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Film Production Tax Credit Program

Sec. 12-217jj-1. Statement of purpose

These rules and regulations, which were drafted in consultation with the Department of Revenue Services, have been adopted to implement and are intended to be applied so as to accomplish the purposes of the film industry tax credit program as established in section 12-217jj of the General Statutes. The film industry tax credit program is administered by the Connecticut Commission on Culture and Tourism and is designed to encourage the production of films and other entertainment media within the State so as to increase employment and develop a more productive state economy.

(Adopted effective February 5, 2009)

Sec. 12-217jj-2. Definitions

As used in sections 12-217jj-1 through 12-217jj-13, inclusive, of the Regulations of Connecticut State Agencies:

(1) “American Institute of Certified Public Accountants (AICPA)” shall mean the national organization which establishes financial, accounting and auditing procedures to which certified public accountants (CPAs) must adhere.

(2) “Applicant” or “the applicant” shall mean, as the context of these regulations shall require:

(A) An eligible production company which applies to the Commission for state-certified qualified production status with respect to its production, or,

(B) An eligible production company which applies to the Commission for a tax credit voucher after eligibility certification for its production.

(3) “Commission” shall mean the Connecticut Commission on Culture and Tourism.

(4) “Commissioner” shall mean the Commissioner of Revenue Services.

(5) “Detailed cost report” or “cost report” shall mean the itemized production expenses or costs report filed with the Commission by an applicant for a tax credit voucher.

(6) “Eligible production company” means “Eligible production company” as defined in subsection (a) of section 12-217jj of the Connecticut General Statutes.

(7) “Eligibility certification” shall mean the written notice issued by the Commission certifying that a production is a qualified production.

(8) “Financial Accounting Standards Board (FASB)” shall mean the board designated by the AICPA to have the authority to set and specify generally accepted accounting principals (GAAP).

(9) “Income year” shall mean the period established by an applicant for federal income tax purposes.

(10) “Production” shall mean the creation, organization and presentation for public consumption of entertainment by means of one or more of the exhibition formats enumerated in subsection (a)(3)(A) of section 12-217jj of the Connecticut General Statutes.

(11) “Production expenses or costs” means “Production expenses or costs” as defined in subsection (a)(5) of section 12-217jj of the Connecticut General Statutes.

(12) “Production expenses or costs incurred in this state” shall mean an applicant’s actual expenditures for services and tangible property used or consumed in this State in connection with a qualified production; provided that pursuant to the provisions of subsection (b)(1) of section 12-217jj of the Connecticut General Statutes on and after January 1, 2009 fifty percent of such expenses or costs shall

be counted toward the tax credit when incurred outside the State and used within the State and one hundred percent of such expenses or costs counted toward such credit when incurred within this State and used within this State; and, provided further, that on and after January 12, 2012, no expenses incurred outside the State and used within the State shall be counted towards such tax credit and one hundred percent of such expenses or costs shall be counted toward such credit when incurred within this State and used within the State.

(13) "Qualified production" means "Qualified production" as defined in subsection (a) of section 12-217jj of the Connecticut General Statutes.

(14) "State" shall mean the State of Connecticut.

(15) "State-certified qualified production" means "State-certified qualified production" as defined in subsection (a) of section 12-217jj of the Connecticut General Statutes.

(Adopted effective February 5, 2009)

Sec. 12-217jj-3. Application for certification as state-certified qualified production

(a) An applicant shall file a written application for eligibility certification under oath on such forms as the Commission may prescribe no later than ninety (90) calendar days after the applicant incurs its first production expenses or costs in the State in connection with the production which is the subject of its application.

(b) An applicant may file only one application for each production for which it seeks eligibility certification and there may be only one applicant for each production.

(c) An applicant shall be primarily responsible for managing the production and shall have access to all financial books and records as are necessary to comply with the financial and other reporting requirements of section 12-217jj of the Connecticut General Statutes and sections 12-217jj-1 through 12-217jj-13, inclusive, of the Regulations of Connecticut State Agencies.

(d) The Commission shall reject any application not filed within the time limit set forth by section 12-217jj of the General Statutes as having been late filed and no further processing of said application shall be undertaken.

(e) An applicant for eligibility certification shall provide the Commission with information including, but not limited to, the following:

(1) Legal name, address and telephone number;

(2) Name, title and telephone number of primary contact person and other contact persons whom the Commission may contact to discuss the application information;

(3) Type of business entity (i.e. proprietorship, partnership, corporation, etc.);

(4) Satisfactory evidence from the Secretary of the State and the Commissioner that the applicant is authorized to do business in the state and is registered as a taxpayer;

(5) Federal Employer Identification Number (FEIN) or Tax Identification Number (TIN);

(6) The applicant's income year;

(7) Title of production and description of the type of production;

(8) Script, story-line or log-line for production;

(9) Length of production;

(10) Date that principal filming, taping or recording will begin and end in the state;

(11) Estimated total production budget;

(12) Estimated total production expenses and costs to be incurred in the state with detail information;

(13) The applicant's certification that the production does not and will not require the maintenance of records pursuant to 18 U.S.C. § 2257;

(14) The applicant's certification that it will at all times maintain books and records in accordance with generally accepted accounting principles consistently applied in connection with the production which is the subject of its application;

(15) Listing of key personnel associated with the production with name, title, address, telephone/fax number and e-mail address;

(16) Post production distribution plan; and,

(17) Such additional pertinent application information concerning the applicant or its production as the Commission may request.

(f) Upon the Commission's written request, the applicant shall provide any necessary written authorization for the release of information concerning the applicant or its production from any federal, state or local governmental authority including, but not limited to, financial reports and records relating to the applicant or its production.

(g) An applicant is responsible for the accuracy of all data, information and documentation included with the application. Applications and all documentation submitted shall become the property of the Commission.

(h) If the Commission determines after review that an application is incomplete, it may request in writing that the applicant submit additional pertinent application information which shall be submitted by the applicant within fifteen (15) days of such request. If the Commission determines that the application remains incomplete after such additional time period, then no further processing of the application shall take place.

(Adopted effective February 5, 2009)

Sec. 12-217jj-4. Disposition of application for certification as state-certified qualified production

(a) The Commission shall review all complete applications submitted pursuant to section 12-217jj-3 of the Regulations of Connecticut State Agencies and determine whether the criteria and qualifications for certification of applicant's production as a state-certified qualified production under sections 12-217jj-1 to 12-217jj-13, inclusive, of the Regulations of Connecticut State Agencies have been met.

(b) If the Commission finds that such criteria and qualifications are met it shall issue written notice of such eligibility certification to the applicant for that production.

(c) The Commission's notice of eligibility certification shall provide a unique identification number for the qualified production assigned by the Commission which shall be referenced on all future correspondence and notices regarding the production.

(d) The Commission's notice of eligibility certification does not grant or convey any state tax credits or benefits and signifies only that the Commission has determined that the production which is the subject of the application is a qualified production under sections 12-217jj-1 to 12-217jj-13, inclusive, of the Regulations of Connecticut State Agencies at the time of the Commission's review of the application.

(Adopted effective February 5, 2009)

Sec. 12-217jj-5. Fiscal and accounting requirements

(a) Each applicant issued a notice of state eligibility certification pursuant to subsection 12-217jj-4 of the Regulations of Connecticut State Agencies shall utilize an accounting system which conforms to generally accepted accounting principles (GAAP) in accounting for all production expenses or costs incurred in connection

with the qualified production. Such expenses or costs shall be included in the detailed cost report which shall accompany any application for a tax credit voucher.

(b) The following accounting records and documentation, at a minimum, shall be made and maintained by an applicant issued a notice of eligibility certification:

(1) Invoices, purchase orders, vouchers, paid bills, crew call sheets, second unit call sheets, and production reports;

(2) Individual payroll records for all employees working on the qualified production;

(3) Individual attendance records for all employees working on the qualified production;

(4) Records relating to refunds, rebates, invoicing errors, purchase returns, sales of equipment, props or other production assets and insurance claims;

(5) Records relating to costs and expenses regarding the ownership or lease of any real property, improved or unimproved, together with sufficient documentation to support one of the cost allocation methods set forth in subsection (a) of section 12-217jj-8 of the Regulations of Connecticut State Agencies;

(6) Records relating to costs and expenses regarding the purchase or rental of any tangible personal property together with sufficient documentation to support the cost allocation method set forth in subsection (b) of section 12-217jj-8 of the Regulations of Connecticut State Agencies; and,

(7) Records relating to any related party transaction as such are defined and specified by the Financial Accounting Standards Board (FASB) Statement No. 57, sufficient to permit an auditor to provide the information required pursuant to subsection 12-217jj-10 (c)(3) of the Regulations of Connecticut State Agencies.

(Adopted effective February 5, 2009)

Sec. 12-217jj-6. Application for issuance of a film production tax credit voucher

(a) An applicant may apply to the Commission for the issuance of a tax credit voucher at one or more of the following times:

(1) Not earlier than three (3) months following submission to the Commission of applicant's eligibility certification application as provided in Section 12-217jj-3 of the Regulations of Connecticut State Agencies; or,

(2) Annually not later than ninety (90) days after the close of the applicant's income year; or,

(3) Not later than ninety (90) days after the last production expenses or costs are incurred in this state.

(b) An applicant shall apply to the Commission for issuance of a tax credit voucher(s) on such forms as the Commission may prescribe. The Commission shall certify the actual amount of the tax credit awarded to the applicant pursuant to section 12-217jj of the Connecticut General Statutes at the time the Commission acts on such application for a tax credit voucher(s).

(c) With each application for the issuance of a tax credit voucher(s), the applicant shall provide the Commission with a detailed cost report to the date of application together with an independent audit report of such cost report pursuant to the provisions of section 12-217jj-10 of the Regulations of Connecticut State Agencies.

(d) The Commission shall provide a unique identification number on each tax credit voucher issued which shall include a reference to the Commission's identification number assigned at the time the Commission's notice of eligibility certification

was issued pursuant to the provisions of Section 12-217jj-4 of the Regulations of Connecticut State Agencies.

(Adopted effective February 5, 2009)

Sec. 12-217jj-7. Detailed cost report

(a) Each applicant for a tax credit voucher shall file with the Commission, under oath, a detailed cost report on such forms as the Commission may prescribe.

(b) The detailed cost report shall classify the production costs and expenditures actually incurred by the applicant under each of the categories specified below:

- (1) Writing;
- (2) Producer and staff;
- (3) Director and staff;
- (4) Talent;
- (5) Travel;
- (6) Fringe benefits – pre-production;
- (7) Production;
- (8) Extra talent;
- (9) Camera;
- (10) Art department;
- (11) Set construction;
- (12) Special effects;
- (13) Set operations;
- (14) Electrical;
- (15) Set dressing;
- (16) Action props;
- (17) Picture vehicles/animals;
- (18) Special photography;
- (19) Wardrobe;
- (20) Makeup and hairdressing;
- (21) Production sound;
- (22) Locations;
- (23) Video tape;
- (24) Transportation;
- (25) Production film and lab;
- (26) Tests;
- (27) Facility expenses;
- (28) Audience relations;
- (29) Second unit;
- (30) Special unit;
- (31) Fringes – shooting period;
- (32) Editing and projection;
- (33) Music;
- (34) Sound – post production;
- (35) Film and stock shots;
- (36) Visual effects;
- (37) Titles, opticals, inserts;
- (38) Fringes – post production;
- (39) Insurance;
- (40) Unit publicity;
- (41) General expenses;
- (42) Insurance claims; and,

(43) Completion bond.

(c) Within the foregoing general cost categories, the Commission may prescribe such sub-categories as it deems necessary to facilitate the applicant's reporting of production expenses or costs and the Commission's review of such expenses or costs.

(Adopted effective February 5, 2009)

Sec. 12-217jj-8. Allocation of costs

(a) Real Property

(1) An applicant owning or leasing real property used in connection with a qualified production may allocate a portion of the total ownership or leasehold costs related to such asset to the production expenses or costs in the detailed cost report under one of the following allocation methods at the election of applicant:

(A) Average lease value method

(i) The applicant may utilize deemed operational and ownership costs based on the average lease value method;

(ii) To arrive at the total deemed operational and ownership costs, the applicant must multiply the average per day lease value of comparable real property by the number of days the asset is used in connection with the production.

(B) Actual operational and ownership costs times production square footage ratio:

(i) An applicant may allocate to the production expenses or costs a portion of the operational and ownership costs of real property by multiplying the production square footage ratio by actual operational and ownership expenses related to the real asset;

(ii) The production square footage ratio is obtained by dividing the square footage of the real asset principally utilized in connection with a production by the total square footage of the real property owned by applicant; and,

(iii) Actual operational and ownership costs of real property may include, but not be limited to: utilities, real estate taxes, depreciation, insurance, property management fees, mortgage expense, and repairs and maintenance.

(b) Personal Property

(1) An applicant purchasing personal property which is not eligible for the credit provided in section 12 -217kk of the Connecticut General Statutes, shall allocate the cost of such personal property pursuant to class life categories and current depreciation rules promulgated by the Internal Revenue Service;

(2) The applicant shall divide the cost of the item of personal property by the applicable class life published by the Internal Revenue Services to determine an annual expense which shall then be multiplied by the ratio obtained from dividing the number of days the item of personal property was actually in use in this State in connection with a qualified production by 365.

(c) Costs for services or wages

(1) Costs for personal services or wages paid by applicant on a daily or hourly basis shall be allocated to the qualified production based on the time the services or work were actually performed in this State;

(2) When an applicant incurs costs for personal services performed partially in this State and such costs are not paid on a daily or hourly basis, then the applicant shall allocate such costs to the qualified production based on the ratio of the number of days the services were performed in this State over the total number of working days the personal services were to be provided to applicant.

(Adopted effective February 5, 2009)

Sec. 12-217jj-9. Limitations on allowable expenses and costs

(a) An applicant may include in the detailed cost report only actual, paid production expenses or costs. The detailed cost report must provide sufficient information so that an independent auditor and the Commission can readily determine that portion of applicant's total qualified production expenses or costs which were incurred in this State.

(b) Costs only generally identified such as "accounts payable" and "accrued charges or deferrals" shall not be allowable.

(c) Amortization of costs related to the production of series or mini-series shall be allocated to specific costs categories.

(d) Refunds, rebates, insurance claim recoveries, discounts, invoicing errors, returns and other such credits must be credited against the costs set forth in the detailed cost report.

(e) When an applicant incurs related party transaction costs, the cost allowable shall be limited to the fair market value as determined by the Commission of the services, goods or other tangible property provided to applicant by the related party.

(f) When an applicant has contracted with a third party for the provision of personnel to perform personal services ("Loan Out Companies") such costs are allowable only if applicant submits to the Commission satisfactory evidence that the Loan Out Company was registered to do business in this State with the Secretary of State and was registered with the Commissioner.

(g) Costs which have been included in any prior application for a tax credit voucher or included in an application for a tax credit voucher under sections 12-217kk or 12-217ll of the Connecticut General Statutes shall not be allowable.

(h) All costs as itemized in subdivision (a)(5)(C) of section 12-217jj of the Connecticut General Statutes shall not be allowable.

(Adopted effective February 5, 2009)

Sec. 12-217jj-10. Scope of and procedures for audit

(a) The purpose of the independent audit is to provide assurances to the Commission that the production expenses or costs set forth in the detailed cost report have in fact been expended and are otherwise accurate and reasonable.

(b) The audit shall be completed in accordance with generally accepted auditing standards as established by the AICPA and FASB and shall be at the sole cost and expense of applicant. The audit shall be performed by a certified public accountant licensed in this State, unrelated to the applicant and having no direct or indirect financial interest in the applicant or the applicant's production.

(c) The auditor's report shall state that the audit was conducted in accordance with this section and shall include and be subject to the following requirements:

(1) A schedule disclosing the applicant's noncompliance with any applicable law, regulation, provision of contracts or other agreements which could have a material effect on the costs reported in the detailed cost report;

(2) A schedule disclosing all sources of funds used by the applicant to finance the production including any non-cash or barter transactions included in the detailed cost report;

(3) A schedule disclosing all related party transactions as such are defined, specified and explained by the Financial Accounting Standards Board (FASB) in Statement No. 57 and which are encompassed in the detailed cost report to include:

(A) The name of the related party;

(B) The nature of the relationship between the related party and the applicant; and,

(C) A description of the nature of the transaction and the amount.

(4) The auditor's opinion shall be dated as of the date that audit fieldwork was completed and shall be addressed to the applicant;

(5) The auditor shall have demonstrated knowledge and familiarity with the accounting practices generally recognized in the film or other media production industry and shall cooperate fully with the Commission in responding to the Commission's post audit inquiries and in complying with such audit guidelines applicable to all such audits as the Commission may prescribe in writing; and,

(6) The audit work papers must be maintained by the auditor for a period of six (6) years from the date that the audit was submitted to the Commission and shall be made available to the Commission upon written request.

(Adopted effective February 5, 2009)

Sec. 12-217jj-11. Confidentiality of application information and documents

When an applicant or other entity submits information it considers to be of a proprietary or confidential nature in connection with its applications for eligibility certification and issuance of tax credit vouchers or notice of transfer of tax credits, such information shall be clearly marked or labeled "CONFIDENTIAL" in capital letters. The applicant or other entity shall also submit a statement briefly setting forth the grounds on which the information should be treated as confidential. Upon the Commission's determination that such information may be lawfully maintained by it as confidential, it shall maintain such portions of the application or notice of transfer of tax credits as confidential to the extent permitted by law.

(Adopted effective February 5, 2009)

Sec. 12-217jj-12. Disposition of application for film production tax credit voucher

(a) The Commission shall review the application and the audit and evaluate whether the applicant has met the criteria set forth under sections 12-217jj-1 to 12-217jj-13, inclusive, of the Regulations of Connecticut State Agencies for issuance of a tax credit voucher. If the Commission determines that the applicant has met such criteria, it shall thereupon issue the written tax credit voucher(s) for the tax credit amount substantiated to the satisfaction of the Commission as of the date of the application.

(b) If the Commission determines after its evaluation that the applicant has not met such criteria for issuance of a tax credit voucher(s), it shall notify the applicant in writing of the deficiencies in the application or audit and the remedial action, if any, that is required of the applicant before the Commission can issue a tax credit voucher(s) in response to the application.

(Adopted effective February 5, 2009)

Sec. 12-217jj-13. Transfers of tax credits

(a) Tax credit vouchers may be sold, assigned or otherwise transferred by the applicant to one or more taxpayers, in whole or in part, up to a maximum of three (3) times and to the extent the tax credit has not previously been claimed. Any taxpayer that is assigned or transferred a tax credit must claim such assigned credit in the same income year that the applicant was eligible to claim the tax credit.

(b) Each tax credit voucher transferor and transferee shall jointly provide written notice of such transfer to the Commission on such forms as may be prescribed by the Commission, not later than thirty (30) days after the transfer. For the purposes of subsections 12-217jj(b)(2) and (d) of the Connecticut General Statutes, a taxpayer

to which a tax credit evidenced by a tax credit voucher may be sold, assigned or otherwise transferred, or that may sell, assign or otherwise transfer such tax credit, shall include a corporation, partnership, limited liability company, or other business entity; provided, however, that the tax credits evidenced by such tax credit voucher may only be claimed against the taxes imposed under chapters 207 and 208 of the Connecticut General Statutes.

(c) The written notice to the Commission of transfer shall include the following:

- (1) The tax credit voucher number;
- (2) The date of transfer;
- (3) The total amount of credit transferred;
- (4) The tax credit voucher balance before and after the transfer;
- (5) The transferor's and transferee's federal tax identification numbers; and,
- (6) Consideration paid by the transferee for the transfer;
- (7) Such other information as the Commission may require.

(d) Failure to comply with all transfer notification requirements contained in this section and subsection (d) of section 12-217jj of the Connecticut General Statutes shall result in the disallowance of the tax credit transfer until such time as the Commission determines that the transferor and transferee are in full compliance. The Commission shall provide notice to the Commissioner of any such disallowance and subsequent allowance of the tax credit transfer, if requested by the Commissioner.

(e) Failure to comply with the time limitation for notice to the Commission of such transfer in subsection (b) of this section and subsection (d) of section 12-217jj of the Connecticut General Statutes shall result in the disallowance of such tax credit transfer unless the Commission determines that such failure was for good cause shown.

(f) In the event that a tax credit voucher is sold, assigned or otherwise transferred to a business entity that is treated as a pass-through entity for federal income tax purposes, the tax credits evidenced by such tax credit voucher shall not be deemed to be allocated or otherwise transferred to any partner, member, shareholder or other equity owner of such transferee (notwithstanding any provision of the governing documents of such entity), and such tax credits shall only be transferred to any such partner, member, shareholder or other equity owner by sale, assignment or other transfer of the tax credit voucher evidencing such tax credits in the manner provided for in this section, subject to the limitation that no tax credit voucher or any fractional part thereof may be assigned or otherwise transferred, in whole or in part, more than three times.

(Adopted effective February 5, 2009)