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Guidelines and Instructions for Application of Qualified Production Tax Credit & Sales and Use Tax Exemption

DISCLAIMER: These are intended to be guidelines only and are subject to revisions. Please check with the Tennessee Entertainment Commission prior to submitting any applications to verify you are using the latest guidelines.

Contents

The definitions of capitalized terms used herein that are not found in the text below can be found in Section 9

Section 1 – Program Overview

1.1 General Program

Tennessee offers a qualified production credit that can be used to offset up to 50% of franchise and excise tax liability. Tenn. Code Ann. § 67-4-2109(j)(2). An applicant who will be engaging in a Qualified Production can generate a tax credit for compensation paid in this state to qualified positions. A Qualified Position means services necessary to and primarily for a qualified production. The amount of the tax credit is 40% for Qualified Payroll Expenses, except in the case of Qualified Payroll Expenses paid to individuals whose primary residence is in a tier 2, 3, or tier 4 enhancement county for which the credit is 50% of Qualified Payroll Expenses. A credit for Qualified Payroll Expenses will be allowed against the applicant's combined franchise and excise tax liability for Qualified Payroll Expenses paid in the state during the applicable tax period. Applicants may request approval to file a combined return with one or more affiliates or affiliated groups for purposes of utilizing the credit. Credits will have a 15 year carry forward.

A Qualified Production must be determined by the Department of Economic and Community Development ("ECD") and the Department of Revenue ("DOR") to be in the Best Interests of the State before applying for the credit. In addition to the credit, an applicant may apply simultaneously for a point of purchase sales and use tax exemption on all taxable goods and services necessary to and primarily used for a Qualified Production. A third party purchasing or using goods or services necessary to and primarily used for a Qualified Production may also separately apply for the sales and use tax exemption. Tenn. Code Ann. § 67-6-323.

To apply for Qualified Production status, applicants will apply to the Tennessee Entertainment Commission on Form A. If the Commission determines the applicant is engaging in a qualified production, then the commissioners of ECD and DOR will determine, in writing, if the production is in the Best Interests of the State. If an applicant is determined to be a qualified production, they must provide production credits, coordinate the delivery of BTS, publicity and social media assets associated with the production to the Commission and organize on location set visits for officials.

1.2 Production Credits to Tennessee

Qualified Productions should provide end credit acknowledgements to the Governor's Office, Tennessee Entertainment Commission (TEC), and regional organizations(s) (if applicable) that provided services to the Qualified Production Entity. All Qualified Productions should also include a Tennessee logo (provided by the TEC) in the credits for the life of the project and/or broadcast. Logo guidelines and assets will be provided to all approved Qualified Productions by the Tennessee Entertainment Commission.

Section 2 – Eligibility Guidelines

2.1 Qualified Productions

A qualified production as determined by the Tennessee Entertainment Commission means: the production of a film, pilot episode, series, esports event, or other episodic content in this state; the creation of computer-generated imagery, video games, or interactive digital media in this state; or stand-alone audio or visual post-production scoring and editing in this state.

As stated, a qualified production must be determined to be in the best interests of the state to qualify for the exemption or credit. The following items likely will not be in the best interests of the state: news, sports (excluding esports), concerts and awards shows; documentaries, webisodes, short form content, corporate marketing or training videos; projects consisting primarily of stock footage and/or interviews; trailers; photo shoots or still photography; website development; and anything that is not original content recorded in Tennessee.

Content and resulting production should not be obscene in nature, as defined by TCA § 39-17-901. Projects applying for the Qualified Production Tax Credit and Sales & Use Tax Exemption will be evaluated on a case-by-case basis. All content will be reviewed to ensure the Qualified Production is in the best interests of the State. The content of the production should also not require that records be maintained pursuant to 18 U.S.C. Sec. 2257 with respect to any performer portrayed therein. The applicant should also comply with all applicable state and federal laws.

2.2 Qualified Position

Qualified Position means services performed by an employee or an independent contractor determined by the Commission to be necessary to and primarily for a qualified production. Applicant must submit a preliminary list of employee or independent contractor positions as part of Form A Part 4 documentation submission to the Commission. See Form A for further instruction.

2.3 Minimum Thresholds

Scripted Film and Television (including Pilots) that will incur less than $500,000 in total qualified production expenditures in Tennessee per project in a taxable year are not likely to be considered in the best interests of the state. Non-Scripted formats (i.e., Talk Shows, Game shows, competition shows, docuseries, reality series); animation, commercials, and video game development that will incur less than $100,000 in Qualified Tennessee Expenditures per project in a taxable year are not likely to be considered in the best interest of the state. All audio and visual postproduction; virtual and augment reality development that will incur a QTE of at least $50,000 per project in a taxable year are not likely to be considered in the best interests of the state.

Section 3 – Application Process

3.1 Forms

- Form A- Application for Approval as Qualified Production and Best Interests Determination
- Application for Qualified Production SU Exemption
- Application for Qualified Production FE Tax Credit
- Form D: Qualified Positions
- Power of Attorney Form

3.2 Timing of Forms

To allow adequate time for all reviews and approvals, the Tennessee Entertainment Commission strongly recommends submitting all required forms and additional documentation at least (60) days prior to the start of making expenditures for a Qualified Production.

3.3 Additional Documentation to be Supplied by Applicant

- Organization Chart (include Affiliate and Affiliated Group relationships)
- Detailed preliminary budget
- List of all Qualified Positions necessary to and primary for the Qualified Production. See Form D
- Written description of project, if applicable provide the script & synopsis
- List of known creative elements
- Tentative Plans for distribution
- Power of Attorney (if requesting combined filing or authorizing outside representative)

3.4 Registering with DOR for sales/use tax and franchise, excise taxes

Organizations applying for the Tax Credit and SU Tax Exemption must be registered with the Department of Revenue and have a F&E Account No. and Sales Tax Account No. This should be completed prior to or in conjunction with your applying to Tennessee Entertainment Commission Form A: Application for Approval as Qualified Production and Best Interests Determination

- Registration for both Franchise & Excise Taxes and Sales/Use Taxes is available on the Tennessee Taxpayer Access Point (TNTAP). Some companies may already be familiar with TNTAP. However, for any companies involved in a qualified production who are not yet registered for these taxes, we recommend that complete your registrations by using the form found here: Application for Registration (tn.gov). Your registration form can be provided along with Form A to the Tennessee Entertainment Commission at TNentertainment@tn.gov, or sent directly to the Department of Revenue to Alaina.B.Turner@tn.gov CC'ing Stacy.Gibson@tn.gov and Aaron.Horton@tn.gov.

- Completing and transmitting the registration(s) this way will allow the state to assist you in ensuring that they are set up correctly, especially in cases where companies are creating a special production entity that will be a single member LLC (SMLLC) whose single member is a corporation for federal purposes. Such an entity is disregarded for Tennessee tax purposes with the parent corporation having the filing requirement. However, for sales/use tax purposes, each location must be registered. By reviewing your registration, and the information provided in Form A, the Commissioner and the Department of Revenue will be better able to assist you.

Section 4 – Application Review and Notification Process

4.1 Tax Credit

To generate a credit for qualified payroll expenses, an applicant must first apply to Tennessee Entertainment Commission (Commission) on *FORM A – Application for Qualified Production and Best Interest Determination*. If the Commission determines that the applicant is engaging in a qualified production, then the Commission will notify the applicant and the Department of Revenue in writing. Upon the Commission's notification, the Department of Economic and Community Development (ECD) and Department of Revenue (DOR) will make a "Best Interest of the State" determination. This determination is made at the sole discretion of the Commissioners of ECD and DOR. In making this determination, the Commissioners may consider the investment made, jobs created, and impact to the community. If the Commissioner's deem the production to be in the best interest of the state, a letter of determination will be issued identifying the applicant as a Qualified Production.

Application to file with DOR for a tax credit and to file on a combined basis is made using the *Application for QP FE Tax credit form* filed as an attachment to Form A that is filed with TEC. Subject to the approval of DOR, an applicant may file a combined return with one or more affiliates or affiliated group members for purposes of fully utilizing this credit. The applicant will receive a separate manual letter approving the status of a combined filing based on the best interest determination from the Commissioners of DOR and ECD. Once an application to file a combined return is granted, an applicant may apply to add or change affiliates or affiliated group members included in the combined return prior to filing the first combined return on which the credit is claimed. If the addition or change is approved by DOR and ECD, then the members included on the combined return must remain unchanged for a minimum of three years, beginning with the first tax year in which the credit is claimed on a combined return.

Each member included on the combined return must close its taxable year on the same date. The total credit taken on any franchise and excise tax return, including any credit carried forward from the prior tax periods, may not exceed 50% of the combined franchise and excise tax liability shown on the return before the credit is taken. Any unused credits may be carried forward in any tax period until the credit is taken; provided however, that the credit may not be carried forward for more than 15 years.

Before a qualified production credit may be claimed on a franchise and excise tax return, the taxpayer must receive a letter from the Department of Revenue that shows the approved qualified payroll expense amount for the tax period. To receive this letter, the taxpayer must provide detail accounting and payroll information to the Department. An excel template with instructions is available for this purpose *see List of Qualified Payroll Expenses for Qualified Production*. Upon review of the excel schedule the Department may request additional information and documents before issuing the letter. Once received, the approved amount is entered on Schedule QP Franchise and Excise Qualified Production Credit, Lines 1, 2 and 3. This schedule is part of the form FAE170 Franchise and Excise Tax Return filing made at the end of each tax period.

It is recommended that applicant's review the information that is requested on the *List of Qualified Payroll Expenses for Qualified Production* and structure their accounting system to capture the information so that it can easily be reported to DOR. For example, amounts paid for a worker's wages post to a general ledger account titled "wage expense." Payroll reports show the total of this account ties to Box 1 of the form W-3. An accounting system may have a "job costing" feature that gives it the ability to *apply* an individual's wages to specific jobs, clients, or in our case qualified productions. An applicant may find that having an accounting system with this ability very helpful. Even more so, the provider of contract labor to a production may want to use job costing software to apply their payroll to specific jobs. The taxpayer should consider asking their contractors to provide the payroll data and job costing reports for their employees that worked on the qualified production along with their invoices.

Please contact Susan Amin, DOR Franchise and Excise Tax Division, before filing a combined return. She will explain what pro-forma and combining workpapers are needed. Her contact information: (615) 532-6394; email susan.amin@tn.gov

4.2 Sales and Use Tax Exemption

To receive a sales tax exemption certificate, an applicant must first apply to Tennessee Entertainment Commission (Commission) on *FORM A – Application for Qualified Production and Best Interest Determination*. If applicable, it is recommended that applicants apply for sales tax exemption at the same time when applying for the tax credit. If the Commission determines that the applicant is engaging in a qualified production, then the Commission will notify the applicant and the Department of Revenue. Upon the Commission’s notification, the Department of Economic and Community Development (ECD) and Department of Revenue (DOR) will make a “Best Interest of the State” determination. This determination is made at the sole discretion of the Commissioners of ECD and DOR. In making this determination, the Commissioners may consider the investment made, jobs created, and impact to the community. If the Commissioner’s deem the production to be in the best interest of the state, a letter of determination will be issued identifying the applicant as a Qualified Production.

As a Qualified Production, the applicant must register with the Department of Revenue and apply for a sale and use tax exemption certificate using *Application for QP SU Exemption*. Upon issue of the certificate by DOR the Qualified Production may make purchases on a tax-exempt basis. All exemption certificate expires two years from its effective date; however, applicants may apply with DOR to be granted up to a two-year renewal. A Third party purchasing or using goods and services that are necessary to and primarily used for a qualified production may separately apply to the department of revenue to also obtain an exemption certified to use the exemption to make purchases on a tax-exempt basis for the identified qualified production.

4.3 Pre-Production Meeting

The Production Entity should meet with TEC and the Department of Revenue to discuss Guidelines and address any questions regarding the program rules and regulation, timelines and/or the Qualified Production before beginning production.

Section 5 – Qualified Expenditures and Programmatic Caps

- Expenditures are considered Qualified Tennessee Expenditures only to the extent that the costs are clearly and demonstrably incurred in Tennessee in the pre-production, production, and post-production phases of a Qualified Production.

- Incurred in Tennessee means payments made for goods or services necessary to and primarily used for a Qualified Production AND purchased from a Tennessee Vendor

- Qualified payroll Expense is compensation paid to a Qualified Position for services performed by an employee or an independent contractor determined by the Commission to be necessary to and primary for a Qualified Production.

- Qualified Payroll Expenses for Qualified Positions may be limited to the first $1,000,000 per qualified position per production/per episode.

- Qualified Positions for non-residents may be limited up to 30% of total qualified positions determined by the Commission to be necessary to and primarily for a qualified production.

- Credit amount for Qualified Payroll Expenses shall be 40%, except in the case of Qualified Payroll expenses paid to individuals whose primary residence is in a tier 2, 3, or tier 4 enhancement county, for which the credit is 50% of Qualified Payroll Expenses.

5.1 Common Eligible Qualified Production Expenditures

The following are common expenditures incurred by a Production Entity that are typically considered to be qualified expenditures. This is not intended to be a complete list. Refer to Appendix B for additional list of all payroll and non-payroll items eligible for the program. Please contact Tennessee Entertainment Commission with any questions prior to production.

- Qualified Payroll Expenses and Non-Payroll Tennessee Expenditures are expenses directly associated with the Qualified Production including labor, equipment, goods, services necessary to and primarily used for a Qualified Production.
- Qualified Payroll Expenses any expense included in Box 1 of the worker's form W-2. The labor of a sole proprietor is a qualified payroll expense to the extent it would be reported in Box 1 of a W-2 if a W-2 was filed. Fees, per diem and fringe benefits (*including pension, workers compensation and health and welfare payments*) are not qualified payroll expenses unless included in the workers W-2, Box 1. For Loan Out Company Registration please see Section 5.4.a
- Travel of cast and crew to/from and within Tennessee, when purchased from a Tennessee Vendor (*does not include private/charter flights*). Please review Appendix B.
- Grip and Electric packages
- Camera Rentals
- Craft Service
- Picture Vehicles
- Software & computer Equipment

5.2 Common Ineligible Qualified Production Expenditures

The following are common expenditures incurred by a Production Entity that are **not considered to be qualified expenditures**. This is not intended to be a complete list. Refer to Appendix B for additional list of all payroll and non-payroll items eligible for the program. Please contact Tennessee Entertainment Commission with any questions prior to production.

- Costs/fees associated with advertising, marketing, distribution, financing, and completion bonds
- Alcohol and tobacco – including use as props
- Cell phone reimbursements
- Contingency fees & Development fees
- Profit sharing payments
- Gifts/prizes
- Wrap party expenses
- In-kind services/goods/labor
- Expenditures incurred in Tennessee if majority of Production occurs out-of-state. (*i.e., travel, goods, services, equipment rental, labor*)
- Employer Payroll Taxes (*FICA, SUI, FUI etc*.)
- Any expenditure for an approved project that is related to portions of a Qualified Production that did not physically occur in Tennessee

5.3 Loan Out Companies

Tax Registration Guidance for Out -of -State and in – State Loan – Out Companies Providing Services to a Qualified Production

Franchise, Excise Tax

Franchise and excise tax are annual taxes imposed on entities that operate in Tennessee and offer their owners limited liability protection. Although the franchise and excise taxes are two separate taxes and are computed separately, the Department of Revenue (the "Department") administers both taxes together under a singular tax structure and requires the filing of an annual return. Excise tax is 6.5% of Tennessee net earnings or income, and franchise tax is based on the greater of net worth or the book value of real or tangible personal property owned or used in Tennessee, with a minimum $100 due.

If, for example, an actor creates a corporation or LLC to "loan out" its services, the corporation or LLC - the "loan-out company" – should have a Tennessee registration and filing requirement if the services are being performed in Tennessee, even if the company is located outside of Tennessee.

The Department's Franchise and Excise Tax Manual (tn.gov) provides thorough guidance on franchise and excise tax application and administration. However, in general, an out-of-state loan-out company providing services on a Tennessee qualified production should be considered to be doing business and have substantial nexus in Tennessee because it would have agents physically present in the state at least on temporary basis. (For a full discussion of "doing business" and "substantial nexus," please refer to Franchise and Excise Tax Manual (tn.gov).

Business Tax:

Business tax is an annual tax on the privilege of doing business by making sales of tangible personal property and/or services in Tennessee and its local jurisdictions. With a few exceptions, all businesses that sell goods or services and have gross sales of at least $10,000 must pay at least the state-level business tax. Service providers such as loan-out companies will come within Classification 3 of the business tax. Classification 3 taxpayers should register and pay business tax on their services at the retail rate of – 3/16 of 1% (0.001875) of its taxable gross sales.

Business tax obligations differ depending upon whether a loan-out company maintains a business location in Tennessee or is an out-of-state company that comes into Tennessee to deliver its services. For example, an out-of-state company that does not maintain a business location in Tennessee but has agents that come into Tennessee to provide services to a qualified production, should have a state-level business tax registration and filing if its gross sales of services in Tennessee are $10,000 or more. An out-of-state company that owes only state-level tax is not required to obtain a business tax license from the county or counties in which services are provided.

A loan-out company located in Tennessee should have a state-level business tax registration and filing requirement if its sales are $10,000 or more. An in-state loan-out company should also have a city/municipal business tax filing requirement if it located in a city that has imposed the business tax. Even if services are provided in other Tennessee jurisdictions, the in-state loan-out company should report tax based upon its business location. If located within a city/municipality that imposes business tax, a loan-out company should report both state-level tax and city/municipal tax each year that it is doing business. An in-state loan-out company would be required to obtain a business tax license from the county and city in which it does business.

The Department's Tennessee Business Tax Manual (tn.gov) provides thorough guidance on business tax application and administration. For example, for a full discussion of "doing business" and "substantial nexus," please refer the manual.)

For more information on franchise and excise taxes please refer to Franchise-Excise-Tax.pdf (tn.gov)

To register a Loan Out Company in the State of Tennessee online go to www.tn.gov/revenue or complete Application for Registration (tn.gov) and submit it to the Tennessee Entertainment Commission at TNentertainment@tn.gov, or directly to the Department of Revenue,

5.4 Completion Notification

Upon the completion of a Qualified Production, the Production Entity should post a notice, once a week for three consecutive weeks, in local newspapers distributed (if applicable) in each Tennessee location where Qualified Production took place, notifying the public of the need to file creditor claims with the Production Entity by a specified date. The Production Entity agrees that outstanding obligations are not waived by a creditor failing to file such claim by the specified date. The Production Entity should include the Qualified Production title, address, phone, and contact name(s) of its primary or corporate office - not a temporary Tennessee production office - as vendors and hires need to be able to contact the Production Entity after it has closed its local production office. Tennessee based companies should include their Tennessee primary or corporate office information. The Production Entity should submit this information to the TEC and submit a copy of the newspaper bill for all three weeks to the TEC.

Section 6 – Compliance Guidance

6.1 Tax Credit

Franchise, excise taxes are filed annually, and returns are subject to review by the Department of Revenue. Prior to claiming a qualified production credit on a franchise and excise tax return, the taxpayer/applicant must have been approved as a qualified production and received a determination that receiving the credit is in the best interests of the state.

Taxpayer/applicants seeking a franchise and excise tax qualified production credit will complete the actions described below. A taxpayer/applicant is the entity financing, producing, or hiring third parties to produce the qualified production. This is the entity expected to incur the qualified payroll expenses either directly or indirectly. Applicants will—

1. Provide information to the Tennessee Entertainment Commission to be designated as a qualified production. Taxpayer/applicants will file Form A with the commission that describes the nature of the planned production, and the estimated number of qualified employment positions on Form Qualified Positions.

2. Taxpayer/applicants of a qualified production may apply to the Department of Revenue to request a best interest of the state determination for the purpose of claiming the qualified production credit. The *Application for QP FE Tax Credit* is filed with the Department of Revenue. This form is also used to request approval of the Department of Revenue to file a combined return with one or more affiliates or affiliated group members for purposes of fully utilizing the credit. For assistance in completing this form please contact the Department's Franchise and Excise Tax Division at (615) 532-6394 or susan.amin@tn.gov .

   If the application is approved, the Department of Revenue will provide the taxpayer with an approval letter authorizing the credit, the estimated value of the credit, the terms of the credit, and the reporting requirement to claim the credit. The Department will also notify the taxpayer if the application is denied with a brief explanation. Likewise, the Department will notify the taxpayer if the request for combined filing is approved or denied.

3. All qualified positions must be approved by the Film Commission.

4. The taxpayer/applicant submits detail payroll data for the qualified positions to the Department of Revenue in support of the qualified payroll expenses being claimed for the credit. An excel template titled *List of Qualified Payroll Expenses for Qualified Production* is available for this purpose. This worksheet has an instruction tab that, among other things, describes the supporting documentation that must accompany the form. It is recommended that taxpayers become familiar with the *List of Qualified Payroll Expenses for Qualified Production* so that they can capture the required data as the expenses are incurred.

5. Upon review of the detail payroll listing mentioned above, the Department will issue a letter to the taxpayer showing the approved amount. Note, all information submitted in the Excel spreadsheet is subject to review. Thus, the Department may request additional information and documents upon receiving the information.

6. After review of that information, the Department will issue a letter indicating the specific amount approved to be claimed as credit. Once that approval is received, the approved amount is entered on Schedule QP Franchise and Excise Qualified Production Credit, Lines 1, 2 and 3. This schedule is part of the form FAE170 Franchise and Excise Tax Return filing made at the end of each tax period.

All items reported on tax returns are subject to review by the Department to ensure correctness. The taxpayer's complete franchise, excise tax return may be subject to review, and, if the return is miscalculated, credits may be adjusted, and additional tax, penalty or interest may be assessed within three years from December 31 of the year the return was filed and paid. This also applies to calculation of tax credit carryover amounts claimed on the return. Taxpayers should retain sufficient documentation to support the tax credit and carryover amounts for at least 3 years from December 31 of the final year that any carryover of the credit is claimed.

6.2 Sales and Use Tax Exemption

To make tax exempt purchases, taxpayer/applicants must first obtain an exemption certificate from the Department of Revenue. To do this taxpayer/applicant must file *Application QP SU Exemption* with the Department of Revenue.

- A copy of the exemption certificate must be provided to the seller to make such purchases exempt from tax. Exemption certificates must be used only to make purchases primarily used in the qualified production.
- The exemption certificate is only valid for purchases made directly by the Applicant/taxpayer named on the exemption certificate. The applicant/taxpayer applying for the franchise, excise tax credit should also be the entity (or a disregarded SMLLC owned by the entity) applying for the sales and use tax exemption. Third parties making purchasing and using tangible personal property, computer software, or services that are necessary to and primarily used for a qualified production may also be granted an exemption. However, third parties must separately apply to receive the exemption. The same tax exemption application is used for third parties but requires that the qualified production also sign the application for any third-party seeking the exemption.
- All purchases made using the sales and use tax exemption certificate are subject to review by the Department of Revenue to determine if they were made in accordance with the named production and associated guidelines. Applicant/Taxpayers will submit the recommended excel template titles *List of Qualified Production SU* with detailed accounting information to the Department.
- The Department may choose to review 100% of purchases made by an Applicant/taxpayer/Third Party without paying tax, or it may choose to verify compliance using a sampling approach. Thus, all taxpayers must maintain sufficient records to determine whether all purchases made qualified for the exemption. Records should include documentation supporting the amount of all merchandise purchased including bills of lading, invoices, and purchase orders.
- Applicant/Taxpayers will be subject to assessment for any sales or use tax, penalty, or interest that would otherwise have been due if there is not sufficient information to conclude that the purchases met all the statutory requirements for the exemption. For all taxpayers who are registered and filing Tennessee sales tax returns, records must be maintained for at least 3 years from December 31 of the year in which the purchase was made using the exemption certificate.

BUSINESS TAX

Persons doing business in Tennessee are required to register for Business tax per Tenn. Code Ann. §67-4-701. This tax is not exempted under the Qualified Production law.

Each taxpayer is classified by its dominant business activity on a per location basis pursuant to Tenn. Code Ann. § 67-4-708. A taxpayer's classification determines its tax rate. Per Tenn. Code Ann. § 67-4-702(5), "dominant business activity" means the business activity that is the major and principal source of taxable gross sales of the business. The Department relies on the Standard Industrial Classification Index (the "SIC index") to determine a company's dominant business activity. Registration for Business tax may be completed on the same form as the Sale/Use and Franchise/Excise tax registration.

Section 7 – Reporting Process

7.1 Forms

1. List of Qualified Payroll Expenses for Qualified Production
2. List of Qualified Production SU Expenses
3. *Form B:* Tennessee Declaration of Residency (Only for each Tennessee Resident with primary residency in Tier 2, 3 & 4 enhancement counties, in which the qualified production is claiming a credit for qualified payroll expenses.
4. *Form C:* Final Application should be completed and submitted to the TEC along with all Form C Part 3 Additional documentation.

7.2 Reporting Qualified Positions for Tax Credit

As part of Form C: Final Application Part 3 documentation to the Commission, the production entity will submit a finalized list of Qualified Position on the *List of Qualified Payroll Expenses for Qualified Production*. For Qualified Position applicable to receiving a 50% credit the employee or independent contractor will fill out a *Form B-Tennessee Declaration of Residency*. Tennessee Residents must meet Tennessee resident criteria, which requires a Tennessee driver's license or identification (ID only) license. According to state law new residents or those returning to Tennessee and holding a driver's license from another state must obtain a Tennessee driver's license no later than thirty (30) days after establishing residency. All new or returning residents must surrender their out-of- state license at time of application for a Tennessee license. Tennessee law does not allow a resident of this state to hold more than one valid driver's license or ID. Only foreign country licenses/IDs may be retained. All applicants obtaining an ID only license must meet the same standards for proof of identity, legal presence and residency as required for any driver's license. For Qualified Payroll Expenses to qualify the individual must have a Tennessee driver's license or Identification (ID Only) license prior to each payment by the Production.

7.3 Demonstration of Work

The Production Entity should provide, to the extent possible, access to a Qualified Production, or the most recent version of the Qualified Production, to the Tennessee Entertainment Commission. The Production Entity should also provide promotion materials agreed upon by the Tennessee Entertainment Commission and the Production Entity (if applicable).

7.4 Final Credit Award

Before a qualified production credit may be claimed on a franchise and excise tax return, the taxpayer must receive a letter from the Department of Revenue that shows the approved qualified payroll expense amount for the tax period. To receive this letter, the taxpayer must provide detail accounting and payroll information to the Department. An excel template with instructions is available for this purpose see *List of Qualified Payroll Expenses for Qualified Production*. Upon review of the excel schedule the Department may request additional information and documents before issuing the letter. Once received, the approved amount is entered on Schedule QP Franchise and Excise Qualified Production Credit, Lines 1, 2 and 3. This schedule is part of the form FAE170 Franchise and Excise Tax Return filing made at the end of each tax period.

Section 8 – Confidentiality

8.1 Tennessee Public Records Act

The Tennessee Public Records Act is found in Tennessee Code Annotated ("TCA") § 10-7-101 and the sections that follow it. For purposes of access to public records, the operative provision is found in TCA § 10-7-503, which says: "All state county and municipal records ... shall at all times, during business hours, be open for public inspection by any citizen of Tennessee, and those in charge of such records shall not refuse such right of inspection to any citizen, unless provided by state law."

"Records" are defined in TCA § 10-7-301 as "all documents, papers, letters, maps, books, photographs, microfilms, electronic data processing files and output, films, sound recordings, or other material, regardless of physical form or characteristics made or received pursuant to law or ordinance or in connection with the transaction of official business of any governmental agency."

In summary, documents that come into possession of a governmental agency either by virtue of receipt of the documents by the agency, or creation of the documents by the agency, are public records that must be made available for public inspection unless they are exempt from the disclosure by state law. TCA § 10-7-505(d) says the law "shall be broadly construed so as to give the fullest possible public access to public records."

TCA § 10-7-504 lists several records and categories of records that are exempt from disclosure. In addition, this same provision lists cross-references to many statutes that exempt certain records from disclosure.

8.2 Taxpayer Confidentiality

Tenn. Code Ann. § 67-1-1702(a) protects tax returns and taxpayer information as confidential and prohibits the unauthorized disclosure of taxpayer information. Taxpayer information is defined under Tenn. Code Ann. § 67-1-1701 and includes a company's identity, tax account numbers, information about income, tax credits, exemptions, net worth, tax assessments, and audit status. This means that ECD and TDOR are generally prohibited from disclosing a company's tax-related records to the public, even if requested under the Public Record Act. Be aware that exceptions to the taxpayer confidentiality law do apply, for example with Comptroller audits, criminal subpoenas, and certain judicial proceedings.

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