



**WEST VIRGINIA SECRETARY OF STATE**

**MAC WARNER**

**ADMINISTRATIVE LAW DIVISION**

**eFILED**

7/26/2022 3:09:13 PM

Office of West Virginia  
Secretary Of State

**NOTICE OF AGENCY APPROVAL OF A PROPOSED RULE AND FILING WITH THE LEGISLATIVE RULE-  
MAKING REVIEW COMMITTEE**

AGENCY: Tax TITLE-SERIES: 110-13X  
RULE TYPE: Legislative Amendment to Existing Rule: Yes Repeal of existing rule: No  
RULE NAME: West Virginia Film Industry Investment Act

**PRIMARY CONTACT**

NAME: MARK S MORTON  
ADDRESS: PO Box 1005  
CHARLESTON, WV 25324-1005  
EMAIL: taxlegal@wv.gov  
PHONE NUMBER: 304-558-5330

CITE STATUTORY AUTHORITY: W. Va. Code §§11-13X-9, 11-10-5 and 11-10-5d(f)

EXPLANATION OF THE STATUTORY AUTHORITY FOR THE LEGISLATIVE RULE, INCLUDING A DETAILED SUMMARY OF THE EFFECT OF EACH PROVISION OF THE LEGISLATIVE RULE WITH CITATION TO THE SPECIFIC STATUTORY PROVISION WHICH EMPOWERS THE AGENCY TO ENACT SUCH RULE PROVISION:

Legislative authority for this rule is found at W. Va. Code §11-13X-9. Amendments to the existing rule are necessary to conform the rule to recent legislation which reinstated the credit, changed the entity in charge of administering the credit program, and removed the cap on the amount of the credit.

IS THIS FILING SOLELY FOR THE SUNSET PROVISION REQUIREMENTS IN W. VA. CODE §29A-3-19(e)? No

IF YES, DO YOU CERTIFY THAT THE ONLY CHANGES TO THE RULE ARE THE FILING DATE, EFFECTIVE DATE AND AN EXTENSION OF THE SUNSET DATE? No

DATE eFiled FOR NOTICE OF HEARING OR PUBLIC COMMENT PERIOD: 6/3/2022

DATE OF PUBLIC HEARING(S) OR PUBLIC COMMENT PERIOD ENDED: 7/3/2022

COMMENTS RECEIVED: No

(IF YES, PLEASE UPLOAD IN THE COMMENTS RECEIVED FIELD COMMENTS RECEIVED AND RESPONSES TO COMMENTS)

PUBLIC HEARING: No

(IF YES, PLEASE UPLOAD IN THE PUBLIC HEARING FIELD PERSONS WHO APPEARED AT THE HEARING(S) AND TRANSCRIPTS)

RELEVANT FEDERAL STATUTES OR REGULATIONS: Yes

WHAT OTHER NOTICE, INCLUDING ADVERTISING, DID YOU GIVE OF THE HEARING?

N/A

SUMMARY OF THE CONTENT OF THE LEGISLATIVE RULE, AND A DETAILED DESCRIPTION OF THE RULE'S PURPOSE AND ALL PROPOSED CHANGES TO THE RULE:

This Legislative Rule is promulgated to provide for the general administration of the West Virginia Film Industry Investment Act, W. Va. Code §11-13X-1, et seq. This Rule carries out the policy and purposes of the Statute, provides necessary clarification of the provisions of the Statute, and provides for the general administration of the Statute.

STATEMENT OF CIRCUMSTANCES WHICH REQUIRE THE RULE:

This Rule carries out the policy and purposes of the Statute, provides necessary clarification of the provisions of the Statute, and provides for the general administration of the Statute.

SUMMARIZE IN A CLEAR AND CONCISE MANNER THE OVERALL ECONOMIC IMPACT OF THE PROPOSED LEGISLATIVE RULE:

A. ECONOMIC IMPACT ON REVENUES OF STATE GOVERNMENT:

This legislative rule provides guidance for the West Virginia Film Industry Investment Act. The legislation reinstates the Film Industry Tax Credit that was terminated by prior legislation effective January 26, 2018. The restored program will be administered by the West Virginia Office of Economic Development. The credit is effective for taxable years beginning on and after July 1, 2022, for expenditures made on and after July 1, 2022 until the sunset date of December 31, 2027. The legislation removes the maximum credit cap and increases the minimum expenditure threshold from \$25,000 per project to \$50,000 per year. Due to the lack of a credit cap, it is estimated that the legislation will result in a minimal loss to General Revenue Funds in FY2023 and an undeterminable loss in subsequent fiscal years. Additional administrative costs incurred by the State Tax Department would be \$20,000 in FY2023 and \$5,000 in subsequent fiscal years.

B. ECONOMIC IMPACT ON SPECIAL REVENUE ACCOUNTS:

This legislative rule provides guidance for the West Virginia Film Industry Investment Act. The legislation reinstates the Film Industry Tax Credit that was terminated by prior legislation effective January 26, 2018. The restored program will be administered by the West Virginia Office of Economic Development. The credit is effective for taxable years beginning on and after July 1, 2022, for expenditures made on and after July 1, 2022 until the sunset date of December 31, 2027. The legislation removes the maximum credit cap and increases the minimum expenditure threshold from \$25,000 per project to \$50,000 per year. Due to the lack of a credit cap, it is estimated that the legislation will result in a

minimal loss to General Revenue Funds in FY2023 and an undeterminable loss in subsequent fiscal years. Additional administrative costs incurred by the State Tax Department would be \$20,000 in FY2023 and \$5,000 in subsequent fiscal years.

C. ECONOMIC IMPACT OF THE LEGISLATIVE RULE ON THE STATE OR ITS RESIDENTS:

This legislative rule provides guidance for the West Virginia Film Industry Investment Act. The legislation reinstates the Film Industry Tax Credit that was terminated by prior legislation effective January 26, 2018. The restored program will be administered by the West Virginia Office of Economic Development. The credit is effective for taxable years beginning on and after July 1, 2022, for expenditures made on and after July 1, 2022 until the sunset date of December 31, 2027. The legislation removes the maximum credit cap and increases the minimum expenditure threshold from \$25,000 per project to \$50,000 per year. Due to the lack of a credit cap, it is estimated that the legislation will result in a minimal loss to General Revenue Funds in FY2023 and an undeterminable loss in subsequent fiscal years. Additional administrative costs incurred by the State Tax Department would be \$20,000 in FY2023 and \$5,000 in subsequent fiscal years.

D. FISCAL NOTE DETAIL:

Effect of Proposal	Fiscal Year		
	2022 Increase/Decrease (use "-")	2023 Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
<b>1. Estimated Total Cost</b>	0.00	20,000.00	5,000.00
<b>Personal Services</b>	0.00	5,000.00	5,000.00
<b>Current Expenses</b>	0.00	0.00	0.00
<b>Repairs and Alterations</b>	0.00	0.00	0.00
<b>Assets</b>	0.00	0.00	0.00
<b>Other</b>	0.00	15,000.00	0.00
<b>2. Estimated Total Revenues</b>	0.00	0.00	0.00

**E. EXPLANATION OF ABOVE ESTIMATES (INCLUDING LONG-RANGE EFFECT):**

This legislative rule provides guidance for the West Virginia Film Industry Investment Act. The legislation reinstates the Film Industry Tax Credit that was terminated by prior legislation effective January 26, 2018. The restored program will be administered by the West Virginia Office of Economic Development. The credit is effective for taxable years beginning on and after July 1, 2022, for expenditures made on and after July 1, 2022 until the sunset date of December 31, 2027. The legislation removes the maximum credit cap and increases the minimum expenditure threshold from \$25,000 per project to \$50,000 per year. Due to the lack of a credit cap, it is estimated that the legislation will result in a minimal loss to General Revenue Funds in FY2023 and an undeterminable loss in subsequent fiscal years. Additional administrative costs incurred by the State Tax Department would be \$20,000 in FY2023 and \$5,000 in subsequent fiscal years.

**BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENT IS TRUE AND CORRECT.**

**Yes**

**Anoop Bhasin -- By my signature, I certify that I am the person authorized to file legislative rules, in accordance with West Virginia Code §29A-3-11 and §39A-3-2.**

TITLE 110  
LEGISLATIVE RULE  
STATE TAX DEPARTMENT

SERIES 13X  
WEST VIRGINIA FILM INDUSTRY INVESTMENT ACT

**§110-13X-1. General.**

1.1. Scope. -- This Legislative Rule is promulgated to provide for the general administration of the West Virginia Film Industry Investment Act, W. Va. Code §11-13X-1, et seq. This Rule carries out the policy and purposes of the Statute, provides necessary clarification of the provisions of the Statute, and provides for the general administration of the Statute.

1.2. Authority. -- W. Va. Code §§11-13X-9, 11-10-5 and 11-10-5d(f).

1.3. Filing Date. -- ~~May 6, 2010.~~

1.4. Effective Date. -- ~~May 11, 2010.~~

1.5. Sunset Provision. -- This rule shall terminate and have no further force or effect upon August 1, 202x.

**§110-13X-2. Definitions.**

2.1 “Commercial” (not a “qualified project”) means television advertising, movie theater advertising, or computer advertising produced and paid for by a promoter, underwriter or sponsor, for the purpose of promoting, or marketing a product or service, including public service programming.

~~2.1.2.2~~ "Commercial exploitation" means reasonable intent for public viewing for the delivery medium used.

~~2.2.2.3~~ “Controlled group” means one or more chains of corporations connected through stock ownership with a common parent corporation, if stock possessing at least fifty percent of the voting power of all classes of stock of each of the corporations is owned directly or indirectly by one or more of the corporations; and the common parent owns directly stock possessing at least fifty percent of the voting power of all classes of stock at least on of the other corporations.

~~2.3.2.4.~~ "Direct production expenditure" means a transaction that occurs in the state of West Virginia or with a West Virginia vendor, and includes:

~~2.3.a.2.4.1.~~ Payment of wages, fees and costs for related fringe benefits provided for talent, management or labor that are subject to West Virginia income tax;

~~2.3.b.2.4.2.~~ Payment to a personal services corporation for the services of a performing artist if:

~~2.3.b.1.2.4.2.a.~~ The personal services corporation is subject to West Virginia income tax on those payments; and

~~2.3.b.2.2.4.2.b.~~ The performing artist receiving the payments from the personal services corporation is subject to West Virginia income tax; and

~~2.3.e.2.4.3.~~ Any of the following provided by a West Virginia vendor:

~~2.3.e.1.2.4.3.a.~~ The story and scenario (script) to be used by a qualified project;

~~2.3.e.2.2.4.3.b.~~ Set construction and operations, wardrobe, accessories and related services;

~~2.3.e.3.2.4.3.c.~~ Photography, sound synchronization, lighting and related services;

~~2.3.e.4.2.4.3.d.~~ Editing and related services;

~~2.3.e.5.2.4.3.e.~~ Rental of facilities and equipment;

~~2.3.e.6.2.4.3.f.~~ Leasing of vehicles;

~~2.3.e.7.2.4.3.g.~~ Food or lodging;

~~2.3.e.8.2.4.3.h.~~ Airfare if purchased through a West Virginia-based travel agency or travel company;

~~2.3.e.9.2.4.3.i.~~ Insurance coverage and bonding if purchased through a West Virginia-based insurance agent; and

~~2.3.e.10.2.4.3.j.~~ Other direct costs of producing a qualified project in accordance with generally accepted entertainment industry practices. “Direct production expenditure” shall not include depreciation of any item that has less than one full year of depreciable life, either a full year original depreciable life or a full year remaining depreciable life out of a partially depreciated asset, as determined for federal income tax purposes.

~~2.4.2.5.~~ "Eligible company" means a person or business entity engaged in the business of producing film industry productions. The term excludes state agencies.

~~2.5.2.6.~~ "Feature length" means in excess of forty minutes.

~~2.6.2.7.~~ "Film industry production" means a qualified project intended for reasonable national or international commercial exploitation.

~~2.7.~~ "Film Office" means the West Virginia Film Office, which is a section of the West Virginia Division of Tourism, which, in turn, is a division of the West Virginia Department of Commerce.

2.8. "Investor" means and includes any person or entity seeking to establish entitlement to the tax credit addressed in this rule, or any person or entity making expenditures, investments or purchases for which the purchaser, investor or taxpayer purports to directly or indirectly establish entitlement to the tax credit established in this rule.

2.9. "Loan-out corporation" means a company owned by one or more artists that provide the services of a performing artist to a payroll service company or a third-party production company, i.e., an eligible company for purposes of W. Va. Code §11-13X-1, et seq.

2.10. "Multi-state distribution" means reaching at least one other state besides West Virginia.

~~2.10.2.11.~~ "Payroll service company" means a business engaged in outsourcing solutions for human resources, payroll, tax and benefits administration.

~~2.11.2.12.~~ "Performing artist" means a person hired to perform services associated with the artist's particular craft in any department associated with a qualified project.

~~2.12.2.13.~~ "Personal services corporation" means a company that performs services in the field of performing arts, among other fields, and meets ownership and service tests as determined by the Internal Revenue Service.

~~2.13.2.14.~~ "Post-production expenditure" means a transaction that occurs in West Virginia or with a West Virginia vendor after the completion of principal photography, including editing and negative cutting, Foley recording and sound effects, automatic dialogue replacement (also known as ADR or dubbing), special effects or visual effects, including computer-generated imagery or other effects, scoring and music editing, sound editing, beginning and end credits, soundtrack production, subtitling or addition of sound or visual effects; but not including expenditure for advertising, marketing, distribution or expense payments.

~~2.14.2.15.~~ "Purchaser" means and includes any person or entity seeking to establish entitlement to the tax credit addressed in this rule, or any person or entity making expenditures, investments or purchases for which the purchaser, investor or taxpayer purports to directly or indirectly establish entitlement to the tax credit established in this rule.

~~2.15.2.16.~~ "Qualified project" means a feature length theatrical or direct-to-video motion picture, a made-for-television motion picture, ~~a commercial~~, a music video, commercial still photography, a television pilot program, a television series and a television mini-series that incurs a ~~minimum~~ cumulative amount of \$25,000\$50,000 in a calendar year in direct production expenditures and post-production expenditures, as defined by this subsection, in West Virginia or any combination of projects not previously claimed that would qualify for the credit except for cost, and that combined meets or exceeds the cumulative amount of \$50,000 in a calendar year. The term excludes news or current affairs programming, a weather or market program, ~~an interview or a talk show~~, a sporting event or show, an awards show, a gala, a production that solicits funds, a home shopping program, a program that primarily markets a product or service, political advertising or a concert production.

~~2.15.a.2.16.1.~~ A qualified project may be produced on any single media or multimedia program that:

~~2.15.a.1.2.16.1.a.~~ Is fixed on film, digital medium, videotape, computer disk, laser disc or other similar delivery medium;

~~2.15.a.2.2.16.1.b.~~ Can be viewed or reproduced;

~~2.15.a.3.2.16.1.c.~~ Is not intended to and does not violate a provision of W. Va. Code §61-8C-1, et seq.;

~~2.15.a.4.2.16.1.d.~~ Does not contain obscene matter or sexually explicit conduct, as defined by W. Va. Code §61-8A-1, et seq.;

~~2.15.a.5.2.16.1.e.~~ Is intended for reasonable commercial exploitation for the delivery medium used whether delivery is in-state or multi-state distribution; and

~~2.15.a.6.2.16.1.f.~~ Does not contain content that negatively portrays the State of West Virginia in a significantly derogatory manner, as determined in the sole discretion of the Film Office Department of Economic Development.

~~2.16.2.17.~~ "Related person" means a corporation, partnership, association or trust controlled by the

taxpayer; or an individual, corporation, partnership, association or trust that is in control of the taxpayer.

~~2.17. "Reviewing committee" means a committee consisting of the following persons:~~

~~2.17.a. The Secretary of the West Virginia Department of Commerce, or his or her designee;~~

~~2.17.b. The Secretary of the West Virginia Department of Education and the Arts, or his or her designee;~~

~~2.17.c. The Director of the West Virginia Film Office, or his or her designee;~~

~~2.17.d. The Commissioner of the West Virginia Division of Tourism, or his or her designee;~~

~~2.17.e. The Tax Commissioner, or his or her designee, and~~

~~2.17.f. An additional representative of the West Virginia Film Office to be appointed by the Commissioner of Tourism.~~

2.18. "Tax Commissioner" means the West Virginia State Tax Commissioner or his or her designee.

2.19. "Taxpayer" means and includes any person or entity seeking to establish entitlement to the tax credit addressed in this rule, or any person or entity making expenditures, investments or purchases for which the purchaser, investor or taxpayer purports to directly or indirectly establish entitlement to the tax credit established in this rule.

2.20. "Television series" means a group of programs created or adapted for television broadcast with a common series title, usually related to one another in subject.

### §110-13X-3. Amount of Tax Credit.

3.1. Tax credit allowed. -- The amount of tax credit allowed to an eligible company, ~~except as provided in subsection 3.2 of this section, is twenty-seven percent~~ is the amount specified under West Virginia Code §11-13X-1, et seq.

~~3.2. Extra allowance for hiring of local workers. -- The base allowance shall be increased by:~~

~~3.2.a. An additional four percent if the eligible company, or its authorized payroll service company, employs ten or more West Virginia residents during principal production as part of its full-time employees working in the state or as apprentices working in the state. The Film Office Department of Economic Development shall determine the number of full-time employees based on employment levels during principal production, rather than pre-production or post-production levels. Since talent and crew work under different circumstances and work hours vary, industry standards shall be taken into consideration when evaluating full-time employees; and~~

~~3.2.b. If the jobs threshold required by W. Va. Code §11-13X-5(b) is met for purposes of entitlement to the four percent extra allowance, then the additional tax credit applies to all expenditures attributable to the qualified project for which the eligible company receives a tax credit pursuant to W. Va. Code §11-13X-1, et seq. It is not limited to costs incurred only during principal production.~~

### §110-13X-4. Requirements for Tax Credit; Application for Tax Credit.

4.1. In order for any company to take a credit under W. Va. Code §11-13X-1, et seq., it shall comply with the following requirements:

4.1.1. Each qualified project must incur ~~a minimum~~the cumulative amount, of \$25,000 specified in the definition of "qualified project" set forth in West Virginia Code §11-13X-3, in expenditures in West Virginia or with a West Virginia vendor, or any combination of projects not previously claimed that would qualify for the credit except for cost, and that combined meets or exceeds the cumulative amount in a calendar year.

4.1.2. If the qualified project contains production credits, the eligible company shall agree, upon request by the ~~Film Office~~Department of Economic Development, to recognize the State of West Virginia with the following acknowledgement in the end credit roll: "Filmed in West Virginia with assistance of the West Virginia Film Industry Investment Act";

4.1.3. Apply to the ~~Film Office~~Department of Economic Development on forms and in the manner the ~~Film Office~~Department of Economic Development may prescribe.

4.1.3.a. A company shall submit to the ~~Film Office~~Department of Economic Development one (1) completed West Virginia Film Industry Investment Act eligibility application, with original signatures and attachments. The eligible company should submit an eligibility application as far in advance as possible prior to the first expenditure in West Virginia. However, an eligible company may submit an application at any time during production or after production: ~~Provided, That the applicant runs the risk of there being no tax credits remaining under the statutory maximum.~~ The ~~reviewing committee~~Department of Economic Development may deny the application if it does not meet all eligibility requirements. Qualified costs incurred prior to the approval of an application are eligible for the incentive if ~~there are tax credits remaining within the \$10 million cap at the time of approval~~approved.

4.1.3.b. The application shall include, but not be limited to:

4.1.3.b.1. A completed West Virginia Film Industry Investment Act eligibility application;

4.1.3.b.2. A copy of the script, or, for commercials, music videos or commercial still photography, a copy of the storyboards or shot lists;

4.1.3.b.3. Proof or status of financing or distribution arrangements;

4.1.3.b.4. A copy of the budget top sheet, which contains a dedicated column that identifies estimated direct production expenditures and post-production expenditures that will be incurred in West Virginia;

4.1.3.b.5. A signature and verification by the applicant or by a duly authorized representative of the applicant;

4.1.3.b.6. The full legal name and tax identification number of the applicant;

4.1.3.b.7. The applicant's physical address, mailing address and telephone number; and

4.1.3.b.8. A certified copy of the applicant's certificate of incorporation, articles of organization, or other similar documents that verify the applicant is in good standing and registered to do business in the state of West Virginia.

4.1.3.c. Application forms may be obtained from the West Virginia ~~Film Office~~Department of Economic Development.

4.1.4. Upon approval of an eligibility application, the eligible company shall begin production within one hundred twenty (120) days of approval, or shall otherwise forfeit the right to claim any tax credit for the approved qualified project. The forfeiture does not preclude the eligible company from resubmitting an eligibility application for the same project at a future date. Upon written request by the eligible company, and prior to the expiration of the one hundred twenty (120) day deadline, the ~~reviewing committee~~Department of Economic Development may extend the deadline at its discretion.

4.2. The applicant shall submit to the ~~Film Office~~Department of Economic Development information required by the ~~Film Office~~Department of Economic Development to demonstrate conformity with the requirements of this section and shall agree in writing:

4.2.1. To pay all obligations the eligible company has incurred or will in future incur in West Virginia;

4.2.2. To delay filing a claim for the tax credit authorized by W. Va. Code §11-13X-1, et seq. until the ~~Film Office~~Department of Economic Development delivers written notification to the Tax Commissioner that the eligible company has fulfilled all requirements for the credit.

4.2.3. Each allocation year stands on its own. It is necessary for an eligible company to file a new application for each year in order to be considered for credit allocation in each specific year. Projects are approved on a first come, first served basis. The maximum amount of project tax credit for any taxable year is the amount allocated by the ~~Film Office~~Department of Economic Development through the project review and certification process.

4.2.4. Any television series that has been approved and issued an approval letter, shall be placed at the top of the queue for an open allocation period on each subsequent year in the life of that series whenever credits are assigned within a fiscal year. Queue placement in subsequent years will be based on the year of original application and original queue number assigned for that series. Each television series must submit a new application for each season prior to any open application period.

4.3. Upon completion of a qualified project:

4.3.1. An eligible company shall have filed all required West Virginia tax reports and returns and paid any balance of West Virginia tax due on those returns;

4.3.2. All claims for the tax credit shall be filed with an expense verification report prepared by an independent certified public accountant licensed to practice in the United States, using "Agreed Upon Procedures" which are prescribed by the ~~Film Office~~Department of Economic Development in accordance with generally accepted auditing standards in the United States. The certified public accountant shall render a report as to the qualification of the credits, consistent with guidelines to be determined by the ~~Film Office~~Department of Economic Development and approved by the Tax Commissioner; and

4.3.3. An eligible company claiming an extra allowance for employing local workers shall submit to the ~~Film Office~~Department of Economic Development documentation verifying West Virginia residency for all individuals claimed to qualify for the extra allowance. The documentation shall include the name, home address and telephone number for all individuals used to qualify for the extra allowance.

4.4. Disqualification. The ~~Film Office~~Department of Economic Development may disqualify in whole or in part any investment or expenditure from eligibility for the tax credit if it appears that the economic substance of an expenditure is not for services substantially rendered in West Virginia, or is for the purchase or lease of tangible personal property not used or operated in West Virginia or is for purchases or leases of realty not located in West Virginia.

4.4.1. The ~~Film Office~~Department of Economic Development may disqualify in whole or in part any investment or expenditure from eligibility for the tax credit if it appears that the economic substance of an expenditure or transaction constitutes self dealing or an expenditure or investment primarily directed to or received by the purchaser or investor, or by an alter ego of the purchaser or investor or by a related person related to the purchaser or investor or by a member of the same controlled group as the controlled group to which the purchaser or investor belongs.

4.4.2. For purposes of this rule, an entity or person is presumed to be an alter ego, nominee or instrumentality of another person, entity or business if:

4.4.2.a. More than twenty percent of the real assets or more than twenty percent of the operating assets or more than twenty percent of the tangible personal property of one person, entity or business are or have been transferred to the other person, entity or business, or are or have been used in the operations of the other person, entity or business, or more than twenty percent of the real assets or more than twenty percent of the operating assets or more than twenty percent of the tangible personal property of one business are or have been used to collateralize or secure debts or obligations of the other person, entity or business;

4.4.2.b. Ownership of the persons, entities or businesses is so configured that the attribution rules of either Internal Revenue Code section 267 or Internal Revenue Code section 318 would apply to cause ownership of the persons, entities or businesses to be attributed to the same person, entity or business; or

4.4.2.c. Substantive control of the persons, entities or businesses is held or retained by the same person, entity or business, directly or indirectly, or through attribution under paragraph 4.4.b.2 of this rule.

4.5. If the requirements of this section have been complied with as determined by the ~~Film Office~~Department of Economic Development, the ~~Film Office~~Department of Economic Development shall approve the tax credit and issue a document granting the appropriate tax credit to the eligible company and shall report this information to the Tax Commissioner.

#### **§110-13X-5. Application Receipt and Review.**

5.1. The ~~Film Office~~Department of Economic Development shall determine and report to the Tax Commissioner in a manner and at times the ~~Film Office~~Department of Economic Development and the Tax Commissioner agree upon:

5.1.1. The eligibility of the company and a proposed project; and

5.1.2. The maximum amount of the tax credit available to the eligible company based on estimated "direct production expenditures" and "post-production expenditures."

5.2. The ~~Film Office~~Department of Economic Development shall ~~reserve~~approve tax credits for an eligible company by:

5.2.1. ~~Reserving~~Approving the credits to eligible companies in ~~the order in which eligibility applications are received and approved by the Film Office~~accordance with Department of Economic Development procedure;

5.2.2. ~~Ensuring that the amount of reserved and allocated credits for the given year does not exceed the maximum available credit as limited by W. Va. Code §11-13X-1, et seq.~~Assigning a unique

tax credit identification number to each approved project:

5.2.2.a. Multiple approved projects of the same eligible company will each receive a separate and unique tax credit identification number;

5.2.2.b. All tax returns, reports, or other correspondence must include the unique tax credit identification number assigned by the Department of Economic Development.

5.2.2.c. Notifying the eligible company, in writing, of the amount of credits that have been reserved for the eligible company and providing copies of the notification to the Tax Commissioner. ~~Timely notice shall be provided to production companies for television series to ensure future series will qualify.~~

5.3. The ~~Film Office~~Department of Economic Development shall receive eligibility applications ~~on a first come, first served basis during regular business hours.~~ The ~~Film Office~~Department of Economic Development shall and record the time and date of receipt of an eligibility application.

5.4. The ~~Film Office~~Department of Economic Development shall review all eligibility applications ~~in the order of their receipt~~ to determine if each application is complete. When it is determined that an eligibility application is complete, the ~~reviewing committee~~Department of Economic Development shall review the applications ~~in the order of their receipt~~ to determine if the applicant and the proposed project meet the eligibility requirements to apply for the tax credit. ~~The reviewing committee's determination shall be made within thirty (30) days receipt of the eligibility application. The eligibility application shall be considered received, for purposes of the time requirements set forth in this rule, and for purposes of assigning a queue position to the application for review by the reviewing committee, when the application is physically received by the Film Office.~~

5.5. In the event the ~~Film Office~~Department of Economic Development determines an eligibility application to be incomplete, the ~~Film Office~~Department of Economic Development shall notify the applicant, in writing, of the reasons for that determination and shall return the incomplete application to the applicant. The applicant may resubmit the eligibility application after correcting the deficiencies stated in the notice, but the resubmitted eligibility application must be received by the ~~Film Office~~Department of Economic Development within twenty (20) days after the ~~Film Office~~Department of Economic Development sends the notice, ~~in order for the application to maintain its initial position in the queue.~~ Any resubmitted application that is received by the ~~Film Office~~Department of Economic Development more than twenty (20) days after the ~~Film Office~~Department of Economic Development sends the notice may, within the sole discretion of the ~~Film Office~~Department of Economic Development, be denied further consideration ~~or may be added to the queue based on the actual date of physical receipt of the resubmitted application by the Film Office.~~

5.6. Requests for Increase in Tax Credit Allocation. -- If an eligible company seeks an increase in the amount of tax credits for an approved qualified project, the eligible company shall submit an application for modification to the ~~Film Office~~Department of Economic Development, which shall be submitted by and bear the same signature as the person who submitted the original eligibility application, ~~or the successor of that person, or a duly authorized representative.~~ The ~~reviewing committee~~Department of Economic Development shall ~~place requests for an increase in the order of receipt of all applications,~~ assign each request a new application number and review each request separately from the original eligibility application. The ~~reviewing committee~~Department of Economic Development shall consider the application ~~at its next scheduled meeting, but within thirty (30) days of receipt,~~ and may request additional information from the applicant to assist in its evaluation of the request. ~~The reviewing committee shall determine approval using the same criteria of the review process and based on the availability of any remaining credits for the fiscal year in which the request is received.~~ The ~~Film Office~~Department of Economic Development shall notify the eligible company in writing of the ~~reviewing~~

~~committee~~Department of Economic Development's decision.

5.7. Other Revisions to Application. -- If an eligible company seeks to revise its original eligibility application for a qualified project for reasons other than those identified in subsection 5.6 of this rule, the eligible company shall submit an application for modification to the ~~Film Office~~Department of Economic Development, which shall be submitted by and bear the same signature as the person who submitted the original eligibility application, or the successor of that person, or a duly authorized representative. The ~~reviewing committee~~Department of Economic Development shall consider the application ~~at its next scheduled meeting,~~ but within thirty (30) days of receipt, and may request additional information from the applicant to assist in its evaluation of the request. The ~~reviewing committee~~Department of Economic Development shall determine the approval using the same criteria of the review process. The ~~Film Office~~Department of Economic Development shall notify the eligible company in writing of the ~~reviewing committee~~Department of Economic Development's decision

5.8. False Information. -- Upon the submittal of any false or misleading information by an applicant, the ~~Film Office~~Department of Economic Development may reject the application and deny further consideration of the applicant for qualification in current and subsequent fiscal years.

5.9. Complete Application. -- Upon a determination by the ~~Film Office~~Department of Economic Development that an eligibility application is complete, the ~~Film Office~~Department of Economic Development ~~shall place the complete application on the agenda of the next duly or regularly scheduled meeting of the reviewing committee~~Department of Economic Development. ~~Complete applications shall be placed on the agenda in the order of their receipt by the Film Office~~may consider the application for approval.

5.10. Action of ~~Reviewing Committee~~Department of Economic Development. -- The allocation of all tax credits under this Rule must be approved by the ~~reviewing committee~~Department of Economic Development. The ~~reviewing committee~~Department of Economic Development shall consider all completed applications ~~in the order they are placed on the agenda.~~ Once an applicant and a project described in an eligibility application have been determined by the ~~reviewing committee~~Department of Economic Development to meet the eligibility requirements of W. Va. Code §11-13X-61, *et seq.*, and this rule, the ~~Film Office~~Department of Economic Development shall notify the Tax Commissioner in writing of the eligibility of the company and the project and the maximum amount of the tax credit to be reserved for the eligible company.

5.11 If an eligible company submits a proposal to perform a qualified project for a state agency, the eligible company shall indicate its intention to claim the tax credit provided by West Virginia Code §11-13X-1, *et seq.*

#### **§110-13X-6. Forfeiture of credit.**

6.1. If an eligible company fails to begin production within the time specified ~~in subdivision 4.1.d. of in the application or in this rule,~~ the eligible company forfeits the right to claim any tax credit for the approved qualified project ~~and the Film Office~~Department of Economic Development shall release the reserved credit and cause it to be available for the next eligible qualified project in the queue for approval. The forfeiture does not preclude the eligible company from resubmitting an application for the same project at a future date.

#### **§110-13X-7. Uses of credit; transferability.**

7.1. The tax credit may be applied to reduce taxes imposed by articles ~~twenty-three (business franchise tax),~~ twenty-four (corporate net income tax) and twenty-one (personal income tax) of Chapter 11 of the West Virginia Code in the tax year the investment is placed in service after approval of the

project by the ~~Film Office~~Department of Economic Development (with potential carry forward for an additional 2 years). The credit may be taken into account in computing estimated payments.

7.2 The tax credit is to first be taken against corporate net income taxes imposed by article twenty-four for the taxable year, determined before application of allowable credits against tax.

7.3 If the eligible taxpayer is an electing small business corporation (as defined in Section 1361 of the United States Internal Revenue Code of 1986, as amended), a partnership, a limited liability company that is treated as a partnership for federal income tax purposes or a sole proprietorship, then any unused credit is allowed as a credit against the personal income taxes imposed by article twenty-one or on income of a personal income tax payer against tax attributable to income directly derived from the qualified project, or in the case of owners, partners, members or interest holders that are C corporations, then any unused credit is allowed as a credit against the corporation net income tax against tax attributable to conduit income directly derived from the qualified project.

7.4. Electing small business corporations, limited liability companies, partnerships and other unincorporated organizations shall allocate the credit allowed by this article among its members in the same manner as profits and losses are allocated for the taxable year.

~~7.2-7.5.~~ After approval by the ~~Film Office~~Department of Economic Development of any transfer, sale or assignment of the tax credit, pursuant to W. Va. Code §11-13X-~~81~~, *et seq.*, the transferee shall acquire the amount of credit that remains available under that section. The transferor and the transferee or transferees may apply the credit against tax in the year of the transfer, and succeeding years in accordance with the amount of credit to which each is entitled, but the dollar amount of credit available to each shall not be exceeded or duplicated.

7.6. All requests for transfer, sale, or assignment of tax credits must include the original approved tax credit identification number; state the timeline as to the number of years of tax credit being transferred; and, clearly identify the tax credit's termination date.

#### **§110-13X-8. Confidentiality.**

8.1. All information submitted to the Tax Commissioner and the ~~Film Office~~Department of Economic Development is confidential and not subject to public disclosure when filed with the ~~Film Office~~Department of Economic Development or Tax Commissioner except as otherwise provided in this rule or the West Virginia Code.

8.2. All information submitted to the ~~Film Office~~Department of Economic Development pursuant to an eligibility application for designation as an eligible company and documents related to the application, is confidential and not subject to public disclosure, except the following in accordance with W. Va. Code §11-13X-~~441~~, *et seq.*:

8.2.1. The full legal name of the applicant;

8.2.2. The mailing and office addresses and telephone number of the applicant; and

8.2.3. The name of a person to contact for the applicant.

8.3. All records and documentation relating to application, evaluation or qualification of a company or a project for the tax credit authorized under W. Va. Code §11-13X-1, *et seq.* is tax information subject to the confidentiality restrictions of the West Virginia Tax Procedure and Administration Act, W. Va. Code §11-10-1, *et seq.*, including, but not limited to, the provisions of W. Va. Code §11-10-5d.

8.4. The Tax Commissioner hereby determines the ~~Film Office~~Department of Economic Development to be a “person having a material interest” in the information in accordance with the provisions of W. Va. Code §11-10-5d(f).

8.5. The confidential information, relating to application, evaluation or qualification of a company or a project, including general correspondence to or from the ~~Film Office~~Department of Economic Development, or to or from the West Virginia Tax Department, including information generated internally by the ~~Film Office~~Department of Economic Development or Tax Department, including but not limited to, internal memoranda and reports, is confidential and not subject to public disclosure, unless otherwise provided by statute or rule.

8.6. All tax returns and tax return information subject to the non-disclosure restrictions of W. Va. Code §11-10-5d are confidential, except for the information subject to disclosures authorized, mandated or permitted pursuant to the West Virginia Tax Procedure and Administration Act, or W. Va. Code §§11-10-5s or §11-13X-1, et seq.

#### **§110-13X-9. General Procedure and Administration.**

9.1. Requirements to Claim the Tax Credit. -- To claim a tax credit, the eligible company shall comply with W. Va. Code §11-13X-1, et seq. and this rule and shall timely provide complete and accurate forms, returns, schedules and other information required by the Tax Commissioner or ~~Film Office~~Department of Economic Development.

9.2. Applicability of Various Tax Laws. -- Application of this credit and eligibility for this credit shall not abrogate application of the provisions of W. Va. Code §11-23-1, et seq. (Business Franchise Tax), W. Va. Code §11-24-1, et seq. (Corporation Net Income Tax) and W. Va. Code §11-21-1, et seq. (Personal Income Tax), and rules issued pursuant to those statutes, with respect to any eligible taxpayer or owner of any eligible taxpayer to the extent that they may be subject to the provisions of those laws, and shall not abrogate application of the provisions of W. Va. Code §11-10-1, et seq. (Procedure and Administration) which provides for administration of those taxes.

9.3. Maintenance of Records. -- An eligible company shall maintain the records required to verify the validity of its eligibility for the tax credit and the accuracy of the amount of the tax credit claimed. Failure to do so may result in denial of the tax credit.

#### **§110-13X-10. Effective date, elimination of film tax credits, preservation of film tax credits earned prior to the sunset date.**

10.1 The amendments to this article enacted in the year 2022 shall apply to all taxable years beginning on or after July 1, 2022: Provided, That, unless sooner terminated by law, the film investment tax credit will terminate on the date specified in West Virginia Code §11-13X-1, et seq. No entitlement to any tax credit authorized by this article may result from, and no credit is available to any person for, expenditures incurred subsequent to the termination date specified in West Virginia Code §11-13X-1, et seq. Film tax credits to which a taxpayer has gained lawful entitlement on or after July 1, 2022, and on or before the termination date specified in West Virginia Code §11-13X-1, et seq., may continue to be applied against tax liabilities, subject to the conditions, limitations, and constraints applicable to such credit under West Virginia Code §11-13X-1, et seq., until exhausted or otherwise terminated in accordance with the terms of West Virginia Code §11-13X-1, et seq., or any other applicable provision of the West Virginia Code. Film tax credits to which a taxpayer has gained lawful entitlement on or after July 1, 2022, and on or before the termination date specified in West Virginia Code §11-13X-1, et seq., may be transferred in accordance with W. Va. Code §11-13X-1, et seq., subject to the conditions, limitations, and constraints applicable to such credit under W. Va. Code §11-13X-1, et seq., until exhausted or otherwise terminated in accordance with the terms of West Virginia Code §11-13X-1, et

seq., or any other applicable provision of the West Virginia Code.