

## Chapter 188 - Alaska Film Production Incentive Program

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### 3 AAC 188.010. Applicability

This chapter applies to applications for

- (1) a notice of qualification under AS 44.33.234 for a film production tax credit; and
- (2) the award of, and the calculation of an amount for, a film production tax credit by the film office under AS 44.33.235 , for purposes of issuance of a transferable tax credit certificate by the Department of Revenue under AS 43.98.030 .

**History: Eff. 6/18/2009, Register 190**

**Authority:** AS 44.33.231, AS 44.33.232, AS 44.33.234, AS 44.33.235, AS 44.33.238

### 3 AAC 188.020. Eligibility

- (a) To satisfy the minimum qualified expenditure requirement of AS 44.33.233 (a)(1) for a film production tax credit, a producer must incur at least \$100,000 in qualified expenditures during production of a single film, video, television program, or commercial. Multiple episodes of a television series that will air during one television season and multiple music videos marketed together as one product may be aggregated to qualify as a single television program or video.
- (b) When calculating the 24-month qualification period of AS 44.33.233 (a)(1), the period begins on the date on which the film office issues the notice of qualification to the producer or on the date agreed upon by the film office and the producer.
- (c) The exclusion under AS 44.33.233 (c)(1) of news, weather, or current events programming from eligibility
  - (1) applies to an ongoing television program created primarily to present news, weather, or current events; and
  - (2) does not apply if a film, video, or television program is a documentary.

**History: Eff. 6/18/2009, Register 190**

**Authority:** AS 44.33.233, AS 44.33.238

### **3 AAC 188.030. Qualification application process**

(a) The following restrictions apply to film producers applying for qualification under AS 44.33.234 :

(1) only one producer per production is eligible for qualification;

(2) only one project is permissible for each application except for

(A) a television series in which one season counts as one project if it is completed within a 24-month period; or

(B) multiple music videos that are marketed together as one product.

(b) The film office will review complete qualification applications in the order that they are received. The film office will determine the order by the date-and-time stamp placed on the complete application on the day it is received into the film office. The priority for reviewing an incomplete application will be determined by the date-and-time stamp placed on the envelope containing the documents or materials needed to make the application complete.

(c) If an application is complete and accompanied by all required materials, the film office will notify the producer by electronic mail that the film office has received the application. The film office will send the notice by United States mail if requested to do so by the producer.

(d) If the application is incomplete or is not accompanied by all required materials, the film office will notify the producer by electronic mail that the application requires additional information, materials, or documentation. The film office will send the notice by United States mail if requested to do so by the producer.

(e) If the film office receives a complete application package for a production that does not qualify under AS 44.33.234 , the film office will notify the producer by electronic mail that the film production does not qualify for the tax credit with an explanation why it does not qualify. The film office will send the notice by United States mail if requested to do so by the producer.

(f) A producer who is notified by the film office that a project does not qualify for the tax credit may reapply. However, the film office will treat reapplication as a new application for purposes of (b) of this section.

(g) After the film office approves a qualification application, it will issue a notice of qualification to the producer that sets out the estimated amount of the film production tax credit and the period during which the producer may incur expenditures for which the producer may claim a credit.

(h) A producer who is denied a notice of qualification may request an administrative hearing by filing a notice of appeal within 30 days after the date of the denial notice. The notice of appeal must be in writing and will be considered filed on the date it is received by the film office. The notice of appeal must clearly state each objection to the denial, the justification for each

objection, and the reasons why the applicant is entitled to a notice of qualification under AS 44.33.234 and this chapter. Appeals will be referred to the office of administrative hearings. A hearing will be conducted under AS 44.64.060 (c) - (e) and 2 AAC 64.100 - 2 AAC 64.370.

(i) When the amount of the notices of qualification and tax credit certificates issued equals the \$100,000,000 in-the-aggregate limit established in AS 43.98.030 , the film office will cease to issue notices of qualification.

**History: Eff. 6/18/2009, Register 190**  
**Authority: AS 44.33.234, AS 44.33.238**

### **3 AAC 188.040. Qualified expenditures**

(a) For purposes of AS 44.33.236 (a),

(1) an expenditure for real property, tangible personal property, or services is ordinary and reasonable if it is

(A) necessary and non-extravagant; and

(B) common and accepted in the producer's trade or business; and

(2) an expenditure is directly related to the production if it is for the direct costs of the actual production that would not have been incurred independent of the production.

(b) If tangible personal property is purchased, leased, or rented for direct use in the state in a film production for which a notice of qualification has been issued under AS 44.33.234 (b), and if the producer does not return, dispose of, or sell the property as of the completion of its use in the film production,

(1) only a portion of the depreciation expense will be allowed for the property;

(2) the allowable depreciation expense is an amount equal to the portion of the depreciation expense attributable to direct use of the property in the state in the film production; and

(3) the allowable depreciation expense will be calculated using class life categories under the federal depreciation rules as identified in United States Internal Revenue Service, Revenue Procedure 87-56, 1987-42 I.R.B. 4, 1987-2 C.B. 674, as modified by Revenue Procedure 88-22, 1988-18 I.R.B. 38, 1988-1 C.B. 785 and adopted by reference; the cost of tangible personal property is divided by the applicable class life category to determine an annual expense; the resulting figure for annual expense is multiplied by the ratio of the number of days in the state that the tangible personal property was in qualified use in the production over 365; the resulting amount is the allowable depreciation expense.

(c) The purchase price of a screenplay is a qualified expenditure if

(1) payment for the screenplay is made during the 24-month period set out in AS 44.33.233 (a)(1), as that period is determined under 3 AAC 188.020(b) ;

- (2) the writer is an Alaska business; and
  - (3) the full rights of the screenplay have been transferred to the producer, and the writer cannot sell the same screenplay to another buyer.
- (d) Only a qualified expenditure that is incurred during the 24-month period set out in AS 44.33.233 (a)(1), as that period is determined under 3 AAC 188.020(b), will be considered in determining whether the producer has met the \$100,000 minimum in AS 44.33.233 (a)(1), and in determining the amount of a tax credit.
- (e) In addition to costs excluded under AS 44.33.236 (b), the following production costs will not be considered qualified expenditures:
- (1) 50 percent of interstate travel and shipping costs;
  - (2) intellectual property rights, including usage rights, archival material costs, fees for stock footage, and costs for licensing.
- (f) For purposes of the additional two percent credit under AS 44.33.235 (c)(2), qualified expenditures will be considered to have been made in a rural area if they are for
- (1) services provided in a rural area;
  - (2) the purchase or use of real property located in a rural area; or
  - (3) tangible personal property purchased, leased, or rented in a rural area from an Alaska business that maintains a year-round physical presence in that rural area.
- (g) For purposes of the additional two percent credit under AS 44.33.235 (c)(3), qualified expenditures will be considered to have been made in the state between October 1 and March 30 if they are for
- (1) services provided during that period; or
  - (2) real property or tangible personal property purchased, leased, or rented from an Alaska business for use during that period.

**Editor's note:** Copies of the United States Internal Revenue Service Revenue Procedure 87-56 and Revenue Procedure 88-22, adopted by reference in 3 AAC 188.040, are available for inspection at the offices of the Department of Commerce, Community, and Economic Development, Office of Economic Development, Alaska Film Office, located in Juneau and Anchorage. Those items also may be viewed through the Office of Economic Development's website at <http://www.commerce.state.ak.us/oed/home.htm>.

**History:** Eff. 6/18/2009, Register 190  
**Authority:** AS 44.33.235, AS 44.33.236, AS 44.33.238

### 3 AAC 188.050. Award of tax credits

(a) Within 60 days after the end of the 24-month period set out in AS 44.33.233 (a)(1), as that period is determined under 3 AAC 188.020(b) , the producer must submit an application to the film office, on a form or in a format provided by the film office, for the award of a film production tax credit under AS 44.33.235 .

(b) Before the film office makes a determination under AS 44.33.235 with respect to the award of a film production tax credit, the producer must submit a rough assembly of the film to the film office for review. The film office will refuse to award the producer a tax credit if the rough assembly of the film does not bear a reasonable resemblance to what was proposed in the documents that the producer provided under AS 44.33.234 , and if the film production is contrary to the best interests of the state under AS 44.33.233 . In this subsection, "rough assembly of the film" means a sequencing of scenes that will eventually be refined into the final cut of the film,

(c) The verification of qualified expenditures required under AS 44.33.235 (d) must be prepared by a certified public accountant who

(1) holds a current license issued under AS 08.04 by the Board of Public Accountancy;

(2) holds a current business license issued under AS 43.70; and

(3) is an independent third party, not related to the producer or involved in any way with the production.

(d) A producer may apply under AS 44.33.235 for a tax credit that exceeds the estimated film production tax credit provided in the notice of qualification issued for the production under AS 44.33.234 . The film office will grant a larger tax credit if

(1) all the expenditures claimed by the producer

(A) are qualified expenditures under AS 44.33.236 and this chapter; and

(B) were incurred during the 24-month period set out in AS 44.33.233 (a)(1), as that period is determined under 3 AAC 188.020(b) ; and

(2) at the time the determination is made, the sum of the following amounts does not exceed the \$100,000,000 in-the-aggregate limit established in AS 43.98.030 :

(A) the total amount of the tax credits estimated for all producers in outstanding notices of qualification issued under AS 44.33.234 (b);

(B) the total amount of tax credits already provided under AS 43.98.030 to all producers;

(C) the amount of the increase that the producer requests under this subsection.

(e) With the items required by AS 44.33.235 (d) and this section, a producer must also submit a sworn certification that the producer and the production have fully complied with all applicable state laws and regulations during the production and have complied with all state permit requirements, that neither the producer nor the production is the subject of an investigation or administrative proceeding concerning alleged violations by the producer or the production of the laws or regulations of this state, and that neither the producer nor the production is involved in a legal action filed in a federal court or a court in this state concerning alleged violations by the producer or the production of the laws or regulations of this state. If the producer or the production, after submission of the sworn certification, becomes the subject of an investigation or administrative proceeding described in this subsection, or becomes involved in a legal action described in this subsection, the producer shall immediately notify the film office. Failure to comply with this subsection may result in a tax credit not being awarded to the producer. If the producer or the production is or becomes the subject of an investigation or administrative proceeding described in this subsection, or is or becomes involved in a legal action described in this subsection, the film office will suspend determination of eligibility for a tax credit pending resolution of that investigation, administrative proceeding, or legal action.

(f) A producer who receives notice from the film office that it will not award all the tax credits for which the producer applied may request an administrative hearing by filing a notice of appeal within 30 days after the date of the denial notice. The notice of appeal must be in writing and will be considered filed on the date it is received by the film office. The notice of appeal must clearly state each objection to the denial, the justification for each objection, and the reasons why the producer is entitled to the amount of the tax credit for which the producer applied. Appeals will be referred to the office of administrative hearings. A hearing will be conducted under AS 44.64.06(c) - (e) and 2 AAC 64.100 - 2 AAC 64.370.

(g) Upon a final determination under AS 44.33.235 on the award and amount of a film production tax credit, the film office will notify the Department of Revenue and request the issuance under AS 43.98.030 of a transferable tax credit certificate in that amount.

(h) If a transferee purchases a film production tax credit certificate in an arm's length transaction, and the department seeks, after the transfer, to recover an amount of the credit under AS 44.33.237 , the department will not hold the transferee liable for any portion of the credit that the department seeks to recover, and will seek recovery from the producer to whom the tax credit certificate was originally provided.

**History: Eff. 6/18/2009, Register 190**

**Authority:** AS 44.33.233, AS 44.33.234, AS 44.33.235, AS 44.33.236, AS 44.33.237, AS 44.33.238

### **3 AAC 188.060. Alaska film production internship training program**

(a) The film office may maintain a list of certified Alaska film production internship training programs and provide the list to producers applying for a film production tax credit.

(b) Organizations eligible to be included on the list are entities that are based in the state and that facilitate learning and career opportunities for residents of the state. These entities may include

(1) a postsecondary educational institution that is accredited by the Northwest Commission on Colleges and Universities, and that offers a program of instruction, training, or study in film, television, or video production at a campus in the state; and

(2) an Alaska business that offers a formal internship training program in film, television, or video production and has worked in one of those fields in each of the five previous years.

**History: Eff. 6/18/2009, Register 190**

**Authority: AS 44.33.231, AS 44.33.238**

### **3 AAC 188.990. Definitions**

(a) In AS 44.33.236 ,

(1) "Alaska musician" means a resident of the state who is a musician;

(2) "fees" means amounts charged by the United States, the state, or a municipality for use or access;

(3) "leasing of vehicles" means rentals and leases of vehicles registered in the state.

(b) In AS 44.33.236 and this chapter,

(1) "real property" means land and things permanently attached to the land; "real property" includes trees already attached to the land, buildings, and stationary mobile homes already attached to the land;

(2) "tangible property" or "tangible personal property" means personal property that can be seen or touched; "tangible property" or "tangible personal property" does not include real property.

(c) In AS 44.33.231 - 44.33.239 and this chapter,

(1) "Alaska resident" or "resident" means an individual who meets the residency requirements of AS 01.10.055 ;

(2) "services" means work performed as an occupation or business by an Alaska business;

(3) "television" means an electronic system of transmitting transient images of fixed or moving objects together with sound over a wire or through space, including over the Internet and via satellite, by apparatus that converts light and sound into electrical waves and reconverts them into visible light rays and audible sound.

(d) In this chapter,

- (1) "Alaska business" has the meaning given in AS 44.33.239 ;
- (2) "film office" has the meaning given in AS 44.33.239 ;
- (3) "rural area" has the meaning given in AS 44.33.239.

**History: Eff. 6/18/2009, Register 190**

**Authority:** AS 44.33.231, AS 44.33.232, AS 44.33.233, AS 44.33.236, AS 44.33.238