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

ONTARIO PRODUCTION SERVICES TAX CREDIT (OPSTC)

GUIDELINES

Updated August 2018

TABLE OF CONTENTS

PAGE

TABLE OF CONTENTS 1
INTRODUCTION 2
  The Guidelines 2
  Overview of the OPSTC 2
  What is it? 2
  How Much is the Tax Credit? 2
  Who is Eligible? 2
  What Is An Eligible Production? 3
  What Expenditures are Eligible? 3
  How is the Credit Administered? 3
  Is a Screen Credit Required on the Production? 3
LEGISLATIVE REQUIREMENTS 5
  1. What Types of Corporations are Eligible? 5
  2. What Is An Eligible Production? 6
  3. How Much is the Credit? 7
    (i) Calculation of the Credit 7
    4. Qualifying Production Expenditure (QPE) 7
    (i) Eligible Wage Expenditure 8
    (ii) Eligible Service Contract Expenditure 8
    (iii) Eligible Tangible Property Expenditures 9
    (iv) Qualifying Production Expenditure Requirements (QPE) 10
    (v) Assistance 11
ADMINISTRATIVE PROCESS 13
  1. OMDC Role 13
    (i) Issuance of Certificates of Eligibility 13
    (ii) Amendment and Revocation of Certificates of Eligibility 13
  2. Canada Revenue Agency Role 13
    (i) Filing of a Corporate Tax Return 13
    (ii) Payment of an OPSTC Refund 14
  3. Applying for a Certificate of Eligibility 14
    (i) Who Applies to the OMDC? 14
    (ii) When Should Application Be Made to the OMDC? 14
    (iii) What Documentation Is Required? 14
    (iv) Is There an Administration Fee? 14
    (v) Online Application 14
    (vi) How Long Does the Process Take? 15
APPENDIX 1 17
LINKS TO LEGISLATION, REGULATIONS AND CAVCO PUBLIC NOTICES 17
APPENDIX 2 18
COMPARISON OF THE ONTARIO PRODUCTION SERVICES TAX CREDIT AND THE FEDERAL FILM OR VIDEO PRODUCTION SERVICES TAX CREDIT 18
APPENDIX 3 - OPSTC DOCUMENTS CHECKLIST 19
APPENDIX 4 - OPSTC ADMINISTRATION FEES 21

The August 2018 version of the Guidelines has been updated to reiterate that talk shows remain ineligible for the OPSTC, acknowledge definitions of ineligible genres and advertising included in CAVCO Public Notices 2017-02 and 2017-03 and provide links to these Notices in Appendix 1. The documents checklist has been updated and excerpts of provincial and federal legislation and regulations have been replaced with links to the most recent legislation and regulations in Appendix 1. As the deadline to apply for grandfathering and the Transitional Grant have closed, references to these have been removed.

The Guidelines

These Guidelines have been prepared to assist producers in applying for an Ontario Production Services Tax Credit (the "OPSTC").

Please note that the OPSTC legislation (section 92 of the *Taxation Act, S.O. 2007)* and OPSTC regulation (Ontario Regulation 37/09) take precedence over any provision of these Guidelines. Links to the legislation and regulation can be found in Appendix 1.

Overview of the OPSTC

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

What is it?

The OPSTC is a refundable tax credit, which means that the amount of the credit, minus any Ontario taxes payable, will be paid to the qualifying corporation. The OPSTC is based upon the Ontario labour and other qualifying production expenditures incurred by a qualifying corporation during a taxation year with respect to an eligible film or television production. The OPSTC is "harmonized" with the federal Film or Video Production Services Tax Credit jointly administered by the Canadian Audio Visual Certification Office of the Department of Canadian Heritage (CAVCO) and the Canada Revenue Agency (CRA), which means that the two credits are similar in many (but not all) respects. The OPSTC may be claimed alone, or in addition to a federal Film or Video Production Services Tax Credit (or a Canadian Film or Video Production Tax Credit).

How Much is the Tax Credit?

The OPSTC is calculated as 21.5% of the qualifying Ontario production expenditures incurred by a qualifying production company with respect to an eligible production minus assistance relating to such expenditures. A qualifying corporation's Ontario labour expenditures (including Ontario labour paid under an eligible service contract) must amount to at least 25% of the qualifying production expenditures claimed. However, there are no per project or annual corporate limits on the amount of the OPSTC which may be claimed.

Who is Eligible?

A qualifying corporation is a Canadian- or foreign-owned corporation which carries on a film or video production or production services business at a permanent establishment in Ontario, files an Ontario corporate tax return and owns the copyright in the eligible production or contracts directly with the copyright owner to provide production services to an eligible production.

What Is An Eligible Production?

An eligible production must exceed a minimum production cost and must not be in an excluded genre or be a production for which public financial support would be contrary to public policy. In addition, a production that receives an Ontario Film and Television Tax Credit is not eligible for an OPSTC.

The production cost must exceed $1 million (CDN), except in the case of a series consisting of two or more episodes or a pilot for such a series. In the case of a series or pilot, the cost for each episode which has a running time less than thirty minutes must exceed $100,000 (CDN) and the cost for episodes with a longer running time must exceed $200,000 (CDN).

Excluded genres are: news; current events or public affairs programming, or a program that includes weather or market reports; talk shows; productions in respect of a game, questionnaire or contest; a sports event or activity; a gala presentation or awards show; a production that solicits funds; reality television; pornography; advertising or a production produced primarily for industrial, corporate or institutional purposes.

What Expenditures are Eligible?

Qualifying production expenditures consist of eligible wages, eligible service contracts and eligible tangible property expenditures.

The production expenditures must also be: reasonable in the circumstances, directly related to the production, must be incurred for the stages of production after the final script stage to the end of post-production. In order to be qualifying production expenditures for a corporation's taxation year, the expenditures must be incurred in the taxation year, paid in the taxation year or within 60 days after the end of the taxation year, and paid to Ontario-based individuals, companies or partnerships for services provided in Ontario. Ontario-based individuals are individuals who were resident in Ontario at the end of the calendar year before the year in which principal photography for the production commenced, and they must also be Ontario-based at the time the payments were made.

How is the Credit Administered?

The OPSTC is jointly administered by the Ontario Media Development Corporation (OMDC) – an agency of the Ontario Ministry of Tourism, Culture and Sport, and the Canada Revenue Agency (CRA). A qualifying corporation submits an application to the OMDC for a Certificate of Eligibility. The OMDC reviews the application and, if applicable, issues a Certificate of Eligibility which certifies eligibility and estimates the amount of the OPSTC. In order to claim the OPSTC, the qualifying corporation files its corporate tax return and the Certificate of Eligibility with the CRA.

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 here.

THE ONTARIO WORDMARK LOGO

Ontario

Ontario Media Development Corporation

Film and Television Tax Credits

LEGISLATIVE REQUIREMENTS

The following is an overview of the legislative requirements for an OPSTC as well as commentary regarding the legislative requirements.

Links to the OPSTC legislation and regulation can be found in Appendix 1. As the OPSTC legislation and regulation make reference to the federal Film or Video Production Services Tax Credit legislation and draft regulation, links to the latter legislation and draft regulation have also been included in Appendix 1.

1. What Types of Corporations are Eligible?

Legislative Requirements

In order to be eligible for an OPSTC for a taxation year, a corporation must be a "qualifying corporation" throughout the year.

A "qualifying corporation" is a corporation which satisfies all of the following requirements:

1. its activities in the taxation year in Ontario are primarily the carrying on of a film or video production business or a film or video production services business;

2. its activities are carried on through a "permanent establishment" in Ontario (see link in Appendix 1);

3. it owns the copyright in the eligible production during the period the production is produced in Ontario,

   or

   where the owner of the copyright in the eligible production is not a qualifying corporation, it is contracting directly with the owner of the copyright to provide production services; and

4. it is not exempt from tax, "controlled directly or indirectly in any manner" by one or more corporations that are exempt from tax, nor a labour-sponsored venture capital corporation for purposes of section 127.4 of the *Income Tax Act* (Canada).

Commentary

A qualifying corporation or its authorized agent may apply for an OPSTC. There may be one or more qualifying corporations in respect of an eligible production. This may be because the copyright is owned by more than one corporation or because production services are provided to the copyright holder (s) by more than one corporation. The OMDC may issue a Certificate of Eligibility to each qualifying corporation in respect of its qualifying expenditures.

A qualifying corporation may be a corporation incorporated under the laws of any jurisdiction (Canadian or non-Canadian) and may be controlled by Canadian or non-Canadian owners.

The activities of the corporation must be primarily the production of film or television productions or the provision of film or television production services. The word "primarily" will be interpreted to mean something more than 50%.

A corporation may be subject to Ontario tax if it has a permanent establishment in Ontario at which it is carrying on business. A "permanent establishment" generally refers to a fixed place of business (see link in Appendix 1). However, whether a fixed place of business is a "permanent establishment" is a question of fact which must be determined on a case-by-case basis. In interpreting the term "permanent establishment", the courts have considered factors such as: the degree of the corporation's control over the place of business, the degree of continuity and permanence of the place of business and the presence of personnel and routine activities.

It is important to note that where the copyright holder is a qualifying corporation, the copyright holder must claim the tax credit. A qualifying corporation contracting directly with the copyright holder may claim the OPSTC only where the copyright holder is not a qualifying corporation.

The copyright owner will be the person which holds the rights to produce the eligible production and will hold legal ownership of the copyright in the completed production. It is not necessary to own all of the underlying elements of the production (egs. the script, and characters), provided that sufficient rights to use such underlying elements to produce the production have been acquired.

Where the qualifying corporation is the copyright owner, it must hold copyright during the period it is producing the production in Ontario. However, the copyright owner may subsequently sell the copyright without affecting its OPSTC claim. Where the qualifying corporation is not the copyright owner, copyright ownership may change during the period the production is produced in Ontario without affecting the OPSTC claim, provided that at all times during this period the qualifying corporation is contracting directly with the applicable copyright owner. In this case, the qualifying corporation will be required to provide evidence, such as a copy of the production services agreement with the new copyright owner, or a copy of the assignment of the production services agreement from the former copyright owner to the new copyright owner.

Corporations which are exempt from tax under Part III of the *Taxation Act* include non-profit or registered charitable corporations.

2. What Is An Eligible Production?

Legislative Requirements

The OPSTC may only be claimed by a qualifying corporation in respect of an "eligible production".

An "eligible production" is a production which satisfies all of the following requirements:

1. The principal photography for the production commences before the end of the year.
2. If the production is a television series production or is a pilot episode for a television series production, the total expenditures included in the cost of each episode or, if the production is a depreciable property, in the capital cost of each episode, during the 24 months after principal photography for the production commences, exceed,

   i. $100,000 if the episode has a running time that is less than 30 minutes, or

   ii. $200,000 in any other case.
3. If the production is not the type of production referred to in paragraph 2, the total expenditures included in the cost of the production or, if the production is a depreciable property, in the capital cost of the production, during the 24 months after principal photography for the production commences, exceed $1 million.
4. The production is not in an excluded genre (such as news or current affairs, talk shows, game shows, sports shows, awards shows, fundraising shows, reality television, pornography or advertising.
5. The production is not a production for which public financial support would be contrary to public policy.

Commentary

The minimum production expenditure levels apply to the whole production, rather than to the part of the production produced in Ontario. There is no requirement as to the minimum activity or production expenditure which must take place in Ontario.

An episode's "running time," for the purposes of determining which production expenditure minimum is applicable, refers to the total screen time of the production excluding commercial breaks. The "running time" of a television production will therefore usually be shorter than the time slot in which it is scheduled.

Talk shows have always been and continue to be ineligible for all provincial tax credits, including the OPSTC. Talk shows are not eligible for the federal Film or Video Production Services Tax Credit administered by CAVCO. CAVCO issued Public Notices 2017-02 and 2017-03 on March 6, 2017. Public Notice 2017-02 sets out definitions for ineligible genres and Public Notice 2017-03 deals with the definition of advertising. OMDC uses these definitions but we conduct our own assessment of a production's genre. Links to these CAVCO Public Notices can be found in Appendix 1.

"Productions for which public financial support would be contrary to public policy" may include productions which are capable of inciting hatred against an identifiable group, including a section of the public distinguished by colour, race, religion, sex, sexual orientation or ethnic origin and productions whose dominant characteristic is the undue exploitation of sex, violence or of sex and one or more of crime, horror, cruelty or violence.

Where an applicant is unsure whether their production is in an eligible genre, they may request an advance ruling as to genre eligibility from the OMDC prior to applying for an OPSTC. If the production is determined by the OMDC to be eligible as to genre, an application for the OPSTC would then be made.

3. How Much is the Credit?

(i) Calculation of the Credit

The OPSTC for an eligible production is calculated by multiplying the qualifying corporation's "qualifying production expenditure" (QPE) for the taxation year by the credit rate of 21.5%.

The amount of the credit will be zero, if the qualifying corporation receives a credit for the production under Section 91 of the *Taxation Act, S.O., 2007* (the Ontario Film and Television Tax Credit available to Canadian-controlled corporations for productions with at least six Canadian content points).

4. Qualifying Production Expenditure (QPE)

Legislative Requirements

A qualifying corporation's "qualifying production expenditure" is the amount which is multiplied by the credit rate in order to calculate the OPSTC for a taxation year. It is equal to the qualifying corporation's qualifying production expenditure for the production for the taxation year, less assistance in respect of such expenditure and less amounts reimbursed to the qualifying corporation by a subsidiary for which the subsidiary can claim a tax credit.

A qualifying corporation's "qualifying production expenditure" for a taxation year is calculated by taking

(a) the corporation's eligible wage expenditure for the year or previous taxation year,

(b) the corporation's eligible service contract expenditure for the year or previous taxation year

(c) the amount determined under subsection (5.5) for the year or a previous taxation year (this refers to parent-subsidiary amounts, as set out below), and

(d) the corporation's eligible tangible property expenditure for the year or a previous taxation year

and deducting all relevant government and non-government assistance in respect of the production.

As noted above, a corporation's "qualifying production expenditure" may consist of the following types of amounts to the extent that they meet the requirements set out in (iv) below:

1) Eligible wage expenditures paid to employees of the qualifying corporation;

2) Eligible service contract expenditures paid by the qualifying corporation to persons or partnerships that carry on business through a permanent establishment in Ontario;

3) Eligible tangible property expenditures paid by the qualifying corporation to a person or partnership that is ordinarily engaged in the business of selling or leasing tangible property of the type of tangible property acquired or leased by the corporation; and

4) Reimbursements made by a wholly-owned subsidiary corporation to its parent corporation for an expenditure made by the parent which would be an eligible wage expenditure or eligible service contract expenditure of the subsidiary corporation if it had been made by them for the same purpose as the parent.

(i) Eligible Wage Expenditure

"Eligible wage expenditures" are the salaries and wages paid in the year or within 60 days after the end of the year to the corporation's employees who were Ontario-based individuals. The corporation's employees must also be Ontario-based at the time the payments were made.

(ii) Eligible Service Contract Expenditure

An "eligible service contract expenditure" consists of the cost of a contract for services that is paid to a person or partnership that carries on a business in Ontario through a permanent establishment and that is:

- an Ontario-based individual at the time the amount is paid and who is not an employee of the corporation (eg. a freelancer) provided the services are rendered in Ontario by the individual or the individual's employees at a time when they were Ontario-based individuals;

- another taxable Canadian corporation, provided the services are rendered in Ontario by the corporation's employees at a time when they were Ontario-based individuals;

- another taxable Canadian corporation which is a loan-out corporation whose shares belong to an Ontario-based individual;

- a partnership, provided the services are rendered in Ontario by an Ontario-based individual who is a member of the partnership or by the partnership's employees at a time when they were Ontario-based individuals; or

- a trade union representing members of the Ontario Provincial Police Force or a municipal police force in Ontario for the provision of security services on the set of the production.

At least 25% of the qualifying production expenditures claimed must relate to salary and wages paid to Ontario based individuals. This amount would be comprised of the corporation's eligible salary and wages and the portion of the corporation's eligible service contract expenditures that relate to the salary and wages paid to Ontario-based individuals. In addition, expenditures incurred by a corporation pursuant to an eligible service contract with a non-arm's length party will be limited to amounts that would have been eligible for the credit if the non-arm's length party had been a qualifying corporation and had incurred the expenditures directly.

(iii) Eligible Tangible Property Expenditures

A corporation's "eligible tangible property expenditure" includes amounts incurred for the acquisition or rental in Ontario of tangible property used in the eligible production. Such expenditures must satisfy the following conditions:

- The property is used in Ontario in a manner that is directly attributable to the eligible production.

- The expenditure is paid to a person or partnership that carries on a business in Ontario through a permanent establishment and that is

  an Ontario-based individual at the time the amount is paid and who is not an employee of the qualifying corporation, or

  a taxable Canadian corporation or partnership (whose members are not employees of the qualifying corporation), and that is ordinarily engaged in the business of selling or leasing tangible property of the type of tangible property acquired or leased by the corporation.

Commentary

As previously noted, a qualifying corporation's eligible wage expenditures include the salaries and wages paid to employees provided that they were also Ontario-based individuals at the time the payments were made.

"Salary and wages" refers to income of a taxpayer from an office or employment as computed under subdivision a of Division B of Part I of the Income Tax Act (Canada) but does not include an amount described in section 7 of the Act or an amount determined by reference to profits or revenues.

Eligible wage expenditures include union and guild fringes that are taxable benefits to Ontario-based employees. Non-taxable benefits are not eligible wage expenditures.

Eligible service contract amounts paid to parties other than employees are qualifying expenditures only to the extent that they are paid directly to the contract service provider for services personally rendered by such parties or for the salaries and wages of their employees. Any amounts paid by the production company to unions or guilds on behalf of the service contract provider are not eligible service contract expenditures.

Eligible service contract expenditures include payments to a trade union representing Ontario provincial or Ontario municipal police for on-set security services. The following expenditures are not eligible service contract expenditures: (i) airfares and other costs for travel outside of Ontario; meals and entertainment, other than food and non-alcoholic beverages for on set catering and craft services; alcoholic beverages; hotel and living expenses.

"Tangible property" is defined as property that can be seen, weighed, measured, felt or touched or that is in any way perceptible to the senses. Eligible tangible property expenditures include but are not limited to equipment, studio rentals and computer software. Such items as insurance, financing, completion bond and banking costs, and the cost of story rights are not qualifying tangible property expenditures.

(iv) Qualifying Production Expenditure Requirements (QPE)

Legislative Requirements

In order to qualify as a "qualifying production expenditure" for an eligible production for a taxation year of a qualifying corporation, an amount must be:

1) reasonable in the circumstances;

2) directly attributable to the production;

3) incurred in the corporation's taxation year or its previous taxation year;

4) incurred for the stages of production after the final script stage to the end of the post-production stage;

5) paid in the taxation year or within 60 days after the end of the year;

6) paid to "Ontario-based individuals" (see below); and

7) for services rendered in Ontario.

Qualifying production expenditure does not include amounts determined by reference to profits or revenues from the production or amounts referred to in section 37 of the Income Tax Act (Canada). For greater certainty, the amount of a corporation's Ontario production expenditure is zero if the corporation is not a qualifying corporation.

"Ontario-based individuals" are individuals who were resident in Ontario at the end of the calendar year immediately before the calendar year in which principal photography for the production commences and thereby subject to Ontario personal income tax for the preceding year (under section 2 of the Income Tax Act (Ontario). For such expenditures to be eligible, the individuals must also be Ontario-based at the time the payments were made.

Commentary

A qualifying corporation's Ontario production expenditure may only include amounts after the final script stage to the end of the post production stage. Eligible wage and service contract expenditures are for services rendered in Ontario after the final script stage to the end of post production. Eligible tangible property expenditures are for properties used in Ontario during such period. Therefore, expenditures relating to the development of the production are excluded. There are no restrictions on the categories of post-production in respect of which Ontario production expenditures may be claimed.

Amounts incurred in the qualifying corporation's taxation year but paid more than 60 days following the end of the taxation year, may not be claimed in the taxation year. However, such amounts may be claimed in the subsequent taxation year of the corporation if they are paid in the subsequent taxation year or within 60 days following the end of the subsequent year.

The following amounts are excluded from the definition of "qualifying production expenditure": amounts determined by reference to revenues or profits from the production (including deferrals), expenditures in respect of scientific research and experimental development, and amounts that are not costs of the production (including amounts in respect of advertising, marketing, promotion, market research or amounts related in any way to another production).

(v) Assistance

Legislative Requirements

Assistance is defined for purposes of the federal Film or Video Production Services Tax Credit as an amount in any form including but not limited to a grant, subsidy, forgivable loan, deduction from tax, or an allowance, received by the taxpayer from:

- persons who pay the amounts in order to achieve a benefit or advantage for the payer or for persons with whom the payer does not deal at arm's length,

or

- a public authority where the amount can reasonably be considered to have been received
    - as an inducement, or
    - as a reimbursement, contribution or allowance or as assistance in respect of the cost of property or in respect of an outlay or expense,

to the extent that the amount may not reasonably be considered to be a payment made for the acquisition by the payer of an interest in the taxpayer or its business or property.

Commentary

Payments to qualifying corporations from both private and public sources, domestic and foreign, regardless of their form, may constitute assistance. Whether an amount is assistance is determined based on the facts of the case.

The federal tax credits for film and television and most Ontario tax credits have been specifically excluded from the definition of "assistance" for purposes of the OPSTC. Accordingly, the OCASE Tax Credit is not "assistance" for purposes of the OPSTC. As well, the 2015 Ontario Production Services and Computer Animation and Special Effects Transitional Fund is not considered assistance for purposes of the OPSTC.

Although the federal tax credits for film and television are excluded from the definition of assistance for the purposes of Ontario's film and television tax credits, Ontario's tax credits and all other provincial tax credits will be considered as assistance for purposes of the federal film and television tax credits. However, only the labour portion of the OPSTC is considered assistance for the purposes of the federal production services tax credit.

In addition, although the OPSTC and other Ontario tax credits are not assistance for purposes of the OPSTC, such credits do constitute assistance for corporate tax purposes generally and must therefore be included in the income of a qualifying corporation for the applicable taxation year of the corporation.

Under the definition of "qualifying production expenditure", the assistance to be deducted is that which may reasonably be considered to be directly attributable to any amount included in the production's qualifying production expenditure. Where assistance is labour-related, the portion of the assistance which must be deducted is determined by dividing the labour portion of the corporation's qualifying production expenditure for the production by its total labour expenditure for the production and multiplying the result by the value of the assistance. Where assistance is not labour-related (such as grants from a film or television fund), the portion of the assistance which must be deducted is determined by dividing the corporation's total qualifying production expenditure for the production by the total cost of the production and multiplying the result by the value of the assistance.

ADMINISTRATIVE PROCESS

The OPSTC 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 corporate tax return for the applicable taxation year in order to claim the OPSTC. 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 OPSTC, 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 to the corporation 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 OPSTC refund previously paid must be repaid.

Please note that there is a fee of $100 for amended Certificates.

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 T2SCH558 which must be filed by the qualifying corporation in order to claim the OPSTC. 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. 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 OPSTC a qualifying corporation must file its T2 return with Schedule T2SCH558 and the Certificate of Eligibility with the CRA. Following its review or audit of the OPSTC 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.

An OPSTC may be claimed annually if the production in Ontario takes place during more than one taxation year of the qualifying corporation. Alternatively, the qualifying corporation may claim the OPSTC for the whole production at the end of the final taxation year of the corporation during which production takes place in Ontario

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 OPSTC Refund

If the qualifying corporation is owed a tax refund (which may include an OPSTC) 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.).

3. Applying for a Certificate of Eligibility

(i) Who Applies to the OMDC?

The qualifying corporation submits a completed OPSTC Application to the OMDC in respect of each eligible production. One application may be filed in respect of episodes of a television production produced for the same broadcast season.

The qualifying corporation is the corporation which is producing all or a part of the eligible production and may not be the copyright owner. For administrative convenience, the qualifying corporation may appoint an agent to apply on its behalf, but any Certificate of Eligibility issued will be in the name of the qualifying corporation.

(ii) When Should Application Be Made to the 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. As a Certificate of Eligibility can be issued before all production activities are completed, it is not necessary to wait until all expenditures have been incurred before applying for a Certificate.

Please note that there is a fee for filing claims that are more than 24 months old.

(iii) What Documentation Is Required?

The applicant must submit to the OMDC the documents set out in the OPSTC Documents Checklist (see Appendix 8). In some cases the OMDC may also require additional documentation or information in order to issue a Certificate of Eligibility. If the production activities have been completed, the applicant should submit a schedule of actual production expenditures and a final cost report. If the production is not complete, the applicant can submit a schedule of projected production expenditures and a production budget. All documentation or information received from an applicant is subject to the confidentiality provisions of the Taxation Act and will be maintained in strictest confidence by the OMDC and the Canada Revenue Agency.

(iv) Is There an Administration Fee?

There is an administration fee for each application for an OPSTC Certificate of Eligibility, payable at the time of submission of the application. The administration fee is calculated as 0.15% of the eligible expenditures for the application. There is a minimum fee of $5,000 per application and a maximum fee of $10,000 per application, as set out in the OPSTC Administration Fee Schedule (see Appendix 4). OPSTC administration fees are used by the OMDC to offset its costs of administering the OPSTC.

(v) 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 documentation and information as only complete applications can be transmitted through 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.

(vi) How Long Does the Process Take?

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.

CONTACT INFORMATION

OMDC Tax Credits Department Who's Who

Listed below are the members of the Tax Credits Department who work on the OPSTC. 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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APPENDIX 1
LINKS TO LEGISLATION, REGULATIONS AND CAVCO PUBLIC NOTICES

Provincial Legislation and Regulation:

Taxation Act, 2007, s. 92 – OPSTC

Taxation Act Regulation, O. Reg 37/09, s. 23 and s.31-33 – OPSTC

Federal Legislation and Regulation:

Income Tax Act (Canada)

s. 125.5 – Film or Video Production Services Tax Credit

s.12(1)(x) – definition of assistance

s.256(5.1) – definition of control in fact

Income Tax Act Regulation

s.9300 – Film or Video Production Services Tax Credit

s.400(2) – definition of permanent establishment

CAVCO Public Notices:

2017-02- Definitions for ineligible genres of production for the purpose of the federal film or video production tax credit programs

2017-03 – Definition of advertising for the purpose of the federal film or video production tax credit programs

APPENDIX 2

COMPARISON OF THE ONTARIO PRODUCTION SERVICES TAX CREDIT AND THE FEDERAL FILM OR VIDEO PRODUCTION SERVICES TAX CREDIT

	Ontario Production Services Tax Credit	**Federal Film or Video Production Services Tax Credit**
Eligible Corporation	Must have a permanent establishment (as defined in the Taxation Act) in Ontario.	Must have a permanent establishment (as defined in the *Income Tax Act* (Canada)) in Canada.
Calculation of Credit	Federal Tax Credits do not constitute assistance.	Provincial tax credits constitute assistance. Only the labour portion of the OPSTC constitutes assistance.
Eligible Expenditures	The credit is based on qualifying Ontario production expenditures. To be eligible, amounts must be paid to Ontario-based individuals (individuals resident in Ontario at the end of the calendar year preceding the year in which principal photography started). The individuals must also be Ontario-based at the time the payments were made.	Credit is based on Canadian labour expenditures – amounts paid to persons resident in Canada at the time the payments were made.
Administration	Certificate addresses applicant and production eligibility and the estimated amount of the credit. Qualifying corporation applies to the OMDC for a Certificate of Eligibility and to the Canada Revenue Agency for a credit refund.	Certificate addresses eligibility of the production and applicant. Copyright owner applies to CAVCO for an accreditation certificate. Eligible production corporation applies to Canada Revenue Agency for credit refund.

APPENDIX 3 - OPSTC DOCUMENTS CHECKLIST

All documents and information must be submitted through OMDC's Online Application Portal. **It is the responsibility of the applicant to ensure that all documentation is current. Please forward amended information/documents as changes occur**.	
1.	Completed OPSTC Application
2.	Administration Fee payable to the *Ontario Media Development Corporation* calculated as 0.15% of the eligible expenditures for the application. There is a minimum fee of $5,000 per application and a maximum fee of $10,000 per application. Note: 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 a fee of $100 for amended Certificates.
3.	Applicant Declaration completed and signed by an authorized signing officer of the corporation.
4.	Incorporation documents for the qualifying corporation
5.	Corporate chart or list of shareholders for the qualifying corporation
6.	Production Services Agreement between copyright holder and qualifying corporation. If the production is domestic, please provide a copy of all signed final financing agreements.
7	Copy of the Official Designee Affidavit signed for purposes of the Federal Film or Video Production Services Tax Credit, if applicable
8.	Synopsis for the production (additional material may be requested)
9.	Chain of title documentation (such as a legal opinion)
10.	CAVCO Accreditation Certificate, if available OR CAVCO Part A Certificate, if available (domestic productions)
11.	Cast List with names and residency addresses
12.	Crew List with names and residency addresses
13.	Production Schedule including start and end dates of preproduction, principal photography and post production.
14.	Financing Plan for the production (for domestic productions)

15.	Detailed Cost Report (if production has been completed) OR Production Budget
16.	Schedule of Final (actual) Ontario Qualifying Production Expenditures (if the production has been completed) OR Schedule of Projected Qualifying Production Expenditures. Please refer to the Qualifying Production Expenditures template posted on OMDC's website. N.B. For purposes of estimating the production's federal Film or Video Production Services Tax Credit (PSTC), it is recommended that the labour expenditures be separated from the other production expenditures, as only the labour portion of the OPSTC will grind the PSTC.

APPENDIX 4 - OPSTC ADMINISTRATION FEES

A non-refundable administration fee is payable with respect to each OPSTC application submitted to the Ontario Media Development Corporation and is used to offset operating costs of the OPSTC program.

The OPSTC administration fee is calculated as 0.15% of eligible expenditures for the application. There is a minimum fee of $5,000 per application and a maximum fee of $10,000 per application.

Note: 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.

The administration fee is payable to the Ontario Media Development Corporation by cheque or money order at the time the OPSTC application is submitted to the OMDC. Please note that these fees are required in order for the application to be reviewed.