

Updated on June 2009

**The following Guidelines apply regarding a qualified production for which the main photography or recording work in Québec is completed after June 12, 2009.**

*It is a well known fact in the film and television industry that Québec ranks among the most production-friendly service centers. Québec is acclaimed worldwide for its technological innovations and superior CGI facilities, broad range of locations, top film production infrastructure and its large pool of skilled technicians.*

### Recent modifications

In order to keep foreign producers interested in choosing Québec as a film location, the tax credit for film production services, provided it applies to qualified productions, has been revamped by Information Bulletin 2009-3 on June 12, 2009.

More specifically, the base of the tax credit, for which the rate remains unchanged at 25%, has been broadened. Henceforth it consists of the all-spend production costs incurred regarding a qualified production. The all-spend production costs includes the qualified labour cost and the cost of qualified properties incurred regarding a qualified production. However, the qualified production categories have been restricted.

In addition, the improvement for computer-aided special effects and animation, regarding a qualified production, benefits from the same broadening. However, the rate of the improvement is now 5%.

### Tax credit overview

The refundable Québec Tax Credit for Film Production Services (QPSTC) is jointly administered by the Société de développement des entreprises culturelles (SODEC) and the ministère du Revenu du Québec (Revenu Québec).

The base of the tax credit applies to all-spend production costs, which corresponds to the total of the qualified labour costs and the costs of qualified properties. The tax credit corresponds to 25% of the qualified expenditures incurred by an eligible corporation for services provided in Québec for the making of an eligible production. In addition, eligible expenditures that relate to computer-aided animation and special effects including the shooting of scenes in front of a chroma-key for use in an eligible production give rise to an increase in the rate of the tax credit. This increase corresponds to an additional rate of 5% of eligible expenditures. Therefore, the total tax credit for those specific activities amounts to 30% of eligible expenditures.

In the case of a qualified low-budget production, no change has been made to the improvement for computer-aided special effects and animation. Accordingly, it continues to apply solely to the qualified labour expenditures that relate to computer-aided special effects and animation for use in the production and, consequently, the rate of the improvement remains at 20%. For greater clarity, only the improvement for computer-aided special effects and animation may be claimed in relation to a qualified low-budget production.

For each eligible production, SODEC issues an Approval Certificate which identifies the owner of the copyright and who also attests the eligibility of the production throughout the period during which the production is carried out in Quebec. A copy of the Approval Certificate must be transmitted by the copyright owner or by the means of his official designee, to any eligible corporation who intends to submit to SODEC an application for an Advance Ruling with regards to the eligible production.

For each production, the QPSTC cannot be combined with any other Québec tax credit except for the Québec Film Dubbing Tax Credit as long as the dubbing expenditures are not included in the QPSTC production costs.

Official treaty co-productions between Canada and another country (as administered by Telefilm Canada) and inter-provincial co-productions are eligible.

## **Joint administration between SODEC and Revenu Québec**

### Role of SODEC

As a Québec governmental agency, SODEC has the responsibility to analyze the tax credit applications within the framework of the program. The agency issues the required certificates of eligibility (Approval Certificate and Advance Ruling) which the applicant will need in order to claim the QPSTC at the end of its corporate year.

In order to obtain a tax credit, the owner of the copyright or his official designee must file an application for an Approval Certificate with SODEC in order to determine the production's eligibility. The Approval Certificate ascertains the actual ownership of the copyright throughout the period during which the production will be carried out in Quebec. This document certifies that the production satisfies the form and content criteria imposed on a production that gives rise to the QPSTC, that it is not an excluded production and also, that its production budget meets the minimal required amount in the case of an eligible production.

An Approval Certificate may also be issued for an eligible "low-budget production", i.e. a production whose budget does not meet the applicable amount. In such a case, the Certificate certifies the eligibility of the production as well as the fact that it does not meet the criterion of applicable amount.

After SODEC issues an Approval Certificate, an eligible corporation, either the owner of the copyright or, where the owner is not an eligible corporation, a corporation that directly entered into a contract with the owner of the copyright for the delivery of production services in relation to the production, will have to apply for an Advance Ruling. In the latter case, SODEC must, to qualify the corporation as an eligible corporation, establish the presence of a direct contractual link with the copyright owner.

Finally, the Advance Ruling issued by SODEC, which provides a tax credit estimate, must identify the eligible corporation and the items that can benefit from the tax credit improvement for computer-aided special effects and animation including the shooting of scenes in front of a chroma-key, if any.

## Role of Revenu Québec

At the end of its corporate year in which an application for an Advance Ruling was filed with SODEC, the eligible corporation must file its corporate income tax return along with SODEC certificates. Revenu Québec processes the tax return and the QPSTC claim and issues a refund cheque to the eligible corporation.

It falls within the competence of Revenu Québec to calculate the QPSTC to which an eligible corporation is entitled. Revenu Québec must also determine whether the corporation that applies for the tax credit is an eligible corporation. In the last analysis, it is therefore up to Revenu Québec to qualify the eligible corporation.

Moreover, SODEC may consult Revenu Québec in the course of the analysis of the copyright ownership and the presence of a direct contractual link for the purposes of determining a corporation's eligibility for the tax credit for film production services. For greater clarity, only the information needed by SODEC for the purposes of such determination may be transmitted, in order to preserve the otherwise confidential nature of the information obtained by Revenu Québec in the course of applying a tax law.

### **Eligible corporations**

In view of the fact that SODEC must carry out an analysis of the ownership of the copyright and, if applicable, note the presence of a contract for the delivery of production services, and that it has the necessary expertise for such activities, the responsibility for qualifying the eligible corporation regarding these two criteria only will be entrusted solely with SODEC.

For greater clarity, Revenu Québec will retain the responsibility of determining the presence of the other items necessary for qualifying a corporation as an eligible corporation and consequently to determine its final eligibility. More specifically, the tax legislation stipulates that, for the purposes of the QPSTC, an eligible corporation, for a taxation year, regarding an eligible production, means a corporation, other than an excluded corporation, that, in the year, has an establishment in Québec. Its activities consist chiefly in carrying on a film or television production business or a film or television production services business.

For the purposes of the tax credit, an eligible corporation, regarding an eligible production, means a corporation that:

- either owns the copyright for the eligible production throughout the period during which the production is carried out in Québec;
- or, in the case where the owner of the copyright is not an eligible corporation regarding such production, has concluded, directly with the owner of the copyright for the eligible production, a contract to supply production services in relation to such production.

## Excluded corporations

A corporation will be denied the QPSTC if, for a taxation year, it is either:

- tax exempt;
- controlled by one or more tax exempt corporations;
- the holder of a broadcasting licence issued by the Canadian Radio-Television and Telecommunications Commission (CRTC) or a corporation that is not at arm's length, in the year or the 24 months preceding said year, to a corporation which holds such a licence<sup>1</sup>.

## Copyright ownership

For the purpose of the tax credit, the copyright owner is the person(s) or entity(ies) that has the rights to produce the eligible production (based on the acquisition of underlying rights) and exploit that production in the markets for which the rights were acquired.

The Approval certificate application must be filed with SODEC by the copyright owner(s). For administrative convenience, the copyright owner(s) may however appoint an official designee (e.g. the Québec service provider or a law firm) to apply for an Approval Certificate on its behalf.

Where an official designee is appointed, the copyright owner(s) must sign and have notarized the *official designee affidavit* and provide the required documentation confirming copyright ownership to the official designee for transmission to SODEC.

SODEC will require the chain-of-title documentation that demonstrates the ownership from the initial developer of the story idea to the writing of the script. The types of documents required are option agreements, transfer agreements, license agreements, script purchase agreements and script writing agreements. A detailed legal opinion (citing the relevant documents, their contents and the dates on which they were entered into) may be provided in lieu of the chain-of-title documentation.

However, SODEC will simplify its administrative procedures with respect to applications filed by Québec Special effects companies<sup>2</sup> whose services contract bears a maximum value of \$1.5M CAD. Instead of the chain-of-title documentation, the companies may submit a sworn statement from the owner of the copyright concerning the copyright ownership status.

SODEC reserves the right to request chain-of-title documents or a legal opinion on the ownership of the film rights, as required, or any other additional document that may be useful in the review of the application.

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<sup>1</sup> Since June 30, 2004, special rules apply to independent production companies that are not at arm's length with a broadcaster that holds a licence issued by the CRTC. Please communicate with SODEC for further details.

<sup>2</sup> In respect to this administrative simplification, eligible activities will consist only to computer-aided animation and special effects activities.

## **Sale of copyright ownership**

The copyright owner(s) may vary throughout the course of a production. The sale of the copyright ownership, after the script stage but before the completion of production in Québec, may give rise to certain complications in the application for the QPSTC.

The copyright owner may apply to SODEC any time after the budget for the production or series is locked and a synopsis of the production or series can be provided. Where the copyright owner is not also the eligible corporation, and a sale of the copyright ownership is contemplated, it may be advisable to wait until after that sale to apply for an Approval Certificate to minimize any administrative inconvenience.

In the case where the copyright owner is also an eligible corporation, then the copyright ownership must remain with the corporation during the time that it carries out the production in Québec. However, the eligible corporation may sell the production (after the production in Québec is completed) without affecting its eligibility for the QPSTC.

When an Approval Certificate has already been issued by SODEC for a said production and its copyright ownership has been sold or transferred during the course of the works carried out in Quebec, an application for an amended Approval Certificate will have to be filed with SODEC. However, the original Approval Certificate will remain valid until the date of the transfer of copyright ownership. Afterwards, when an eligible corporation files for an Advance Ruling with SODEC for the purposes of a services contract concluded with the new copyright owner, it will have to provide a copy of the amended Approval Certificate confirming the direct contractual link with the new copyright owner.

## **Eligible productions**

To be of an eligible genre, the production must be one of the following:

- Fiction films, including films consisting entirely of sketches taken in full from a script and designed and arranged especially for television;
- Documentary films of at least 30 minutes of programming, or, in the case of a series, 30 minutes of programming per episode, with the exception of films intended for children under 13 years of age;

Eligible productions must be of an eligible genre and meet a minimum budget requirement. Generally the cost for a single production must exceed \$1,000,000 (CND), with the exception of series consisting of two or more episodes or a pilot for such series. The cost for each episode in a series, which has a running time of 30 minutes or less, must exceed \$100,000 (CND) per episode. The cost for episodes with a longer running time must exceed \$200,000 (CND) per episode.

Please note that each episode in a series is treated as a single production and must qualify both as to cost minimum and eligible genre.

Furthermore, small-budget productions, which do not satisfy the cost minimum rules to qualify for the basic rate of the tax credit for production services, provided the production is not in an excluded production, are only eligible for the tax assistance for computer-aided animation and special effects, including the shooting of scenes in front of a chromatic screen.

The following classes of films are ineligible:

- films produced for industrial, commercial, corporate or institutional purposes;
- films produced for educational purposes or for the purposes of teaching a technique;
- films intended for an adult audience and including scenes of explicit sexuality;
- video clips;
- shows or films covering a sports event or a sports activity;
- news programs, public affairs programs or reports;
- weather, road or stock market reports;
- gala, award or parade television productions that present an activity in real time, for live or delayed broadcast, with or without modification during editing;
- games, questionnaires and contests, in any form, with the exception of educational broadcasts in the form of games, questionnaires or contests intended for children under 13 years of age;
- variety shows and television magazines other than those mentioned under classes of films eligible for recognition;
- a production intended to raise funds;
- a reality television show;
- a “making of” production;
- a production, other than a documentary, consisting completely or almost completely of stock footage.

### **Qualified all-spend production costs**

The base of the tax credit applies to all-spend production costs, which corresponds to the total of the qualified labour cost and the cost of qualified properties as long as they are directly attributable to the completion of the qualified production and they are reasonable in the circumstances.

### **Qualified labour cost**

The qualified labour cost of a qualified corporation, for a taxation year, means the wages and salaries, including the associated payroll taxes<sup>3</sup> incurred by the corporation, in the year, regarding an employee as well as the cost of any service contract<sup>4</sup>, incurred by the corporation with a supplier of services, in relation to a qualified production<sup>5</sup>, provided that they relate to services provided in Québec<sup>6</sup>, in the course of the year, in relation to the production stages running from screenplay to postproduction<sup>7</sup>.

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<sup>3</sup> These are the payroll taxes the employer must pay, such as contributions to the Québec Pension Plan, to the Commission des normes du travail, to the Québec Parental Insurance Plan and to Employment Insurance. However, they exclude contributions to the Health Services Fund (HSF).

<sup>4</sup> Including the fees the qualified corporation must pay to organizations like the Union des artistes (UDA) and the Alliance of Canadian Cinema, Television and Radio Artists (ACTRA).

<sup>5</sup> And, for the taxation year during which the corporation submits an application for an advance ruling to SODEC, the qualified labour cost it incurred in a year prior to the one during which it submitted such application.

<sup>6</sup> Whether these services are provided directly by the supplier of services or indirectly by another person.

<sup>7</sup> Or in relation to another stage of the production that is completed after postproduction within a time considered reasonable by the Minister of Revenue but that cannot exceed the date that occurs 18 months after the fiscal year end of the qualified corporation that includes the date of the recording of the trial print of the qualified production.

However, a wage or salary, including the associated payroll taxes, or a cost of a service contract incurred directly or indirectly regarding a producer, an author, a scriptwriter, a director, a production designer, a director of photography, a music director, a composer, a conductor, an editor, a visual effects supervisor, an actor (speaking role) or an interpreter will be qualified only if such person is an individual who qualifies as a Québec resident with regards to the Québec Taxation Act, at the time the services are provided in the course of the completion of the qualified production.

Moreover, the cost of a service contract will not be part of the qualified labour cost of a corporation if the supplier of services is a corporation that holds a broadcast license issued by the Canadian Radio-television and Telecommunications Commission or a corporation not at arm's length with a corporation that holds such a license.

For greater clarity, in relation to a qualified low-budget production that qualifies only for the computer-aided special effects and animation enhancement, eligible labour expenditures for the improvement include both the salaries paid to its employees and to employees of a technical services companies that act as sub-contractors for part of the production work that is directly attributable to an eligible production. However, only the remuneration paid to Québec residents or to a corporation with an establishment in Québec for services provided by Québec residents constitutes an eligible labour expenditure for the purpose of the tax credit. An "eligible employee" and an "eligible individual" mean a taxpayer who is a resident of Québec at some time during the taxation year in which services were provided to the production.

### **Cost of qualified properties**

The cost of qualified properties of a qualified corporation, for a taxation year, means the costs incurred by the corporation, in the year, regarding the acquisition or rental, in Québec, of tangible properties (including software), in relation to a qualified production<sup>8</sup>, provided that:

- they relate to properties used in Québec, in the course of the year, in relation to the production stages running from screenplay to postproduction<sup>9</sup>;
- they are incurred with:
  - an individual who resides in Québec at the time the properties are acquired or rented, in the course of the completion of the qualified production; or
  - a corporation or partnership that carries on a business in Québec and has an establishment there at the time the properties are acquired or rented, in the course of the completion of the qualified production.

Moreover, the cost of the qualified properties of a corporation does not include the cost of properties acquired or rented from a corporation that holds a broadcast license issued by the Canadian Radio-television and Telecommunications Commission (CRTC) or a corporation not at arm's length with a corporation that holds such a license.

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<sup>8</sup> And, for the taxation year during which the corporation submits an application for an advance ruling to SODEC, the cost of qualified properties it incurred in a year prior to the one during which it submitted such application.

<sup>9</sup> See note 7 above.

## **Acquisition or rental of a property**

In the case of the acquisition, by a qualified corporation, of a depreciable property used in the course of completion of the qualified production, the cost of qualified properties includes only the portion of the cost of acquisition of the property belonging to the corporation that corresponds to the portion of the accounting depreciation of the property, for a taxation year, determined in accordance with generally accepted accounting principles (GAAP), relating to the use in Québec made by the corporation of the property in such year, in the course of the completion of the qualified production<sup>10</sup>.

In the case of the rental of a property, the cost of qualified properties includes only the portion of the cost of rental of the property, for a taxation year, reasonably attributable to its use in Québec by the corporation in such year, in the course of the completion of the qualified.

## **Wholly-owned subsidiary**

The all-spend production costs of a qualified corporation also include, where the qualified corporation is a wholly-owned subsidiary of another corporation, the repayment made by the qualified corporation of an expenditure that the other corporation incurred in the taxation year regarding the qualified production that would be, because of the application details of the tax credit, included in the all-spend production costs of the qualified corporation regarding the production for the taxation year if, as the case may be, the qualified corporation had had such a taxation year and if such expenditure had been incurred by the qualified corporation for the same purposes as it was by the other corporation and paid to the same person or partnership that it was by the other corporation.

## **Anti-avoidance rule**

For the purposes of determining the amount of the tax credit for film production services of a qualified corporation that incurred all-spend production costs under a contract that the corporation entered into with a person or a partnership with which it is not at arm's length, if, in the view of the Minister of Revenue, one of the purposes of the existence of such a contract is to increase the amount of the tax credit, that, in the absence of such a contract, would have been obtained, the amount of the tax credit will be reduced by the amount of such increase.

To determine whether a qualified corporation is not at arm's length with a partnership, the partnership shall be considered a corporation all of whose shares with voting rights belong to the members of the partnership in proportion to what would be the allocation among them of the income or losses of the partnership had the fiscal year of the partnership ended on the date when the contract was entered into.

## **Government and non-government assistance**

The total amount of all-spend production costs incurred by a qualified corporation must be reduced by the amount of any government assistance, any non-government assistance and any profit or gain, according to the usual rules<sup>11</sup>.

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<sup>10</sup> For greater clarity, an acquisition includes a capital lease.

<sup>11</sup> Accordingly, the gain attributable to the cost of qualified properties includes the portion of the proceeds of disposition of a property that relates to the portion of the cost of acquisition of the property already included on account of the cost of qualified properties, up to the amount already thus included.

For greater clarity, the amount of a financial contribution paid by a public body that holds a broadcast license issued by the Canadian Radio-television and Telecommunications Commission (CRTC) will be considered government assistance. However, the Federal Tax Credit for Film or Video Production Services, assistance paid by the Société du 400<sup>e</sup> anniversaire de Québec, and the Federal Film or Video Production Tax Credit and The Film or Video Production Services Tax Credit are not considered as assistance.

### **Improved tax assistance for computer-aided special effects and animation**

The improvement for computer-aided special effects and animation is designed to support the technological development of the industry in Québec by providing an additional improvement of 5% regarding expenditures relating to computer-aided special effects and animation activities, including the shooting of scenes in front of a chromatic screen (chroma-key), for use in a qualified film or television production. This improvement applies to all-spend production costs which correspond to the total of the qualified labour cost and the cost of qualified properties directly attributable to those specific activities.

Moreover, to establish the amount of the expenditures directly attributable to eligible activities relating to computer-aided animation and special effects in the course of an eligible production, the expression “computer-aided animation and special effects” means special effects and animation sequences, as generally understood in the industry, created using digital technology, as well as the shooting of scenes that are subsequently altered with visual effects (shooting of scenes in front of a chromatic screen).

In addition, the expression “eligible activities” designates only activities that directly contribute to the:

- creation of computer-aided animation and special effects;
- shooting of scenes in front of a chromatic screen.

### **Role of SODEC**

The Advance Ruling Letter issued by SODEC for an eligible production or a low-budget production, identifies the eligible corporation as well as the budget items related to the eligible expenditures for the “computer-aided animation and special effects” activities.

Thus, the certificate of the expenditures for computer-aided animation and special effects indicates, by budget items, the amounts corresponding to the portion of eligible expenditures which are directly attributable to eligible activities. This certificate is annexed to the Advance Ruling letter delivered by SODEC. The eligible corporation will have to join these two documents at the time of its corporate tax return with Revenu Québec, who is responsible to evaluate the amount of the tax credit to be granted.

Accordingly, the increase in tax assistance for computer-aided animation and special effects applies to specific technical positions certified by SODEC. To be entitled to this tax credit improvement, the eligible corporation must provide SODEC with a detailed documentation which identifies the expenditures directly attributable to these specific activities.

The parameters related to the tax assistance for computer-aided animation and special effects including the shooting of scenes in front of a chromatic screen are illustrated in the following table:

**Tax assistance for computer-aided animation and special effects, and shooting of scenes in front of a chromatic screen**

	<b>Basic rate</b>	<b>Improvement rate</b>	<b>Total</b>	<b>Eligible expenditures</b>
General production budget	25%	-	<b>25%</b>	Eligible expenditures (all-spend) incurred on Québec territory
Computer-aided animation and special effects and Shooting of scenes in front of a chromatic screen	5%	5%	<b>30%</b>	Eligible expenditures (all-spend) directly attributable to eligible activities relating to computer-aided animation and special effects  Eligible expenditures (all-spend) directly related to the shooting of scenes in front of a chromatic screen
Small budget production	-	20%	<b>20%</b>	Eligible labour expenditures related to computer-aided animation and special effects

**Accumulation of tax credits**

To prevent the accumulation of tax credits, a taxpayer cannot claim the tax credit for film production services for a given production if an amount of tax credit for Québec film or television production has been claimed in its regard.

Similarly, a change has been made to the rules of the tax credit for dubbing, so that an expense cannot be claimed for the purposes of this tax credit if an amount of tax credit for film production services has been claimed for the same expense.

**Application date**

The refundable tax credit for film production services applies regarding taxation years of an eligible corporation ending after February 12, 1998. Moreover, the additional tax assistance for computer-aided animation and special effects applies for salaries and wages paid after March 31, 1998.

The new all-spend policy applies regarding a qualified production for which the main photography or recording work in Québec is completed after June 12, 2009.

**Claiming the tax credit**

An eligible corporation can file a QPSTC claim with regard to a film as from the corporate year of assessment of the corporation in which an application for an Advance Ruling is formulated at SODEC. Any QPSTC claim related to a film must be transmitted to Revenu Québec inside a 12 months deadline following the expiration date of production of the year of assessment (18 months) during which a request for an Advance Ruling was formulated with SODEC with regard to the production. In the same way, for each year of subsequent assessment, any QPSTC claim relative to this same production will have to be transmitted inside an 18 months deadline following the end of each year of assessment, if applicable, until the production has been completed.

Furthermore, to be entitled to additional assistance for computer-aided animation or special effects, the eligible corporation will have to include with the prescribed form, the certificate of eligible activities from SODEC, establishing the list of budget accounts relating to eligible computer-aided animation and special effects activities.

### **Screen credit requirement**

Film and television productions that are entitled to the tax credit for film production services must include the "QUÉBEC" symbol followed by the text "Production services tax credit" in the end credits of all versions (domestic and international) of each film or each episode of a series, and in all advertising, publicity and promotional materials.

Please refer to SODEC website at: [http://www.sodec.gouv.qc.ca/medias\\_logotypes.php](http://www.sodec.gouv.qc.ca/medias_logotypes.php)

### **Administrative fees**

The following fees are payable upon submission of application and cheques are to be made payable to SODEC.

#### Approval certificate

- Flat fee: 500\$

In addition to the base fee:

- a non-refundable \$50 fee is payable for each eligibility assessment application;
- a \$25 fee is payable for each additional copy of an issued attestation;

#### Advance Ruling

The administrative fees are calculated as follows:

- \$3.00 per \$1,000 of eligible labour expenditures for the first \$1,500,000
- plus**
- \$1.75 per \$1,000 of eligible labour expenditures exceeding \$1,500,000

The minimum and maximum fees are \$350 and \$25,000, respectively.

In addition to the base fee:

- a \$25 fee is payable for each additional copy of an issued attestation;
- a \$300 fee is payable for the issuance of an amended attestation.

The preceding information pertaining to the refundable tax credit for film production services is taken from the Budget Speech of March 31, 1998 as amended by Information Bulletins number 1998-3, 1999-2, 2001-06, 2004-12, 2007-10 and 2009-3 of the Department of Finance, as well as the Budget Speeches of March 29, 2001, March 11, 2003, June 12, 2003, March 30, 2004, April 21, 2005, March 23, 2006, February 20, 2007, May 24, 2007 and March 19, 2009.

The aforementioned documents, which take precedence over this summary, can be found on the Department of Finance's web site.

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