

Canadian Audio-Visual
Certification Office
(CAVCO)

**Canadian Film or Video
Production Tax Credit
(CPTC)**

Guidelines

Table of Contents

INTRODUCTION	1
QUALIFIED CORPORATION	3
CANADIAN FILM OR VIDEO PRODUCTION	4
1. DEFINITION OF THE TERM "CANADIAN"	4
2. DEFINITION OF THE TERM "PRODUCER"	5
3. EXEMPTION FOR A FOREIGN COURTESY CREDIT FOR A PRODUCER-RELATED POSITION	5
4. OWNERSHIP AND DISTRIBUTION	6
5. INELIGIBLE GENRES OF PRODUCTION	7
6. CREATIVE SERVICES	7
a) <i>Non-animated productions (live action)</i>	7
b) <i>Animation productions</i>	8
c) <i>General rules</i>	9
d) <i>Lead performer and screenwriter</i>	10
7. CANADIAN EXPENDITURES	11
QUALIFIED LABOUR EXPENDITURE	13
1. ELIGIBLE COST OF PRODUCTION	13
2. LABOUR EXPENDITURES	13
a) <i>Salary or wages</i>	14
b) <i>Remuneration (other than salary or wages)</i>	14
c) <i>Reimbursement by a wholly-owned corporation to its parent</i>	16
3. LABOUR EXPENDITURE DURING POST-PRODUCTION.....	17
4. DETERMINATION OF THE QUALIFIED LABOUR EXPENDITURE	18
ADMINISTRATION	19
1. RESPONSIBILITIES OF CAVCO	19
a) <i>Canadian Film or Video Production Certificate (Part A)</i>	19
b) <i>Certificate of Completion (Part B)</i>	19
2. RESPONSIBILITIES OF THE CANADA REVENUE AGENCY	20
3. SCREEN CREDITS.....	21
4. PROCESSING FEES.....	21
ADDRESSES	22
APPENDIX I - PRODUCER CONTROL GUIDELINES	23
APPENDIX II - CALCULATION OF QUALIFIED POST-PRODUCTION LABOUR EXPENDITURES	32
APPENDIX III - AUDIT ACCOUNTING GUIDELINES	37
APPENDIX IV - BREAKDOWN OF COSTS - LIVE PRODUCTION	46
APPENDIX V - BREAKDOWN OF COSTS - ANIMATION	57
APPENDIX VI - INCOME TAX ACT AND (DRAFT) REGULATIONS	68

Canadian Film Or Video Production Tax Credit

Guidelines

These guidelines have been prepared to assist producers in completing the application form for a Canadian Film or Video Production Certificate (Part A) or a Certificate of Completion (Part B). The relevant sections of the *Income Tax Act* and *Regulations* take precedence over these guidelines.

Introduction

The rules that apply for the purpose of computing the Canadian Film or Video Production Tax Credit are set out in section 125.4 of the *Income Tax Act* (the "Act"). A Canadian film or video production is a production which meets the requirements of section 1106 of the draft *Income Tax Regulations* (the "Regulations").

Generally, the tax credit is available at a rate of 25 per cent of "the eligible labour costs of a Canadian-controlled production corporation which produces Canadian film or video productions". For productions, which development commences on or after November 14, 2003 or the first eligible labour expenditures are incurred on or after January 1, 2004, the qualified labour expenditure may not exceed 60 per cent of the cost of the production net of assistance. As well, a production corporation may elect that the new 60 per cent rate applies to productions for which labour expenditures were first incurred in a corporate taxation year that includes November 14, 2003. All other productions are subject to the former 48 per cent cap. The tax credit may be calculated by multiplying the qualified labour expenditure by 25 per cent. The tax credit therefore cannot exceed 15 per cent of the cost of production net of assistance.

The total cost of production will be reduced by any assistance received (or to be received) as defined in paragraph 12(1)(x) of the Act. Production costs and labour expenditures are also limited to those amounts which have been incurred in respect of the property owned by the corporation. Ownership may be shared only in cases where there is a Canadian co-production or a treaty co-production. For Canadian co-productions, however, CAVCO will issue a single certificate with respect to the production. It is therefore incumbent on each co-producer to claim the relative portion of the tax credit in computing its income. Labour expenditures must be directly attributable to the corporation's Canadian film or video production, incurred for the production of the property from the production commencement time to the end of the post-production stage, reasonable in the circumstances and included in the cost to the corporation.

An additional capital cost allowance, up to the cost of the certified production (net of the credit and assistance), and to the extent of film income, may also be available to some production corporations.

Co-productions between Canada and another country are eligible for the tax credit program only when co-produced under an official treaty. They are, however, exempted from certain requirements of the Regulations.

Qualified Corporation

For the purposes of the program, the production company (and the parent company, where applicable) must meet the requirements of the Act and Regulations.

The Department of Canadian Heritage is charged with the regulatory requirement of initially determining whether a company is Canadian-controlled under sections 26 to 28 of the *Investment Canada Act*.¹ The Canada Revenue Agency is charged with the legislative requirement of determining if the production company is a qualified corporation for the applicable time period. Qualified corporation for a taxation year means a corporation that is throughout the year a prescribed taxable Canadian corporation the activities of which in the year are primarily the carrying on through a permanent establishment (as defined by regulation) in Canada of a business that is a Canadian film or video production business.²

It is important to note that the corporation's primary activity must be in relation to the production of "Canadian films or videos". Consequently, if the business of a corporation includes other activities such as, the rental of equipment or studios, or the distribution of films and videos, or if the corporation is carrying on business outside of Canada, it may not be considered a "qualified corporation" for the purposes of the tax credit program. Furthermore, if the corporation produces films or videos that do not qualify as "Canadian film or video productions", the corporation may also be considered as a non-qualifying corporation. It is therefore conceivable that a corporation may be denied the tax credit by reason of its activities in the year. Production companies should seek to ensure that they are eligible for credit purposes by contacting the Canada Revenue Agency - Income Tax Rulings and Interpretations Directorate.

Furthermore, a corporation that is controlled directly or indirectly in any manner whatsoever by one or more persons, all or part of whose taxable income is exempt from tax under Part I of the Act, or a prescribed labour-sponsored venture capital corporation referred to in section 6701 of the Regulations, is not considered to be a "prescribed taxable Canadian corporation".³

Please refer to the Annex- Checklist for Corporate Documentation Required in the CAVCO Forms section for a description of the corporate information required to confirm initial Canadian status at CAVCO.

1 Subsection 1106(1) of the Regulations, under the definition of "Canadian".

2 Subsection 125.4(1) of the Act, under the definition of "Qualified Corporation".

3 Subsection 1106(2) of the Regulations, under the definition of "Prescribed Taxable Canadian Corporation".

Canadian Film or Video Production

In order to be eligible for the Canadian Film or Video Production Tax Credit, a production must be certified by the Canadian Audio-Visual Certification Office ("CAVCO") as a "Canadian film or video production". A Canadian film or video production means a film or video production, other than an "excluded production"⁴, produced by a prescribed taxable Canadian corporation⁵ and that is either a treaty co-production or a film or video production that meets the requirements of the Regulations.⁶

A production must be completed (answer print or video master) within two (2) years after the end of the taxation year in which the principal photography began.

Furthermore, a "Certificate of Completion"⁷ (Part B) must be issued by the Minister of Canadian Heritage within 30 months after the end of the corporation's taxation year in which the production's principal photography began. This certificate will certify that the production was completed within the period described above. If a production does not meet these prescribed time frames, it will become an excluded production. Consequently, no tax credit will be allowed.

Co-productions between Canada and another country are eligible for the tax credit program only when co-produced under an official treaty. Treaty co-productions must comply with the requirements outlined in the Regulations unless otherwise specified. Telefilm Canada continues to be responsible for the certification of treaty co-productions. However, in order to obtain a certificate to access the tax credit program, the producer must apply directly to CAVCO. A Telefilm Canada Advance Ruling must be submitted by the producer with an application for a Canadian film or video production certificate (Part A). At the Certificate of Completion (Part B) stage, Telefilm Canada will send its final recommendation directly to CAVCO.

1. Definition of the term "Canadian"

The term "Canadian" is defined as a person who is, at all relevant times, a Canadian citizen as defined in the *Citizenship Act*, a permanent resident within the meaning assigned by the *Immigration and Refugee Protection Act (2001)*, or a corporation that is Canadian-controlled, as determined for the purposes of sections 26 to 28 of the *Investment Canada Act*.⁸

⁴ Subsection 1106(1) of the Regulations, under the definition of "Excluded Production".

⁵ See note 3) above.

⁶ A "Canadian Film or Video Production" is defined in subsection 1106(3) of the Regulations. See also subsections 1106(4) about "Creative Services", 1106(5) about "Lead Performer/Screenwriter" and 1106(6) about "Documentary Production".

⁷ As defined in subparagraph 1106(1)(a)(i) of the Regulations, under the definition of "Excluded Production".

⁸ See note 1) above.

"Canadian at all relevant times" means that an individual must be Canadian at the time he or she begins his or her duties in relation to the production and during the entire course of the filming or taping and post-production. An individual cannot acquire permanent resident status in order to qualify as "Canadian" at any point during a production; such status must be confirmed before the individual begins engaging in any activity related to the production.

2. Definition of the term "producer"

The term "producer"⁹ is defined as an individual:

- a) who controls and is the central decision maker in respect of the production; and
- b) who is directly responsible for the acquisition of the production story or screenplay and the development, creative and financial control and exploitation of the production; and
- c) who is identified in the production as being the producer of the production.

All the positions related to the producer function must be held by Canadians, unless a request for an exemption for a foreign courtesy credit has been granted by CAVCO. However, no exemption will be granted for the functions of line producer, co-producer or production manager; these positions must be held by Canadians and CAVCO will seek to ensure that all persons to whom they report are Canadians.

3. Exemption for a foreign courtesy credit for a producer-related position

An exemption for a foreign courtesy credit may only be granted to the extent that the functions of a non-Canadian individual in no way interfere with the financial and creative authority of the Canadian Producer and either relate to the arranging of foreign distribution or financing, or the provision of services to the production under the strict supervision and control of the Producer. An affidavit must be filed on CAVCO's approved form before these individuals begin their duties.

CAVCO Producer Control Guidelines ([Appendix I](#)) describes the policy with respect to this matter.

⁹

Subsection 1106(1) of the Regulations, under the definition of "Producer".

4. Ownership and Distribution

To be considered as a Canadian film or video production, a production must meet the conditions set out below.¹⁰ However, treaty co-productions are exempt from the conditions mentioned in paragraph i).

- a) The prescribed taxable Canadian corporation or another prescribed taxable Canadian corporation related to the corporation:¹¹
 - i) is, except in a Canadian co-production, the exclusive worldwide copyright owner in the production for all commercial exploitation purposes for the twenty-five year¹² period that begins at the first time the production has been completed and is commercially exploitable. A production is deemed to be completed on the date of acceptance of the answer print (film) or master (video),
 - ii) controls the initial licensing of commercial exploitation, and
 - iii) retains a share of revenues, that is acceptable to the Minister of Canadian Heritage, from the exploitation of the production in non-Canadian markets. (A specific policy to that effect is currently under consultation with industry associations).
- b) There must be an agreement in writing for consideration at the fair market value with
 - i) a corporation that is a Canadian and is a distributor of film or video productions, or
 - ii) a corporation that holds a broadcasting licence issued by the Canadian Radio-television and Telecommunications Commission (CRTC) for television markets,

to have the production shown in Canada within the two-year period that begins at the first time the production has been completed and is commercially exploitable.

¹⁰ Subparagraphs 1106(1)(a)(ii), (iii) and (iv) of the Regulations, under the definition of "Excluded Production".

¹¹ IMPORTANT. Please note that, in order to claim a tax credit, the corporation must be the owner of the copyright in the production, and have incurred the labour expenditure. Once the tax credit has been claimed, the copyright may then be assigned to a related prescribed taxable Canadian corporation.

¹² This clause applies to the 1995 and subsequent taxation years except that the reference to the "twenty-five year period" in that clause shall be read as a "five-year period" in the case of a film or video production for which a Canadian film or video production certificate is obtained before 1997.

If a distribution is made in Canada within that two-year period by a person who is not a Canadian, the production will be deemed an "excluded production".

Producers must also submit copies of all distribution or broadcast agreements. At least one of the Canadian agreements (the broadcast agreement in the case of a television program) must contain a commitment to show or broadcast the production in Canada within the period indicated above. Distribution agreements should also contain a clause to the effect that the distributor is a Canadian company, within the meaning prescribed by Regulation.

5. Ineligible genres of production

The following genres of production are not eligible for the tax credit program¹³:

- a) news, current events or public affairs programming, or a programme that includes weather or market reports;
- b) talk show;
- c) production in respect of a game, questionnaire or contest (other than a production directed primarily at minors);
- d) sports event or activity;
- e) gala presentation or an awards show;
- f) production that solicits funds;
- g) reality television;
- h) pornography;
- i) advertising;
- j) production produced primarily for industrial, corporate or institutional purposes;
- k) production, other than a documentary, all or substantially all of which consists of stock footage.

CAVCO is currently drafting criteria in order to define some of the above-named genres of production.

6. Creative services

a) Non-animated productions (live action)

To be recognized as a Canadian production, a live action production must be allotted a total of at least six (6) points according to the following scale:

(Points are allotted if the individual(s) who rendered the service is/are Canadian).

¹³

Paragraph 1106(1)(b) of the Regulations, under the definition of an "Excluded Production".

Director	2 points
Screenwriter ¹⁴	2 points
Lead performer for whose services the highest remuneration was payable	1 point
Lead performer for whose services the second highest remuneration was payable	1 point
Director of photography*	1 point
Art director**	1 point
Music composer***	1 point
Picture editor*	1 point

* For video productions, the equivalents to DOP are either "technical director" or "lighting director" and the equivalent to picture editor is "off-line editor".

** "Art director" refers to the head of the art department. In some cases, this individual may have the title of "production designer".

*** The point for music composer is allotted only if the music created for the production is an original work.

In addition, a production must obtain two of the four points allotted for the director and the screenwriter (one of the two positions must be filled by a Canadian). A production must also obtain one of the two points allotted for lead performers (one of these two positions must also be filled by a Canadian).

In the case of a documentary production not involving performers or other functions such as art director or music composer, a production may meet the creative services criteria even if the production has not been allotted the minimum six points required. However, all the filled creative positions must be occupied by Canadians.

b) Animation productions

To be recognized as a Canadian production, an animation production must be allotted a total of at least six (6) points according to the following scale¹⁵:

(Points are allotted if the individual(s) who rendered the service is/are Canadian).

¹⁴

See the definition of Screenwriter under "Creative Services" in paragraph 1106(5)(c) of the Regulations.

¹⁵

Subparagraph 1106(4)(a)(ii), (iii) and (iv) of the Regulations. See also paragraph 1106(4)(c).

Director	1 point
Screenwriter <u>and</u> storyboard supervisor	1 point
Lead voice for which the highest or second highest remuneration was payable	1 point
Design supervisor (art director)	1 point
Camera operator where the camera operation is done in Canada	1 point
Music composer*	1 point
Picture editor	1 point

(The following points will be allotted if the place where the work is performed is in Canada**).

Layout and background	1 point
Key animation	1 point
Assistant animation and in-betweening	1 point

* The point for the function of music composer is allotted only if the music created for the production is an original work.

** At Part B, an affidavit will be required attesting that the functions were performed in Canada.

Furthermore, for the production to be considered Canadian, the following conditions must be fulfilled: either the director, or the screenwriter and storyboard supervisor must be Canadian; the lead voice for which the highest or second highest remuneration was payable must be Canadian; and the key animation must be done in Canada.

c) **General rules**

No points will be allotted for a Canadian who shares the functions of a key creative position with one or more non-Canadians (see also the definition of screenwriter below). Where the functions of a position are carried out by more than one person, only the number of points provided for in the Regulations will be allotted, regardless of the number of individuals named in the credits for this position. In the case of a television series or a collection of films, each of the episodes in the series or each of the films in the collection must meet the requirements of the Regulations.

d) Lead performer and screenwriter**i) Lead performer**

CAVCO will use three criteria to determine which individuals are in effect the lead performers in non-animated productions¹⁶:

(i) remuneration (including all types of benefits, residuals, travel and living expenses, etc.), (ii) billing and (iii) time on screen.

In the case of an animation production¹⁷, CAVCO will determine which individual is in effect the lead voice on the basis of remuneration received (including benefits, residuals, travel and living expenses, etc.) and length of time that the individual's voice is heard in the production.

An actor or actress is an individual engaged to speak lines of dialogue or mime a scene, or whose performance consists in interpreting a character, even where there is no dialogue. When there is no actor or actress, an individual who performs one of the following functions may be considered equivalent to the lead performer: dancer, singer, specialty act performer, host (a performer who introduces or links segments of a program), narrator (a performer engaged to perform narrative material), off-camera performer (a performer other than the narrator engaged to perform a role in a dramatic work off-camera), or the actor who performs or reads the voice of a character in a film or animated production. Guests on a magazine program, or the subjects of biographical documentaries, are not considered performers for certification purposes.

ii) Screenwriter

In order to obtain points for the position of screenwriter¹⁸, a production must meet one of the following conditions:

- (A) Each individual involved in the preparation of the screenplay for the production must be Canadian. This means that all the individuals engaged in developing the screenplay, from the outline or treatment through the various drafts (including consultants and story editors) and dialogue polishes to the final shooting script, must be Canadian.

¹⁶ Paragraph 1106(5)(a) of the Regulations.

¹⁷ Paragraph 1106(5)(b) of the Regulations.

¹⁸ Paragraph 1106(5)(c) of the Regulations.

- (B) The principal screenwriter is a Canadian individual and the screenplay for the production is based on a work authored by a Canadian and the work is published in Canada.

7. Canadian expenditures

In order to qualify as a Canadian film or video production, a production must meet the following requirements in respect of Canadian expenditures:

- a) Not less than 75 per cent of the total of all costs for services provided in respect of producing the production (other than excluded costs) was payable to, and in respect of services provided to or by individuals who are, Canadians¹⁹.

Excluded costs are:

- i) costs determined by reference to the amount of income from the production;
 - ii) remuneration payable to, or in respect of, the producer or key creative services personnel. Only the fees paid to a Canadian producer or co-producer are excluded. All other fees paid to producer-related positions are calculated as services. In the case of an animation production, the costs associated with positions which entitle the production to a point based on the place where the work is done are not considered to be excluded costs;
 - iii) amounts payable in respect of insurance, financing, brokerage, legal and accounting fees, and similar amounts; and
 - iv) costs relating to the post-production stage.
- b) In addition, not less than 75 per cent of the total of all costs incurred for post- production of the production, including laboratory work, sound re-recording, sound editing and picture editing (other than costs determined by reference to the amount of income from the production and remuneration payable to the producer and key creative services personnel) was incurred in respect of services provided in Canada.²⁰

CAVCO's Breakdown of Costs form (form No. 6 for live action productions or form No. 7 for animation productions) must be submitted with the application for

¹⁹

Subparagraph 1106(3)(b)(iii) of the Regulations. The expression "by individuals" will likely be replaced by "to or by individuals" in a proposed amendment to the draft regulations.

²⁰

Paragraph 1106(3)(iv) of the Regulations.

the Certificate of Completion (Part B). In the case of a television series or a collection of films, although only one Breakdown of Costs form is required, each of the episodes in the series or each of the films in the collection must meet the requirements of the Regulations. In certain cases, CAVCO may ask that a Breakdown of Costs form be completed for each episode.

CAVCO Breakdown of Costs ([Appendix IV - Production](#)) and ([Appendix V - Animation](#)) describes the policy with respect to this matter.

Qualified Labour Expenditure

The determination of the qualified labour expenditure is done in two steps: 1) the determination of the eligible cost of production and 2) the computation of the labour expenditure.

1. Eligible cost of production

The Canadian Film or Video Production Tax Credit may not exceed 15 per cent (12 per cent before November 14, 2003) of the cost of production after deduction of any assistance. Production costs are also limited to those amounts which have been incurred in respect of the property owned by the corporation. Ownership may be shared in cases where there is a Canadian co-production, a treaty co-production, or through an investment by a prescribed person or another qualified production corporation. Where the ownership of a production is shared among Canadian co-producers, each production corporation will calculate its production costs and labour expenditures based on their percentage of ownership in the production.

Assistance means any financial assistance from any source, including grants, subsidies, provincial tax credits, forgivable loans, contributions, services or certain advances and any other similar forms of assistance. For the purpose of calculating the estimates, deferrals are not included in the eligible cost of production. Assistance is defined in paragraph 12(1)(x) of the Act.

Since November 14, 2003, all public investment will be treated as assistance in the calculation of the tax credit for all productions utilizing the 60 per cent cap.

Given that any assistance received or to be received has an impact on the estimate of eligible expenses and the tax credit to be received, CAVCO will not issue a Canadian film or video production certificate (Part A) until all the components of the financing plan are in place and until it has received copies of all financing agreements. The producer is required to report any assistance that is known or anticipated at the time of the application. The Canada Revenue Agency has the responsibility to determine whether an amount received by the corporation represents assistance that should reduce the tax credit to which it is entitled. Please note that the Act provides for the repayment of assistance under certain conditions²¹.

2. Labour expenditures

The eligible labour expenditures of a corporation in respect of a Canadian film or video production must meet four criteria:

²¹

Subparagraph 125.4(1)(b)(ii) of the Act, under the definition of "Qualified Labour Expenditure".

- a) be reasonable in the circumstances,
- b) included in the cost or, in the case of depreciable property, the capital cost to the corporation, of the property,
- c) incurred for the stages of production of the property from the production commencement time to the end of the post-production stage, and iv)
- d) directly attributable to the production of the property.²²

CAVCO will provide an estimate of the total labour expenditure of a production. However, only the labour expenditures incurred after 1994 and in the taxation year, or the preceding taxation year, and paid by the corporation in the year or within 60 days after the end of the year, will qualify as labour expenditures for a given year when applying to the Canada Revenue Agency for the tax credit.

The labour expenditure of a corporation is the total of three categories:

- a) salary or wages;
- b) portion of the remuneration, other than salary or wages;
- c) reimbursement by a wholly-owned corporation to its parent.

The labour expenditure of a corporation which is not a qualified corporation is nil.

a) Salary or wages.

The salaries or wages must be directly attributable to the production and incurred and paid by the corporation for the stages of production of the property, from production commencement time to the end of the post-production stage. Salaries or wages paid to non-Canadian citizens are no longer eligible unless they are residents of Canada. Salaries or wages paid to Canadian citizens, whether they are residents of Canada or not, are eligible. Salary and wages are defined in section 248 of the Act. Only benefits that are taxable in the employees' hands would qualify (e.g. 4 per cent vacation, RRSP's but not pension plans). Producers may consult representatives of the Canada Revenue Agency, Audit Directorate, with respect to this matter.

b) Remuneration (other than salary or wages)

The portion of the remuneration, other than salary or wages, is considered to be a labour expenditure if it is directly attributable to the production of the property and is paid to:

²²

Subsection 125.4(1) of the Act under the definition of "Labour Expenditure".

- i) An individual who is not an employee of the corporation, to the extent that the amount paid
 - (A) is attributable to services personally rendered by the individual for the production of the property, or
 - (B) is attributable to and does not exceed the salary and wages of the individual's employees for personally rendering services for the production of the property.

If the payment to these non-employees includes a non-labour component (e.g. goods provided by the service provider, profit margin or the employer's share of government deductions), this portion does not form part of the remuneration. Only the labour component is eligible for the calculation of the labour expenditure.

- ii) Another taxable Canadian corporation to the extent that the amount paid is attributable to and does not exceed the salary or wages of the other corporation's employees for personally rendering services for the production of the property.

As discussed above, only the labour portion of the invoice sent to the production company, net of any profit margin, materials or the employer's share of government deductions, may be included as a labour expenditure. If an exact amount for net labour expenditures is not known, CAVCO will accept 65 per cent of the invoice as being a reasonable estimate of the labour expenditure directly attributable to the production subject to the Canada Revenue Agency's analysis of particular circumstances. Technically, the salary or wages must be paid to the corporation's employees. The corporation must be Canadian and taxable. Please note that some Canadian broadcasters are not taxable corporations (e.g. Radio-Québec, TVOntario, Knowledge Network, SCN).

- iii) Another taxable Canadian corporation all the issued and outstanding shares of the capital stock of which (except directors' qualifying shares) belong to an individual and the activities of which consist principally of the provision of the individual's services, to the extent that the amount paid is attributable to services rendered personally by the individual for the production of the property.

If the recipient corporation meets all of these criteria, then the whole remuneration qualifies as a labour expenditure.

- iv) A partnership that is carrying on business in Canada, to the extent that the amount paid

- (A) is attributable to services personally rendered by an individual who is a member of the partnership for the production of the property, or
- (B) is attributable to and does not exceed the salary or wages of the partnership's employees for personally rendering services for the production of the property.

c) Reimbursement by a wholly-owned corporation to its parent

Where

- i) a production corporation is a subsidiary wholly-owned corporation of another taxable Canadian corporation (parent), and
- ii) the corporation and the parent have agreed (by agreement²³) that this paragraph applies in respect of the production, the reimbursement made by the corporation in the year, or within 60 days after the end of the year, of an expenditure that was incurred by the parent in a particular taxation year of the parent in respect of the production and that would be included in the labour expenditure of the corporation in respect of the property for the particular taxation year because of paragraph (a) or (b) above if:
 - (A) the corporation had had such a particular taxation year, and
 - (B) the expenditure were incurred by the corporation for the same purpose as it was by the parent and were paid at the same time and to the same person or partnership as it was by the parent,

is an eligible labour expenditure.

If all the criteria listed in c) above are not met, payments to the parent company will become payments to another taxable Canadian corporation (as described under (b)(ii) above). Consequently, only the labour expenditure with respect to the salary or wages of the parent corporation's employees will qualify. The labour expenditure that has been paid to a subcontractor will not qualify.

The term remuneration includes salaries, wages, fees and other taxable benefits. Thus, per diems, travel and living expenses, car rentals, etc.

²³

Unlike the English version, the French version of the Act mentions "*a conclu une convention*" (an agreement has been reached).

should not be included as labour expenditures unless they have been included in the income of the recipient as a taxable benefit. Share option benefits and amounts determined by reference to profits or revenues are excluded from the concept of "salary or wages".

3. Labour expenditure during post-production

The Act provides a specific rule governing labour expenditures of a corporation incurred during the post-production stage. The following list of services applies only when the labour expenditure is paid to another corporation. When the post-production is done in-house, payments are made in the form of salary or wages as in a) above. When labour expenditures are paid to another taxable Canadian corporation (see (b) above), producers may only include those services that are rendered by a person who performs a function during post-production that is directly attributable to the production of the property.

In order to help producers estimate post-production labour expenditures at the Part A stage, a scale is provided in these guidelines (Appendix II), **for reference purposes only**. Producers should request that post-production service entities break down the labour component of their invoices, as this information may be requested by the Canada Revenue Agency's auditors.

Example

Director's fees will fall into one of the previously defined categories, depending on the manner in which they are paid:

- a) if a salary is paid directly to an individual director (excluding a foreign citizen who is not a resident of Canada), then the salary would be a labour expenditure, in accordance with a) above;
- b) if the remuneration is paid to another taxable Canadian corporation which provided the services of the director, then the salary or wages attributable, net of profit and employer's charges, to the production may be included, in accordance with b)(ii) above;
- c) if the remuneration is paid to another taxable Canadian corporation which is wholly owned by the director and which solely provided the services of the director, then the whole remuneration may be included, in accordance with b)(iii) above;
- d) if the remuneration is paid to a non-Canadian corporation which provided the services of the director, even if the latter is Canadian, the remuneration does not meet any of the criteria listed above, and hence is deemed ineligible.

4. Determination of the qualified labour expenditure

CAVCO provides estimates of the appropriate amounts for determining the qualified labour expenditures for the purposes of calculating the tax credit for a given production. The authority to confirm these estimates lies with the Canada Revenue Agency.

Producers may estimate the qualified labour expenditure for a particular production based on the lesser of the net labour expenditure and the eligible production cost multiplied by 60 per cent. The qualified labour expenditure must then be multiplied by 25 per cent in order to calculate the tax credit. Therefore, the tax credit may not exceed 15 per cent of the cost of production, net of assistance.

Administration

1. Responsibilities of CAVCO

CAVCO is responsible for determining whether a production meets the requirements under section 1106 of the Regulations. CAVCO may then recommend that the Minister of Canadian Heritage issue two mandatory certificates:

a) Canadian film or video production certificate (Part A)

The Canadian film or video production certificate (Part A) is based on an analysis of detailed cost estimates, financing plans (including deemed assistance), as well as Canadian content issues and may be provided before or during the course of production to facilitate interim financing and the claiming of a tax credit at the end of the first corporate fiscal year of production.

This certificate performs two functions as follows (the second is optional):

- i) projects that the production will be a Canadian film or video production;
- ii) estimates the appropriate amounts for determining the qualified labour expenditure of a qualified corporation, for the purpose of calculating the tax credit.

This certificate may be revoked by the Minister of Canadian Heritage if:

- i) an omission or incorrect statement was made for the purpose of obtaining the certificate, or
- ii) the production is not a Canadian film or video production.

A certificate that has been revoked is deemed never to have been issued.

b) Certificate of Completion (Part B)

Once the production is completed, a Certificate of Completion (Part B) may be issued. This certificate certifies that the production was completed within two years after the end of the corporate taxation year in which the principal photography began. If a production is not completed (answer print or master video) within that period, the production will be an excluded production and the Canada Revenue Agency will refuse any tax credit claimed in the year and reassess the corporation for any tax credit previously allowed.

Because the Certificate of Completion must be issued within 30 months after the end of the corporation's taxation year in which the production's principal photography began, the Department of Canadian Heritage cannot give any assurance that it will issue the certificate within this time frame if the application for a Certificate of Completion, along with all required documents, is not received at the latest 25 months following the end of the taxation year in which the principal photography began.

When applying for a Certificate of Completion (Part B), producers will need to provide an audited statement of production costs prepared by a certified accountant independent of the production company for productions with a total cost of \$500,000 or more. For productions with a total cost ranging from \$200,000 to \$499,999, a Review Engagement Report will suffice. For productions with a budget of less than \$200,000, CAVCO requires a notarized affidavit, signed by the producer, attesting to the total cost of the production. Please see CAVCO's Audit Accounting Guidelines (Appendix III) with respect to this matter.

Producers may decide to apply for both certificates once the production is completed. In such a case, the Canadian film or video production certificate (Part A) and the Certificate of Completion (Part B) will be issued at the same time.

CAVCO, on behalf of the Minister of Canadian Heritage, may require that the producer provide all necessary records and financial documents for audit by a third party. The producer will ensure that adequate space and time are provided and that all relevant documents are made available for this audit.

CAVCO reserves the right to require that its representatives be present at the filming or taping of a production and to require any information, affidavits or sworn statements that it deems necessary in order to issue a certificate.

2. Responsibilities of the Canada Revenue Agency

In order to claim the tax credit, a qualified corporation must file with its return of income for a taxation year:

- a) a Canadian film or video production certificate (Part A) issued in respect of a Canadian film or video production of the corporation;
- b) the Canada Revenue Agency's form "Claiming a Canadian Film or Video Production Tax Credit" (T1131), for each film for which a tax credit is being claimed;

- c) any other document prescribed in respect of the production.

Once the production is completed, the Canada Revenue Agency will require that the corporation provide the Certificate of Completion (Part B) issued by the Minister of Canadian Heritage, in addition to any other information it deems necessary.

If no tax is payable, a qualified corporation will be entitled to a refund of income tax, subject to the right of the Canada Revenue Agency to offset any other amount owed by the corporation.

3. CAVCO's electronic screen credit

Available for downloading from the CAVCO Web site : www.pch.gc.gc.ca/cavco.

This credit is to appear in all domestic and international versions of each production and in all related advertising, publicity and promotional materials.

4. Processing fees

The fees are as follows:

Part A:	0.15 per cent of the Eligible Production Cost (Line D of the Section 5 of the application form)
Part B:	0.15 per cent of the Eligible Production Cost (Line D of the Section 5 of the application form)
Part A/B	0.30 per cent of the Eligible Production Cost (Line D of the Section 5 of the application form) (The minimum fee is \$200 in this case)

Make cheque payable to the Receiver General for Canada.

Addresses**Canadian Audio-Visual Certification Office (CAVCO)**

Department of Canadian Heritage
9th Floor – 25 Eddy Street (25-09-0)
Gatineau, Quebec K1A 0M5
Telephone: 1-888-433-2200 or (819) 934-9830
Fax: (819) 934-9828
Web site: www.pch.gc.ca/cavco

Canada Revenue Agency (CRA)

International Tax Directorate
Film Industry Services Division
6th Floor - 344 Slater Street
Ottawa, Ontario K1A 0L5
Telephone: (613) 952-7815
Fax: (613) 941-2614
Contact: Brian Heatherington

Canada Revenue Agency (CRA)

Income Tax Rulings and Interpretations Directorate
Place de Ville "B"
8th Floor – 112 Kent Street
Ottawa, Ontario K1A 0L5
Telephone: (613) 957-8953
Fax: (613) 957-2088
Contact: Anne Wilson

Appendix I - Producer Control Guidelines

(For treaty co-productions, please refer to Telefilm Canada guidelines.)

In order to ensure that access to the new Canadian Film or Video Production Tax Credit is limited to productions that are truly owned and controlled by Canadian companies, and in addition to copyright ownership, company eligibility and distribution requirements outlined in subsections 1106(1) and (3) of the Income Tax Regulations, CAVCO will apply a number of tests described herein to determine production eligibility.

The following guidelines will apply to any production whose principal photography begins on September 1, 1996 and beyond.

However, please note that, in consultation with industry associations, the Department of Canadian Heritage has agreed to provide a transition adjustment period allowing television series in respect of which the last day of shooting of its 1997 cycle occurs no later than December 31 of that year, to continue to qualify provided that the series benefited from either Capital Cost Allowance or the Tax Credit in 1995. This transitional measure will not apply to movies of the week or other non-series programming, or spin-offs, sequels, etc. that might follow the original series in question. This measure will also not apply in cases where only a pilot episode was produced in 1995.

Producer definition

Throughout this document, the term "producer" is used to refer either to the eligible individual, or to the production corporation, or both. For the purposes of the tax credit, an individual producer must, at all relevant times, be a Canadian citizen or a permanent resident as defined in the *Immigration and Refugee Protection Act (2001)*. A production company must be an eligible company as defined in the Income Tax Act.

The producer shall be defined as follows:

The producer controls and is the central decision maker in respect of the production from beginning to end. The producer is normally involved in and is ultimately responsible for: the acquisition and/or meaningful development of the story; the commissioning of the writing of the screenplay/series bible; the selection, hiring and firing of the key artists and creative personnel; the preparation, revision and final approval of the budget; all overages; the binding of the production company to talent and crew contracts; the arranging of the production financing; the supervision of the filming/taping and post-production; final creative control (as per contract); production expenditures (as per contract); production bank accounts (sole and unfettered cheque signing authority); and the arranging of the commercial exploitation of the production.

Only those productions for which Canadians assume the preceding responsibilities will be recognized as Canadian film or video productions (see also Non-Canadian Exemption Policy).

The functions of line producer and production manager, in and of themselves, are not sufficient to confer producer status. Furthermore, persons assuming these functions, as well as persons to whom they report, must also be Canadian.

Approvals

Control by the Canadian producer over the financial and creative elements of the production may be subject to reasonable and customary approvals required by other non-Canadian arm's length financial participants such as distributors, broadcasters and financiers. For greater clarity, however, reasonable and customary approvals shall not confer to individuals other than the producer, significant controls and/or approval rights consistent with, or encroaching in any manner on, those of the producer. These individuals (and/or any related, associated or affiliated entity) should not, for example, control expenditures and co-sign cheques, receive under budgeted amounts, supervise certain production functions such as production accountant or production manager, or be able to overrule the producer in the case of a dispute.

Requirements

1. 100 per cent of the worldwide copyright in the production must be owned and controlled by Canadians for a minimum period of twenty five years²⁴ that begins the first time the production has been completed and is commercially exploitable;
2. the Canadian distribution rights must be owned and controlled by Canadians for a minimum period of twenty five years²⁵ that begins the first time the production has been completed and is commercially exploitable;
3. the producer must control the initial licensing of commercial exploitation of the production;
4. the producer must, in the opinion of the Minister, retain a reasonable financial interest in the foreign exploitation of the production (see indicators 2 and 3);
5. the producer must not be a producer-for-hire of a non-Canadian entity (with minimal remuneration and payments tied to incremental or achieved results) or be tied contractually to an ineligible entity in such a way as to restrict the authority and responsibilities of the producer;

24

Clause 1106(1)(a)(ii)(A) of the proposed Income Tax Regulations applies to the 1995 year and subsequent taxation years except that the reference to the "twenty-five-year period" in that clause shall be read as a "five-year period" in the case of a film or video production for which a Canadian film or video production certificate is obtained before 1997.

25

The Department of Finance is presently evaluating an industry proposal to modify subparagraph 1106(1)(a)(iv) of the proposed Income Tax Regulations to raise the Canadian distribution requirement from a two-year period to a twenty-five-year period.

6. the producer must not receive less remuneration as a producer (in the aggregate) than the total paid to all credited or uncredited foreign producer-related positions (in the aggregate);
7. the producer must not be a party to an agreement that grants a non-Canadian entity the right to cancel the agreement at any time without suffering a significant penalty;
8. the producer must not be a party to an agreement wherein the producer can be overruled by a non-Canadian entity in the case of a dispute. In addition, no one may have the ability to fire the producer (except for a producer hired by the eligible Canadian production company), subject to normal takeover rights of a completion guarantor or an entity normally in the business of lending money and taking security therefor. Any agreement(s) with such an entity must clearly state that, in the event the production is taken over, the entity will ensure that the production continues to comply with all of CAVCO's requirements (see indicator 7).

Indicators

In addition, the following indicators will be considered in assessing true Canadian ownership and control of the production:

1. evidence that 75 per cent or more of the total budget/final cost is financed (or interim-financed) by a single non-Canadian entity (or through a combination of related, associated or affiliated non-Canadian entities), but specifically excluding recognized lending institutions, along with evidence of substantial foreign controls in other areas;
2. evidence that a Canadian entity does not own or control distribution and exhibition rights to at least either the USA or an economically significant portion of the world outside North America;
3. evidence that the Canadian producer does not retain an effective share of net proceeds equivalent to at least 25 per cent of the value worldwide excluding Canada;
4. evidence that the producer does not have at least a right of first negotiation, or option rights, for subsequent cycles of a television series, sequels and spin-offs based on the specific rights acquired;
5. evidence that the producer does not participate in the meaningful development of the story, concept and/or script acquired;
6. evidence that foreign participants may, through the receipt of weekly expense statements, daily rushes, rough cuts, etc., exercise undue control or require

changes (at a cost or at no cost to the producer), save to conform to pre-approved elements or in the opinion of the producer, enhance the production;

7. evidence that a foreign company (other than a recognized lending institution) which is normally involved in the business of either producing, distributing, broadcasting or similar endeavours, is providing the completion guarantee with standard take-over rights.

Where, in the opinion of CAVCO and upon review of all material documents, contractual conditions related to areas outlined above limit the Canadian producer, the production will be considered ineligible for the program. CAVCO will make its determination on a case by case basis, giving due regard to all contractual obligations, facts and representations.

Non-Canadian Exemption Policy²⁶

(i) Individual production-related positions and screen credits

1. Co-production credits (with the exception of treaty co-productions) will not be granted to non-Canadian persons;
2. A maximum of two (2) non-Canadian credits for the following positions are allowed, provided that these functions in no way interfere with the financial and creative authority of the Producer and either relate to the arranging of foreign distribution or financing, or the provision of services to the production under the strict supervision and control of the Producer (exemptions on the sole basis that an individual held initial or previous rights will not be granted):
 - Executive producer
 - Senior executive/Executive in charge of production
 - Supervising producer
 - Supervising executive
 - Production supervisor
 - Associate producer

Persons requiring such exemptions will be required to sign duly notarized affidavits (on a CAVCO-approved form), outlining full and specific duties and responsibilities, and in which they declare that they hold no ultimate creative or financial decision making power. All affidavits are to be sworn before non company-related Commissioners of Oaths. CAVCO also requires full disclosure of all documentation pertaining to exempted individuals' involvement in the production. [Particular attention will be paid

²⁶

While these guidelines are expected to apply in most cases, CAVCO may also consider requests for credits whose net effect conforms with this policy.

to the favourable positioning (prominence and time on screen) of foreign courtesy credits in various types of productions, as a further indicator of non-Canadian control];

3. In addition to the maximum two (2) non-Canadian credits granted under paragraph (i) 2. above, and subject to paragraph (i) 4. below, a maximum of one (1) individual non-Canadian courtesy credit from among the following positions may be allowed provided that these functions in no way interfere with the financial and creative authority of the Producer (CAVCO also reserves the right to approve or disapprove other similar credits). These functions will also be subject to the filing of exemption affidavits outlining full and specific duties and time on set:
 - Production Executive
 - Production Associate
 - Executive/Production Consultant
 - Creative Consultant
4. Consideration will also be given to the granting of an Executive producer credit for either a non-Canadian leading performer or a writer-for-hire, provided that the credit is offered solely as a vanity credit. Only one (1) such credit may be granted and a credit granted under these circumstances will disallow the granting of any credit (or similar credit) listed under paragraph (i) 3. to any other production personnel. In certain cases, the writer-for-hire may also be accorded an additional "Created by" or "Creative Consultant" credit provided that it is clearly established by contract that this person is working under the direct supervision and control of the Canadian producer who at all times retains the ability to terminate the person's employment. Evidence in the form of an executed service agreement, as well as an affidavit (on a CAVCO-approved form), must be submitted in support of the writer-for-hire credit. A leading performer is not required to submit an affidavit;
5. The amount of time which may be spent on set by **credited** (exempted) non-Canadian representatives (with the exception of a leading actor or writer-for-hire) is limited to 25 per cent of principal photography;
6. Non-Canadian **individual presenter** credits will only be granted for representatives of bona fide distribution companies or licenced broadcasters whose functions on the production are solely to distribute or broadcast, and involve no creative or financial control. In addition, such credits will require an exemption and will be counted in determining the maximum exemptions granted under paragraphs (i) 2., 3. and 4. However, these individuals cannot also claim a producer-related credit by virtue of paragraphs (i) 2., 3. and 4.

7. All remuneration (including fringes, travel, accommodations and gratuities) for any credited or uncredited producer-related positions (including specific contractual remuneration for leading actors' and writers' courtesy producer-related credits) will be treated as part of the expenditures when calculating the percentage amount of services spent on Canadian and non-Canadian elements.

(ii) Corporate credits

1. Co-production credits (with the exception of treaty co-productions) will not be granted to non-Canadian entities;
2. At all times, the main and end titles must clearly and prominently identify the Canadian producer and production company;
3. Corporate presentation credits are allowed for non-Canadian licensed broadcasters;
4. Subject to CAVCO approval, other non-Canadian corporate entities such as distributors, syndicators, packagers and financiers, may be granted up to a maximum of two (2) presentation credits in the main titles;
5. Substitution of corporate presentation credits for distribution and/or broadcasting entities, in non-Canadian territories specifically held by them, will be allowed;
6. "In association with" (or similar) credits:

a) Main titles:

Subject to paragraph (ii) 4., "in association with" (or similar) production credits, may be granted to non-Canadian bona fide distributors and licensed broadcasters only to the extent that these entities provide solely a distribution or a broadcasting service and where the credit conforms to the following:

"a (Canadian company) production in association with (foreign entity)". CAVCO will not recognize credits in the form of "a (Canadian company) production produced in association with (non-Canadian entity)", or "produced by (Canadian company) in association with (non-Canadian entity)".

b) End titles:

There is no restriction as to the number of "in association with" (or similar) production credits for non-Canadian entities, provided that

these credits conform with the language in 6.a) above and that the Canadian production company is clearly and no less prominently identified.

7. Logos of non-Canadian broadcasters, distributors, syndicators, packagers and financiers are allowed in the end titles provided that Canadian company logos also appear and are no less prominent;
8. The Canadian copyright is mandatory in the screen credits.

(iii) Individual and Corporate Credits

1. A maximum of two (2) credits may be allowed for **any one** non-Canadian company and/or its representative(s) in total, as listed under sections (i) and (ii);
2. Subject to paragraph (ii) 5., CAVCO-approved screen credits are to be maintained in all territories and media throughout the world (by specific contractual agreement). Furthermore, producers will ensure that the credits used in billing blocks, video cassette boxes, posters and all other forms of advertising will be consistent with the approved credits. Intentional deletion of Canadian producers, stars and key creatives (or substitution by non-Canadians) in foreign territories and media may cause the production to lose its certified status.

i) Individual Production-Related Positions And Screen Credits

	Option 1	Option 2	Option 3
Producer, Co-Producer, Line Producer	Canadian	Canadian	Canadian
Executive Producer, Senior Executive/Executive in Charge of Production, Supervising Producer, Supervising Executive, Production Supervisor, Associate Producer [par. (i) 2] (<i>notes 1,2</i>)	2 foreign	2 foreign	1 foreign
Production Executive, Production Associate, Executive or Production Consultant, Creative Consultant [par.(i) 3] (<i>notes 1, 10</i>)	1 foreign	0 foreign	1 foreign
OR	OR	OR	OR
Executive Producer for lead performer or writer-for-hire [par. (i) 4] (<i>notes 1,8</i>)	1 foreign	0 foreign	1 foreign
Individual Presenter [par. (i) 6] (<i>notes 1,3,4</i>)	0 foreign	1 foreign	1 foreign

ii) Corporate Credits

	Option 1	Option 2	Option 3
Broadcaster (presenter) [par. (ii) 3]	foreign	foreign	foreign
Distributor, syndicator, packager, financier (presenter) [par. (ii) 4] (<i>notes 5, 9</i>)	2 foreign	1 foreign	0 foreign
«in association with» or (similar) production credits	0	1	2
main title [par. (ii) 6a] (<i>notes 5, 6, 7</i>)	foreign	foreign	foreign
end title [par. (ii) 6b] (<i>note 7</i>)	foreign	foreign	foreign

Notes

1. An exemption is required.
2. For individuals whose functions in no way interfere with the financial and creative authority of the producer and either relate to the arranging of foreign distribution or financing, or the provision of services to the production under the strict supervision and control of the producer.
3. For an individual representative of a bona fide distribution company or a licenced broadcaster whose function on the production is solely to distribute or broadcast, and involves no creative or financial control.
4. This individual cannot also claim a producer-related credit by virtue of paragraphs (i) (2)(3)(4).
5. Subject to CAVCO approval.
6. granted to non-Canadian bona fide distributors and licenced broadcasters only to the extent that this entity provides solely a distribution or a broadcasting service.

7. The credit must conform to the following: «a (Canadian company) production in association with (foreign entity)».
8. Provided that the credit is offered solely as a vanity credit.
9. A Maximum of two (2) non-Canadian corporate credits in total, as listed under paragraphs (ii) 4 and 6a), may be allowed in the main titles.
10. Provided that these functions in no way interfere with the financial and creative authority of the producer.

General Rule

1. The amount of time which may be spent on set by credited (exempted) non-Canadian representatives (with the exception of a leading actor or writer-for-hire) is limited to 25 per cent of principal photography.
2. A maximum of two (2) credits may be allowed for any one non-Canadian company and/or its representative(s) in total, as listed under sections (i) and (ii).
3. CAVCO approved credits are to be effective for all territories and media throughout the world (excluding presentation credits for specific distribution entities and/or broadcasters, in foreign territories specifically held by them).

Policy has precedence over this document

Appendix II - Calculation Of Qualified Post-Production Labour Expenditures

This scale indicates the labour portion (as either a percentage of retail price or an hourly rate) for each budget account for post-production services. These rates are indicated for **reference purposes only**. Invoices indicating labour expenditures for post-production work will take precedence when reporting costs at Part B of the certification process.

Please note that only 65 per cent of the amount for each account can be included in the qualified labour calculation. The difference (35 per cent) accounts for the profit margin and the fringe benefits paid by the laboratory.

E.g.: If the invoice indicates a global amount for the process, the qualified labour calculation expenditure is done as follows:

Film processing (based on the invoice)	\$10,000
Eligible rate according to the scale (see 51.10)	15%
Sub-total	<u>\$1,500</u>
Percentage of labour (i.e. without the laboratory's profit margin)	65%
Amount to indicate in the qualified labour column of the production	<u>\$975</u>

E.g.: If the invoice is based on the number of hours required to complete the process, the calculation is as follows:

Rushes synchronisation (based on the invoice)	10 hours
Eligible hourly rate according to the scale (see 50.40)	\$19.50/hr
Sub-total	<u>\$195</u>
Percentage of labour (i.e. without the laboratory's profit margin)	65%
Amount to indicate in the qualified labour column of the production	<u>\$126.75</u>

These rates were proposed by the members of the Technical Industries Branch of the Association des producteurs de films et de télévision du Québec (APFTQ).

A) By Budget Accounts

Account 50	Videotape Stock	Rate
50.01	Original scenes	Nil
50.10/50.15	Film to tape transfer	\$64.50/hr or 20%
50.20	Sub-masters with time code	\$19.50/hr or 20%
50.35	Sound transfer 1/4@ to 3/4@ digital	\$17.00/hr or 15%
50.40	Rushes synchronisation	\$19.50/hr or 20%
50.50	Viewing copies	\$19.50/hr or 20%
Account 51	Production Laboratory	Rate
51.01	Raw stock	nil

51.10	Processing	15%
51.15	Special processing	15%
51.17	Vaccumate	15%
51.20	Work print	20%
51.22	Video cassettes (rushes)	\$64.50/hr or 20%
51.24	Take selection	17%
51.26	Special printing	20%
51.30	Magnetic master stock	nil
51.35	Magnetic transfer	\$17.00 or 15%
51.40	Synchronization	\$19.50 or 20%
51.50	Edge coding	15%
51.60	Rushes/dailies screening	20%
51.70	Continuity/production stills	nil
Account 60	Editorial Labour	Rate
Film	100% of labour expenditures included	
Video	Case by case basis Off Line and On Line editors could be included in account 62 Videotape Post Production (Picture)	
Account 61	Editorial Equipment	Rate
	No labour expenditure	nil
Account 62	Videotape Post-Production (Picture)	Rate
62.01	Editing rooms	nil
62.05	Off line - video editor - assistant editor (optional)	\$45.00/hr \$19.50/hr
62.10	Computer load list (Clean list) - assistant editor	\$19.50/hr
62.15	On Line - video editor and technician	\$64.50/hr
62.20	Digital optical effects machines - video editor and technician	\$64.50/hr
62.25	Graphics generator - video credits designer and technician	\$39.00/hr
62.30	Computer clean - assistant editor	\$19.50/hr
62.40	Graphics - computer graphics designer and technician	\$64.50/hr
62.45	Graphics camera - computer graphics designer and technician	\$64.50/hr
62.60	Protection copies	\$19.50/hr or 20%
62.64	Distribution copies/master D2 colour timed	\$19.50/hr or 20%
62.68	Viewing copies	\$19.50/hr or 20%

Account 63	Videotape Post-Production (Sound)	Rate
63.01	Audio master	nil
63.05	Edited master - sound editor	\$45.00/hr
63.10	Voice-over recording and postsynchronization - recording technician and sound engineer	\$42.00/hr
63.15	Interlock/pre-mix - magnetic transfer on multitrack - viewing interlock video	\$17.00/hr or 15% \$62.00/hr
63.20/63.25	Sweetening/final mix - mixer, assistant-mixer and recording technician	\$92.00/hr
63.30	Re-stripe/Final mix transfer	\$17.00/hr or 15%
63.35	Foley track - recording technician - foley (if non included in account 62)	\$42.00/hr \$35.00/hr
63.40	Music and Effects track (M&E)	\$17.00/hr or 15%
Account 64	Post-Production Laboratory	Rate
64.01	Slash print	20%
64.05	Negative cutting	100%
64.10	Answer print	20%
64.15	Fades/Dissolves	\$30.00/hr or 20%
64.20	Intermediate positive	20%
64.25	Intermediate negative	20%
64.30	CRI	20%
64.35	Check print	20%
64.40	Wet gate full immersion (include in printing copies)	20%
64.50	Release print(s)	20%
64.60	Reduction/Blow-up printing	20%
64.70	Videocassettes	\$64.50/hr or 20%
64.80	Vaults/Storage	nil
Account 65	Post-Production Film (Sound)	Rate
65.01	Original effects recording - labour cost for sound engineer and boom operator	100%
65.04	Library effects purchase	nil
65.10	Narration/Voice-over - narrator	100%
65.15	Sound transfer - labour cost for technician	\$17.00/hr or 15%
65.20	Sound slashes/dupes	15%
65.25	Post Sync Dialogue (ADR) - detection, transcription, calligraphy, work	100%

	plan - sound engineer and recording technician - co-ordination - transfer film to film (technician) - transfer 1/4" to film (technician)	\$42.00/hr 100% \$17.00/hr or 15% \$17.00/hr or 15%
65.30	Foley - sound engineer and recording technician	\$42.00/hr
65.35	Evaluation screenings - mixer and recording technician	\$67.00/hr
65.37	Interlock screenings - mixer and recording technician	\$67.00/hr
65.40	Pre mix - mixer and recording technician - assistant mixer	\$67.00/hr \$25.00/hr
65.45	Final mix - mixer and recording technician - second mixer - assistant mixer	\$67.00/hr \$50.00/hr \$25.00/hr
	Music and Effects (M&E) - mixer and recording technician - assistant mixer	\$67.00/hr \$25.00/hr
	Encodage Dolby - mixer, assistant mixer and recording technician	\$92.00/hr
65.48	3 track master - mixer, assistant mixer and recording technician	\$92.00/hr or \$67.00/hr
65.50	Protection copy	\$17.00/hr or 15%
65.55	Optical track	20%
65.70	Dolby noise reduction - Dolby license - Dolby optical track (printing technician)	nil 20%

B) By Personnel Function

Please note that only 65 per cent of the calculated amount for each account can be included in the qualified labour calculation. The difference (35 per cent) accounts for the profit margin and the fringe benefits paid by the laboratory.

Off Line Editor	\$45.00/hr
Sound Editor	\$45.00/hr
On Line Editor	\$45.00/hr
Special Effects Editor	\$45.00/hr
Assistant Editor	\$19.50/hr
Projectionist	20% of retail price
Color Timer	20% of retail price

Printing Technician	15% of retail price
Inspection/Vaccum Technician	15% of retail price
Processing Technician	15% of retail price
Color Technician	\$45.00/hr
Assistant Color Technician	\$19.50/hr
Computer Graphics Designer	\$45.00/hr
Video Credits Designer	\$19.50/hr
Video Technician	\$19.50/hr
Coding Technician	\$19.50/hr
Foley Technician	\$35.00/hr
Assistant Foley Technician	\$19.50/hr
Sound Recordist	\$25.00/hr
Subtitling Technician	\$17.00/hr
Mixer	\$50.00/hr
Assistant Mixer	\$25.00/hr
Printing Technician	\$17.00/hr
Recording Engineer	\$17.00/hr

Appendix III - Audit Accounting Guidelines

An audited Schedule of Production Costs is required for all productions with a final cost of \$500,000 or more, while a Review Engagement Report (as defined in sections 8100 and 8200 of the *CICA Handbook*) will be accepted for productions with a final cost of \$200,000 to \$499,999. For productions with a final cost of less than \$200,000, the producer will be required to submit a CAVCO-approved notarized affidavit attesting to the total cost of the production.

It is the producer's responsibility to ensure that all of the required information is provided. CAVCO will not accept audited schedules which do not conform to the guidelines outlined herein.

General

- The auditor must be a Licensed Public Accountant in Canada and must be an independent third party, not related to the producer.
- The auditor's report must be addressed to the party which has engaged the auditor, that is, the Directors of the production company or the producer of the production.
- The auditor's name, address and telephone number must be evident.
- The auditor's report must be dated as at the completion of the audit fieldwork.
- The audit must be performed in accordance with generally accepted auditing standards and the auditor must have sufficient knowledge of accounting principles and practices generally recognized in the film and television industry.

Identification of the production

- The title of the production and, when applicable, the episode numbers, must be disclosed.
- The title of the schedule must indicate the type of costs reported: "Schedule of Production Costs" means the standard schedule of negative costs.
- The period during which the costs were incurred must be disclosed.

Cost report

- The cost report must be in Canadian dollars and conform as much as possible to the Schedule of Production Costs model provided hereafter. Alternatively, CAVCO will accept that the auditor present the results of the audit on CAVCO's Breakdown of Costs form (Form 6 for live action productions and Form 7 for animation productions) as long as the audited Breakdown of Costs conforms to proposed Subparagraphs 1106(3)(b)(iii) and (iv) of the draft *Income Tax Regulations*, and is accompanied by the required standard disclosures and explanatory notes.
- Only expenditures which were incurred for the production can be recorded as production costs; these must be charged to the proper budgetary item.

- Refunds and credit notes received for discounts, rebates, invoicing errors and purchase returns must be credited to the production costs; similarly, proceeds from the sale of props and other production assets must be deducted from the costs presented in the cost report. In cases where props and other productions assets are kept in inventory for future productions, they must also be deducted, at fair market value, from the costs presented in the cost report.
- Completion bond expenditures must reflect any "no-claims rebate" received (the amount reported must be net after rebate).
- Amortization of series costs must be allocated to specific cost categories.

Notes to the cost report

Sources of funds

- All sources of funds that were used to finance the production must be disclosed, including any non-monetary transactions (as defined in section 3830 of the *CICA Handbook*) that were included in the cost of the production.
- Non-monetary transactions must be disclosed at fair market value. The nature of the services provided and the consideration given in exchange for the services must be disclosed.
- If there were no non-cash transactions, the schedule must include a note to that effect.

Non-Canadian costs

- The notes to the Schedule of Production Costs must provide a breakdown of all non-Canadian costs and include: a) the budget item and b) the amount of the transaction
- Production costs incurred in foreign currencies must be converted into Canadian dollars at the rate of exchange in effect at the time of transaction.
- If there are no non-Canadian costs, the schedule must include a note to that effect.

Accounts payable, accrued charges and deferrals

- The amount of accounts payable, accrued charges and deferrals must be presented separately as at the ending date of the cost report.
- If there are no accounts payable, accrued charges or deferrals, the cost report must include a note to that effect.

Related party transactions

- The notes to the Schedule of Production Costs must provide a breakdown of all related party transactions (as defined in Section 3840 of the *CICA Handbook*), and include :
 - a) the name of the related party
 - b) the nature of the relationship between the related party and the production company
 - c) the nature of the transaction, and
 - d) the amount of the transaction.
- If there are no related party transactions, the schedule must include a note to that effect.

MODEL SCHEDULE

Statement of Production Costs of
THE PRODUCTION ENTITLED "ABC"

Period from _____ to _____

The Production Co. Inc.

Auditor's Report

To the Directors of
The Production Co. Inc.

We have audited the statement of production costs applicable to the production entitled "ABC" for the period from _____ to _____. This financial information is the responsibility of the producers. Our responsibility is to express an opinion on this financial information based on our audit.

We conducted our audit in accordance with generally accepted auditing standards. Those standards require that we plan and perform an audit to obtain reasonable assurance whether the financial information is free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial information. An audit also includes assessing the accounting principles used and significant estimates made by the producers, as well as evaluating the overall presentation of financial information.

In our opinion, this schedule presents fairly, in all material respects, the production costs of the production entitled "ABC" for the period ended _____ in accordance with generally accepted accounting principles.

Licensed Public Accountants

(City, Canada)

(Date)

Statement Of Production Costs

(suggested presentation only; Telefilm format is not mandatory)

The production entitled "ABC"

Period from _____ to _____

The Production Co. Inc.

"Above the Line"

Story rights and acquisitions

Scenario

Development costs

Producer

Director

Stars

(A) Sub-Total

Production

Cast

Extras

Production staff

Design labour

Construction labour

Set dressing labour

Property labour

Special effects labour

Wrangling labour

Wardrobe labour

Makeup and hair labour

Video technical crew

Camera labour

Electrical labour

Grip labour

Production sound labour

Transportation labour

Fringe benefits

Production office expenses

Studio and backlot expenses

Location office expenses

Site expenses

Unit expenses

Travel and living expenses

Transportation

Construction materials

Art supplies

Set dressing

Props

Special effects

Animals

Wardrobe supplies
Makeup and hair supplies
Video studio facilities
Video remote technical facilities
Camera equipment
Electrical equipment
Grip equipment
Sound equipment
Second unit
Videotape stock
Production laboratory

(B) Sub-Total

Post-Production
Editorial labour
Editorial equipment
Video post-production (picture)
Video post-production (sound)
Post-production laboratory
Film post-production sound
Music
Titles, opticals and stock footage
Versioning

(C) Sub-Total

Other Expenses
Unit Publicity
General Expenses
 Insurance
 Legal fees
 Audit fee
 Bank charges
 Other general expenses
Indirect Costs (that are directly attributable to the production)
 Corporate overhead
 Interim financing costs
 Interest earned
Other indirect expenses (CAVCO fees, foreign exchange)

(D) Sub-Total

Total (A) + (B) + (C) + (D)

Completion guarantee

Grand Total

Notes to the Statement Of Production Costs

The production entitled "ABC"
Period from _____ to _____.
The Production Co. Inc.

1. General

This schedule represents the production costs attributable to the production entitled "ABC" produced by The Production Co. Inc. during the period _____ to _____.

2. Sources of funds

As at _____ (ending date of the cost report) the production entitled "ABC" was financed from the following sources :

The following non-monetary transactions (as defined in Section 3830 of the *CICA Handbook*) were included in the cost of the production :

For each non-monetary transaction, the nature of the services provided and the consideration given in exchange for the services must be disclosed.

3. Non-Canadian costs

The production costs presented in this schedule include the following non-Canadian costs:

- *budget item*: \$ _____
- *budget item*: \$ _____

4. Accounts payable, accrued charges and deferrals

As at (ending date of the cost report), the production costs presented in this schedule include the following:

- Accounts payable : \$ _____
- Accrued charges : \$ _____
- Deferrals : \$ _____
Total : \$ _____

5. Related party transactions

The production costs presented in this schedule include the following related party transactions (as defined in Section 3840 of the *CICA Handbook*):

For each transaction, define the name of the related party, the nature of the relationship between the related party and the production company, the nature of the transaction and the amount of the transaction.

Appendix IV - Breakdown of Costs - Live Production

Production costs is aimed at ensuring that the expenses incurred for the production of a film or video meet the requirements set out in subsection 1106(3) of the *Income Tax Regulations*. Production costs are divided into four categories: Producer expenses and Key creative personnel expenses, Services costs, Laboratory and post-production costs, and Other expenses. Only in the Services and Laboratories categories is the breakdown done on the basis of Canadian or non-Canadian costs. In a television series or collection of films, each episode in the series or each film in the collection must meet the requirements of the Regulations.

1. Producer expenses

This category includes the remuneration (including travel and living expenses and fringe benefits) of the Canadian producer(s) and co-producer(s). All other incumbents of positions performing a producer-related function are in the Services category. Therefore, included in the Services category are the functions of line producer, executive producer, associate producer and all other personnel related to the producer function.

Key creative personnel expenses

This category includes the remuneration (including travel and living expenses and fringe benefits) of the director(s), screenwriter(s), art director(s), director(s) of photography, picture editor(s) and music composer(s), as well as the two highest paid actors/actresses. The payments to assistants must be included in the Services or Laboratories category, as the case may be.

2. Services

The Regulations stipulate that not less than 75 per cent of the total of all costs for services provided in respect of producing the production (other than excluded costs) was payable to, and in respect of services provided to or by individuals who are, Canadians. Excluded costs are: (a) costs determined by reference to the amount of income from the production; (b) remuneration payable to, or in respect of, the producer or key creative personnel; (c) amounts payable in respect of insurance, financing, brokerage, legal and accounting fees, and similar amounts; and (d) costs relating to the post-production stage.

This category includes the remuneration of incumbents of positions related to the producer function (other than a Canadian producer or co-producer), the remuneration of the creative and technical personnel (other than the key creative personnel), and the benefits and travel and living expenses connected with these functions.

As a rule, the determination as to whether the travel and living expenses are in the Canadian or non-Canadian category is based on the nationality of the person in respect of whom they are incurred. If, during a production, expenses are incurred to enable a Canadian to travel on a non-Canadian airline and stay in a hotel abroad, these expenses are deemed to be in the Canadian category, since they are incurred in respect of a Canadian citizen. However, if these same expenses are incurred in respect of a non-Canadian, even if all the amounts are paid to a Canadian airline and to Canadian hotels and restaurants, they are deemed to be in the non-Canadian category, since they are incurred in respect of a non-Canadian.

This category also includes royalties paid with respect to the story rights, music rights and stock footage, as well as expenses for the rental and purchase of equipment for shooting and of vehicles, location expenses, office expenses and so on. Also included in this category are purchases of raw stock, videotape and magnetic tape needed for the shooting of principal photography/taping. The determination as to whether these expenses are in the Canadian or non-Canadian category is based on the nationality of the supplier.

The completion bond is also included in this category. The determination as to whether this expense is in the Canadian or non-Canadian category is based on the nationality of the individual who makes the decision whether or not to issue the bond.

3. Laboratories

Similarly, not less than 75 per cent of the total of all costs incurred for the post-production of the production, including laboratory work, sound re-recording, sound editing and picture editing was incurred in respect of services provided in Canada. Excluded costs are: (a) costs determined by reference to the amount of income from the production; (b) remuneration payable to, or in respect of, the producer or key creative personnel; (c) costs relating to services; and (d) amounts payable in respect of insurance, financing, brokerage, legal and accounting fees, and similar amounts.

This category includes all the expenses connected with laboratory and post-production work and paid in the form of remuneration for services rendered in Canada. It also includes all services provided by individuals and companies in the course of the post-production work, as well as rental costs. All services provided in Canada, whether or not they are provided by a Canadian, are categorized as "Canadian." All services provided outside Canada, even if they are provided by a Canadian, are categorized as "non-Canadian."

Note that purchases of raw stock, videotape and magnetic tape needed for the shooting of principal photography/taping are included in the services category.

4. Other expenses

Included in this category are all expenses excluded from the other categories listed above. These are the expenses not related to production - for example, those for insurance, legal services, auditing, corporate overhead, interim financing and interest fees.

Explanatory Notes

Please Note: The following numbers correspond to the account numbers found on the Breakdown of Costs (form 6) for live action productions.

1. Story rights/Acquisitions

Enter costs paid for story rights or script acquisition fees in the Canadian or non-Canadian Services column.

2. Scenario

- (a) Enter the remuneration paid to the screenwriter(s) (including fringe benefits) in the Key creative column.
- (b) Enter travel and living expenses related to the screenwriter position in the Key creative column.
- (c) Enter consultant, storyboard, script editor, research, clearances/searches, secretary, script reproduction and other expenses in the Canadian or non-Canadian Services column.

3. Development costs

Enter all expenses related to the development of the project such as preliminary breakdown, budget preparation, consultant, office expenses, survey/scouting, travel and living expenses and other expenses in the Canadian or non-Canadian Services column. Fees paid to producer(s), director(s), screenwriter(s), etc., should be entered in appropriate accounts.

4. Producer

4.1 and 4.2

- (a) Enter the remuneration (including fringe benefits) of the Canadian producer(s) and Canadian co-producer(s) in the Key creative column.
- (b) Enter all travel and living expenses related to Canadian producer(s) and Canadian co-producer(s) function in the Key creative column.

4.3 to 4.6

- (a) Enter the remuneration (including fringe benefits) of line producers, executive producers and associate producers and of all other producer-related personnel (Supervising Producer, Production Supervisor,

Production Executive, Production Associate, Executive in Charge of Production, Executive Production Consultant, Supervising Executive, etc.) in the Canadian or non-Canadian Services column.

- (b) Enter all travel and living expenses related to these various functions in the Canadian or non-Canadian Services column.

4.7

Enter all other expenses related to production personnel such as secretary, travel and living expenses, public relations and other expenses in the Canadian or non-Canadian Services column.

5. Director

- (a) Enter the remuneration (including fringe benefits) of the director(s) in the Key creative column.
- (b) Enter all travel and living expenses related to the director function in the Key creative column.
- (c) Enter all other costs related to the director function such as second unit director, dialogue director, secretary, travel and living expenses, permits, etc., in the Canadian or non-Canadian Services column.

6. Stars

- (a)
 - (i) Enter the remuneration (including fringe benefits and rights payment) of the highest paid performer and second highest paid performer in the Key creative column. Enter any separate contractual fees related to creative consulting services, or other services performed by stars, in the Canadian or non-Canadian Services column.
 - (ii) Enter fees paid to other stars in the Canadian or non-Canadian Services column.
- (b) Enter all travel and living expenses related to stars in the Key creative column [if related to personnel claimed at item (a)(i) above] or in the Canadian or non-Canadian Services column [if related to personnel claimed at item (a)(ii) above].
- (c) Enter all other expenses related to stars in the Canadian or non-Canadian Services column.

10. Cast

Enter the remuneration of all other performers (excluding stars claimed at account 6) and expenses related to casting director, casting expenses, rehearsal area, video expenses, rights payments, fringe benefits, etc., in the Canadian or non-Canadian Services column.

11. Extras

Enter the remuneration of extras, stand-ins, tutors, children's co-ordinators, guardians, fringe benefits, etc., in the Canadian or non-Canadian Services column.

12. Production staff

Enter the remuneration of the production supervisor, production manager, assistant production manager, unit manager, location manager, 1st, 2nd and 3rd assistant director, production assistant, talent co-ordinator, production secretary, production accountant, bookkeeper, local contact, technical advisor, interpreter, script, etc., in the Canadian or non-Canadian Services column.

13. Design labour

Enter the remuneration of the production designer (or art director if there is no production designer) in the Key creative column and the remuneration of all other personnel related to the design department in the Canadian or non-Canadian Services column.

14. to 20.

Enter the remuneration of personnel related to each of these functions in the Canadian or non-Canadian Services column.

21. Video technical crew

In video productions, where there is usually no director of photography, the position of technical producer will be accepted as the equivalent. Enter the remuneration of the director of photography (or *technical producer*) in the Key creative column. Enter the remuneration of other personnel related to the video technical crew in the Canadian or non-Canadian Services column.

22. Camera labour

- i) Enter the remuneration of the director of photography in the Key creative column.

- ii) Enter the remuneration of other personnel related to the camera department in the Canadian or non-Canadian Services column.

23. to 26.

Enter the remuneration of personnel related to each of these functions in the Canadian or non-Canadian Services column.

27. Fringe benefits

Enter fringe benefits paid to personnel of accounts 12 to 26, indicating amounts paid to the production designer and to the director of photography (or *technical producer*) in the Key creative column and amounts paid to other functions in the Canadian or non-Canadian Services column.

28. to 32.

Enter fees related to each of these accounts in the Canadian or non-Canadian Services column. The nationality of the payment is based on the nationality of the suppliers.

33. Travel and living expenses

- (i) Enter all travel and living expenses related to production designer and to director of photography (or *technical producer*) in the Key creative column.
- (ii) Enter all travel and living expenses related to other functions in Canadian or non-Canadian Services columns.

34. to 49.

Enter costs related to each of these accounts in the Canadian or non-Canadian Services column. The nationality of the payment is based on the nationality of the suppliers.

50. Videotape stock

- (i) Enter costs related to videotape and magnetic master stock used for taping of principal photography, dailies screenings and continuity/production stills, in Canadian or non-Canadian Services columns.
- (ii) Enter costs related to materials used to transfer film to video, sub-masters with time code, viewing copies, etc., in the Canadian or non-Canadian Laboratory column.

51. Production laboratory

- (i) Enter costs related to the purchase of raw stock and magnetic master stock for shooting of principal photography, rushes/dailies screenings and continuity/production stills, in the Canadian or non-Canadian Services column.
- (ii) Enter costs related to negative processing, vacuumate, work print, video cassettes (rushes), take selection, magnetic transfer, synchronisation, edge coding, etc., in the Canadian or non-Canadian Laboratory column.

60. Editorial labour

- (a)
 - (i) Enter the remuneration (including fringe benefits) of the picture editor(s) [for videotaping, enter the remuneration (including fringe benefits) of the off-line editor(s)] in the Key creative column.
 - (ii) Enter the remuneration of the assistants related to editing and of the personnel related to sound editing, supervisor/co-ordinator, looping supervisor, dialogue transcription, fringe benefits, etc., in the Canadian or non-Canadian Laboratory column.
- (b) Enter all travel and living expenses related to editor(s) [according to (a)(i)] in the Key creative column or [according to (a)(ii)] in the Canadian or non-Canadian Laboratory column.
- (c) Enter all other costs in the Canadian or non-Canadian Laboratory column.

61. Editorial equipment

Enter costs related to editing rooms, editing equipment, materials purchases, etc., in the Canadian or non-Canadian Laboratory column.

62. Video post-production (picture)

- (a)
 - (i) Enter the remuneration (including fringe benefits) related to off-line editor(s) in the Key creative column if not entered at account 60(a)(i).
 - (ii) Enter the remuneration of on-line editor(s) and of personnel related to video post-production (picture) in the Canadian or non-Canadian Laboratory column.
- (b) Enter all travel and living expenses related to editor(s) [according to (a)(i)] in the Key creative column or [according to (a)(ii)] in Canadian or non-Canadian Laboratory columns.

- (c) Enter all other costs related to video post-production such as costs of equipment, additional machines and materials related to off-line and on-line editing, in addition to the costs of computer load list, digital optical effects machine, graphics, graphics camera, insert studio, protection copies, distribution copies used by producer, viewing copies, etc., in the Canadian or non-Canadian Laboratory column.

63. Video post-production (sound)

Enter costs of labour and materials related to audio master, voice-over recording, pre-mix, sweetening, mix, re-stripe, foley track and to the making of the music and effects track (M&E), etc., in the Canadian or non-Canadian Laboratory column.

64. Post-production laboratory

Enter costs relating to slash print, negative cutting, answer print, fades/dissolves, interpositive, internegative, C.R.I., check prints, wet gate printing, polishing, release print(s) used by the producer, reduction/blow-up printing, videotapes, vaults/storages, etc., in the Canadian or non-Canadian Laboratory column.

65. Film post-production (sound)

Enter costs relating to original effects recording, effects library purchases, special sound treatment, narration/voice-over studio, sound transfer, sound slashes/dupes, lip sync band, post-sync recording (A.D.R.), foley track, evaluation screenings, interlock screenings, pre-mix, mix of the original tracks and of the M&E, 3 track master, protection copy, M&E track, optical track, reduction/blow-up optical, Dolby noise reduction, Dolby license, etc., in the Canadian or non-Canadian Laboratory column.

66. Music

- (a)
 - (i) Enter the remuneration (including fringe benefits) of the music composer in the Key creative column.
 - (ii) Enter the remuneration (including fringe benefits) of other music personnel such as arranger/orchestrator, conductor/leader, musicians, in the Canadian or non-Canadian Laboratory column.
- (b) Enter travel and living expenses related to the music composer [according to (a)(i) above] in the Key creative column and expenses related to other functions [according to (a)(ii) above] in the Canadian or non-Canadian Laboratory column.

- (c) Enter music rights in the Canadian or non-Canadian Services column. The nationality of the rights holder will determine the nationality of the payment.
- (d) Enter other costs such as pre-recorded guide track, studio fee, mix, materials, etc., in the Canadian or non-Canadian Laboratory column.

67. Titles/Opticals/Stock footage

- (a) Enter costs related to titles and opticals work in the Canadian or non-Canadian Laboratory column.
- (b) Enter costs related to purchases of stock footage in the Canadian or non-Canadian Services column.

68. Versioning

Enter costs related to versioning and closed captioning in the Canadian or non-Canadian Laboratory column. Are excluded, costs generally associated with the distribution of the production. May be included, costs engaged in relation to the production of simultaneous versions in both official languages.

69. Amortisation (series)

Break down and enter costs related to the amortization of television series in the Key creative, in the Services and Laboratories columns or in the Other column, according to the nature of the expenses. *CAVCO reserves the right to require a full itemised breakdown of the amortised expenses.*

70. Unit Publicity

Enter costs related to unit publicity, publicity/press expenses, stills photography, promotion, videotapes, public relations, trailer, etc., in the Canadian or non-Canadian Services column. This does not include publicity costs associated with the distribution of the production.

71. General expenses

Enter costs related to insurance, legal fees, audit fees and other costs in the Other column.

72. Indirect costs

Enter costs related to corporate overhead, interim financing, interest fees and other costs in the Other column.

81. Completion guarantee

Enter costs related to the completion guarantee in the Canadian or non-Canadian Services columns (these costs should reflect a no-claims rebate). The nationality of the payment of the completion bond is based on the nationality of the individual who makes the decision whether or not to issue the bond.

Appendix V - Breakdown of Costs - Animation

The formula for breaking down production costs is aimed at ensuring that the expenses incurred for the production of a film or video meet the requirements set out in subsection 1106(3) of the *Income Tax Regulations*. Production costs are divided into four categories: Producer expenses and Key creative personnel expenses, Services costs, Laboratory and post-production costs, and Other expenses. Only in the Services and Laboratories categories is the breakdown done on the basis of Canadian or non-Canadian costs. In a television series or collection of films, each episode in the series or each film in the collection must meet the requirements of the Regulations.

1. Producer expenses

This category includes the remuneration (including travel and living expenses and fringe benefits) of the Canadian producer(s) and co-producer(s). All other incumbents of positions performing a producer-related function are in the Services category. Therefore, included in the Services category are the functions of line producer, executive producer, associate producer and all other personnel related to the producer function.

Key creative personnel expenses

This category includes the remuneration (including travel and living expenses and fringe benefits) of the director(s), screenwriter(s), storyboard supervisor(s), lead voice (or first or second leading performer), design supervisor(s), camera operator(s), picture editor(s) and music composer(s). The payments to assistants must be included in the Services or Laboratories category, as the case may be.

2. Services

The Regulations stipulate that not less than 75 per cent of the total of all costs for services provided in respect of producing the production (other than excluded costs) was payable to, and in respect of services provided to or by individuals who are, -Canadians. Excluded costs are: (a) costs determined by reference to the amount of income from the production; (b) remuneration payable to, or in respect of, the producer or key creative personnel; (c) amounts payable in respect of insurance, financing, brokerage, legal and accounting fees, and similar amounts; and (d) costs relating to the post-production stage.

This category includes the remuneration of incumbents of positions related to the producer function (other than a Canadian producer or co-producer), the remuneration of the creative and technical personnel (other than the key creative personnel), and the benefits and travel and living expenses connected with these functions.

As a rule, the determination as to whether the travel and living expenses are in the Canadian or non-Canadian category is based on the nationality of the person in respect of whom they are incurred. If, during a production, expenses are incurred to enable a Canadian to travel on a non-Canadian airline and stay in a hotel abroad, these expenses are deemed to be in the Canadian category, since they are incurred in respect of a Canadian citizen. However, if these same expenses are incurred in respect of a non-Canadian, even if all the amounts are paid to a Canadian airline and to Canadian hotels and restaurants, they are deemed to be in the non-Canadian category, since they are incurred in respect of a non-Canadian.

This category also includes royalties paid with respect to the story rights, music rights and stock footage, as well as expenses for the rental and purchase of equipment for shooting and of vehicles, location expenses, office expenses and so on. Also included in this category are purchases of raw stock, videotape and magnetic tape needed for the shooting of principal photography/taping. The determination as to whether these expenses are in the Canadian or non-Canadian category is based on the nationality of the supplier.

The completion bond is also included in this category. The determination as to whether this expense is in the Canadian or non-Canadian category is based on the nationality of the individual who makes the decision whether or not to issue the bond.

3. Laboratories

Similarly, not less than 75 per cent of the total of all costs incurred for the post-production of the production, including laboratory work, sound re-recording, sound editing and picture editing was incurred in respect of services provided in Canada. Excluded costs are: (a) costs determined by reference to the amount of income from the production; (b) remuneration payable to, or in respect of, the producer or key creative personnel; (c) costs relating to services; and (d) amounts payable in respect of insurance, financing, brokerage, legal and accounting fees, and similar amounts.

This category includes all the expenses connected with laboratory and post-production work and paid in the form of remuneration for services rendered in Canada. It also includes all services provided by individuals and companies in the course of the post-production work, as well as rental costs. All services provided in Canada, whether or not they are provided by a Canadian, are categorized as "Canadian." All services provided outside Canada, even if they are provided by a Canadian, are categorized as "non-Canadian."

Note that purchases of raw stock, videotape and magnetic tape needed for the shooting of principal photography/taping are included in the services category.

4. Other expenses

Included in this category are all expenses excluded from the other categories listed above. These are the expenses not related to production - for example, those for insurance, legal services, auditing, corporate overhead, interim financing and interest fees.

Explanatory Notes

Please Note: The following numbers correspond to the account numbers found on the Breakdown of Costs (form 7) for animation productions.

1. Story rights/Acquisitions

Enter costs paid for story rights or script acquisition fees in Canadian or non-Canadian Services columns.

2. Scenario

- (a) Enter the remuneration paid to the screenwriter(s) (including fringe benefits) in the Key creative column.
- (b) Enter travel and living expenses related to the screenwriter position in the Key creative column.
- (c) Enter consultant, storyboard, script editor, research, clearances/searches, secretary, script reproduction and other expenses in the Canadian or non-Canadian Services columns.

3. Development costs

Enter all expenses related to the development of the project such as preliminary breakdown, budget preparation, consultant, office expenses, survey/scouting, travel and living expenses and other expenses in the Canadian or non-Canadian Services columns. Fees paid to producer(s), director(s), screenwriter(s), etc., should be entered in appropriate accounts.

4. Production

4.1 and 4.2

- (a) Enter the remuneration (including fringe benefits) of the Canadian producer(s) and Canadian co-producer(s) in the producer/Key creative column.
- (b) Enter all travel and living expenses related to Canadian producer(s) and Canadian co-producer(s) function in the producer/Key creative column.

4.3 to 4.6

- (a) Enter the remuneration (including fringe benefits) of line producers, executive producers and associate producers and of all other producer-

related personnel (Supervising Producer, Production Supervisor, Production Executive, Production Associate, Executive in Charge of Production, Executive Production Consultant, Supervising Executive, etc.) in the Canadian or non-Canadian Services columns.

- (b) Enter all travel and living expenses related to these various functions in the Canadian or non-Canadian Services columns.

4.7

Enter all other expenses related to production personnel such as secretary, travel and living expenses, public relations and other expenses in the Canadian or non-Canadian Services columns.

5. Director

- (a) Enter the remuneration (including fringe benefits) of director(s) in the Key creative column.
- (b) Enter all travel and living expenses related to director function in the Key creative column.
- (c) Enter all other costs related to director function such as second unit director, dialogue director, secretary, travel and living expenses, permits, etc., in the Canadian or non-Canadian Services columns.

10. Voices, mock voices, rotoscope talent

- (i) Enter the remuneration (including rights payment) of the first or second voice (or first or second leading performer) in the Key creative column.
- (ii) Enter fees paid to other voices or performers and all other expenses related to voices, mock voices and rotoscope talent in the Canadian or non-Canadian Services columns.

11. Voices recording

- (i) Enter the remuneration (including rights payment) of the first or second voice (or first or second leading performer) in the Key creative column.
- (ii) Enter fees paid to other voices or performers and all other expenses related to voices recording in the Canadian or non-Canadian Services columns.

12. Production labour

Enter the remuneration of the production supervisor, production manager, assistant production manager, unit manager, location manager, 1st, 2nd and 3rd assistant director, production assistant, talent co-ordinator, production secretary, production accountant, bookkeeper, local contact, technical advisor, interpreter, script, etc., in the Canadian or non-Canadian Services columns.

13. Storyboard labour

- (i) Enter the remuneration of the storyboard supervisor in the Key creative column.
- (ii) Enter the remuneration of all other storyboard staff in the Canadian or non-Canadian Services columns.

14. Design labour

- (i) Enter the remuneration of the design supervisor in the Key creative column.
- (ii) Enter the remuneration of all other design staff in the Canadian or non-Canadian Services columns.

15. Picture edit (leica test) labour

- (i) Enter the remuneration of the picture editor in the Key creative column.
- (ii) Enter the remuneration of other labour related to the picture edit in the Canadian or non-Canadian Laboratory columns.

16. Voice edit labour

Enter the remuneration of voice edit labour in the Canadian or non-Canadian Laboratory columns.

17. Picture edit (line test) labour

- (i) Enter the remuneration of the picture editor (line test) in the Key creative column.
- (ii) Enter the remuneration of other labour related to the picture edit (line test) in the Canadian or non-Canadian Laboratory columns.

18. to 24.

Enter the remuneration of personnel related to each of these functions in the Canadian or non- Canadian Services columns.

25. Camera labour

- i) Enter the remuneration of camera operator(s) in the Key creative column.
- ii) Enter the remuneration of other personnel related to the camera department in the Canadian or non-Canadian Services columns.

26. Office labour

Enter the remuneration related to office labour in the Canadian or non-Canadian Services columns.

27. Fringe benefits

- (i) Enter fringe benefits paid to the storyboard supervisor, first or second voice (or first or second performers), design supervisor, picture editor, and camera operator in the Key creative column.
- (ii) Enter fringe benefits paid to personnel of accounts 10 to 26 [excluding accounts 15, 16, 17, and benefits already included at item 27(i)] in the Canadian or non-Canadian Services columns.
- (iii) Enter fringe benefits paid to personnel of accounts 15, 16, and 17 [excluding benefits related to the picture editor already included at item 27(i)] in the Canadian or non-Canadian Laboratories columns.

28. Travel and living expenses

- (i) Enter all travel and living expenses related to the storyboard supervisor, first or second voice (or first or second performers), design supervisor, picture editor, and camera operator in the Key creative column.
- ii) Enter all travel and living expenses related to personnel of accounts 10 to 26 [excluding accounts 15, 16, 17, and expenses already included in 28(i)] in the Canadian or non-Canadian Services columns.
- (iii) Enter all travel and living expenses related to personnel of accounts 15, 16, and 17 [excluding expenses related to the picture editor already included at item 28(i)] in the Canadian or non-Canadian Laboratories columns.

29. to 32.

Enter costs related to each of these accounts in the Canadian or non-Canadian Services columns. The nationality of the payment is based on the nationality of the suppliers.

33. Production laboratory

- (i) Enter costs related to the purchase of raw stock, master videotape and magnetic master stock for shooting of principal photography, rushes/dailies screenings and continuity/production stills, in the Canadian or non-Canadian Services columns.
- (ii) Enter costs related to negative processing, vacuumate, work print, video cassettes (rushes), take selection, magnetic transfer, synchronisation, edge coding, transfer of film to video, sub-masters with time code, viewing copies, etc., in the Canadian or non-Canadian Laboratory columns.

40. Editorial labour

- (i) Enter the remuneration (including fringe benefits and travel and living expenses) of the picture editor(s) [for videotaping, enter the remuneration (including fringe benefits and travel and living expenses) of the off-line editor(s)] in the Key creative column.
- (ii) Enter the remuneration of the on-line editor and of assistants related to picture editing and of the personnel related to sound editing, supervisor/co-ordinator, looping supervisor, dialogue transcription, fringe benefits, travel and living expenses, and all other costs, in the Canadian or non-Canadian Laboratory columns.

41. Editorial equipment

Enter costs related to editing rooms, editing equipment, materials purchases, etc., in the Canadian or non-Canadian Laboratory columns.

42. Video post-production (picture)

Enter all other costs related to video post-production such as costs of equipment, additional machines and materials related to off-line and on-line editing, in addition to the costs of computer load list, digital optical effects machine, graphics, graphics camera, insert studio, protection copies, distribution copies used by producer, viewing copies, etc., in Canadian or non-Canadian Laboratory columns. *The remuneration of the off-line editor must be entered at account 40(i).*

43. Video post-production (sound)

Enter costs of labour and materials related to audio master, voice-over recording, pre-mix, sweetening, mix, re-stripe, foley track and to the making of the music and effects track (M&E), etc., in the Canadian or non-Canadian Laboratory columns.

44. Film post-production (picture)

Enter costs relating to slash print, negative cutting, answer print, fades/dissolves, interpositive, internegative, C.R.I., check prints, wet gate printing, polishing, release print(s) used by the producer, reduction/blow-up printing, videotapes, vaults/storages, etc., in the Canadian or non-Canadian Laboratory columns.

45. Film post-production (sound)

Enter costs relating to original effects recording, effects library purchases, special sound treatment, narration/voice-over studio, sound transfer, sound slashes/dupes, lip sync band, post-sync recording (A.D.R.), evaluation screenings, interlock screenings, pre-mix, mix of the original tracks and of the M&E, 3 track master, protection copy, M&E track, optical track, reduction/blow-up optical, Dolby noise reduction, Dolby license, etc., in the Canadian or non-Canadian Laboratory columns.

46. Special effects/Foley

Enter costs relating to special effects library purchases, creation, editing, studio and to the foley track in the Canadian or non-Canadian Laboratory columns.

47. Music

- (a) (i) Enter the remuneration (including fringe benefits and travel and living) of the music composer in the Key creative column.
- (ii) Enter the remuneration (including fringe benefits and travel and living) of other music personnel such as arranger/orchestrator, conductor/leader, musicians, in the Canadian or non-Canadian Laboratory columns.
- (b) Enter music rights in the Canadian or non-Canadian Services columns. The nationality of the rights holder will determine the nationality of the payment.
- (c) Enter other costs such as pre-recorded guide track, studio fee, mix, materials, etc., in the Canadian or non-Canadian Laboratory columns.

48. Titles/Opticals/Stock footage

- (a) Enter costs related to titles and opticals work in the Canadian or non-Canadian Laboratory columns.
- (b) Enter costs related to purchases of stock footage in the Canadian or non-Canadian Services columns.

49. Final copies

Enter costs related to final copies in the Canadian or non-Canadian Laboratory columns.

50. Versioning

Enter costs related to versioning and closed captioning in the Canadian or non-Canadian Laboratory columns. Are excluded, costs generally associated with the distribution of the production. May be included, costs engaged in relation to the production of simultaneous versions in both official languages.

52. Amortization (series)

Break down and enter costs related to the amortization of television series in the Key creative, in the Services and Laboratories columns or in the Other column, according to the nature of the expenses. *CAVCO reserves the right to require a full itemised breakdown of the amortised expenses.*

70. Unit Publicity

Enter costs related to unit publicity, publicity/press expenses, stills photography, promotion, videotapes, public relations, trailer, etc., in the Canadian or non-Canadian Services columns. This does not include publicity costs associated with the distribution of the production.

71. General expenses

Enter costs related to insurance, legal fees, audit fees and other costs in the Other column.

72. Indirect costs

Enter costs related to corporate overhead, interim financing, interest fees and other costs in the Other column.

81. Completion guarantee

Enter costs related to the completion guarantee in the Canadian or non-Canadian Services columns (these costs should reflect a no-claims rebate). The nationality of the payment of the completion bond is based on the nationality of the individual who makes the decision whether or not to issue the bond.

Appendix VI - Income Tax Act and (Draft) Regulations

Overview of the Legislation

Section 125.4 of the Act

- | | |
|----------|---|
| 125.4(1) | Definitions |
| | - assistance |
| | - Canadian film or video production |
| | - Canadian film or video production certificate |
| | - investor |
| | - labour expenditure |
| | - qualified corporation |
| | - qualified labour expenditure |
| | - salary or wages |
| 125.4(2) | Rules governing labour expenditure of a corporation |
| 125.4(3) | Tax credit |
| 125.4(4) | Exception |
| 125.4(5) | When assistance received |
| 125.4(6) | Revocation of a certificate |

Application

Section 125.4 of the Act applies to the 1995 and subsequent taxation years except for the definition “qualified corporation” in subsection 125.4(1) where in the case of a film or video production the principal photography of which began before July 1996, the words “are primarily” are replaced by “include”.

Overview of the Legislation

Draft Regulations

1100(1)(m)	Additional CCA for property in 1101(5k.1)
1100(2)(a)(iii)	Application of half-year rule
1101 (5k.1)	Depreciable property class regarding property that qualifies under section 125.4 (Class 10(x) of Schedule II)
1106	Certificates Issued by Minister of Canadian Heritage
1106(1)	Definitions <ul style="list-style-type: none">- Canadian- Canadian government film agency- excluded production- producer- remuneration- treaty co-production
1106(2)	Prescribed Taxable Canadian Corporation
1106(3)	Canadian Film or Video Production
1106(4)	Creative Services
1106(5)	Lead Performer/Screenwriter
1106(6)	Documentary Production
1106(7)	Prescribed Person

Application

Proposed Regulation 1106 applies to the 1995 and subsequent taxation years except for the definition “excluded production” in subsection 1106(1) of the proposed Regulations where a Canadian film or video production certificate is obtained before 1997, the mention of “25-year period” is replaced by “5-year period”.

Canadian Film or Video Production Tax Credit

Income Tax Act, Part I

Definitions

125.4(1) "The definitions in this subsection apply in this section.

"assistance" means an amount, other than an amount deemed under subsection (3) to have been paid, that would be included under paragraph 12(1)(x) in computing the income of a taxpayer for any taxation year if that paragraph were read without reference to subparagraphs (v) to (vii).

"Canadian film or video production" has the meaning assigned by regulation.

"Canadian film or video production certificate" means a certificate issued in respect of a production by the Minister of Canadian Heritage

- (a) certifying that the production is a Canadian film or video production, and
- (b) estimating amounts relevant for the purpose of determining the amount deemed under subsection (3) to have been paid in respect of the production.

"investor" means a person, other than a prescribed person, who is not actively engaged on a regular, continuous and substantial basis in a business carried on through a permanent establishment (as defined by regulation) in Canada that is a Canadian film or video production business.

"labour expenditure" of a corporation for a taxation year in respect of a property of the corporation that is a Canadian film or video production means, in the case of a corporation that is not a qualified corporation for the year, nil, and in the case of a corporation that is a qualified corporation for the year, subject to subsection (2), the total of the following amounts to the extent that they are reasonable in the circumstances and included in the cost or, in the case of depreciable property, the capital cost to the corporation of the property:

- (a) the salary or wages directly attributable to the production that are incurred after 1994 and in the year, or the preceding taxation year, by the corporation for the stages of production of the property, from the final script stage to the end of the post-production stage, and paid by it in the year or within 60 days after the end of the year

(other than amounts incurred in that preceding year that were paid within 60 days after the end of that preceding year),

- (b) that portion of the remuneration (other than salary or wages and other than remuneration that relates to services rendered in the preceding taxation year and that was paid within 60 days after the end of that preceding year) that is directly attributable to the production of property, that relates to services rendered after 1994 and in the year, or that preceding year, to the corporation for the stages of production, from the final script stage to the end of the post-production stage, and that is paid by it in the year or within 60 days after the end of the year to
- (i) an individual who is not an employee of the corporation, to the extent that the amount paid
 - (A) is attributable to services personally rendered by the individual for the production of the property, or
 - (B) is attributable to and does not exceed the salary or wages of the individual's employees for personally rendering services for the production of the property,
 - (ii) another taxable Canadian corporation, to the extent that the amount paid is attributable to and does not exceed the salary or wages of the other corporation's employees for personally rendering services for the production of the property,
 - (iii) another taxable Canadian corporation all the issued and outstanding shares of the capital stock of which (except directors' qualifying shares) belong to an individual and the activities of which consist principally of the provision of the individual's services, to the extent that the amount paid is attributable to services rendered personally by the individual for the production of the property, or
 - (iv) a partnership that is carrying on business in Canada. to the extent that the amount paid
 - (A) is attributable to services personally rendered by an individual who is a member of the partnership for the production of the property, or
 - (B) is attributable to and does not exceed the salary or wages of the partnership's employees for personally

rendering services for the production of the property,
and (c) where

c) where

(i) the corporation is a subsidiary wholly-owned corporation of another taxable Canadian corporation (in this section referred to as the "parent"), and

the corporation and the parent have agreed that this paragraph apply in respect of the production,

the reimbursement made by the corporation in the year, or within 60 days after the end of the year, of an expenditure that was incurred by the parent in a particular taxation year of the parent in respect of that production and that would be included in the labour expenditure of the corporation in respect of the property for the particular taxation year because of paragraph (a) or (b) if

(iii) the corporation had such a particular taxation year, and

(iv) the expenditure were incurred by the corporation for the same purpose as it was by the parent and were paid at the same time and to the same person or partnership as it was by the parent.

"qualified corporation" for a taxation year means a corporation that is throughout the year a prescribed taxable Canadian corporation the activities of which in the year are primarily the carrying on through a permanent establishment (as defined by regulation) in Canada of a business that is a Canadian film or video production business."

(In the case of a film or video production the principal photography of which began before July 1996, the words "are primarily" are replaced by "include".)

"qualified labour expenditure" "of a corporation for a taxation year in respect of a property of the corporation that is a Canadian film or video production means the lesser of

(a) the amount, if any, by which

(i) the total of

- (A) the labour expenditure of the corporation for the year in respect of the production, and
 - (B) the amount by which the total of all amounts each of which is the labour expenditure of the corporation for a preceding taxation year in respect of the production exceeds the total of all amounts each of which is a qualified labour expenditure of the corporation in respect of the production for a preceding taxation year before the end of which the principal filming or taping of the production began
- (ii) where the corporation is a parent, the total of all amounts each of which is an amount that is the subject of an agreement in respect of the production referred to in paragraph (c) of the definition "labour expenditure" between the corporation and its wholly-owned corporation, and
- (b) the amount determined by the formula

A - B

where

A is 60 per cent of the amount by which

- (i) the cost or, in the case of depreciable property, the capital cost to the corporation of the production at the end of the year,

exceeds
- (ii) the total of all amounts each of which is an amount of assistance in respect of that cost that, at the time of the filing of its return of income for the year, the corporation or any other person or partnership has received, is entitled to receive or can reasonably be expected to receive, that has not been repaid before that time pursuant to a legal obligation to do so (and that does not otherwise reduce that cost), and

B is the total of all amounts each of which is the qualified labour expenditure of the corporation in respect of the production for a preceding taxation year before the end of which the principal filming or taping of the production began.

"salary or wages" does not include an amount described in section 7 or any amount determined by reference to profits or revenues.

125.4(2) Rules governing labour expenditure of a corporation

- (2) For the purpose of the definition "labour expenditure" in subsection (1),
- (a) remuneration does not include remuneration determined by reference to profits or revenues; and
 - (b) services referred to in paragraph (b) of that definition that relate to the post-production stage of the production include only the services that are rendered at that stage by a person who performs the duties of animation cameraman, assistant colourist, assistant mixer, assistant sound-effects technician, boom operator, colourist, computer graphics designer, cutter, developing technician, director of post production, dubbing technician, encoding technician, inspection technician - clean up, mixer, optical effects technician, picture editor, printing technician, projectionist, recording technician, senior editor, sound editor, sound-effects technician, special effects editor, subtitle technician, timer, video-film recorder operator, videotape operator or by a person who performs a prescribed duty.

125.4(3) Tax credit

- (3) Where
- (a) a qualified corporation for a taxation year files with its return of income for the year
 - (i) a Canadian film or video production certificate issued in respect of a Canadian film or video production of the corporation,
 - (ii) a prescribed form containing prescribed information, and
 - (iii) each other document prescribed in respect of the production, and
 - (b) the principal filming or taping of the production began before the end of the year, the corporation is deemed to have paid, on the day referred to in paragraph 157(1)(b) on or before which the corporation would be required to pay the remainder of its tax payable under this Part for the year if such a remainder were payable, an amount on account of its tax payable under this Part for

the year equal to 25 per cent of its qualified labour expenditure for the year in respect of the production.

125.4(4) Exception

- (4) This section does not apply to a Canadian film or video production where an investor, or a partnership in which an investor has an interest, directly or indirectly, may deduct an amount in respect of the production in computing its income for any taxation year.

125.4(5) When assistance received

- (5) For the purposes of this Act other than this section, and for greater certainty, the amount that a corporation is deemed under subsection (3) to have paid for a taxation year is assistance received by the corporation from a government immediately before the end of the year.

125.4(6) Revocation of a certificate

- (6) A Canadian film or video production certificate in respect of a production may be revoked by the Minister of Canadian Heritage where
- (a) an omission or incorrect statement was made for the purpose of obtaining the certificate, or
- (b) the production is not a Canadian film or video production,
- and, for the purpose of subparagraph (3)(a)(i), a certificate that has been revoked is deemed never to have been issued.

(2) Subsection (1) applies to the 1995 and subsequent taxation years.”

12(1)(x) Inducement, reimbursement, etc. - “any amount (other than a prescribed amount) received by the taxpayer in the year, in the course of earning income from a business or property, from

- (i) a person who pays the amount (in this paragraph referred to as the “payer”) in the course of earning income from a business or property or in order to achieve a benefit or advantage for the payer or for persons with whom the payer does not deal at arm’s length, or
- (ii) a government, municipality or other public authority where the amount can reasonably be considered to have been received

- (iii) as an inducement, whether as a grant, subsidy, forgivable loan, deduction from tax, allowance or any other form of inducement, or,
- (iv) “as a reimbursement, contribution or allowance or as assistance, whether as a grant, subsidy, forgivable loan, deduction from tax, allowance or any other form of assistance, in respect of the cost of property or in respect of an outlay or expense to the extent that the amount”
- (v) *not applicable,*
- (vi) *not applicable,*
- (vii) *not applicable,*
- (viii) “may not reasonably be considered to be a payment made in respect of the acquisition by the payer or the public authority of an interest in the taxpayer or the taxpayer’s business or property,”²⁷

²⁷

Disclaimer: The above legislation is not intended to be a substitute for the official government publications and is provided to production companies in a consolidated format for reference use only. CAVCO assumes no responsibility for the use of this legislation and suggests that users consult a qualified professional for advice regarding any application made in connection with this legislation. (Prepared November, 1996)

Canadian Film or Video Production Tax Credit**Income Tax (Draft) Regulations
(Released December 12, 1995)*****Additional Allowance - Canadian Film and Video Production***

- 1100(1)(m) “such additional amount as the taxpayer claims in respect of property for which a separate class is prescribed by subsection 1101(5k.1) not exceeding the lesser of
- (i) the taxpayer’s income for the year from the property, determined before making any deduction under this paragraph, and
 - (ii) the undepreciated capital cost to the taxpayer of the property of that separate class at the end of the year (before making any deduction under this paragraph for the year);”

Applicable: To the 1995 and subsequent taxation years.

Schedule II, Class 10:

- (w) “a certified production acquired after 1987 and before March 1996, or”
- (x) “a Canadian film or video production.”

Applicable: To the 1995 and subsequent taxation years.

Half-Year Rule:

The half-year rule applies to new Class 10(x), i.e. not exempted by Regulation 1100(2)(a):

- (iii) “property included in paragraph (1)(v), paragraph (w) of Class 10 or any of paragraphs (a) to (c), (e) to (i), (k), (l) and (p) to (s) of Class 12.”

Applicable: To property acquired after December 12, 1995.

Separate Class: Canadian Film or Video Production

- 1101(5k.1) “A separate class is hereby prescribed for all property of a corporation included in Class 10 in Schedule II because of paragraph (x) thereof that is property

- (a) in respect of which the corporation is deemed under subsection 125.4(3) of the Act to have paid an amount, or
- (b) acquired by the corporation from another corporation where
 - (i) the other corporation acquired the property in circumstances to which paragraph (a) applied, and
 - (ii) the corporations were related to each other throughout the period that began when the other corporation acquired the property and ended when the other corporation disposed of the property to the corporation.”

Applicable: To the 1995 and subsequent taxation years.

Certificates issued by Minister of Canadian Heritage

1106.(1) “For the purposes of this section and paragraph (x) of Class 10 in Schedule II,

"Canadian" means a person that is

- (a) a Canadian citizen as defined in the Citizenship Act,
- (b) a permanent resident within the meaning assigned by the *Immigration and Refugee Protection Act (2001)*, or
- (c) a corporation that is Canadian-controlled, as determined for the purposes of sections 26 to 28 of the Investment Canada Act;

"Canadian government film agency" means a federal or provincial government agency the mandate of which is related to the provision of assistance to film productions in Canada;

"excluded production" means a film or video production or a prescribed taxable Canadian corporation

- (a) in respect of which
 - (i) the Minister of Canadian Heritage has not issued a certificate of completion, within 30 months after the end of the corporation's taxation year in which the production's principal photography began, certifying that the production was completed within two years after the end of the year,

- (ii) where the production is not a treaty co-production, neither the corporation nor another prescribed taxable Canadian corporation related to the corporation
 - (A) is, except to the extent of an interest in the production held by a prescribed taxable Canadian corporation as a co-producer of the production or by a prescribed person (within the meaning assigned by subsection 1106(7)), the exclusive worldwide copyright owner in the production for all commercial exploitation purposes for the 25-year period that begins at the first time the production had been completed and is commercially exploitable, "*(Where a Canadian film or video production certificate is obtained before 1997, the words "25-year period" are replaced by "5-year period".)*"
 - (B) controls the initial licensing of commercial exploitation, and
 - (C) retains a share of revenues, that is acceptable to the Minister of Canadian Heritage, from the exploitation of the production in non-Canadian markets,
 - (iii) there is not an agreement in writing for consideration at the fair market value with
 - (A) a corporation that is a Canadian and is a distributor of film or video productions, or
 - (B) a corporation that holds a broadcasting license issued by the Canadian Radio-television and Telecommunications Commission for television markets,

to have the production shown in Canada within the two-year period that begins at the first time the production has been completed and is commercially exploitable, or
 - (iv) a distribution is made in Canada within that two-year period by a person who is not a Canadian, or
- (b) that is
- (i) news, current events or public affairs programming, or a program that includes weather or market reports,

- (ii) a talk show,
- (iii) a production in respect of a game, questionnaire or contest (other than a production directed primarily at minors),
- (iv) a sports event or activity,
- (v) a gala presentation or an awards show,
- (vi) a production that solicits funds,
- (vii) reality television,
- (viii) pornography,
- (ix) advertising,
- (x) a production produced primarily for industrial, corporate or institutional purposes,
- (xi) a production, other than a documentary, all or substantially all of which consists of stock footage.

"producer" of a film or video production does not include a person unless the person is the individual

- (a) who controls and is the central decision maker in respect of the production,
- (b) who is directly responsible for the acquisition of the production story or screenplay and the development, creative and financial control and exploitation of the production, and
- (c) who is identified in the production as being the producer of the production;

"remuneration" does not include an amount determined by reference to profits or revenues;

"treaty co-production" means a film or video production the production of which is contemplated in a co-production treaty entered into between Canada and another country.

Prescribed taxable Canadian Corporation

- (2) For the purposes of section 125.4 of the Act and this section, "prescribed taxable Canadian corporation" means a taxable Canadian corporation that is a Canadian, other than a corporation that is
- (a) controlled directly or indirectly in any manner whatever by one or more persons all or part of whose taxable income is exempt from tax under Part I of the Act; or
 - (b) a prescribed labour-sponsored venture capital corporation.

Canadian Film or Video Production

- (3) For the purposes of section 125.4 of the Act, this Part and Schedule II, "Canadian film or video production" means a film or video production, other than an excluded production, of a prescribed taxable Canadian corporation and that is
- (a) a treaty co-production, or
 - (b) a film or video production
 - (i) at all times during the production of which the producer of which is a Canadian,
 - (ii) in respect of which the Minister of Canadian Heritage has allotted not less than six points in accordance with subsection (4),
 - (iii) in respect of which not less than 75 per cent of the total of all costs for services provided in respect of producing the production (other than excluded costs) was payable to, and in respect of services provided by individuals who are, Canadians, and for the purpose of this subparagraph, excluded costs are
 - (A) costs determined by reference to the amount of income from the production,
 - (B) remuneration payable to, or in respect of, the producer or individuals described in any of clauses (4)(a)(i)(A) to (H) and (ii)(A) to (F) and subparagraph 4(a)(iii),
 - (C) amounts payable in respect of insurance, financing, brokerage, legal and accounting fees, and similar amounts, and

- (D) costs described in subparagraph (iv), and
- (v) in respect of which not less than 75 per cent of the total of all costs incurred for the post-production of the production, including laboratory work, sound re-recording, sound editing and picture editing (other than costs determined by reference to the amount of income from the production and remuneration payable to, or in respect of, the producer or individuals described in any of clauses (4)(a)(i)(A) to (H) and (ii)(A) to (F) and subparagraph 4(a)(iii)) was incurred in respect of services provided in Canada,

other than a production the certification of which has been revoked under subsection 125.4(6) of the Act by the Minister of Canadian Heritage.

Creative Services

- (4) For the purposes of subsection (3) and this subsection,
 - (a) there shall be allotted in the case of a film or video production
 - (i) that is not an animation production,
 - (A) for the director, two points,
 - (B) for the principal screenwriter, two points,
 - (C) for the lead performer for whose services the highest remuneration was payable, one point,
 - (D) for the lead performer for whose services the second highest remuneration was payable, one point,
 - (E) for the art director, one point,
 - (F) for the director of photography, one point,
 - (G) for the music composer, one point, and
 - (H) for the picture editor, one point,
 - if that person is an individual who is a Canadian,
 - (ii) that is an animation production,

- (A) for the director, one point,
 - (B) for the lead voice for which the highest or second highest remuneration was payable, one point,
 - (C) for the design supervisor, one point,
 - (D) for the camera operator where the camera operation is done in Canada, one point,
 - (E) for the music composer, one point, and
 - (F) for the picture editor, one point,
if that person is an individual who is a Canadian, and
- (iii) that is an animation production, one point where both the principal screenwriter and storyboard supervisor are individuals who are Canadians; and
 - (iv) that is an animation production
 - (A) for the place where the layout and background work is done, one point,
 - (B) for the place where the key animation is done, one point,
 - (C) for the place where the assistant animation and in-betweening is done, one point,
if the place is in Canada;
 - (b) a production that is not an animation production is deemed not to be a Canadian film or video production unless there are allotted in respect of the production two points under clause (a)(i)(A) or (B) one point under clause (a)(i)(C) or (D); and
 - (c) an animation production is deemed not to be a Canadian film or video production unless there are allotted in respect of the production
 - (i) one point under clause (a)(ii)(A) or subparagraph (a)(iii),

- (ii) one point under clause (a)(ii)(B), and
- (iii) one point under clause (a)(iv)(B).

Lead Performer/Screenwriter

- (5) For the purposes of subsections (4) and (6),
 - (a) a lead performer in respect of a production is an actor or actress who has a leading role in the production having regard to the performer's remuneration, billing and time on screen;
 - (b) a lead voice in respect of an animation production is the voice of the individual who has a leading role in the production having regard to the length of time that the individual's voice is heard in the production and the individual's remuneration;
 - (c) the principal screenwriter of a production is not a Canadian unless
 - (i) each individual involved in the preparation of the screenplay for the production is otherwise a Canadian, or
 - (ii) the principal screenwriter is an individual who otherwise is a Canadian and
 - (A) the screenplay for the production is based upon a work authored by a Canadian, and
 - (B) the work is published in Canada.

Documentary Production

- (6) Notwithstanding subsection (4), a documentary production that is not an excluded production is deemed to be a Canadian film or video production if all creative positions in respect of the production are occupied by individuals who are Canadians.

Prescribed Person

- (7) For the purpose of section 125.4 of the Act, "prescribed person" means
 - (a) a corporation that holds a television broadcasting licence issued by the Canadian Radio-television and Telecommunications Commission,

- (b) a person to whom paragraph 149(1)(l) of the Act applies where the person has a fund which is used to finance Canadian film or video productions,
- (c) a Canadian government film agency, or
- (d) in respect of a film or video production, a non-resident person who does not carry on a business in Canada where the person's interest in the production is acquired to comply with the certificate requirements of a treaty co-production twinning arrangement.”

Applicable: To the 1995 and subsequent tax years.²⁸

²⁸

Disclaimer: The above draft regulations are not intended to be a substitute for the official government publications and are provided to production companies in a consolidated format for reference use only. CAVCO assumes no responsibility for the use of these draft regulations and suggests that users consult a qualified professional for advice regarding any application made in connection with these draft regulations. (Prepared November, 1996)