

**TENNESSEE DEPARTMENT OF REVENUE
LETTER RULING # 11-05**

WARNING

Letter rulings are binding on the Department only with respect to the individual taxpayer being addressed in the ruling. This presentation of the ruling in a redacted form is informational only. Rulings are made in response to particular facts presented and are not intended necessarily as statements of Department policy.

SUBJECT

Statutory requirements to qualify for the incentive available for the production of a movie or episodic television program in Tennessee.

SCOPE

This letter ruling is an interpretation and application of the tax law as it relates to a specific set of existing facts furnished to the Department by the taxpayer. The rulings herein are binding upon the Department, and are applicable only to the individual taxpayer being addressed.

This letter ruling may be revoked or modified by the Commissioner at any time. Such revocation or modification shall be effective retroactively unless the following conditions are met, in which case the revocation shall be prospective only:

- (A) The taxpayer must not have misstated or omitted material facts involved in the transaction;
- (B) Facts that develop later must not be materially different from the facts upon which the ruling was based;
- (C) The applicable law must not have been changed or amended;
- (D) The ruling must have been issued originally with respect to a prospective or proposed transaction; and
- (E) The taxpayer directly involved must have acted in good faith in relying upon the ruling and a retroactive revocation of the ruling must inure to his detriment.

FACTS

[TAXPAYER] wishes to be recognized as a "headquarters facility," as the term is defined in Tenn. Code Ann. § 67-6-224((b)(3), in the State of Tennessee for purposes of qualifying for the incentive available under Tenn. Code Ann. § 67-4-2109(k) for the production of movies or episodic television programs in Tennessee.

[TAXPAYER TWO] has served as a headquarters for [NUMBER] feature films and has received conditional pre-approval on several other features. [TAXPAYER TWO] has entered into an

agreement with [TAXPAYER THREE] to be the headquarters for the feature film [NAME OF MOVIE] and has formed [TAXPAYER] as a sole purpose headquarters for this film. This headquarters will continue as a headquarters facility after the completion of the film.

The president of [TAXPAYER], [NAME OF INDIVIDUAL], has been a Tennessee resident and registered voter in Tennessee since [DATE]. His [NUMBER] automobiles are registered in Tennessee and his [NUMBER] children are enrolled in [NAME OF SCHOOL] in [NAME OF COUNTY].

The national headquarters of [TAXPAYER] is located at [STREET ADDRESS], [CITY], Tennessee [ZIP CODE]. The headquarters staff employees of [TAXPAYER] are located and employed at this address and its primary headquarters related functions and services are performed there.

None of the movies or episodic television productions that [TAXPAYER] plans to produce in Tennessee for purposes of the incentive provided by Tenn. Code Ann. § 67-4-2109(k) will be vulgar in nature or “obscene,” as the word is defined in Tenn. Code Ann. § 39-17-901.

QUESTIONS PRESENTED

1. Will [TAXPAYER] qualify as a “headquarters facility,” pursuant to Tenn. Code Ann. § 67-6-224(b)(3) and for purposes of Tenn. Code Ann. § 67-4-2109(k)(2)?
2. Will the costs and expenses incurred by [TAXPAYER] in Tennessee to produce movies or episodic television programs in the State of Tennessee be deemed to be “qualified expenses,” as defined in Tenn. Code Ann. § 67-4-2109(k)(1)(A)?
3. If [TAXPAYER] incurs at least \$1 million in “qualified expenses”, will it be deemed a “qualified production company,” as the term is defined in Tenn. Code Ann. § 67-4-2109(k)(1)(C)?
4. Assuming that each of the above questions are answered in the affirmative, will [TAXPAYER] be entitled to a credit amounting to 15% of qualified expenses as set forth in Tenn. Code Ann. § 67-4-2109(k)(2)?
5. Tenn. Code Ann. § 67-4-2109(k)(1)(C) states that to be deemed a “qualified production company,” an entity must incur at least \$1 million in “qualified expenses.” Is this a one-time threshold requirement?
6. Tenn. Code Ann. § 67-4-2109(k)(1)(A) states that “qualified expenses” are those expenses incurred in Tennessee that “are necessary for the production of a movie or episodic television program in this state” that is “in the best interests of this state.”
 - (a) What does the language “necessary for the production of a movie or episodic television program in this state” mean?
 - (b) What does the language “in the best interests of this state” mean?

7. What documentation is required to evidence “qualified expenses”?

RULINGS

1. Yes.
2. Yes, provided that the costs and expenses are determined by the Commissioner of Revenue and the Commissioner of Economic and Community Development to be necessary for the production of a movie or episodic television program in Tennessee that is in the best interests of the State of Tennessee.
3. Yes.
4. Yes, provided that all applicable statutory requirements of Tenn. Code Ann. § 67-4-2109(k) are met.
5. No. The qualified production company must incur at least \$1 million in Tennessee qualified expenses for the production of each movie or episodic television program produced in Tennessee that is eligible for the incentive credit.
6. (a) Expenses “necessary for the production of a movie or episodic television program in this state” are expenses incurred in Tennessee without which the movie or episodic television program could not have reasonably been made. The phrase “necessary for the production of a movie or episodic television program in this state” does not mean only the expenses that would be necessary to make the movie or episodic television program in Tennessee on the lowest possible budget.

(b) Tenn. Code Ann. § 67-4-2109(k)(1)(A), defines the phrase “in the best interests of this state” for purposes of movie or episodic television program incentives, to mean “. . . a determination by the commissioner of revenue and the commissioner of economic and community development that the production is a result of the credit provided in this subsection (k) and that the production is not found to be obscene as defined in § 39-17-901.”
7. Any documentation that, in the opinion of the Commissioner, is necessary to satisfy him that the expenses claimed are eligible for the statutory incentive will be required. Actual documentation required will be determined by the Commissioner on a case-by-case basis and may vary depending on the factual situation with which the Commissioner is presented.

The minimal documentation that will be required in every case will be a listing of the expenses incurred and the name and address of each vendor to whom each expense was paid. The Commissioner will not require any more documentation regarding “qualified expenses” than is absolutely and reasonably necessary to satisfy him that the expenses claimed are eligible for the statutory incentive.

ANALYSIS

APPLICABLE STATUTES

The following definitions are set forth in Tenn. Code Ann. § 67-4-2109(k)(1) with regard to the availability of a credit for a percentage of the expenses incurred in producing a movie or episodic television program in Tennessee.

- (A) “Qualified expenses” means those expenses incurred in this state that are necessary for the production of a movie or episodic television program in this state; provided, however, that such expenses shall not qualify under this subdivision (k)(1)(A) unless both the commissioner of revenue and the commissioner of economic and community development determine, in their sole discretion, that the production and the allowance of the credit are in the best interests of this state. For purposes of this subdivision (k)(1)(A), “best interests of this state” means a determination by the commissioner of revenue and the commissioner of economic and community development that the production is a result of the credit provided in this subsection (k) and that the production is not found to be obscene as defined in § 39-17-901;
- (B) “Qualified investor” means any entity that has established a headquarters facility as defined in § 67-6-224 that has invested in a qualified production company; and
- (C) “Qualified production company” means any entity that incurs at least one million dollars (\$1,000,000) in qualified expenses.

The word “obscene” used in Tenn. Code Ann. § 67-4-2109(k)(1)(A) set forth above is defined in Tenn. Code Ann. § 39-17-901(10) as follows:

(10) “Obscene” means:

- (A) The average person applying contemporary community standards would find that the work, taken as a whole, appeals to the prurient interest;
- (B) The average person applying contemporary community standards would find that the work depicts or describes, in a patently offensive way, sexual conduct; and
- (C) The work, taken as a whole, lacks serious literary, artistic, political, or scientific value[.]

The terms “community,” “patently offensive,” “prurient interest,” and “sexual conduct” used in Tenn. Code Ann. § 39-17-901(10), set forth above, are defined as follows in Tenn. Code Ann. § 39-17-901(2), (11), (12) and (14):

- (2) “Community” means the judicial district, as defined in § 16-2-506, in which a violation is alleged to have occurred[.]
- (11) “Patently offensive” means that which goes substantially beyond customary limits of candor in describing or representing such matters;

(12) “Prurient interest” means a shameful or morbid interest in sex;

(14) “Sexual conduct” means:

(A) Patently offensive representations or descriptions of ultimate sexual acts, normal or perverted, actual or simulated. A sexual act is simulated when it depicts explicit sexual activity that gives the appearance of ultimate sexual acts, anal, oral or genital. “Ultimate sexual acts” means sexual intercourse, anal or otherwise, fellatio, cunnilingus or sodomy; or

(B) Patently offensive representations or descriptions of masturbation, excretory functions, and lewd exhibition of the genitals[.]

Tenn. Code Ann. § 67-6-224(b)(3), referenced in Tenn. Code Ann. § 67-4-2109(k)(1)(B), set forth above, defines a “headquarters facility” as follows:

(3) “Headquarters facility” means a facility in this state that houses the international, national, or regional headquarters of a taxpayer, where headquarters staff employees are located and employed, and where the primary headquarters related functions and services are performed.

Tenn. Code Ann. § 67-4-2109(k) makes the following provisions for a qualified production company or a qualified investor that has established a headquarters facility in Tennessee to obtain a credit for a percentage of the expenses incurred in producing a movie or episodic television program in Tennessee:

(2) A credit in an amount equal to fifteen percent (15%) of any qualified expenses shall be allowed against the combined franchise and excise tax liability of any qualified production company that has established a headquarters facility as defined in § 67-6-224. If the qualified production company does not have a headquarters facility as defined in § 67-6-224, then any qualified investor shall be allowed a credit equal to the amount of credit to which the qualified production company would have been entitled had it established a headquarters facility as defined in § 67-6-224, multiplied by the qualified investor’s percentage ownership interest in the qualified production company.

(3) In order for either a qualified production company or a qualified investor to become entitled to a credit under this subsection (k), the qualified production company shall submit documentation verifying that the qualified expenses have been incurred and paid.

(4) The commissioner shall review the documentation and notify the qualified production company of the approved credit.

(5) Once the qualified production company has been notified of the approved credit, either the qualified production company or the qualified investment company, as appropriate, may submit a claim for the credit. To the extent that any amount allowed as a credit under this subsection (k) exceeds the current and outstanding combined franchise and excise tax liability of the claimant, the amount of such excess shall be deemed an overpayment and shall be refunded to the claimant. For qualified expenses incurred and

paid during any tax year, the commissioner is authorized to issue a refund as described in this subdivision (k)(5) prior to the expiration of such tax year if the amount of the approved credit exceeds the claimant's current and outstanding franchise and excise tax liability on the date of such refund. Any refund under this subsection (k) shall be subject to the procedures of § 67-1-1802; provided, however; notwithstanding any procedure of § 67-1-1802 to the contrary, that a claim for refund shall be filed with the commissioner within three (3) years from December 31 of the year in which the qualified expenses were incurred. In no case shall a refund for the same qualified expenses be allowed twice.

APPLICATION OF THE STATUTES TO A QUALIFIED PRODUCTION COMPANY

Tenn. Code Ann. § 67-4-2109(k) provides that a qualified production company may qualify for a credit amounting to 15% of certain Tennessee expenses incurred in the production of a movie or episodic television program in Tennessee if the following requirements are met:

1. The qualified production company must have established a "headquarters facility" in Tennessee. This requirement will be met if the qualified production company has a Tennessee office that meets the following criteria:
 - (a) The Tennessee office must be a "headquarters facility" that houses the entity's international, national, or regional headquarters (See Tenn. Code Ann. § 67-6-224(b)(3)).
 - (b) The Tennessee office must be where the entity's primary headquarters related functions and services are performed (See Tenn. Code Ann. § 67-6-224(b)(3)).
 - (c) The Tennessee office must be the employment location and physical location of the entity's headquarters staff employees (See Tenn. Code Ann. § 67-6-224(b)(3)).
2. The entity so established must:
 - (a) Incur at least \$1 million in Tennessee "qualified expenses" in the production of a movie or episodic television program; and
 - (b) Secure a written determination by the Commissioner of Revenue and the Commissioner of Economic and Community Development stating that:
 - (i) The movie or episodic television program is in the best interest of Tennessee (See Tenn. Code Ann. § 67-4-2109(k)(1)(A)); and
 - (ii) The expenses incurred in producing the movie or episodic television program were necessary for such production in Tennessee (See Tenn. Code Ann. § 67-4-2109(k)(1)(A)); and
 - (iii) The movie or episodic television program is a result of the credit provided in Tenn. Code Ann. § 67-4-2109(k) (See Tenn. Code Ann. § 67-4-2109(k)(1)(A)); and

(iv) The movie or episodic television program is not “obscene,” as the word is defined in Tenn. Code Ann. § 39-17-901 (See Tenn. Code Ann. § 67-4-2109(k)(1)(A)).

3. The “qualified production company” must submit to the Commissioner of Revenue documentation of the Tennessee expenses incurred in producing the movie or episodic television program (See Tenn. Code Ann. § 67-4-2109(k)(3)). Expenses for talent will be considered incurred in Tennessee if the person to whom payment is made is a permanent resident of Tennessee. Expenditures for travel must be paid to a bona fide Tennessee travel agency or a bona fide permanent Tennessee business establishment engaged in providing travel services.
4. Upon review of the documentation submitted for the expenses incurred in producing the movie or episodic television program, the Commissioner of Revenue will notify the “qualified production company” of the approved amount (See Tenn. Code Ann. § 67-4-2109(k)(4)).
5. If approved, a credit in the amount of 15% of “qualified expenses” will be allowed against the franchise, excise tax liability of the “qualified production company” or the “qualified investor,” as appropriate (See Tenn. Code Ann. § 67-4-2109(k)(2)).
6. If the amount of the approved incentive credit exceeds the franchise, excise tax liability of the entity entitled to the credit, then the excess may be refunded to the entity (See Tenn. Code Ann. § 67-4-2109(k)(5)).
7. In order for the excess credit to be refunded, the entity entitled to the credit must submit a refund claim to the Department of Revenue within 3 years from December 31 of the year in which the “qualified expenses” were incurred (See Tenn. Code Ann. § 67-4-2109(k)(5)).
8. The refund claim must be processed under the provisions of Tennessee law which requires approval of the Commissioner of Revenue and the Tennessee Attorney General (See Tenn. Code Ann. § 67-4-2109(k)(5)).

A “qualified production company” or “qualified investor,” as appropriate, that meets the above outlined requirements will be allowed a credit against its franchise, excise tax liability equal to 15% of the qualified Tennessee expenses that it incurs in the production of a movie or episodic television program in Tennessee and will be refunded the amount that the credit exceeds such liability.

We turn now to an analysis of the Rulings made in response to the questions presented.

1. [TAXPAYER] WILL BE CONSIDERED A “HEADQUARTERS FACILITY” UNDER THE PROVISIONS OF TENN. CODE ANN. § 67-6-224(b)(3) AND FOR PURPOSES OF TENN. CODE ANN § 67-4-2109(k)(2)

[TAXPAYER] will be considered a “headquarters facility” under the provisions of Tenn. Code Ann. §§ 67-6-224(b)(3) and for purposes of 67-4-2109(k)(2), if it:

1. Establishes a facility in Tennessee that houses its international, national, or regional headquarters; and
2. Its headquarters staff employees are located and employed at its Tennessee “headquarters facility”; and
3. Its primary headquarters related functions and services are performed at the facility.

The facts presented clearly state that [TAXPAYER]’s national headquarters is located at [Street Location Address], Tennessee [Zip Code] and that its headquarters staff employees are located and employed at such headquarters. [TAXPAYER]’s primary headquarters related functions and services are performed at this national headquarters office. [TAXPAYER] is thus considered a “headquarters facility” under the provisions of Tenn. Code Ann. § 67-6-224(b)(3) and for purposes of Tenn. Code Ann. § 67-4-2109(k)(2).

2. COSTS AND EXPENSES INCURRED BY [TAXPAYER] IN TENNESSEE
TO PRODUCE A MOVIE OR EPISODIC TELEVISION PROGRAM IN THE
STATE OF TENNESSEE WILL BE CONSIDERED “QUALIFIED EXPENSES” PROVIDED
PROPER APPROVAL IS SECURED

Tenn. Code Ann. § 67-4-2109(k)(1)(A) defines “qualified expenses” for purposes of the incentives available for production of a movie or episodic television program in Tennessee. The statute sets forth the following criteria:

1. The expenses must be incurred in Tennessee to produce a movie or episodic television program in the State of Tennessee.
2. The Commissioner of Revenue and the Commissioner of Economic and Community Development must make a written determination stating that:
 - (a) The production and allowance of the credit are in the best interests of Tennessee; and
 - (b) The expenses incurred were necessary for the production of the movie or episodic television program in Tennessee; and
 - (c) The production is a result of the credit provided by Tenn. Code Ann. § 67-4-2109(k); and
 - (d) The production is not “obscene,” as the word is defined in Tenn. Code Ann. § 39-17-901.

Tenn. Code Ann. § 67-4-2109(k)(1)(C) requires the “qualified expenses” to be incurred in Tennessee by a “qualified production company” and requires that the expenses so incurred amount to at least \$1 million.

As explained in #3 below, [TAXPAYER] will be considered a “qualified production company” if it incurs “qualified expenses” of at least \$1 million in Tennessee in the production of a movie or episodic television program in the State of Tennessee. The facts presented state that, for

purposes of the incentives provided by Tenn. Code Ann. § 67-4-2109(k), [TAXPAYER] will not produce any movies or episodic television programs that are vulgar in nature or “obscene,” as the word is defined in Tenn. Code Ann. § 39-17-901.

The expenses incurred in Tennessee for making a movie or episodic television program will be deemed “qualified expenses,” as defined in Tenn. Code Ann. § 67-4-2109(k)(1)(A); provided that [TAXPAYER] secures a written determination from the Commissioner of Revenue and the Commissioner of Economic and Community Development stating that:

1. The production is a result of the credit provided by Tenn. Code Ann. § 67-4-2109(k); and
 2. The production and allowance of the credit are in the best interests of Tennessee; and
 3. The expenses incurred were necessary for the production of the movie or episodic television program in Tennessee; and
 4. The production is not “obscene,” as the word is defined in Tenn. Code Ann. § 39-17-901.
3. [TAXPAYER] WILL BE CONSIDERED A “QUALIFIED PRODUCTION COMPANY” IF IT INCURS “QUALIFIED EXPENSES” IN TENNESSEE OF AT LEAST \$1 MILLION IN THE PRODUCTION OF A MOVIE OR EPISODIC TELEVISION PROGRAM IN THE STATE OF TENNESSEE

In order to be considered a “qualified production company,” Tenn. Code Ann. § 67-4-2109(k)(1)(C) requires an entity to incur “qualified expenses” in Tennessee of at least \$1 million to produce a movie or episodic television program in Tennessee.

If [TAXPAYER] incurs “qualified expenses” in Tennessee of at least \$1 million in the production of a movie or episodic television program in the State of Tennessee, it will be considered a “qualified production company” for purposes of being eligible for incentives available under Tenn. Code Ann. § 67-4-2109(k) for production of a movie or episodic television program in Tennessee.

4. [TAXPAYER] WILL BE ENTITLED TO A FRANCHISE, EXCISE TAX CREDIT OF 15% OF ITS “QUALIFIED EXPENSES” PROVIDED THAT IT MEETS ALL APPLICABLE STATUTORY REQUIREMENTS SET FORTH IN TENN. CODE ANN. § 67-4-2109(k)

In view of the facts presented and the Rulings in response to questions 1 through 3 above, there is no reason to believe that [TAXPAYER] will fail to meet any of the applicable statutory requirements set forth in Tenn. Code Ann. § 67-4-2109(k) and outlined in this Letter Ruling to qualify for credit equal to 15% of the qualified expenses that it incurs in the production of a movie or episodic television program in Tennessee.

5. THE “QUALIFIED EXPENSES” THRESHOLD OF \$1 MILLION APPLIES TO EACH MOVIE OR EPISODIC TELEVISION PROGRAM PRODUCED BY A “QUALIFIED PRODUCTION COMPANY” IN TENNESSEE

Tenn. Code Ann. § 67-4-2109(k)(1)(C) states that a “qualified production company” is an “. . .

entity that incurs at least one million dollars (\$1,000,000) in qualified expenses.”

Tenn. Code Ann. § 67-4-2109(k)(1)(A) states that “qualified expenses” are “. . . those expenses incurred in Tennessee that are necessary for the production of a movie or episodic television program in this state . . .” (Emphasis underline added.)

According to these statutes, one of the requirements that a “qualified production company” must meet to be eligible for the movie or episodic television production incentive credit provided by Tenn. Code Ann. § 67-4-2109(k)(2) is that the expenses that it incurs “for the production of a movie or episodic television program in this state” must amount to at least \$1 million. For example, suppose that expenses for a movie that [TAXPAYER] produces in Tennessee amount to \$1 million. Assuming that all applicable statutory requirements are met, [TAXPAYER] will receive a credit of \$150,000 (15% of \$1,000,000).

For another movie or episodic television program produced in Tennessee, suppose that [TAXPAYER] incurs expenses of \$990,000. [TAXPAYER] will not receive any credit because the \$1 million “qualified expenses” threshold has not been met.

Assume expenses for another movie or episodic television program produced by [TAXPAYER] in Tennessee amount to \$1,050,000 and all applicable statutory requirements are met. [TAXPAYER] will receive a credit of \$157,500 (15% of \$1,050,000).

6. (a) REQUIREMENT THAT “QUALIFIED EXPENSES” “ARE NECESSARY FOR THE PRODUCTION OF A MOVIE OR EPISODIC TELEVISION PROGRAM IN THIS STATE”

Neither the word “necessary” nor any of the other words or terms used in the phrase “. . . are necessary for the production of a movie or episodic television program in this state . . .” found in Tenn. Code Ann. § 67-4-2109(k)(1)(A) are defined in the law.

The most basic rule of statutory construction is to ascertain and give effect to the intention and purpose of the legislature. *Worrall v. Kroger Co.*, 545 S.W.2d 736 (Tenn. 1977). Legislative intent or purpose is to be ascertained primarily from the natural and ordinary meaning of the language used, without forced or subtle construction that would limit or extend the meaning of the language. *National Gas Distributors, Inc. v. State*, 804 S.W.2d 66 (Tenn. 1991). In seeking to determine the “natural and ordinary meaning” of statutory language, the usual and accepted source for such information is a dictionary. *State v. Givens*, Slip op. 1994 WL406187 (Tenn.Crim.App. Aug. 4, 1994).

One of the definitions given for the word “necessary” in BLACK’S LAW DICTIONARY 928 (5th ed. 1979) is “. . . something which in the accomplishment of a given object cannot be dispensed with . . .” Among the definitions given for the word “necessary” in THE AMERICAN HERITAGE DICTIONARY 834 (2nd ed. 1982) are “[a]bsolutely essential; indispensable” and “[n]eeded to achieve a certain result . . .”

In view of the context of the phrase “. . . are necessary for the production of a movie or episodic

television program in this state . . .” and the definitions of the word “necessary” cited in the above paragraph, it appears that the legislative intent or purpose is to classify expenses without which the movie or episodic television program could not have reasonably been made as “qualified expenses.”

It does not appear that the legislature intended that only expenses that are necessary to make a movie or episodic television program in Tennessee on the lowest possible budget will be allowed as “qualified expenses.”

It appears that the legislature only intended to give the Commissioner of Revenue and the Commissioner of Economic and Community Development the ability to review expenses that a “qualified production company” claims as “qualified expenses” to make sure that such expenses are reasonably related to the production of a movie or episodic television program in Tennessee.

For example, if a “qualified production company” had someone on its payroll that had nothing to do with making the movie or episodic television program in Tennessee, or who was merely present as a bystander when the movie or episodic television program was made, but did not actually do anything at any time in connection with the movie or episodic television program, then that person’s salary will not be allowed as a “qualified expense.” If a person in the employ of the “qualified production company” worked on many projects, including the making of a movie or episodic television program in Tennessee, then only the portion of such person’s salary paid while the person was actually working on making the particular movie or episodic television program in Tennessee will be allowed as a “qualified expense.” Expenses incurred outside Tennessee will not be allowed as “qualified expenses.”

6. (b) MEANING OF THE LANGUAGE “IN THE BEST INTERESTS OF THIS STATE” IN TENN. CODE ANN. § 67-4-2109(k)(1)(A)

Tenn. Code Ann. § 67-4-2109(k)(1)(A) states that “qualified expenses” are limited to those expenses incurred in Tennessee that, in the sole discretion of the Commissioner of Revenue and the Commissioner of Economic and Community Development, are necessary for the production of a movie or episodic television program in this state. The Commissioner of Revenue and the Commissioner of Economic and Community Development must also determine that the production and allowance of the credit are “in the best interests of this state.”

By enactment of Tenn. Code Ann. § 67-4-2109(k), the Tennessee legislature obviously wants to encourage the making of movies and episodic television programs in Tennessee. The legislature has provided an incentive to entities that choose to make movies or episodic television programs in Tennessee and that meet the statutory requirements to qualify for the incentive offered. However, the legislature does not want to encourage or reward the making of movies or episodic television programs in Tennessee that are not “in the best interests of this state.”

The last sentence of Tenn. Code Ann. § 67-4-2109(k)(1)(A), set forth below, defines “best interests of this state” as follows:

For purposes of this subdivision (k)(1)(A), “best interests of this state” means a determination

by the commissioner of revenue and the commissioner of economic and community development that the production is a result of the credit provided in this subsection (k) and that the production is not found to be obscene as defined in § 39-17-901.

A movie or episodic television program that, in the opinion of the Commissioner of Revenue and the Commissioner of Economic and Community Development, is not a result of the credit provided in Tenn. Code Ann. § 67-4-2109(k) or that is “obscene,” as the word is defined Tenn. Code Ann. § 39-17-109, is not “in the best interests of this state” and its producer will not be rewarded by the incentives provided in Tenn. Code Ann. § 67-4-2109(k) for making the movie or episodic television program in Tennessee.

According to the facts presented, [TAXPAYER] intends to produce movies or episodic television programs as a result of the credit provided in Tenn. Code Ann. § 67-4-2109(k) and none of its productions will be “obscene,” as the word is defined Tenn. Code Ann. § 39-17-109. Therefore, it does not appear that [TAXPAYER] will have any problem in meeting the “best interests of this state” requirement.

7. DOCUMENTATION REQUIRED TO EVIDENCE “QUALIFIED EXPENSES”

Tenn. Code Ann. § 67-4-2109(k)(3) and (4) make the following provisions concerning the documentation of “qualified expenses” that are eligible for the statutory incentive for the making of a movie or episodic television program in Tennessee:

- (3) In order for either a qualified production company or a qualified investor to become entitled to a credit under this subsection (k), the qualified production company shall submit documentation verifying that the qualified expenses have been incurred and paid.
- (4) The commissioner shall review the documentation and notify the qualified production company of the approved credit.

The statutes are so written that the Commissioner of Revenue may require any documentation that, in the opinion of the Commissioner, is necessary to satisfy him that the expenses are eligible for the statutory incentive. The actual documentation required will be determined by the Commissioner on a case-by-case basis and may vary depending on the factual situation with which the Commissioner is presented.

The minimal documentation that will be required in every case will be a listing of the expenses incurred and the name and address of each vendor to whom each expense was paid. If the nature of the expense and its relationship to the movie or episodic television program produced is not obvious from such a listing, then a further explanation may need to be provided.

In some situations, the Commissioner may find it necessary to require a copy of the invoice evidencing each expense and/or a copy of the canceled check or other evidence of payment. Affidavits attesting to certain expenses, or certain work done in production of the movie or episodic television program in Tennessee may also be required in certain instances.

In any case, the Commissioner will not require any more documentation regarding “qualified

expenses” than is absolutely and reasonably necessary to satisfy him that the expenses claimed are eligible for the statutory incentive.

Arnold B. Clapp
Special Counsel to the Commissioner

APPROVED: Richard H. Roberts, Commissioner

DATE: 1-24-11