

Film Production Tax Credit Program

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Film Production Tax Credit Guidelines (Section 135.750, RSMo)

Pursuant to Section 620.1900, RSMo, this tax credit program is subject to a fee of 2.5% of the amount of tax credits issued. Applicants will be invoiced for the fee after the tax credit application has been approved. Tax credits will be issued upon receipt of the fee.

DEFINITIONS

Highly compensated individual: Any individual who received compensation in excess of one million dollars in connection with a single qualified film production project.

Qualified film production project: Any film, video, commercial, or television production that has been approved by the Department of Economic Development and the Missouri Film Office. Qualified films under thirty minutes must spend a minimum of fifty thousand dollars. Qualified films over thirty minutes must spend a minimum of one hundred thousand dollars.

Business Entity Located in Missouri: Any sole proprietorship, partnership, limited liability entity or corporation with offices in Missouri more than 180 days prior to the start of a film production for which tax credit expenditures are being claimed.

Individual Located in Missouri: A person residing in Missouri more than 180 days before the start of a film production for which film tax credit expenditures are being claimed.

Missouri Expenditure: An expense for a product or service provided in Missouri that is a necessary cost for the production of a qualifying film production, for which remuneration is received by a business entity, organization or individual located in Missouri. Such expenditures may include, but are not limited to, the costs for labor, services, materials, equipment rental, lodging, food, location fees and property rental. Interstate travel expenses and any other expenses incurred outside of Missouri are not Missouri expenditures.

Travel: All charges related to Interstate travel are not eligible. The exception is travel to and from Missouri airports to filming destination. Hotel charges will be allowed with a copy of the itemized billing.

Qualifying expenses: A Missouri expenditure that is used in the production of the qualified film production project.

- a. Goods and services leased or purchased by the production company- for goods with a purchase price of twenty-five thousand dollars or more, the amount included in qualifying expenses shall be the purchase price less the fair market value of the goods at the time the production is completed.
- b. Bank interest will not be a qualifying expense.
- c. Compensation and wages paid by the production company on which the production company remitted withholding payments to the department of revenue- to verify that withholdings were taken out, a paycheck stub will need to be submitted.

NAICS (North American Industry Classification System): The Federal Office of Management and Budget (OMB) adopted the NAICS as the industry classification system used by the statistical agencies of the United States. NAICS replaces the 1987 Standard Industrial Classification (SIC). The NAICS is used for classifying business establishments to assist with gathering data related to measuring productivity, unit labor costs, and the capital intensity of production, employment and other information. Missouri businesses are assigned a NAICS when the company files a "Report to Determine Liability Status" with the Missouri Department of Labor and Industrial Relations, Division of Employment Security to determine Unemployment Tax Liability. Normally, a general business employer becomes liable for the tax and responsible for providing unemployment insurance for its workers when it:

- Pays \$1,500 in wages (cash and in-kind) in a calendar quarter, or
- Has an employee in some portion of a day in each of 20 different weeks, or
- Becomes liable under the Federal Unemployment Tax Act (FUTA) and employs a worker in Missouri, or

- Acquires and continues without interruption substantially all the business of a liable employer.

Necessary Costs: Money actually paid for items that are consumed in the production of the project, less any salvage, resale or residual value. Such items may include, but are not limited to, the costs for labor, services, materials, equipment rental, lodging, food, location fees and property rental. All such costs must be reasonable and within accepted industry standards. Necessary costs do not include any marketing costs that are incurred.

Organization Located in Missouri: Any non-profit organization in existence in Missouri for more than 180 days prior to the start of a film production for which tax credit expenditures are being claimed, and any public entity located in Missouri.

Pre-application (Letter of Intent): A form used at the beginning of the process of requesting the tax incentive, where an estimate of the proposed Missouri expenditures is provided by the producers of the film project. The estimates provided by the producers will be used in determining whether the project may meet the qualifying amount of \$50,000 for films less than 30 minutes in length and \$100,000 for films over 30 minutes in length in Missouri expenditures, and in determining the estimated amount of tax credits that could be reserved for the project.

Project Review: The process by which DED examines the estimates provided in the pre-application form and any other relevant information to determine the likelihood of the film project qualifying for Missouri film production tax credits. Such reviews may be performed periodically on each project, or at any time when new information indicates a likelihood that a project will be delayed.

Proof of Payment: Receipt; check (cancelled, front and back); bank statement (for debit card transactions); or credit card statement (for credit card transactions).

Proof of Purchase: Invoice or receipt.

Reserved Tax Credits: Tax credits that DED sets aside for a project that has submitted an application form demonstrating a likelihood of surpassing \$50,000 in Missouri expenditures for films less than 30 minutes in length and \$100,000 in Missouri expenditures for films over 30 minutes in length. Such reserved credits may be rescinded upon a subsequent review of the project that results in a finding that the project is not likely to qualify for the reserved credits within the time scheduled for the project.

Effective January 1, 2008, the Missouri Department of Economic Development (DED) may issue a film production company a state income tax credit equaling up to 35% of the company's expenditures in Missouri necessary for the making of a film. Each film production company will be limited to one qualified film production project per year. A qualifying film production project shall not include any of the following:

- News or current events programming
- Talk shows
- Production produced primarily for industrial, corporate, or institutional purposes, and for internal use
- Sports event or sports programs
- Gala presentation or awards shows
- Infomercials or any productions that directly solicits funds
- Political ads
- Productions that are considered obscene, as defined in section 573.010, RSMo

To Qualify: The film production company must spend at least \$50,000 for films under thirty minutes in length. They must spend at least \$100,000 for films over thirty minutes in length (i.e., payments made to Missouri companies, organizations or individuals) in the making of the film. Only those Missouri expenditures that are necessary for the production of the film are applicable. Such expenditures may include, but are not limited to, the costs for labor, services, materials, equipment rental, lodging, food, location fees and property rental.

Uses of Tax credits: The tax credits may be applied against state income taxes (excluding withholding taxes) or financial institution taxes. They may be applied by the original recipient against such tax liability, or may be sold or transferred to another taxpayer and applied by the transferee against such tax liability. The credits may be used for the tax period during which they are earned, or may be carried forward for up to five additional tax periods. All film

production tax credits must be claimed within ten tax periods following the tax period in which the film production or production-related activities for which the credits are certified by the department occurred.

Reservation of Tax Credits: The entire film production tax credit program is capped at \$4.5 million per year. Because there is a finite amount of tax credits available, DED has established a procedure whereby tax credits may be set aside for a given film project by the submission of an application that provides estimates for the company's Missouri expenditures on the project. Proof of financing should be attached (Ex. Completion bond). Based upon these estimates and any other relevant information, DED may reserve a given amount of tax credits for the project (for a given period of time). If it appears at any time that a project may be significantly delayed, then DED may review the project and, if warranted, reclaim those reserved credits, and apply them elsewhere.

In the application, DED will ask for estimates of the amount of money to be spent in Missouri, as well as projected dates for establishing the production office and the first day of principal photography. These dates will be used in determining the length of time for which tax credits may be reserved for the project, as well as the likelihood that the project will actually be produced in Missouri.

DED will evaluate each application and respond to the producer with an amount of tax credits that may be reserved for the project. It is possible that, at the time of a producer's initial inquiry, all of the \$4,500,000 in the tax credit program has been reserved by earlier projects. In that event, the producer will be informed of the next date when a review of one or more projects may be performed, and the possibility of tax credits becoming available for reservation on other projects. It is important to understand that the reservation of credits is not a guarantee that the applicant will receive the credits. It guarantees only that credits are available, and may be awarded once Missouri expenditures are verified by DED. Only after verification will DED certify the credits for delivery to the applicant.

Because the tax credit program is an incentive program, DED cannot award tax credits to producers who have already selected the state for their project. Hence, the reservation of credits for a project must be completed before Missouri has been selected as a location for the project. For the purposes of reserving tax credits, establishing a production office in the region is evidence that Missouri has been selected as a location for the project.

Verification of Expenditures: DED must be able to verify all items listed on the expenditures form that are to be applied to the tax credit program. The production company shall provide a spreadsheet of detailed Missouri expenditures along with the proof of purchases and proof of payments demonstrating that all expenditures were bought and paid to Missouri companies, organizations, or individuals. In addition, DED verifies that all expenditures were necessary costs incurred in the production of the project. A call sheet showing the number of people who worked on the film, the number of days those individuals worked, the rate at which they were paid, and the hours per day that they worked will need to be submitted along with the Film Production Expenditure Report.

Delivery of Tax Credits: Missouri Department of Economic Development (DED) will go through all Missouri expenditures that were submitted by the recipient. DED then must check with the Department of Revenue to determine if the applicant has any delinquent taxes prior to the issuance of tax credits. If there is a delinquency, the credit will be offset by that amount. An issuance fee invoice for 2.5% of the tax credit amount will be sent to the production company. Once the production company pays the issuance fee, a Certificate of Eligibility will be issued. This certificate is what the production company will use to redeem the tax credit. If the production company chooses to transfer/sell the tax credit, a transfer form (**MO-TF**) will need to be completed. Without submitting this form to DED, the Department of Revenue will not recognize the transfer.

Overview of how the Film Production tax credit program works:

1. An application is submitted to the Department of Economic Development (DED). Any financing that has taken place will need to be attached to the application. A copy of the application will be faxed over to the Missouri Film Commission by DED.
2. The Missouri Film Office will evaluate how the film will affect the economy by looking at such things as the number of jobs and revenue that will be brought into the state.
3. The Missouri Film Office will submit to the Department of Economic Development a recommendation for a film. This recommendation will include the circumstances of the recommendation which include the amount of tax credit that is being proposed, the day that the film production office must open, the day that principal

photography must begin, the minimum amount of Missouri expenditures that must be spent on the film, and the day that principal photography must end.

4. An approval letter will be sent out to the film production company outlining all of the circumstances given by the recommendation by the Missouri Film Commission. Missouri expenditures that were incurred prior to the date that the approval letter was sent out to the film production company will not count as eligible Missouri expenditures that will be included in the tax credit.
5. The Department of Economic Development will meet with the film production accountant to go over any questions that he or she might have and to discuss how to submit all of the documentation to our office.
6. DED will receive the Film Production expenditure report, call sheets for all days of production, spreadsheets breaking all of the expenses into different categories such as accounts payable and per diem, and all of the supporting documentation shown on the spreadsheet such as proof of purchase and proof of payment.
7. DED will go through all of the documentation that is submitted to determine the amount of eligible Missouri expenditures. If the film production company hasn't met the minimum amount of eligible expenditures that is needed then they will be given an opportunity to submit further documentation.
8. Once the minimum amount of eligible Missouri expenditures has been met, an issuance fee invoice will be sent out in the amount of 2.5% of the tax credit.
9. After the issuance fee has been paid and the Department of Revenue has verified that there aren't any delinquencies or unpaid taxes then a Certificate of Eligibility is mailed to the film production company. This certificate is what the film production company uses to redeem the tax credit.

TAX CREDIT ACCOUNTABILITY

The Tax Credit Accountability Act of 2004 (Senate Bill 1099, Sections 135.800 through 135.830, RSMo) makes several changes to the tax credit programs, specifically:

- Processing tax credit applications,
- Annual reporting requirements, and
- Penalty provisions.

Changes in Processing of Tax Credits (Section 135.815, RSMo)

Prior to the Missouri Department of Economic Development (DED) authorization of a tax credit, DED will contact the Department of Revenue and the Department of Insurance to verify the applicant does not owe any delinquent income, sales, use, or insurance taxes, or interest or penalties on such taxes. If a delinquency exists, the amount of tax credits issued will be reduced by the amount of the delinquency. After satisfying all delinquencies, the remaining credits shall be issued.

REPORTING

Tax Credit Accountability Act -- Reporting Requirements (Section 135.805, RSMo)

Certain tax credit recipients are required to annually report to DED information pertaining to the project that received the tax credits. The statute requires a full year to pass after the issuance of tax credits before SB 1099 reporting requirements must be met. The earliest date that SB 1099 reporting requirements may be required is June 30, 2006.

The Business Recruitment category of tax credits, which includes the Film Production Tax Credit Program, requires recipients to annually report to DED for three (3) consecutive years following the date of the issuance of tax credits the following information:

- Category of business by size
- Address of the business headquarters
- Addresses of all offices located within this state
- Number of employees at the time of the annual update
- Updated estimate of the number of employees projected to increase as a result of the completion of the project
- The estimated or actual project cost.

Penalty Provisions (Section 135.810, RSMo)

Failure to meet the annual reporting requirements or any determination of fraud in the application process, if determined by a court, such person or entity shall be subject to penalties.

- If the annual report is ninety (90) days past due, DED shall send notice by registered mail to the last known address of the person or entity who is required to complete the annual report. The notice shall inform the person or entity of the past-due report, the pending penalties and their respective deadlines.
- If the annual report is six (6) months past due, DED shall notify the Department of Revenue that the taxpayer is subject to penalties because of failure to report.

Such penalties include the following:

- Failure to report for six (6) months but less than one year shall equal a penalty of two percent (2%) of the value of the tax credits issued for each month of the delinquency.
EXAMPLE: Recipient receives \$10,000 in tax credits. Annual report is due June 30, 2006, however, the recipient does not submit the report until March 30, 2007. The recipient is nine (9) months delinquent and the penalty would equal 2% multiplied by \$10,000 for nine (9) months or \$1800.
- Failure to report for more than one (1) year shall equal a penalty of ten percent (10%) of the value of the credits issued for each month of the delinquency, not to exceed one hundred percent (100%) of the tax credit value.
EXAMPLE: Recipient receives \$10,000 in tax credits. Annual report is due June 30, 2006, however, the recipient does not submit the report until March 30, 2008. The recipient is twenty-one (21) months delinquent and the penalty would equal 10% multiplied by \$10,000 for twenty-one (21) months or \$21,000, however, the statute limits the penalty to the amount of the tax credits, therefore the penalty would be \$10,000.

The taxpayer shall be liable for any penalties as of December 31 of any tax year and the liability shall be due as of the filing date of the taxpayer's next income tax return.

If the taxpayer is not required to file an income tax return, the taxpayer's liability for penalties shall be due as of April 15th of each year.

The Director of the Department of Revenue shall offset any tax credits claimed on a filed tax return against an outstanding penalty before applying such credits to the tax year against which they were originally claimed.

Any nonpayment of liability for penalties shall be subject to the same provisions of law as a liability for unpaid income taxes, including but not limited to, interest and penalty provisions.

Penalties shall remain the obligation of the person or entity obligated to complete the annual report without regard to any transfer of the credits.

Closed Records (Sections 610.255 and 620.014, RSMo)

Before August 28, 2004 and pursuant to Section 620.014, DED had the authority to close certain records except for the name of the tax credit recipient and the amount of the tax credit. SB 1099 removes this broad exception but DED retains the authority to close records or documents that "relate to financial investments in a business, or sales projections or other business plan information which may endanger the competitiveness of a business" or as also allowed by law.

Contact Information

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The link below is to the Missouri Film office website:

<http://www.missouribusiness.net/film/index.asp>



**FILM PRODUCTION TAX CREDIT PROGRAM
APPLICATION (SECTION 137.750, RSMo)**

Pursuant to Section 620.1900, RSMo, this tax credit program is subject to a fee of 2.5% of the amount of tax credits issued. Applicants will be invoiced for the fee after the tax credit application has been approved. Tax credits will be issued upon receipt of the fee.

Applicant Information						
Name of Film Production Company			Primary Telephone Number		Federal Tax I.D. Number	
			Alternate Telephone Number		NAICS Code	
Address (Street, P.O. Box)			Fax Number			
City		State	Zip Code			
Name of Person Completing Application			Telephone Number		Email	
Address of Person Completing Application			State		Zip Code	
Business Type (circle one):						
Individual	C Corp	S Corp	LLC	Sole Proprietor	Partnership	Other: _____
If the taxpayer is a Partnership, S Corporation, or other entity, which has a flow through tax treatment, identify the names, social security numbers and proportionate share of ownership of each Beneficiary, Partner or Shareholder on the last day of the tax period. Aggregate proportionate shares or percent of total ownership may not exceed 100%. Attach a separate sheet if necessary.						
Name (First, Middle Initial, and Last)		Social Security Number		Percent of Ownership		Birth Date
Is the company a privately-held company?					YES	NO
For a privately-held company, please list the following individuals, (first, middle, and last name, and date of birth): All directors, officers (president, vice-president, secretary, and treasurer), and executives (chief executive officer, chief financial officer, etc.); and members of the management team for the project facility.						
Headquarters and Missouri Office(s)						
Headquarters Address			City		State	Zip Code
1. Other Facility Address (if different from taxpayer above)			City		State	Zip Code
2. Other Facility Address (if different from taxpayer above)			City		State	Zip Code
Employment						
Number of current employees in Missouri:						
Number of current employees nationwide including Missouri employees:						
Projected number of Missouri employees during the project:						

Are any other State or Federal programs being applied for or utilized for this project?	Yes	No	
If Yes, Identify the State and Federal programs being applied for or utilized:			
Project Type			
Check ONE of the following which describes this project's type of production:			
<input type="checkbox"/> Theatrical release feature film	<input type="checkbox"/> Broadcast network TV Movie of the Week	<input type="checkbox"/> TV Commercial	
<input type="checkbox"/> Cable TV film	<input type="checkbox"/> Broadcast network TV series	<input type="checkbox"/> Documentary Film	
<input type="checkbox"/> Cable TV series	<input type="checkbox"/> Broadcast network TV mini-series		
<input type="checkbox"/> Cable TV mini-series	<input type="checkbox"/> Broadcast network TV pilot		
Project Title			
Length of film			
Check ONE of the following which describes this project's length of film:			
o 30 minutes and under			
o Over 30 minutes			
Production Personnel-list the full names of the key personnel associated with this production project:			
Director	Production Coordinator		
Executive Producer	Location Manager		
Producer(s)	Principal Actors/Actresses		
Unit Production Manager			
Director of Photography	Production Designer/Art Director		
Production Information			
Attach financing documentation to the back of this application, e.g. Completion bond.			
Has financing been authorized ("given the green light") by the entity financing this production project?	Yes	No	
Enter the date the production office is expected to be operating in Missouri (month/year):	/		
Enter the date of the first day of principal photography to occur in Missouri (month/year):	/		
Estimated number of days of principal photography in Missouri:			
Will you make this production available for a Missouri premiere?	Yes	No	
Please provide an economic impact statement, showing the economic impact from the activities of the film production project. The economic impact statement must indicate the impact on the region of the state in which the film production or production-related activities are located and on the state as a whole.			
Is the company currently in good standing with the Secretary of State?	Yes	No	
Please attach a copy of the Tax Clearance Certificate.			
Project Expenditures <i>(List your "below the line budget" expenses expected for this Missouri Project)</i>			
Include only your estimated costs for in-state expenditures, I.E. rental/purchase of Missouri equipment, materials, products and services, including but not limited to Missouri lodging, Missouri food, and Missouri labor (must be salaries/wages paid to Missouri residents only).			
PROJECT ITEM	COST	PROJECT ITEM	COST
Missouri Labor Wages/Salaries	\$	Missouri Food/Restaurant Expenses	\$

Missouri Lodging Expenses	\$	Missouri Equipment Rental/Purchase	\$
Missouri Building(s) Rental	\$	Missouri Location Fees	\$
Missouri Contracted Services (Casting, Security, etc.: itemize separately)	\$	Missouri Materials Rental/Purchase (Set Construction, Wardrobe, etc.)	\$
OTHER PROJECT ITEMS	COST	OTHER PROJECT ITEMS	COST
Out of State Labor Wages/Salaries with Missouri Withholdings	\$	Missouri	\$
Missouri	\$	Missouri	\$
Missouri	\$	Missouri	\$
Missouri	\$	Missouri	\$
TOTAL ESTIMATED MISSOURI PROJECTED EXPENDITURES			\$

TOTAL ESTIMATED PROJECT BUDGET			\$
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Per HB 1549, any business receiving must enroll in the E-Verify Program. The program is designed to provide employment status information to determine the eligibility of applicants for employment. Currently an employer's participation in E-Verify is FREE. To access E-Verify website, go to: [HTTPS://e-verify.uscis.gov/enroll/](https://e-verify.uscis.gov/enroll/)



CERTIFICATION
(PLEASE READ THOROUGHLY PRIOR TO SIGNING)

- I certify that I am an authorized representative of the applicant and as such am authorized to make the statement of affirmation contained herein.
- I certify that the information submitted by the applicant to DED is true and correct and such information is consistent with documents provided to lenders, other government programs, or investors. The applicant hereby authorizes DED to verify such information and the information provided in this certification from any source.
- I certify that neither the applicant nor any individual identified in this application:
 - a. Has committed a felony, is currently under indictment or charged with a felony, or is currently on parole or probation;
 - b. Is delinquent with respect to any non-protested federal, state or local taxes or fees;
 - c. Has filed (or is about to file) for bankruptcy, unless otherwise disclosed to DED; or
 - d. Has failed to fulfill any obligation under any other state or federal program;
- I certify that the applicant does NOT knowingly employ any person who is an unauthorized alien and the applicant has complied with federal law (8 U.S.C. § 1324a) requiring the examination of an appropriate document or documents to verify that each individual is not an unauthorized alien.
- I certify that the applicant is enrolled and will participate in a federal work authorization program as defined in Section 285.525(6), RSMo., with respect to employees working in connection with the activities that qualify applicant for this program. I certify that the applicant will maintain and, upon request, provide the Department of Economic Development documentation demonstrating applicant's participation in a federal work authorization program with respect to employees working in connection with the activities that qualify applicant for this program.
- I understand that, pursuant to section 285.530.5, RSMo, a general contractor or subcontractor of any tier shall not be liable under section 285.525 to 285.550 when such general contractor or subcontractor contracts with its direct subcontractor who violates section 285.530.1, if the contract binding the contractor and subcontractor affirmatively states that the direct subcontractor is not knowingly in violation of section 285.530.1 and shall not henceforth be in such violation and the contractor or subcontractor receives a sworn affidavit under the penalty of perjury attesting to the fact that the direct subcontractor's employees are lawfully present in the United States.
- I understand that if the applicant is found to have employed an unauthorized alien, applicant may subject to penalties pursuant to Sections 135.815, 285.025, and 285.535, RSMo.

- I understand that if the applicant is found to have employed an unauthorized alien in Missouri and did not, for that employee, examine the document(s) required by federal law, that the applicant shall be ineligible for any state-administered or subsidized tax credit, tax abatement or loan for a period of five years following any such finding.
- There are no pending or threatened liens, judgments, or material litigation which is likely to affect the viability of the company as an ongoing concern.
- Neither the operations of the applicant nor the receipt of the requested incentives would violate any existing agreement.
- I certify that the applicant has obtained or is capable of obtaining all necessary federal, state and local permits and licenses for the proposed activity.
- I attest that I have read and understand the Film Production Tax Credit Program guidelines, specifically as it relates to the Tax Credit Accountability Act of 2004 (SB 1099).
- I hereby agree to allow DED, Department of Revenue, or either of their designated representatives, access to the property and applicable records as may be necessary for the administration of this program.
- I certify under penalties of perjury that the above statements, information contained in the application and attachments are complete, true, and correct to the best of my knowledge and belief.

Print Name	Signature	Title	Date		
Notary Public Embosser Seal		On this ____ day of _____, 20__, before me, _____, a Notary Public in and for said state, personally appeared _____, known to me to be the person who executed the Certification and acknowledged and states on his/her oath to me that he/she executed the same for the purposes therein stated.			
		State of	County (or City of St. Louis)		
		Notary Public Name (Print)	My Commission Expires	Use Rubber Stamp in Area Below	
		Notary Public Signature			