauga, Brampton, Caledon
- Region of York includes: King, Vaughan, Richmond Hill, Markham, Aurora, Whitchurch- Stouffville, East Gwillimbury, Georgina
- Region of Durham includes: Brock, Uxbridge, Scugog, Pickering, Ajax, Whitby, Oshawa, Clarington

