

## **Avis, Andrew FIN:EX**

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**From:** Banning, Kathy FIN:EX  
**Sent:** Tuesday, January 12, 2016 3:24 PM  
**To:** Avis, Andrew FIN:EX  
**Cc:** Gunther, Mark FIN:EX  
**Subject:** Estimate of the Adiministration Cost of the BC Film Tax Credits

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

Hi Andrew,

Steve advised we typically use \$100,000 per year for ITB audit staff including benefits etc. so that would be a reasonable estimate for the film tax credit program.

Please let me know if you require anything further.

Thanks,

Kathy

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**From:** Banning, Kathy FIN:EX  
**Sent:** Tuesday, January 12, 2016 1:41 PM  
**To:** Avis, Andrew FIN:EX  
**Cc:** Gunther, Mark FIN:EX  
**Subject:** RE: Estimate of the Adiministration Cost of the BC Film Tax Credits

Hi Andrew,

Creative BC does not receive any payments from the Ministry of Finance to verify applications. They do receive funding from the provincial government though and my guess is it would be from Ministry of Jobs, Tourism and Skills Training (where the certifying authority is located) but that may be more for some of the other programs that they administer and the grants etc. My understanding is the cost to verify the applications in theory are supposed to be covered by the administration fees collected for the certificates. I know they raised the application fee a few years ago and that was supposed to compensate for the additional costs Creative BC was incurring to verify and issue certificates etc. I can always call Creative BC if you'd like to know further details on the application fees they receive?

The estimate for the 2015/16 fiscal year (updated in December 2015) for payments made to CRA to administer the "non-harmonized" components of the FTTC and PSTC credit program are as follows:  
FTTC - \$267,194 to process 324 claims and PSTC - \$333,862 to process 306 claims so a total estimate this fiscal of \$601,056 for 630 claims. Works out to 4.879 FTE's for CRA that we pay for this fiscal year.

I'll have to check with Steve if he has any figures or estimates for ITB staff allocated to the film tax credit program and will let you know. Steve might be out of the office for the rest of the day so may not be able to get back to you until tomorrow on this point.

Let me know if you have any further questions or what me to call Creative BC regarding the application fees collected.

Regards,

**Kathy Banning, CPA, CGA**  
Team Leader, Tax Credit Programs  
Income Taxation Branch  
Ministry of Finance  
Phone: 250-953-3089, Fax: 250-356-9243  
<<[mail to: Kathy.Banning@gov.bc.ca](mailto:Kathy.Banning@gov.bc.ca)>>

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**From:** Avis, Andrew FIN:EX  
**Sent:** Tuesday, January 12, 2016 12:59 PM  
**To:** Banning, Kathy FIN:EX  
**Cc:** Gunther, Mark FIN:EX  
**Subject:** Estimate of the Administration Cost of the BC Film Tax Credits

Hi Kathy,

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If you would prefer to discuss, feel to give me a call at 6-6004.

Thanks very much for your help.

*Andrew Avis*  
Tax Policy Analyst | Policy & Legislation Division | Ministry of Finance  
105 – 617 Government Street, Victoria, BC V8W 9V8  
Tel. 250-356-6004 Email: [Andrew.Avis@gov.bc.ca](mailto:Andrew.Avis@gov.bc.ca)



## DIVISIONAL INFORMATION NOTE

### Controlling the Costs of Film Tax Credits

**Issue:**

In Budget 2016, the government committed to limiting the growth of film tax credits for 2016/17, 2017/18 and 2018/19.

**Background:**

BC offers refundable film tax credits that offset the labour costs of BC productions. The cost of these credits has been sharply increasing, due in large part to the falling Canadian dollar. The cost of the credits averaged \$255 million annually from 2010/11 to 2013/14, but is expected to cost nearly \$500 million in 2016/17 if no action is taken.

Recognizing that the rising costs pose a threat to the sustainability of the credits, officials from the Motion Picture Production Industry Association of BC and the Canadian Media Production Association wrote to the Ministers of Finance and Jobs, Tourism and Skills Training in January to request a meeting that would establish a working group to study this issue. The Ministers issued a joint reply agreeing to initiate discussions with the industry (these letters are attached).

*Budget 2016* announced that the government will work with the industry to develop solutions to limit the growth of film tax credit costs for 2016/17, 2017/18 and 2018/19. <sup>s.13</sup>

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## ADVICE TO MINISTER

<b>CONFIDENTIAL</b> <b>DRAFT GCPE-FIN ISSUE NOTE</b> Ministry of Finance Date: February 2, 2016 Minister Responsible: Michael de Jong	<b>Film Tax Credits Budget 2016</b>
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### DRAFT

#### ADVICE AND RECOMMENDED RESPONSE:

- The Province will be sitting down with film and television industry representatives to explore how government can continue to support the sector in a fiscally sustainable way.
- The film industry has recognized the pressure increasing costs of film tax credits are having on government's fiscal capacity and has offered to work with government on solutions that address this pressure.

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- B.C. has seen record levels of activity in the film and television sector in recent years.
- Most significantly, the US dollar gained considerable strength relative to the Canadian dollar in 2015, which made it substantially more attractive to base productions in B.C.

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## ADVICE TO MINISTER

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- s.13 As production increases, so does the amount of subsidy granted by the Province.
- Film tax credits do not reduce the tax paid by companies – they are direct subsidies to the companies based on their spending. That means that film and TV companies get the tax credits based on eligible labour costs even if they pay very little or no provincial tax themselves.

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### KEY FACTS REGARDING THE ISSUE:

The province's film tax credits are labour-based credits, which means the tax credit applies to a production's British Columbia labour costs and effectively reduces labour costs. For productions meeting Canadian content requirements, the basic tax credit rate is 35% of British Columbia labour. For other productions, the basic tax credit rate is 33% of British Columbia labour. Productions can qualify for additional British Columbia tax credits for work done outside the Vancouver area, or for digital animation, visual effects or post-production work.

The federal government also provides tax credits worth 25% of labour expenditures for productions meeting Canadian content requirements, and 16% for other productions. From 2010-11 to 2013-14, the cost of provincial tax credits averaged about \$255 million per year. However, with the strengthening of the US dollar in 2015, production spending in British Columbia by production services tax credit-eligible productions, including foreign productions, increased by more than 50% to \$1.6 billion and likely will continue at historically high levels. As a result, the cost of the province's film tax credits have increased to around \$500 million annually.

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Saskatchewan eliminated its tax credits in 2012. Ontario, Quebec and New Brunswick have reduced their tax credits in recent years. California and New Mexico cap the cost of their tax credits, while North Carolina eliminated its film tax credit altogether in 2015. When industry size is taken into account, British Columbia offers very generous credits. British Columbia's film industry spent about C\$2 billion in 2014-15, with a tax credit cost of C\$343 million. California's industry spent about US\$17 billion, with a tax credit cost of approximately US\$330 million.

### History

On January 15, 2016, the Province published an op-ed by Jordan Bateman of the Canadian Taxpayers Federation (<http://blogs.theprovince.com/2016/01/14/jordan-bateman-its-time-to-wean-film-industry-off-corporate-welfare/>) calling for government to reduce the amount of taxpayer-funded support for the industry, noting that the "provincial government cut cheques for \$1.5 billion in film subsidies over the past

ADVICE TO MINISTER

five years. That's more than taxpayers spent on the ministries of aboriginal relations, agriculture and environment combined".

On January 14, 2016, film industry representatives were on the radio discussing Oscar nominations for B.C.-based productions and attributing their success, at least in part, to B.C.'s film tax credits. (Lynda Steele CKNW/CBC Daybreak South). "We cannot bank on the dollar, it has to be our great tax credits which are always going to be the thing that help us get our films here in the Okanagan."

JTST Minister Shirley Bond said in July 2015 that despite the weak Canadian dollar, government is not considering changing the film incentive structure (<http://www.cknw.com/2015/07/27/85053/>).

In 2013, the film industry called on the B.C. government to match Ontario and Quebec's film and television tax credits to keep productions from leaving B.C. At the time, B.C. declined to increase the tax credits, calling it a race to the bottom. (<http://www.thedlobeandmail.com/news/british-columbia/bc-film-advocacy-group-disbands/article14820208/>)

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Current support:

- B.C. offers two distinct tax credit programs for the film and television industry:
  - Domestic: Film Incentive BC is a refundable tax credit for Canadian controlled production companies based on eligible BC labour costs.
  - Foreign: The production services tax credit is a refundable tax credit for international or Canadian film and television production corporations that have incurred costs in British Columbia. The PSTC is not subject to any Canadian content requirements.
- B.C.'s film tax credits reduce the cost of wages for film and television companies and make operating in B.C. more competitive. For each dollar spent by a production company on eligible labour, B.C.'s film tax credits can return between 33 – 71 cents to that company. Film tax credits offered by the federal government are also available and add to these provincial payments.
- Budget 2014 announced an amendment to the Film and Television Tax Credit Regulation to include the Capital Regional District in the distant location tax credit, effective for productions beginning on or after February 19, 2014. This extension applies to both the production services tax credit and the Film Incentive BC tax credit.
- Government established Creative BC, an independent society working with creative industries in B.C. to develop and implement a broad strategy capitalizing on the sector's strengths and identifying future opportunities.

Table 1: Creative BC Tax Credit Certifications

	Film Incentive BC (domestic productions)	Production services tax credit (foreign productions)	Total
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2012-13			

ADVICE TO MINISTER

2013-14
2014-15

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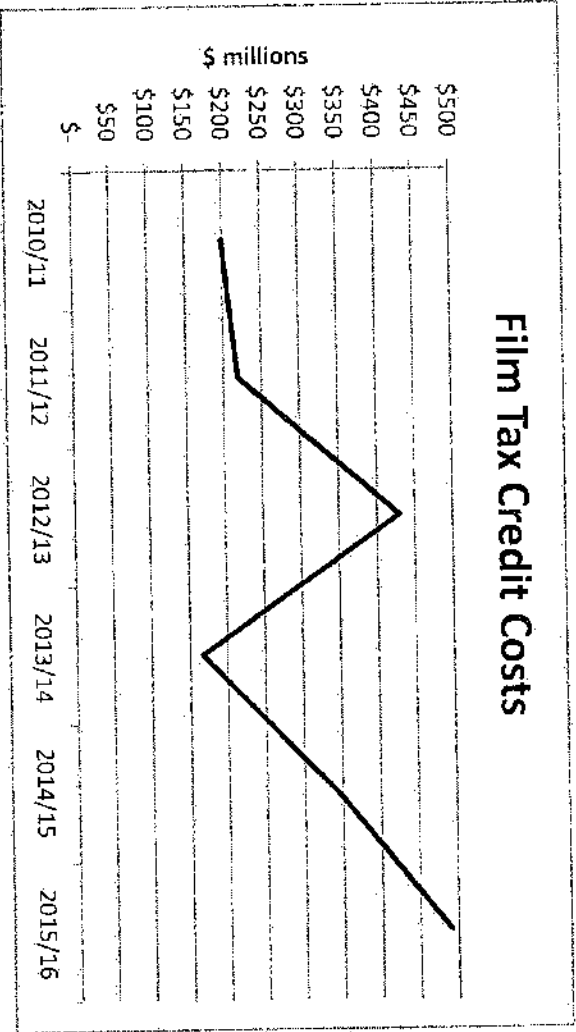
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Communications Contact: Sonja Zoeller, 387-1248  
Program Area Contact: David Karp, 387-5044  
File Created: February 2, 2016  
File Updated:  
File Location: J:\Secure Folder\Budget 2016\Issues Notes

Program Area	Comm. Director	Deputy	Minister's Office

	2010/11	2011/12	2012/13	2013/14	2014/15	2015/16
Total	199	219		430	167	343
						491



**Ministry of Finance**  
**BRIEFING DOCUMENT**

**To:** Honourable Michael de Jong, Q.C.  
Minister of Finance

**Date Requested:** February 9, 2016  
**Date Required:** February 12, 2016

**Initiated by:** Paul Flanagan  
Executive Director  
Tax Policy Branch

**Date Prepared:** February 9, 2016

**Ministry Contact:** David Karp  
Tax Policy Analyst  
Tax Policy Branch

**Phone Number:** 250-387-5044  
**Email:** david.karp@gov.bc.ca

**Cliff #:** 348270

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**TITLE:** Providing Legislative Authority to Change Film Tax Credit Rates by Regulation

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**PURPOSE:**

**(X) DECISION REQUIRED**

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**DATE PREPARED:** February 9, 2016

**TITLE:** Providing Legislative Authority to Change Film Tax Credit Rates by Regulation.

**ISSUE:** s.13  
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direction is required on a number of issues.

Further

**BACKGROUND:** Budget 2016 includes a topic box on film tax credits that states the Province will work with the film industry to control the costs of BC's film tax credits. The topic box is not specific about how this will be accomplished, as discussions with the film industry will take at least a month.

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**DISCUSSION:**

Tax credit rates to be reduced:

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	Film Incentive BC	Production services
Basic rate	35%	33%
Regional tax credit	12.5%	6%
Distant location tax credit	6%	6%
Digital animation or visual effects tax credit	17.5%	17.5%

The cost of BC's film tax credits for 2016/17, at current rates, is expected to be approximately \$500 million. Approximately \$305 million of this amount is attributable to the production services tax credit basic credit.

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Recommendation:

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APPROVED / NOT APPROVED

De minimis tax credit rate:

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**Recommendation:**

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**APPROVED / NOT APPROVED**

Maximum tax credit rate:

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**Recommendation:**

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**APPROVED / NOT APPROVED**



Application of new rates:

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Recommendation:

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APPROVED / NOT APPROVED

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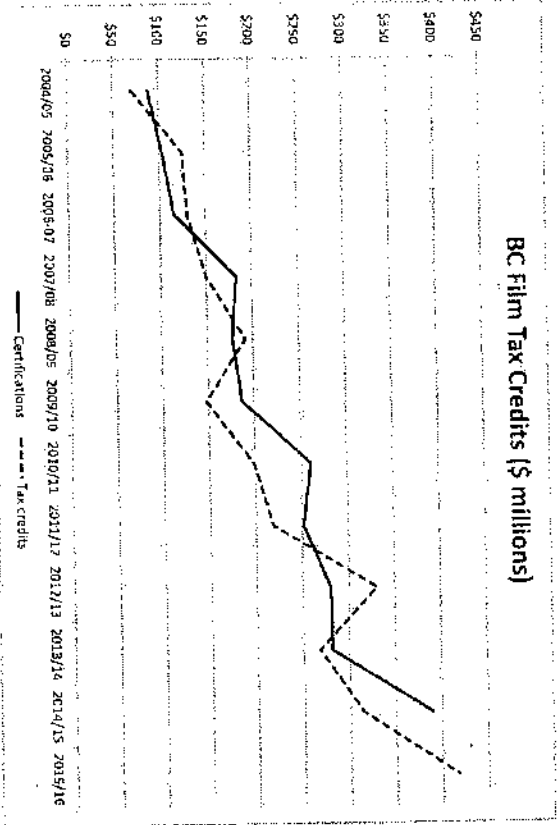
APPROVED / NOT APPROVED

\_\_\_\_\_  
Michael de Jong, Q.C.  
Minister

\_\_\_\_\_  
Date

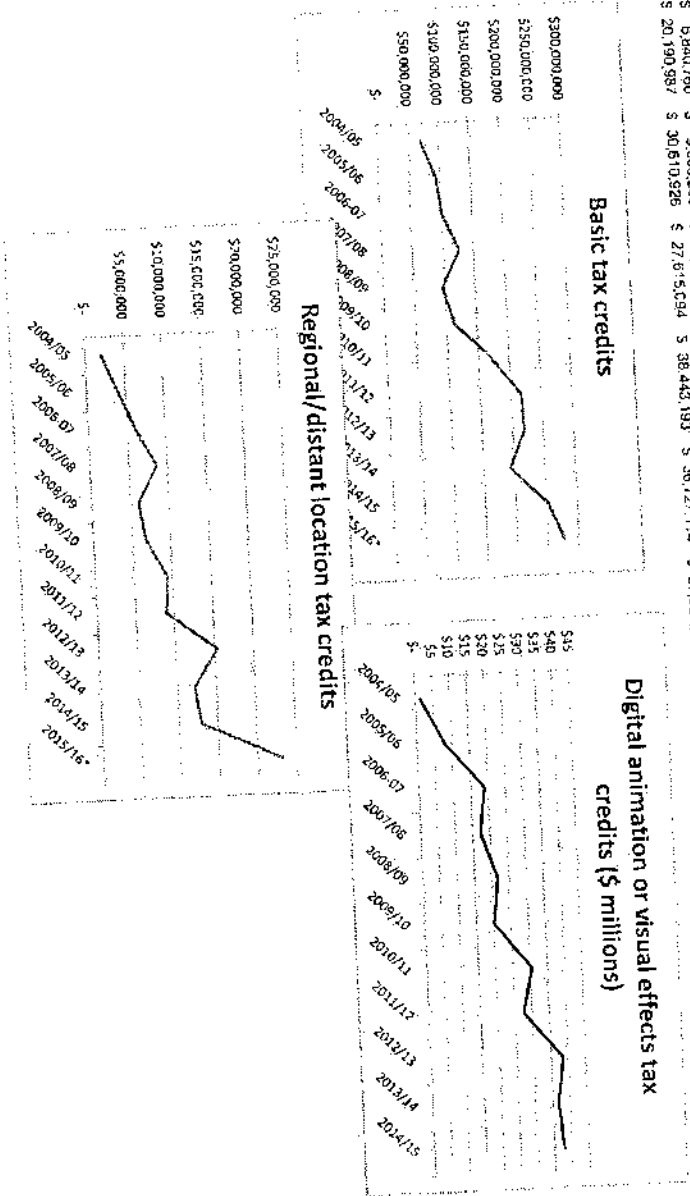
Year	1999/00	2000/01	2001/02	2002/03	2003/04	2004/05	2005/06	2006/07	2007/08	2008/09	2009/10	2010/11	2011/12	2012/13	2013/14	2014/15	2015/16	2016/17*	2017/18*	2018/19*	2019/20*	YTD (to Sept. 30)
Assessments	6,781,783	23,692,612	50,867,893	60,629,726	41,366,304	74,401,025	105,915,535	126,226,458	152,764,814	124,999,731	140,394,540	211,151,011	254,248,401	272,569,173	242,657,957	303,675,438						175,480,582
Certifications						88,197,583	103,374,879	115,593,601	182,924,705	178,088,316	166,902,805	281,467,184	251,682,648	280,243,669	281,404,256	389,944,642						155,200,693
Tax credits						79000000	125000000	130000000	150000000	192000000	148000000	198000000	219000000	331000000	268,000,000	315,000,000		417,500,000	427,500,000	437,500,000	447,500,000	457,500,000

\*All data are all forecasts. Assessment and certification data are actuals up to Sept. 2015, and forecasts thereafter.



	2004/05	2005/06	2006/07	2007/08	2008/09	2009/10	2010/11	2011/12	2012/13	2013/14	2014/15	2015/16	YTD (to Sept. 30)
Basic	\$70,801,018	\$93,132,653	\$101,028,037	\$126,771,895	\$97,136,569	\$113,320,919	\$171,169,811	\$217,467,065	\$218,767,941	\$193,704,964	\$262,864,190	\$276,828,030	\$138,463,015
Regional	\$ 2,072,162	\$ 4,114,367	\$ 6,099,359	\$ 8,646,260	\$ 6,062,517	\$ 8,840,760	\$ 9,366,289	\$ 9,030,631	\$ 15,363,069	\$ 12,215,233	\$ 12,917,603	\$ 23,726,590	\$ 11,613,295
DAVE	\$ 1,473,778	\$ 6,036,941	\$ 19,378,998	\$ 17,321,535	\$21,790,706	\$ 20,190,987	\$ 30,610,926	\$ 27,615,094	\$ 38,443,193	\$ 36,727,114	\$ 37,826,471	\$ 50,766,316	\$ 25,383,158

Data is based on assessment's 2015-16's a (forecast based on year-to-date actuals).



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## ADVICE TO MINISTER

<p>CONFIDENTIAL GCPE-FIN ISSUE NOTE DRAFT</p> <p>Ministry of Finance Date: August 28, 2014 Updated: January 15, 2016 Minister Responsible: Michael de Jong</p>	<p><b>Film Tax Credits</b></p>
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### ADVICE AND RECOMMENDED RESPONSE:

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- The industry has established world-class production infrastructure in our province, and our capacity for post-production and special effects work continues to grow. We're also rapidly developing our digital media and video gaming sector.
- B.C. tax credits are only one factor the industry uses to decide where to base its productions.
- B.C.'s advantages include its pool of skilled labour, one-of-a-kind scenery and proximity to major U.S. studios. A relatively weak Canadian dollar has also made it more affordable to base productions in here.

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- s.13 As production increases, so does the amount of subsidy granted by the Province.
- Film tax credits do not reduce the tax paid by companies – they are direct subsidies to the companies based on their spending. The tax credits are not designed as a refund or rebate of taxes the industry and its participants pay. That means that film and TV companies get the tax credits based on eligible labour costs even if they pay very little or no provincial tax themselves.

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## GROWTH IN B.C.'S FILM SECTOR

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## SUPPORT FOR B.C.'S FILM SECTOR

- B.C.'s film and television tax credits serve to reduce the cost of wages for film and television companies and make operating in B.C. more competitive.
- Budget 2015 announced the extension of the Digital Animation or Visual Effects (DAVE) tax credit to eligible post-production activities.
- Government established "Creative BC", an independent society working with creative industries in B.C. to develop and implement a broad strategy capitalizing on the sector's strengths and identifying future opportunities.

## KEY FACTS REGARDING THE ISSUE:

A number of economists and business leaders, including B.C.'s Expert Panel on Business Tax Competitiveness, have noted there is little evidence that successive increases in these incentives produce a stable, competitive advantage for any of the participating provinces. s.13

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The Vancouver Economic Commission estimates that more than 34,000 direct and indirect jobs are generated by film and television production in B.C., with more than 80% located in Metro Vancouver.

BC Film + Media (now Creative BC) noted in its May 2012 submission to the Expert Panel on Tax that B.C. has been able to "transition from a location that competes for individual productions to one where companies establish permanent studios" in animation and visual effects. But it also noted that film and television shoots do not involve long-term investment by foreign production companies.

## History

On January 15, 2016, the Province published an op-ed by Jordan Bateman of the Canadian Taxpayers Federation (<http://blogs.theprovince.com/2016/01/14/jordan-bateman-its-time-to-wean-film-industry-off-corporate-welfare/>) calling for government to reduce the amount of taxpayer-funded support for the industry, noting that the "provincial government cut cheques for \$1.5 billion in film subsidies over the

## ADVICE TO MINISTER

past five years. That's more than taxpayers spent on the ministries of aboriginal relations, agriculture and environment combined".

On January 14, 2016, film industry representatives were on the radio discussing Oscar nominations for B.C.-based productions and attributing their success, at least in part, to B.C.'s film tax credits. (Lynda Steele CKNW/CBC Daybreak South). "We cannot bank on the dollar, it has to be our great tax credits which are always going to be the thing that help us get our films here in the Okanagan."

JTST Minister Shirley Bond said in July 2015 that despite the weak Canadian dollar, government is not considering changing the film incentive structure (<http://www.cknw.com/2015/07/27/85053/>).

In 2013, the film industry called on the B.C. government to match Ontario and Quebec's film and television tax credits to keep productions from leaving B.C. At the time, B.C. declined to increase the tax credits, calling it a race to the bottom. (<http://www.theglobeandmail.com/news/british-columbia/bc-film-advocacy-group-disbands/article14820208/>)

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### Current support:

- B.C. offers two distinct tax credit programs for the film and television industry:
  - Domestic: Film Incentive BC (FIBC) is a labour based tax incentive that provides refundable tax credits to Canadian controlled production companies based on eligible BC labour costs.
  - Foreign: The production services tax credit (PSTC) is a labour based tax incentive that provides refundable tax credits to international or Canadian film and television production corporations that have incurred costs in British Columbia. The PSTC is not subject to any Canadian content requirements.
- B.C.'s film tax credits reduce the cost of wages for film and television companies and make operating in B.C. more competitive. For each dollar spent by a production company on eligible labour, B.C.'s film tax credits can return between 33 – 71 cents to that company. Film tax credits offered by the federal government are also available and add to these provincial payments.
- Budget 2014 announced an amendment to the Film and Television Production Regulation to include the Capital Regional District (CRD) in the Distant Location Tax Credit, effective for productions beginning on or after February 19, 2014. This extension applies to both the Production Services Tax Credit and the Film Incentive BC tax credit.
- Government established Creative BC, an independent society working with creative industries in B.C. to develop and implement a broad strategy capitalizing on the sector's strengths and identifying future opportunities.



Table 1: BC film production spending (based on Creative BC tax credit certifications)

	Film Incentive BC (domestic productions)	Production services tax credit (foreign productions)	Total
2012-13	\$197 million	\$1.09 billion	\$1.28 billion
2013-14	\$292 million	\$1.08 billion	\$1.37 billion
2014-15	\$289 million	\$1.67 billion	\$1.96 billion

Communications Contact: Sonja Zoeller  
Program Area Contact: David Karp  
File Created: August 28, 2014  
File Updated: January 15, 2016  
File Location: J:\NEW - OPERATIONS\Issues Notes\Tax Policy

250 387-1248  
250 387-5044

Program Area	Comm. Director	Deputy	Minister's Office

Film and Television Tax Credits Certified by Creative BC  
Production and BC Budget Figures  
April 1, 2004 to October 31, 2015

	2004/2005	2005/2006	2006/2007	2007/2008	2008/2009	2009/2010	2010/2011	2011/2012	2012/2013	2013/2014	2014/2015	Apr 1 to Oct 31, 2015
Fiscal Year												
Number of Certificates Issued	96	107	102	170	140	135	127	112	128	119	136	75
BC Labour Budget	137,860,088	91,150,280	89,190,575	175,451,351	152,877,068	133,767,263	130,028,465	104,905,635	173,728,479	162,344,093	164,678,158	96,584,745
BC Production Budget*	-	-	-	-	-	-	-	-	196,799,053	291,901,868	289,495,705	173,977,123
Total Production Budget*	358,750,363	224,611,241	223,238,335	424,989,286	376,361,532	321,809,999	299,473,657	232,958,766	390,742,084	366,033,481	350,609,752	213,305,944

Production Services Tax Credit

	2004/2005	2005/2006	2006/2007	2007/2008	2008/2009	2009/2010	2010/2011	2011/2012	2012/2013	2013/2014	2014/2015	Apr 1 to Oct 31, 2015
Fiscal Year												
Number of Certificates Issued	79	94	90	114	112	100	125	141	139	130	151	85
BC Labour Budget	467,504,481	469,087,031	405,873,670	529,049,546	465,204,689	439,486,810	594,282,949	535,776,433	515,541,840	505,809,090	744,386,903	358,366,329
BC Production Budget	1,168,786,375	973,268,106	982,320,991	1,174,097,705	900,311,288	1,092,404,202	1,363,504,688	1,277,161,984	1,086,477,631	1,081,551,737	1,672,475,933	672,158,893
Total Production Budget*	-	-	-	-	-	-	-	-	3,720,838,443	4,942,008,513	6,484,043,632	2,828,120,050

\* A reporting change was made in October 2012 to start capturing the BC Production Budget and the Total Production Budget for both programs. As figures were not captured until October 2012, the statistics for fiscal year 2012/13 are not complete. The FTTC BC Production Budget figure is for the time period Oct 2012 - Mar 2013 and Total Production Budget is for the entire fiscal year. PSTC Total Production Budget is for the time period Oct 2012 - Mar 2013. Prior fiscal year figures are not available as noted.

Note: The figures above are based on certificates issued by Creative BC during the fiscal years noted. They do not necessarily correspond to the corporation's fiscal year end or the year in which filming or production occurred. These figures are often based on budgeted amounts or estimates, actual claims filed with the Canada Revenue Agency for these productions can be different (claims are often higher).

Film and Television Tax Credits Assessed by Canada Revenue Agency  
April 1, 2004 to September 30, 2015

Film and Television Tax Credit (aka FIBC)													
Fiscal Year	2004/2005	2005/2006	2006/2007	2007/2008	2008/2009	2009/2010	2010/2011	2011/2012	2012/2013	2013/2014	2014/2015	Apr 1 to Sept 30, 2015	Apr 1 to Sept 30, 2015
Number of Claims Assessed	133	137	159	206	181	193	228	235	256	243	239	100	100
Basic Credit	25,919,095	30,180,315	23,974,267	36,689,685	27,359,518	33,919,527	33,938,222	51,852,546	59,732,100	51,990,630	66,887,304	44,469,220	44,469,220
Regional Credit	974,005	3,545,337	4,722,052	7,720,505	5,448,421	5,605,408	7,253,069	7,556,825	13,388,335	9,545,585	9,339,458	8,086,458	8,086,458
Distant Location Credit	-	-	-	-	-	84,978	506,947	163,896	589,822	316,585	814,216	867,227	867,227
DAVE Credit	677,154	1,557,183	1,505,143	2,755,391	2,896,548	3,752,057	2,164,578	3,223,460	4,370,713	3,931,769	4,550,402	1,973,486	1,973,486
Film Training Tax Credit	54,067	31,574	20,074	23,324	7,939	41,874	3,885	45,621	14,077	10,595	7,234	1,114	1,114
Value of Credits Assessed	27,624,321	35,314,409	30,221,536	46,198,905	35,712,426	43,403,844	43,866,701	62,842,348	78,095,047	65,795,164	81,398,614	55,397,505	55,397,505

Production Services Tax Credit													
Fiscal Year	2004/2005	2005/2006	2006/2007	2007/2008	2008/2009	2009/2010	2010/2011	2011/2012	2012/2013	2013/2014	2014/2015	Apr 1 to Sept 30, 2015	Apr 1 to Sept 30, 2015
Number of Claims Assessed	109	129	150	149	171	207	172	212	206	220	216	99	99
Basic Credit	44,881,923	63,562,338	77,053,770	91,072,010	69,779,051	79,401,392	137,231,689	165,644,509	159,035,841	141,714,364	186,176,886	83,993,795	83,993,795
Regional Credit	1,098,157	589,030	1,377,307	927,755	614,096	1,150,374	1,601,515	1,136,641	1,258,739	1,697,476	2,158,235	1,614,452	1,614,452
Distant Location Credit	-	-	-	-	-	-	4,758	233,269	127,053	655,607	605,694	1,045,158	1,045,158
DAVE Credit	796,624	6,479,758	17,573,845	14,566,144	18,894,158	16,438,930	28,446,348	24,391,634	34,072,480	32,795,346	33,276,009	23,409,672	23,409,672
Value of Credits Assessed	46,776,704	70,601,126	96,004,922	106,565,909	89,287,305	96,990,696	167,284,310	191,406,053	194,494,123	176,862,793	222,216,824	120,063,077	120,063,077

Note: The figures above are based on claims assessed by the Canada Revenue Agency (CRA) during the fiscal years noted. They do not correspond to the corporation's fiscal year end or the year in which filming or production occurred.

Ministry of Finance  
Revenue Division  
Income Taxation Branch  
Income Tax Programs

Year	2004/05	2005/06	2006/07	2007/08	2008/09	2009/10	2010/11	2011/12	2012/13	2013/14	2014/15	2015/16	2016/17*	2017/18*	2018/19*	2019/20*
Tax credits	70000000	125000000	130000000	150000000	192000000	148000000	199000000	219000000	331000000	268,000,000	315,000,000	417,500,000	427,500,000	437,500,000	447,500,000	457,500,000

Anita's data are all forecasts. Assessment and certification data are actuals up to Sept. 2015, and forecasts thereafter.

### History of BC Film Tax Credits

Budget 1998	<ul style="list-style-type: none"> <li>Film Incentive BC credit introduced for productions meeting Canadian content requirements. Rate set at 20 per cent for basic credit, plus a 12.5 per cent regional credit for productions shot outside Vancouver.</li> </ul>
June 1998 income tax bill	<ul style="list-style-type: none"> <li>Production services tax credit introduced. Rate set at 11 per cent for basic credit.</li> </ul>
Budget 2003	<ul style="list-style-type: none"> <li>Film tax credits are extended by five years.</li> <li>Digital animation or visual effects tax credit introduced at a rate of 15 per cent.</li> <li>Production services tax credit films become eligible for a regional tax credit of 6 per cent.</li> </ul>
Budget 2005	<ul style="list-style-type: none"> <li>Film Incentive BC tax credit rate increased temporarily to 30 per cent.</li> <li>Production services tax credit rate increased temporarily to 18 per cent.</li> </ul>
Budget 2006	<ul style="list-style-type: none"> <li>Temporary enhancements from Budget 2005 are extended to 2008.</li> </ul>
Budget 2008	<ul style="list-style-type: none"> <li>Film tax credits are extended by five years.</li> <li>Film Incentive BC tax credit rate temporarily increased to 35 per cent.</li> <li>Production services tax credit rate temporarily increased to 25 per cent.</li> <li>Distant location tax credits are introduced for productions in areas more distant from Lower Mainland, at a rate of 6 per cent (for both Film Incentive BC and production services tax credits).</li> </ul>
Budget 2009	<ul style="list-style-type: none"> <li>Film tax credits are made permanent at the temporarily enhanced rates in effect at that time.</li> </ul>
Budget 2010	<ul style="list-style-type: none"> <li>Production services tax credit rate increased to 33 per cent.</li> <li>Digital animation or visual effects tax credit rate is increased to 17.5 per cent.</li> </ul>
Budget 2014	<ul style="list-style-type: none"> <li>Distant location tax credit is expanded to the Capital Regional District.</li> </ul>
Budget 2015	<ul style="list-style-type: none"> <li>Digital animation or visual effects tax credit is expanded to post-production activities.</li> </ul>

Page 026 to/à Page 032

Withheld pursuant to/removed as

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Ministry of Finance  
SIGN-OFF SHEET

Item: ☒BN for Information   ☐BN for Decision   ☐Correspondence   ☐OIC  
☐Other \_\_\_\_\_

Issue: Grandfathering for animation tax credit changes

CLIFF #: 347744

Date initiated: Jan 11, 2016      Final Due on: \_\_\_\_\_

Approvals Required:	Reviewer	Reviewer Initial	Approval	Date Signed
Drafter	David Karp			
Director			<input type="checkbox"/> Approved <input type="checkbox"/> Approved w/ Changes <input type="checkbox"/> Needs Rewrite	
Executive Director	Paul Flanagan	PF	<input checked="" type="checkbox"/> Approved <input type="checkbox"/> Approved w/ Changes <input type="checkbox"/> Needs Rewrite	Jan. 12, 2016
ADM	Heather Wood	HW	<input type="checkbox"/> Approved <input checked="" type="checkbox"/> Approved w/ Changes <input type="checkbox"/> Needs Rewrite	Jan. 12, 2016
<del>DM</del>	Kim Henderson	KH	<input type="checkbox"/> Approved <input checked="" type="checkbox"/> Approved w/ Changes <input type="checkbox"/> Needs Rewrite	Jan 20/16
Notes: Package includes MLA bullets that were drafted under 347618 and provided as information only to DM.				

Included are the following: (check all that apply)

- ☐ Correspondence
- ☐ Incoming
- ☐ Memo
- ☐ OIC
- ☒ Briefing Note
- ☐ Certificate
- ☐ Other:





**Ministry of Finance**  
**BRIEFING DOCUMENT**

**To:** Kim Henderson  
Deputy Minister

**Date Requested:** January 7, 2016  
**Date Required:** January 11, 2016

**Initiated by:** Paul Flanagan  
Executive Director  
Tax Policy Branch

**Date Prepared:** January 8, 2016

**Ministry Contact:** David Karp  
Tax Policy Analyst  
Tax Policy Branch

**Phone Number:** 250-387-5044  
**Email:** david.karp@gov.bc.ca

**Cliff #:** 347744

---

**TITLE:** Regional and distant location film tax credit changes.

---

**PURPOSE:**

**(X) FOR INFORMATION**

---

**DATE PREPARED:** January 8, 2016

**TITLE:** Regional and distant location film tax credit changes.

**ISSUE:** An animation company has complained about a change to tax credits for animated productions announced on June 26, 2015.

**BACKGROUND:**

BC offers two distinct tax credit programs for the film and television industry:

- Film Incentive BC (FIBC) tax credits are refundable credits for productions that meet Canadian content requirements (e.g., domestic productions).
  - o The basic credit 35 per cent
  - o Regional credit + 12.5 per cent (47.5 per cent total)
  - o Distant location credit + 6 per cent (53.5 per cent total)
- The Production Services Tax Credits (PSTC) are refundable tax credits for productions that do not meet Canadian content requirements (e.g., foreign films).
  - o The basic credit 33 per cent
  - o Regional credit + 6 per cent (39 per cent total)
  - o Distant location credit + 6 per cent (45 per cent total)

The regional tax credit is provided to qualifying film productions for which principal photography is done outside the Designated Vancouver Zone. The distant location tax credit is provided to productions done outside of the Vancouver, Fraser Valley and Whistler / Squamish areas.

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A tax notice was issued on June 26, 2015, announcing the government's intention to introduce legislation in Budget 2016 to enact changes to ensure the labour expenses did occur in the regional and distant locations. The changes would be effective for productions that commence principal photography on or after June 27, 2015. Industry associations and affected companies were also notified of the government's intention directly.

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**DISCUSSION:**

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The change is expected to be enacted through budget legislation and effective for productions with principal photography commencing on or after June 27, 2015.

The attached MLA bullets provide a summary response for MLAs facing questions on this issue.

**347618 Bullets:**

- To encourage film production in all areas of the province, BC offers regional and distant location film tax credits for productions that do principal photography outside the Vancouver Area.
- On June 26, the government announced its intention to change BC's regional and distant location film and television tax credits for animated productions in Budget 2016. Regional and distant location tax credits for animated productions will be calculated by multiplying the applicable tax credit rate by the amount of eligible labour expenditures incurred in the regional or distant location area.

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- It is intended that the change would apply to productions that begin key animation after June 26.
- The change as announced on June 26 is being implemented as part of budget legislation.
- Government recognizes the benefits of having a vibrant film industry in BC. In addition to benefiting from the favourable exchange rate and BC's pool of skilled labour, BC's animation studios will continue to be eligible for generous refundable tax credits worth up to 52.5 per cent of eligible labour expenses in the Vancouver area, and up to 71 per cent of eligible labour expenses in distant locations.

**Additional Background information:**

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Page 039 to/à Page 040

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## **Personal Income Tax**

### **Trusts**

**Q. Why is the government changing the tax treatment of trusts?**

A. The Province is paralleling changes that the federal government announced in its 2014 budget.

The changes will improve tax fairness by reducing tax planning opportunities arising from beneficiaries effectively accessing more than one set of tax graduated tax rates. Previously, there was an opportunity for an estate to reduce its taxes by creating multiple trusts.

BC is also obligated to implement these changes under the terms of its tax collection agreement with the federal government.

### **New farmers' food donation tax credit (this is also a corporate income tax measure)**

**Q. What is the farmers' food donation tax credit?**

A. The farmers' food donation tax credit is a non-refundable credit for farmers that donate qualifying agricultural products to certain charities. The credit is worth 25 per cent of the fair market value of the food donated.

**Q. How do I apply for the farmers' food donation tax credit?**

A. Eligible taxpayers can claim the credit starting in the spring of 2017 when they file their 2016 personal income tax returns. Taxpayers will need a receipt from the charity they donated to.

**Q. Who is eligible for the farmers' food donation tax credit?**

A. The credit is available to farmers, the spouse or common-law partner of a farmer, and farming corporations.

**Q. Why is the farmers' food donation tax credit only available for three years (2016, 2017 and 2018)?**

A. The farmers' food donation tax credit will be reviewed after three years to ensure it continues to meet its objectives.

## **Corporate Income Tax**

### **Mining exploration tax credit extension**

**Q. What is the mining exploration tax credit?**

A. The mining exploration tax credit is a refundable credit available to individuals, corporations and active members of partnerships that undertake mineral exploration. The credit is calculated as 20 per cent of eligible mining exploration expenses, less the amount of any assistance. The tax credit rate is increased to 30 per cent if exploration is in an area affected by the mountain pine beetle.

**Q. The government provides too much support to the mining industry. Why is government extending the credit?**

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A. The credit supports BC's mining industry.  
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#### Regional and distant location tax credits for animation productions clarified

**Q. What change is being made?**

A. The calculation for regional and distant location tax credits for animation productions that start principal photography after June 26, 2015 is being clarified. Going forward, the credit for animation productions will be calculated based on expenditures that are incurred in the regional or distant location.

**Q. Why are animation productions being treated differently than live-action productions?**

A. Regional and distant location tax credits for live-action productions will continue to be based on the proportion of days that principal photography is done in the regional or distant location. This concept is clear for live-action productions, but for animation productions it is not clear what "principal photography" entails.

**Q. Why is this change being made?**

A. The change clarifies the government's intention that regional and distant location tax credits should be in respect of labour performed in the regional or distant location area.

#### Equity tax credit budget of small business venture capital program increased

**Q. What is the small business venture capital tax credit program?**

A. The small business venture capital tax credit program provides a combination of personal and corporate income tax credits that encourage investors to make equity capital investments in BC small businesses so that small businesses have access to early-stage capital to help them develop and grow.

**Q. How is the program being enhanced?**

- A. The small business venture capital tax credit program provides up to \$30 million in tax credits per year. In Budget 2015, this amount was temporarily enhanced for 2015 to \$33 million, by adding a \$3-million budget for eligible new corporations.

Budget 2016 makes the temporary \$3-million enhancement for eligible new corporations permanent, and also adds \$2 million to the general equity tax credit budget.



Page 044 to/à Page 051

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Page 052 to/à Page 091

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**Karp, David FIN:EX**

**From:** Karp, David FIN:EX  
**Sent:** Friday, January 8, 2016 9:27 AM  
**To:** Flanagan, Paul FIN:EX  
**Subject:** Ontario film costs

According to Ontario's 2015 budget:

"Ontario provided significant support of approximately \$335 million in 2014-15 to the film and television industry through the Ontario Film and Television Tax Credit (OFTTC), the Ontario Production Services Tax Credit (OPSTC) and the Ontario Computer Animation and Special Effects Tax Credit (OCASE)."

The quarterly report does not mention film. I will keep looking to see if I can find any forecasts.

*David Karp*  
Tax Policy Analyst | Policy & Legislation Division | Ministry of Finance  
107 - 617 Government Street, Victoria, BC V8W 9V8  
Tel. 250-387-5044 | Email: [David.Karp@gov.bc.ca](mailto:David.Karp@gov.bc.ca)

Karp, David FIN:EX

---

**From:** Karp, David FIN:EX  
**Sent:** Friday, January 8, 2016 9:32 AM  
**To:** 'Tim.Fish@ontario.ca'  
**Subject:** Cost of film tax credits

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

Hi Tim,

I've been asked to find an estimate of the costs of Ontario's film tax credits.

The most recent statement I could find was from your 2015 budget, which estimated the 2014-15 combined cost of OFTTC, OPSTC and OCSAE to be \$335 million. Do you happen to know if this is the most up-to-date estimate available, or whether there is a more recent forecast (perhaps for 2015-16 or 2016-17) that is publicly available or that you'd be able to share with us?

Thanks,

David.

*David Karp*  
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107 – 617 Government Street, Victoria, BC V8W 9V8  
Tel. 250-387-5044 | Email: [David.Karp@gov.bc.ca](mailto:David.Karp@gov.bc.ca)

Karp, David FIN:EX

---

**From:** Karp, David FIN:EX  
**Sent:** Friday, January 8, 2016 9:33 AM  
**To:** Ewing, Patrick FIN:EX  
**Subject:** Ontario film tax credits

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

Hi Patrick,

I've been asked to find an estimate of the costs of Ontario's film tax credits.

The most recent statement I could find was from your 2015 budget, which estimated the 2014-15 combined cost of OFTTC, OPSTC and OCSAE to be \$335 million. Do you happen to know whether there is a more recent forecast (perhaps for 2015-16 or 2016-17) available? Paul Flanagan suggested I try their quarterly report, but it makes no mention of film.

Thanks,

David.

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Tel. 250-387-5044 | Email: [David.Karp@gov.bc.ca](mailto:David.Karp@gov.bc.ca)

## Karp, David FIN:EX

---

**From:** Karp, David FIN:EX  
**Sent:** Friday, January 8, 2016 9:46 AM  
**To:** Flanagan, Paul FIN:EX  
**Subject:** Ontario and Quebec film tax credit changes

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

Hi Paul,

Here is a summary of the changes made by Ontario and Quebec to film tax credits in their 2015 budgets.

### Ontario

- **Domestic Film Tax Credit Amended to Allow for Government Assistance**
  - The Ontario film and television tax credit is reduced by the amount of assistance a production receives. As a result of a change by the federal government to the Canadian Film or Television Production Tax Credit, government equity assistance would be considered as "assistance" and thus reduce the Ontario credit a corporation is eligible for.
  - Retroactive to January 1, 2009, the Ontario film and television tax credit will not be reduced by government equity assistance.
- **Foreign Film Tax Credit Reduced**
  - Effective April 24, Ontario is reducing its production services tax credit rate from 25 per cent to 21.5 per cent.
  - Effective for tax years beginning on or after April 24, 2015, at least 25 per cent of a corporation's expenditures must be for Ontario labour in order for the corporation to be eligible for the credit. There will also be a provision aimed at preventing corporations from contracting with related entities in order to get around this requirement.
  - Ontario will also clarify that expenses incurred before a script is finalized are not eligible for a credit.
  - The measure is expected to save Ontario approximately \$25 million per year.
- **Digital animation or visual effects tax credit reduced**
  - Effective April 24, 2015, the Ontario computer animation and special effects tax credit rate will be reduced from 20 per cent to 18 per cent. In addition, corporations that are ineligible for one of Ontario's basic film tax credits will no longer be eligible for the computer animation and special effects credit.
  - The measure is expected to save Ontario approximately \$8 million per year.

### Quebec

- Quebec is making a number of revisions to its film tax credits.

- Previously, the credit rate differed depending on whether a production was in French or in another language. Effective March 27, the credit rate will continue to differ based on language, but will also differ depending on whether a production is based on an existing concept from outside Quebec.
- If a production is based on an existing concept from outside Quebec, the tax rate will remain unchanged. For other films, the tax rate will increase by four percentage points (to 40 per cent of eligible salary and wages for French productions and 32 per cent for productions in other languages).
- To limit the credit to independent producers, broadcasters holding a license from the Canadian Radio-television and Telecommunications Commission (CRTC), and production companies associated with these broadcasters, will no longer be eligible for the credit.
- Quebec offers a separate tax credit for film dubbing. Effective March 27, the credit rate will be increased from 28 per cent of qualified expenditures to 35 per cent.

*David Karp*

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Tel. 250-387-5044 | Email: [David.Karp@gov.bc.ca](mailto:David.Karp@gov.bc.ca)

## Karp, David FIN:EX

---

**From:** Flanagan, Paul FIN:EX  
**Sent:** Friday, January 8, 2016 10:00 AM  
**To:** Karp, David FIN:EX  
**Subject:** RE: Ontario film costs

Is there any way to find out the components – domestic, foreign and the animation? A time series going back would also be useful.

---

**From:** Karp, David FIN:EX  
**Sent:** Friday, January 8, 2016 9:27 AM  
**To:** Flanagan, Paul FIN:EX  
**Subject:** Ontario film costs

According to Ontario's 2015 budget:

"Ontario provided significant support of approximately \$335 million in 2014–15 to the film and television industry through the Ontario Film and Television Tax Credit (OFTTC), the Ontario Production Services Tax Credit (OPSTC) and the Ontario Computer Animation and Special Effects Tax Credit (OCASE)."

The quarterly report does not mention film. I will keep looking to see if I can find any forecasts.

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Tel. 250-387-5044 | Email: [David.Karp@gov.bc.ca](mailto:David.Karp@gov.bc.ca)



## Karp, David FIN:EX

---

**From:** Karp, David FIN:EX  
**Sent:** Friday, January 8, 2016 10:06 AM  
**To:** 'Tim.Fish@ontario.ca'  
**Subject:** RE: Cost of film tax credits

I've just been informed we are also interested in historical data, ideally with a breakdown between the three credits. Please let me know if you think this is doable or if there's someone else I should be talking to. Thanks!

---

**From:** Karp, David FIN:EX  
**Sent:** Friday, January 8, 2016 9:32 AM  
**To:** 'Tim.Fish@ontario.ca'  
**Subject:** Cost of film tax credits

Hi Tim,

I've been asked to find an estimate of the costs of Ontario's film tax credits.

The most recent statement I could find was from your 2015 budget, which estimated the 2014-15 combined cost of OFTTC, OPSTC and OCSAE to be \$335 million. Do you happen to know if this is the most up-to-date estimate available, or whether there is a more recent forecast (perhaps for 2015-16 or 2016-17) that is publicly available or that you'd be able to share with us?

Thanks,

David.

*David Karp*

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Tel. 250-387-5044 | Email: [David.Karp@gov.bc.ca](mailto:David.Karp@gov.bc.ca)

**Karp, David FIN:EX**

---

**From:** Karp, David FIN:EX  
**Sent:** Friday, January 8, 2016 10:09 AM  
**To:** Ewing, Patrick FIN:EX  
**Subject:** RE: Ontario film tax credits

Paul just informed me he's also looking for historical data as well as a breakdown between the three different film tax credits, if it's available. I haven't been able to find anything but perhaps you know their documents better than I do ☺

---

**From:** Karp, David FIN:EX  
**Sent:** Friday, January 8, 2016 9:33 AM  
**To:** Ewing, Patrick FIN:EX  
**Subject:** Ontario film tax credits

Hi Patrick,

I've been asked to find an estimate of the costs of Ontario's film tax credits.

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Thanks,

David.

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Karp, David FIN:EX

From: Karp, David FIN:EX  
Sent: Friday, January 8, 2016 10:22 AM  
To: Flanagan, Paul FIN:EX  
Subject: FW: Ontario film tax credits

Here's some info from Ontario's estimates. It looks like it shows the cost for all "cultural" credits (which includes film but also book publishing, interactive digital media and sound recording), as well as the change in each individual tax credit from 2014-15 to 2015-16, but not the cost of the individual credits.

I've got a request out to my film contact in Ontario to see if he can get us anything.

From: Ewing, Patrick FIN:EX  
Sent: Friday, January 8, 2016 10:17 AM  
To: Karp, David FIN:EX  
Subject: RE: Ontario film tax credits

David,

I did a Google search and pulled up their Estimates. This may be what you're looking for.

Standard Account by Item and Sub-Items			
(\$)			
VOTE-ITEM #	STANDARD ACCOUNT BY ITEM AND SUB-ITEMS		
OPERATING EXPENSE			
3808-1	Ontario Cultural Media Tax Credits		
	Transfer payments	3,217,600	
	Ontario Book Publishing Tax Credit	23,618,600	
	Ontario Computer Animation and Special Effects Tax Credit*	176,572,100	
	Ontario Film and Television Tax Credit	71,211,900	
	Ontario Interactive Digital Media Tax Credit**	164,780,500	
	Ontario Production Services Tax Credit*	292,200	439,692,900
	Ontario Sound Recording Tax Credit*		
	Total Operating Expense to be Voted		439,692,900
	Total Operating Expense for Ontario Cultural Media Tax Credits		439,692,900

\*Subject to the enactment of Schedule 40 of the proposed Building Ontario Up Act (Budget Measures), 2015

\*\*Subject to the enactment of supporting legislative amendments

Source: [http://www.fin.gov.on.ca/en/budget/estimates/2015-16/volume1/MTCS\\_2718.html](http://www.fin.gov.on.ca/en/budget/estimates/2015-16/volume1/MTCS_2718.html)

--  
Patrick

**From:** Ewing, Patrick FIN:EX  
**Sent:** Friday, January 8, 2016 10:11 AM  
**To:** Karp, David FIN:EX  
**Subject:** RE: Ontario film tax credits

Sorry, we generally don't look at the tax side – we leave that to your branch.

–  
*Patrick*

**From:** Karp, David FIN:EX  
**Sent:** Friday, January 8, 2016 10:09 AM  
**To:** Ewing, Patrick FIN:EX  
**Subject:** RE: Ontario film tax credits

Paul just informed me he's also looking for historical data as well as a breakdown between the three different film tax credits, if it's available. I haven't been able to find anything but perhaps you know their documents better than I do ☺

**From:** Karp, David FIN:EX  
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Karp, David FIN:EX

**From:** Karp, David FIN:EX  
**Sent:** Friday, January 8, 2016 10:24 AM  
**To:** Ewing, Patrick FIN:EX  
**Subject:** RE: Ontario film tax credits

s.16

**From:** Ewing, Patrick FIN:EX  
**Sent:** Friday, January 8, 2016 10:23 AM  
**To:** Karp, David FIN:EX  
**Subject:** RE: Ontario film tax credits

There's another table above that table in the link I sent you that may also be helpful.

Patrick

**From:** Karp, David FIN:EX  
**Sent:** Friday, January 8, 2016 10:18 AM  
**To:** Ewing, Patrick FIN:EX  
**Subject:** RE: Ontario film tax credits

Thanks! I think that's what we need.

**From:** Ewing, Patrick FIN:EX  
**Sent:** Friday, January 8, 2016 10:17 AM  
**To:** Karp, David FIN:EX  
**Subject:** RE: Ontario film tax credits

David,

I did a Google search and pulled up their Estimates. This may be what you're looking for.

Standard Account by Item and Sub-Items				
(\$)				
VOTE-ITEM #	STANDARD ACCOUNT BY ITEM AND SUB-ITEMS			
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3808-1	Ontario Cultural Media Tax Credits			
	Transfer payments			
	Ontario Book Publishing Tax Credit		3,217,600	
	Ontario Computer Animation and Special Effects Tax Credit*		23,618,600	

Ontario Film and Television Tax Credit	176,572,100		
Ontario Interactive Digital Media Tax Credit**	71,211,900		
Ontario Production Services Tax Credit*	164,780,500		
Ontario Sound Recording Tax Credit*	292,200		439,692,900
<b>Total Operating Expense to be Voted</b>			<b>439,692,900</b>
<b>Total Operating Expense for Ontario Cultural Media Tax Credits</b>			<b>439,692,900</b>

\*Subject to the enactment of Schedule 40 of the proposed Building Ontario Up Act (Budget Measures), 2015

\*\*Subject to the enactment of supporting legislative amendments

Source: [http://www.fin.gov.on.ca/en/budget/estimates/2015-16/volume1/MTCS\\_2718.html](http://www.fin.gov.on.ca/en/budget/estimates/2015-16/volume1/MTCS_2718.html)

--  
*Patrick*

**From:** Ewing, Patrick FIN:EX  
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**To:** Karp, David FIN:EX  
**Subject:** RE: Ontario film tax credits

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*Patrick*

**From:** Karp, David FIN:EX  
**Sent:** Friday, January 8, 2016 10:09 AM  
**To:** Ewing, Patrick FIN:EX  
**Subject:** RE: Ontario film tax credits

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**From:** Karp, David FIN:EX  
**Sent:** Friday, January 8, 2016 9:33 AM  
**To:** Ewing, Patrick FIN:EX  
**Subject:** Ontario film tax credits

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Thanks,

David.

*David Karp*

Tax Policy Analyst | Policy & Legislation Division | Ministry of Finance

107 – 617 Government Street, Victoria, BC V8W 9V8

Tel. 250-387-5044 | Email: [David.Karp@gov.bc.ca](mailto:David.Karp@gov.bc.ca)

## Karp, David FIN:EX

---

**From:** Karp, David FIN:EX  
**Sent:** Friday, January 8, 2016 11:45 AM  
**To:** Flanagan, Paul FIN:EX  
**Subject:** Ontario film tax credits

Hi Paul,

As discussed, here is the 2015-16 cost of Ontario's film tax credits (as reported in their 2015-16 estimates:  
[http://www.fin.gov.on.ca/en/budget/estimates/2015-16/volume1/MTCS\\_2718.html](http://www.fin.gov.on.ca/en/budget/estimates/2015-16/volume1/MTCS_2718.html)):

Ontario Film and Television Tax Credit: \$176.6 M  
Ontario Production Services Tax Credit: \$164.8 M  
Ontario Computer Animation and Special Effects Tax Credit: \$23.6 M

TOTAL: \$365.0 M

Here are the key changes to Ontario's film tax credits from their 2015 budget:

- Effective April 24, 2015, Ontario is reducing its production services tax credit rate from 25 per cent to 21.5 per cent. Additionally, effective for tax years beginning on or after April 24, 2015, at least 25 per cent of a corporation's expenditures must be for Ontario labour in order for the corporation to be eligible for the credit. There will also be a provision aimed at preventing corporations from contracting with related entities in order to get around this requirement. Finally, Ontario will also clarify that expenses incurred before a script is finalized are not eligible for a credit. These changes are expected to save Ontario approximately \$25 million per year.
- Effective April 24, 2015, the Ontario computer animation and special effects tax credit rate will be reduced from 20 per cent to 18 per cent. In addition, corporations that are ineligible for one of Ontario's basic film tax credits will no longer be eligible for the computer animation and special effects credit. The measure is expected to save Ontario approximately \$8 million per year.

Cheers,

David.

*David Karp*

Tax Policy Analyst | Policy & Legislation Division | Ministry of Finance  
107 – 617 Government Street, Victoria, BC V8W 9V8  
Tel. 250-387-5044 | Email: [David.Karp@gov.bc.ca](mailto:David.Karp@gov.bc.ca)



**Karp, David FIN:EX**

---

**From:** Fish, Tim (MOF) <Tim.Fish@ontario.ca>  
**Sent:** Friday, January 8, 2016 12:40 PM  
**To:** Karp, David FIN:EX  
**Subject:** RE: Cost of film tax credits

Hi David,

I've asked one of the economists to send you some numbers, so you should receive an email shortly.

The numbers are available in the Expenditure Estimates and Public Accounts. The cultural media credits are included in the budget of the Ministry of Tourism, Culture and Sport because they are refundable tax credits.

<http://www.fin.gov.on.ca/en/budget/estimates/>  
[http://www.fin.gov.on.ca/en/budget/estimates/2015-16/volume1/MTCS\\_2718.html](http://www.fin.gov.on.ca/en/budget/estimates/2015-16/volume1/MTCS_2718.html)

<https://www.ontario.ca/page/public-accounts-ontario>  
[http://www.fin.gov.on.ca/en/budget/paccts/2015/15\\_vol1\\_MTCS.html](http://www.fin.gov.on.ca/en/budget/paccts/2015/15_vol1_MTCS.html)

As an aside, do you work with Ted Cook at all?

By the way, <sup>s.22</sup>

All the best in 2016,

Tim

---

**From:** Karp, David FIN:EX [<mailto:David.Karp@gov.bc.ca>]  
**Sent:** January 8, 2016 1:06 PM  
**To:** Fish, Tim (MOF)  
**Subject:** RE: Cost of film tax credits

I've just been informed we are also interested in historical data, ideally with a breakdown between the three credits. Please let me know if you think this is doable or if there's someone else I should be talking to. Thanks!

---

**From:** Karp, David FIN:EX  
**Sent:** Friday, January 8, 2016 9:32 AM  
**To:** 'Tim.Fish@ontario.ca'  
**Subject:** Cost of film tax credits

Hi Tim,

I've been asked to find an estimate of the costs of Ontario's film tax credits.

The most recent statement I could find was from your 2015 budget, which estimated the 2014-15 combined cost of OFTTC, OPSTC and OCSAE to be \$335 million. Do you happen to know if this is the most up-to-date estimate available,

or whether there is a more recent forecast (perhaps for 2015-16 or 2016-17) that is publicly available or that you'd be able to share with us?

Thanks,

David.

*David Karp*

Tax Policy Analyst | Policy & Legislation Division | Ministry of Finance

107 – 617 Government Street, Victoria, BC V8W 9V8

Tel. 250-387-5044 | Email: [David.Karp@gov.bc.ca](mailto:David.Karp@gov.bc.ca)

**Karp, David FIN:EX**

---

**From:** Karp, David FIN:EX  
**Sent:** Monday, January 11, 2016 10:49 AM  
**To:** Flanagan, Paul FIN:EX  
**Subject:** Film tax credit tables

s.13

Page 109

Withheld pursuant to/removed as

s.13

*David Karp*

Tax Policy Analyst | Policy & Legislation Division | Ministry of Finance

107 – 617 Government Street, Victoria, BC V8W 9V8

Tel. 250-387-5044 | Email: [David.Karp@gov.bc.ca](mailto:David.Karp@gov.bc.ca)

**Karp, David FIN:EX**

---

**From:** Flanagan, Paul FIN:EX  
**Sent:** Monday, January 11, 2016 12:08 PM  
**To:** Karp, David FIN:EX; Purnell, Richard FIN:EX  
**Subject:** FW: Film credits

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

---

**From:** Riley, Dave FIN:EX  
**Sent:** Monday, January 11, 2016 11:54 AM  
**To:** Flanagan, Paul FIN:EX  
**Cc:** Nair, Anita A FIN:EX  
**Subject:** FW: Film credits

---

**From:** Riley, Dave FIN:EX  
**Sent:** Friday, January 8, 2016 10:08 AM  
**To:** Farkas, George FIN:EX  
**Cc:** Nair, Anita A FIN:EX  
**Subject:** RE: Film credits

s.13

-----Original Message-----  
**From:** Farkas, George FIN:EX  
**Sent:** Friday, January 8, 2016 9:51 AM

To: Riley, Dave FIN:EX  
Subject: Film credits

What's the up to date number on 15/16 for film

Sent from my iPhone

Page 113 to/à Page 117

Withheld pursuant to/removed as

s.14



**Karp, David FIN:EX**

---

**From:** Karp, David FIN:EX  
**Sent:** Wednesday, January 13, 2016 1:41 PM  
**To:** Morgan, Melissa FIN:EX  
**Subject:** Film - electronic versions  
**Attachments:** 347618 - Animation bullets.docx; 347744 - Animation avoidance follow-up.doc

Hi Melissa,

Here are the electronic versions of the updated film note and MLA bullets.

Thanks,

David.

*David Karp*  
Tax Policy Analyst | Policy & Legislation Division | Ministry of Finance  
107 – 617 Government Street, Victoria, BC V8W 9V8  
Tel. 250-387-5044 | Email: [David.Karp@gov.bc.ca](mailto:David.Karp@gov.bc.ca)

**347618 Bullets:**

- To encourage film production in all areas of the province, BC offers regional and distant location film tax credits for productions that do principal photography outside the Vancouver Area.
- On June 26, the government announced its intention to change BC's regional and distant location film and television tax credits for animated productions in Budget 2016. Regional and distant location tax credits for animated productions will be calculated by multiplying the applicable tax credit rate by the amount of eligible labour expenditures incurred in the regional or distant location area.

s.13

- It is intended that the change would apply to productions that begin key animation after June 26.
- The change as announced on June 26 is being implemented as part of budget legislation.
- Government recognizes the benefits of having a vibrant film industry in BC. In addition to benefiting from the favourable exchange rate and BC's pool of skilled labour, BC's animation studios will continue to be eligible for generous refundable tax credits worth up to 52.5 per cent of eligible labour expenses in the Vancouver area, and up to 71 per cent of eligible labour expenses in distant locations.

**Additional Background information:**

- BC's basic film tax credits are supplemented by regional and distant location tax credits. The regional tax credit is provided to qualifying film productions done outside the Vancouver area. The distant location tax credit is provided to productions done outside of the Vancouver, Fraser Valley and Whistler / Squamish areas.

s.13

**Ministry of Finance**  
**BRIEFING DOCUMENT**

**To:** Kim Henderson  
Deputy Minister

**Date Requested:** January 7, 2016  
**Date Required:** January 11, 2016

**Initiated by:** Paul Flanagan  
Executive Director  
Tax Policy Branch

**Date Prepared:** January 8, 2016

**Ministry Contact:** David Karp  
Tax Policy Analyst  
Tax Policy Branch

**Phone Number:** 250-387-5044  
**Email:** david.karp@gov.bc.ca

**Cliff #:** 347744

---

**TITLE:** Regional and distant location film tax credit changes.

---

**PURPOSE:**

**(X) FOR INFORMATION**

---

**DATE PREPARED:** January 8, 2016

**TITLE:** Regional and distant location film tax credit changes.

**ISSUE:** An animation company has complained about a change to tax credits for animated productions announced on June 26, 2015.

**BACKGROUND:**

BC offers two distinct tax credit programs for the film and television industry:

- Film Incentive BC (FIBC) tax credits are refundable credits for productions that meet Canadian content requirements (e.g., domestic productions).
  - o The basic credit 35 per cent
  - o Regional credit + 12.5 per cent (47.5 per cent total)
  - o Distant location credit + 6 per cent (53.5 per cent total)
- The Production Services Tax Credits (PSTC) are refundable tax credits for productions that do not meet Canadian content requirements (e.g., foreign films).
  - o The basic credit 33 per cent
  - o Regional credit + 6 per cent (39 per cent total)
  - o Distant location credit + 6 per cent (45 per cent total)

The regional tax credit is provided to qualifying film productions for which principal photography is done outside the Designated Vancouver Zone. The distant location tax credit is provided to productions done outside of the Vancouver, Fraser Valley and Whistler / Squamish areas.

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A tax notice was issued on June 26, 2015, announcing the government's intention to introduce legislation in Budget 2016 to enact changes to ensure the labour expenses did occur in the regional and distant locations. The changes would be effective for productions that commence principal photography on or after June 27, 2015. Industry associations and affected companies were also notified of the government's intention directly.

s.13

**DISCUSSION:**

s.13

The change is expected to be enacted through budget legislation and effective for productions with principal photography commencing on or after June 27, 2015.

The attached MLA bullets provide a summary response for MLAs facing questions on this issue.

Page 123 to/à Page 126

Withheld pursuant to/removed as

s.14

**Karp, David FIN:EX**

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**From:** Karp, David FIN:EX  
**Sent:** Wednesday, January 13, 2016 4:51 PM  
**To:** Flanagan, Paul FIN:EX; Purnell, Richard FIN:EX  
**Subject:** Film tax credit table

s.13

*David Karp*  
Tax Policy Analyst | Policy & Legislation Division | Ministry of Finance  
107 – 617 Government Street, Victoria, BC V8W 9V8  
Tel. 250-387-5044 | Email: [David.Karp@gov.bc.ca](mailto:David.Karp@gov.bc.ca)

Page 128 to/à Page 131

Withheld pursuant to/removed as

s.14



**Karp, David FIN:EX**

---

**From:** Karp, David FIN:EX  
**Sent:** Thursday, January 14, 2016 12:56 PM  
**To:** Flanagan, Paul FIN:EX; Purnell, Richard FIN:EX  
**Subject:** RE: Film tax credit table

Updated table as per Richard's request.

s.13

---

**From:** Karp, David FIN:EX  
**Sent:** Wednesday, January 13, 2016 4:51 PM  
**To:** Flanagan, Paul FIN:EX; Purnell, Richard FIN:EX  
**Subject:** Film tax credit table

s.13

*David Karp*

Tax Policy Analyst | Policy & Legislation Division | Ministry of Finance

107 – 617 Government Street, Victoria, BC V8W 9V8

Tel. 250-387-5044 | Email: [David.Karp@gov.bc.ca](mailto:David.Karp@gov.bc.ca)

Karp, David FIN:EX

---

**From:** Zoeller, Sonja GCPE:EX  
**Sent:** Friday, January 15, 2016 11:30 AM  
**To:** Karp, David FIN:EX  
**Subject:** RE: IN for approval: Film Tax Credits  
**Attachments:** IN\_Film Tax Credits\_15Jan16\_DRAFT.doc

Hi David,

Here's the revised version.

Thank you!

---

**From:** Karp, David FIN:EX  
**Sent:** Friday, January 15, 2016 10:38 AM  
**To:** Zoeller, Sonja GCPE:EX  
**Subject:** RE: IN for approval: Film Tax Credits

OK I'll hold off. Can you remind me when we last updated this note?

---

**From:** Zoeller, Sonja GCPE:EX  
**Sent:** Friday, January 15, 2016 10:20 AM  
**To:** Karp, David FIN:EX  
**Subject:** RE: IN for approval: Film Tax Credits

I think I'll have to send you another draft – Jamie just talked to me more about this.

---

**From:** Karp, David FIN:EX  
**Sent:** Friday, January 15, 2016 9:57 AM  
**To:** Zoeller, Sonja GCPE:EX  
**Subject:** RE: IN for approval: Film Tax Credits

I can try...

---

**From:** Zoeller, Sonja GCPE:EX  
**Sent:** Friday, January 15, 2016 9:26 AM  
**To:** Karp, David FIN:EX  
**Subject:** IN for approval: Film Tax Credits

Hi David,

Film tax credits have been in the news lately. Jamie asked me to update our IN asap. Is there any chance you could get it approved this morning?

Thanks!

**Sonja Zoeller**  
Public Affairs Officer  
Ministry of Finance  
Direct: 250-387-1248

Cell: 250-812-6844

CONFIDENTIALITY NOTICE:  
This e-mail was intended for a specific recipient. It may contain information that is privileged, confidential or exempt from disclosure. Any privilege that exists is not waived. If you are not the intended recipient, do not distribute it to another person or use it for any other purpose. Please delete it and advise me by return e-mail or telephone.

## ADVICE TO MINISTER

CONFIDENTIAL  
GCPE-FIN ISSUE NOTE  
DRAFT

Ministry of Finance  
Date: August 28, 2014  
Updated: January 15, 2016  
Minister Responsible: Michael de Jong

### Film Tax Credits

DRAFT

#### ADVICE AND RECOMMENDED RESPONSE:

s.13

- The industry has established world-class production infrastructure in our province, and our capacity for post-production and special effects work continues to grow. We're also rapidly developing our digital media and video gaming sector.
- B.C. tax credits are only one factor the industry uses to decide where to base its productions.
- B.C.'s advantages include its pool of skilled labour, one-of-a-kind scenery and proximity to major U.S. studios. A relatively weak Canadian dollar has also made it more affordable to base productions in here.

s.13

s.13

- As production increases, so does the amount of subsidy granted by the Province.
- Film tax credits do not reduce the tax paid by companies – they are direct subsidies to the companies based on their spending. The tax credits are not designed as a refund or rebate of taxes the industry and its participants pay. That means that film and TV companies get the tax credits based on eligible labour costs even if they pay very little or no provincial tax themselves.

s.16

## GROWTH IN B.C.'S FILM SECTOR

s.13

### SUPPORT FOR B.C.'S FILM SECTOR

- B.C.'s film and television tax credits serve to reduce the cost of wages for film and television companies and make operating in B.C. more competitive.
- Budget 2015 announced the extension of the Digital Animation or Visual Effects (DAVE) tax credit to eligible post-production activities.
- Government established "Creative BC", an independent society working with creative industries in B.C. to develop and implement a broad strategy capitalizing on the sector's strengths and identifying future opportunities.

### KEY FACTS REGARDING THE ISSUE:

A number of economists and business leaders, including B.C.'s Expert Panel on Business Tax Competitiveness, have noted there is little evidence that successive increases in these incentives produce a stable, competitive advantage for any of the participating provinces. s.13

s.13

The Vancouver Economic Commission estimates that more than 34,000 direct and indirect jobs are generated by film and television production in B.C., with more than 80% located in Metro Vancouver.

BC Film + Media (now Creative BC) noted in its May 2012 submission to the Expert Panel on Tax that B.C. has been able to "transition from a location that competes for individual productions to one where companies establish permanent studios" in animation and visual effects. But it also noted that film and television shoots do not involve long-term investment by foreign production companies.

### History

On January 15, 2016, the Province published an op-ed by Jordan Bateman of the Canadian Taxpayers Federation (<http://blogs.theprovince.com/2016/01/14/jordan-bateman-its-time-to-wean-film-industry-off-corporate-welfare/>) calling for government to reduce the amount of taxpayer-funded support for the industry, noting that the "provincial government cut cheques for \$1.5 billion in film subsidies over the past five years. That's more than taxpayers spent on the ministries of aboriginal relations, agriculture and environment combined".

## ADVICE TO MINISTER

On January 14, 2016, film industry representatives were on the radio discussing Oscar nominations for B.C.-based productions and attributing their success, at least in part, to B.C.'s film tax credits. (Lynda Steele CKNW/CBC Daybreak South). "We cannot bank on the dollar, it has to be our great tax credits which are always going to be the thing that help us get our films here in the Okanagan."

JTST Minister Shirley Bond said in July 2015 that despite the weak Canadian dollar, government is not considering changing the film incentive structure (<http://www.cknw.com/2015/07/27/85053/>).

In 2013, the film industry called on the B.C. government to match Ontario and Quebec's film and television tax credits to keep productions from leaving B.C. At the time, B.C. declined to increase the tax credits, calling it a race to the bottom. (<http://www.theglobeandmail.com/news/british-columbia/bc-film-advocacy-group-disbands/article14820208/>)

s.13

### Current support:

B.C. offers two distinct tax credit programs for the film and television industry:

- Domestic: Film Incentive BC (FIBC) is a labour based tax incentive that provides refundable tax credits to Canadian controlled production companies based on eligible BC labour costs.
  - Foreign: The Production Services Tax Credit (PSTC) is a labour based tax incentive that provides refundable tax credits to international or Canadian film and television production corporations that have incurred costs in British Columbia. The PSTC is not subject to any Canadian content requirements.
- B.C.'s film tax credits reduce the cost of wages for film and television companies and make operating in B.C. more competitive. For each dollar spent by a production company on eligible labour, B.C.'s film tax credits can return between 33 – 71 cents to that company. Film tax credits offered by the federal government are also available and add to these provincial payments.
  - Budget 2014 announced an amendment to the Film and Television Production Regulation to include the Capital Regional District (CRD) in the Distant Location Tax Credit, effective for productions beginning on or after February 19, 2014. This extension applies to both the Production Services Tax Credit and the Film Incentive BC tax credit.
  - Government established Creative BC, an independent society working with creative industries in B.C. to develop and implement a broad strategy capitalizing on the sector's strengths and identifying future opportunities.

Table 1: Creative BC Tax Credit Certifications

	Film Incentive BC (domestic productions)	Production Services tax credit (foreign productions)	Total
2012-13	s.13		
2013-14			
2014-15			

s.13

Communications Contact: Sonja Zoeller250 387-1248

Program Area Contact: David Karp250 387-5044

File Created: August 28, 2014

File Updated: January 15, 2016

File Location: J:\NEW - OPERATIONS\Issues Notes\Tax Policy

Program Area	Comm. Director	Deputy	Minister's Office



## Karp, David FIN:EX

---

**From:** Karp, David FIN:EX  
**Sent:** Friday, January 15, 2016 12:28 PM  
**To:** Purnell, Richard FIN:EX  
**Subject:** FW: IN for approval: Film Tax Credits  
**Attachments:** IN\_Film Tax Credits\_15Jan16\_DRAFT\_dk edits.doc

Richard, here are my comments. Can I send to Sonja?

---

**From:** Zoeller, Sonja GCPE:EX  
**Sent:** Friday, January 15, 2016 11:30 AM  
**To:** Karp, David FIN:EX  
**Subject:** RE: IN for approval: Film Tax Credits

Hi David,

Here's the revised version.

Thank you!

---

**From:** Karp, David FIN:EX  
**Sent:** Friday, January 15, 2016 10:38 AM  
**To:** Zoeller, Sonja GCPE:EX  
**Subject:** RE: IN for approval: Film Tax Credits

OK I'll hold off. Can you remind me when we last updated this note?

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**From:** Zoeller, Sonja GCPE:EX  
**Sent:** Friday, January 15, 2016 10:20 AM  
**To:** Karp, David FIN:EX  
**Subject:** RE: IN for approval: Film Tax Credits

I think I'll have to send you another draft – Jamie just talked to me more about this.

---

**From:** Karp, David FIN:EX  
**Sent:** Friday, January 15, 2016 9:57 AM  
**To:** Zoeller, Sonja GCPE:EX  
**Subject:** RE: IN for approval: Film Tax Credits

I can try...

---

**From:** Zoeller, Sonja GCPE:EX  
**Sent:** Friday, January 15, 2016 9:26 AM  
**To:** Karp, David FIN:EX  
**Subject:** IN for approval: Film Tax Credits

Hi David,

Film tax credits have been in the news lately. Jamie asked me to update our IN asap. Is there any chance you could get it approved this morning?

Thanks!

**Sonja Zoeller**  
Public Affairs Officer  
Ministry of Finance  
Direct: 250-387-1248  
Cell: 250-812-6844

CONFIDENTIALITY NOTICE:

This e-mail was intended for a specific recipient. It may contain information that is privileged, confidential or exempt from disclosure. Any privilege that exists is not waived. If you are not the intended recipient, do not distribute it to another person or use it for any other purpose. Please delete it and advise me by return e-mail or telephone.

## ADVICE TO MINISTER

<b>CONFIDENTIAL</b> <b>GCPE-FIN ISSUE NOTE</b> <b>DRAFT</b> Ministry of Finance Date: August 28, 2014 Updated: January 15, 2016 Minister Responsible: Michael de Jong	<b>Film Tax Credits</b>
---	-------------------------

DRAFT

### ADVICE AND RECOMMENDED RESPONSE:

- s.13

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s.13

s.13

- s.13

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s.13

**GROWTH IN B.C.'S FILM SECTOR**

s.13

s.13

**SUPPORT FOR B.C.'S FILM SECTOR**

- B.C.'s film and television tax credits serve to reduce the cost of wages for film and television companies and make operating in B.C. more competitive.
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**KEY FACTS REGARDING THE ISSUE:**

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s.13

s.13

The Vancouver Economic Commission estimates that more than 34,000 direct and indirect jobs are generated by film and television production in B.C., with more than 80% located in Metro Vancouver.

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**History**

## ADVICE TO MINISTER

On January 15, 2016, the Province published an op-ed by Jordan Bateman of the Canadian Taxpayers Federation (<http://blogs.theprovince.com/2016/01/14/jordan-bateman-its-time-to-wean-film-industry-off-corporate-welfare/>) calling for government to reduce the amount of taxpayer-funded support for the industry, noting that the "provincial government cut cheques for \$1.5 billion in film subsidies over the past five years. That's more than taxpayers spent on the ministries of aboriginal relations, agriculture and environment combined".

On January 14, 2016, film industry representatives were on the radio discussing Oscar nominations for B.C.-based productions and attributing their success, at least in part, to B.C.'s film tax credits. (Lynda Steele CKNW/CBC Daybreak South). "We cannot bank on the dollar, it has to be our great tax credits which are always going to be the thing that help us get our films here in the Okanagan."

JTST Minister Shirley Bond said in July 2015 that despite the weak Canadian dollar, government is not considering changing the film incentive structure (<http://www.cknw.com/2015/07/27/85053/>).

In 2013, the film industry called on the B.C. government to match Ontario and Quebec's film and television tax credits to keep productions from leaving B.C. At the time, B.C. declined to increase the tax credits, calling it a race to the bottom. (<http://www.theglobeandmail.com/news/british-columbia/bc-film-advocacy-group-disbands/article14820208/>)

s.13

s.13

### Current support:

- B.C. offers two distinct tax credit programs for the film and television industry:
  - Domestic: Film Incentive BC (FIBC) is a labour based tax incentive that provides refundable tax credits to Canadian controlled production companies based on eligible BC labour costs.
  - Foreign: The Production Services Tax Credit (PSTC) is a labour based tax incentive that provides refundable tax credits to international or Canadian film and television production corporations that have incurred costs in British Columbia. The PSTC is not subject to any Canadian content requirements.
- B.C.'s film tax credits reduce the cost of wages for film and television companies and make operating in B.C. more competitive. For each dollar spent by a production company on eligible labour, B.C.'s film tax credits can return between 33 – 71 cents to that company. Film tax credits offered by the federal government are also available and add to these provincial payments.
- Budget 2014 announced an amendment to the Film and Television Production Regulation to include the Capital Regional District (CRD) in the Distant Location Tax Credit, effective for productions beginning on or after February 19, 2014. This extension applies to both the Production Services Tax Credit and the Film Incentive BC tax credit.
- Government established Creative BC, an independent society working with creative industries in B.C. to develop and implement a broad strategy capitalizing on the sector's strengths and identifying future opportunities.

s.13

Table 1: BC film production spending (based on Creative BC Tax Credit Certifications)			
	Film Incentive BC (domestic productions)	Production Services tax credit (foreign productions)	Total
2012-13	s.13		
2013-14			
2014-15			

s.13

Communications Contact: Sonja Zoeller250 387-1248

Program Area Contact: David Karp250 387-5044

File Created: August 28, 2014

File Updated: January 15, 2016

File Location: J:\NEW - OPERATIONS\Issues Notes\Tax Policy

Program Area	Comm. Director	Deputy	Minister's Office
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**ADVICE TO MINISTER**

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**Karp, David FIN:EX**

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**From:** Karp, David FIN:EX  
**Sent:** Friday, January 15, 2016 12:56 PM  
**To:** Zoeller, Sonja GCPE:EX  
**Subject:** RE: film and tax credits

It's probably "yes," but what figure is she referring to exactly (e.g. year, CRA assessments vs. Creative BC certifications)?

---

**From:** Zoeller, Sonja GCPE:EX  
**Sent:** Friday, January 15, 2016 12:51 PM  
**To:** Karp, David FIN:EX  
**Subject:** FW: film and tax credits

Do you know?

---

**From:** Edwardson, Jamie GCPE:EX  
**Sent:** Friday, January 15, 2016 12:33 PM  
**To:** Zoeller, Sonja GCPE:EX  
**Subject:** FW: film and tax credits

I'm sure it's yes, but please confirm.

---

**From:** Mi-Jung Lee [<mailto:Mi-Jung.Lee@bellmedia.ca>]  
**Sent:** Friday, January 15, 2016 12:17 PM  
**To:** Edwardson, Jamie GCPE:EX  
**Subject:** film and tax credits

Hi Jamie:  
Do you know if the nearly \$600 million in tax credits would be a record in BC?

Thanks,  
Mi-Jung

---

**Mi-Jung Lee** | Senior Reporter/Anchor  
CTV Vancouver | 604.609.5828 | [mi-jung.lee@bellmedia.ca](mailto:mi-jung.lee@bellmedia.ca)  
959 Robson, 5<sup>th</sup> floor  
Vancouver, BC V6Z 1X5  
[@ctvmijunglee](http://twitter.com/ctvmijunglee)  
<http://vancouver.ctvnews.ca/>





Karp, David FIN:EX

---

**From:** Karp, David FIN:EX  
**Sent:** Friday, January 15, 2016 1:32 PM  
**To:** Zoeller, Sonja GCPE:EX  
**Cc:** Purnell, Richard FIN:EX  
**Subject:** RE: film and tax credits

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

Yes, the \$514M would be a record for BC.

---

**From:** Zoeller, Sonja GCPE:EX  
**Sent:** Friday, January 15, 2016 12:51 PM  
**To:** Karp, David FIN:EX  
**Subject:** FW: film and tax credits

Do you know?

---

**From:** Edwardson, Jamie GCPE:EX  
**Sent:** Friday, January 15, 2016 12:33 PM  
**To:** Zoeller, Sonja GCPE:EX  
**Subject:** FW: film and tax credits

I'm sure it's yes, but please confirm.

---

**From:** Mi-Jung Lee [<mailto:Mi-Jung.Lee@bellmedia.ca>]  
**Sent:** Friday, January 15, 2016 12:17 PM  
**To:** Edwardson, Jamie GCPE:EX  
**Subject:** film and tax credits

Hi Jamie:  
Do you know if the nearly \$600 million in tax credits would be a record in BC?

Thanks,  
Mi-Jung

---

**Mi-Jung Lee** | Senior Reporter/Anchor  
CTV Vancouver | 604.609.5823 | [mi-jung.lee@bellmedia.ca](mailto:mi-jung.lee@bellmedia.ca)  
999 Robson, 5<sup>th</sup> floor  
Vancouver, BC V6Z 1X5  
[@ctvmijunglee](#)  
<http://vancouver.ctvnews.ca/>



Karp, David FIN:EX

---

**From:** Karp, David FIN:EX  
**Sent:** Friday, January 22, 2016 4:25 PM  
**To:** Flanagan, Paul FIN:EX  
**Cc:** Purnell, Richard FIN:EX  
**Subject:** Film change explained  
**Attachments:** Film rates explained.docx

Paul, is this what you envisioned?

*David Karp*  
Tax Policy Analyst | Policy & Legislation Division | Ministry of Finance  
107 – 617 Government Street, Victoria, BC V8W 9V8  
Tel. 250-387-5044 | Email: [David.Karp@gov.bc.ca](mailto:David.Karp@gov.bc.ca)

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Withheld pursuant to/removed as

s.14

**Karp, David FIN:EX**

---

**From:** Zoeller, Sonja GCPE:EX  
**Sent:** Monday, January 25, 2016 12:02 PM  
**To:** Karp, David FIN:EX  
**Subject:** IN on regional film tax credit changes  
**Attachments:** IN\_Regional Film Tax Credit Changes\_10July15\_FINAL.doc

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

I guess it makes more sense just to leave it as ‘final’ until we know if an update is required. If you think the wording should be updated let me know and I’ll change the date and put it into draft.

Our deadline is Wednesday.

Thank you!

**Sonja Zoeller**  
Public Affairs Officer  
Ministry of Finance  
Direct: 250-387-1248  
Cell: 250-812-6844

**CONFIDENTIALITY NOTICE:**  
This e-mail was intended for a specific recipient. It may contain information that is privileged, confidential or exempt from disclosure. Any privilege that exists is not waived. If you are not the intended recipient, do not distribute it to another person or use it for any other purpose. Please delete it and advise me by return e-mail or telephone.

ADVICE TO MINISTER

<p>CONFIDENTIAL GCPE-FIN ISSUE NOTE</p> <p>Ministry of Finance Date: June 23, 2015 Updated: July 10, 2015 Minister Responsible: Michael de Jong</p>	<p><b>Regional and distant location film and television tax credit changes – animated productions</b></p>
---	---

ADVICE AND RECOMMENDED RESPONSE:

- We intend to clarify the way B.C.'s regional and distant location film and television tax credits are calculated for animated film productions.
- These credits aim to encourage film and television productions to locate outside of the Vancouver area, so the benefits of a vibrant film industry can be shared across the province.
- The change will clarify that animated productions will only be eligible for regional and distant location film and television tax credits based on the portion of labour costs incurred in the regional or distant location areas.
- This will ensure the regional and distant location film and television tax credits operate as intended: to provide a tax benefit for animation jobs in regional or distant location areas.
- We intend to introduce the necessary legislation as part of Budget 2016. The new formula for calculating the regional and distant location film and television tax credits would apply retroactively to animated productions that begin key animation after June 25, 2015.

KEY FACTS REGARDING THE ISSUE:

The original intent of the regional credit was to recognize the additional costs (union benefits such as travel costs and higher wages) that Vancouver studios incur while filming outside the Vancouver area. The distant location credit was introduced in 2008 to encourage film studios and production activities outside the lower mainland.

s.13

The proposed legislative changes will limit the regional and distant location credits to labour expenses incurred in the region or distant locations. This will ensure the incentive to locate animation activity in a regional or distant location area is protected by preventing animated productions from claiming the credits on expenses incurred in Vancouver.

Twelve provinces and U.S. states (including BC) offer regional incentives for film. Most other jurisdictions base their regional incentives on the percentage of time spent at a location, or the percentage of spending incurred at a location.

BC offers two distinct tax credit programs for the film and television industry:

- Film Incentive BC (FIBC) tax credits are refundable credits for productions that meet Canadian content requirements (e.g., domestic productions).
  - The basic credit 35 per cent
  - Regional credit<sup>1</sup> + 12.5 per cent (47.5% total)
  - Distant location credit<sup>2</sup> + 6 per cent (53.5% total)
- The Production Services Tax Credits (PSTC) are refundable tax credits are for productions that do not meet Canadian content requirements (e.g., foreign films).
  - The basic credit 33 per cent
  - Regional credit<sup>1</sup> + 6 per cent (39% total)
  - Distant location credit<sup>2</sup> + 6 per cent (45% total)

The Province is declaring July 27 as "Screen in B.C. Day", an event led by JTST to promote B.C.'s film industry. The event consists of an announcement of the opening of B.C.'s LA Film office and a tour of two Vancouver studios and Vancouver Film School. A number of industry stakeholders are expected to participate, including Motion Picture Production Industry Association of BC and Canadian Media Production Association.

<sup>1</sup> The regional tax credit is provided to qualifying film productions for which principal photography is done outside the Designated Vancouver Zone.  
<sup>2</sup> The distant location tax credit is provided to productions done outside of the Vancouver, Fraser Valley and Whistler/Squamish areas.

ADVICE TO MINISTER

Communications Contact: Sonja Zoeller, 387-1248  
Program Area Contact: David Karp, 387-5044  
File Created: June 23, 2015  
File Updated: July 10, 2015  
File Location: J:\NEW -  
OPERATIONS\Announcements\2015\06 -  
June TBD - Film Tax Credit Changes\

Program Area	Comm. Director	Deputy	Minister's Office
DK/RP	JE		

**Karp, David FIN:EX**

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**From:** Karp, David FIN:EX  
**Sent:** Monday, January 25, 2016 5:06 PM  
**To:** Flanagan, Paul FIN:EX  
**Cc:** Purnell, Richard FIN:EX  
**Subject:** RE: Film change explained  
**Attachments:** Film rates explained\_2.docx

**Foillow Up Flag:** Follow up  
**Flag Status:** Flagged

Updated as per your request, Paul. I will discuss with Mark.

---

**From:** Karp, David FIN:EX  
**Sent:** Friday, January 22, 2016 4:25 PM  
**To:** Flanagan, Paul FIN:EX  
**Cc:** Purnell, Richard FIN:EX  
**Subject:** Film change explained

Paul, is this what you envisioned?

*David Karp*  
Tax Policy Analyst | Policy & Legislation Division | Ministry of Finance  
107 – 617 Government Street, Victoria, BC V8W 9V8  
Tel. 250-387-5044 | Email: [David.Karp@gov.bc.ca](mailto:David.Karp@gov.bc.ca)



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s.14

**Karp, David FIN:EX**

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**From:** Karp, David FIN:EX  
**Sent:** Monday, January 25, 2016 5:08 PM  
**To:** Gunther, Mark FIN:EX  
**Subject:** Film update  
**Attachments:** Film rates explained\_2.docx

Hi Mark,

Paul asked that I share this with you. It is a document that outlines the latest policy position on film. We can discuss tomorrow.

Thanks,

David.

*David Karp*  
Tax Policy Analyst | Policy & Legislation Division | Ministry of Finance  
107 – 617 Government Street, Victoria, BC V8W 9V8  
Tel. 250-387-5044 | Email: [David.Karp@gov.bc.ca](mailto:David.Karp@gov.bc.ca)

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**Karp, David FIN:EX**

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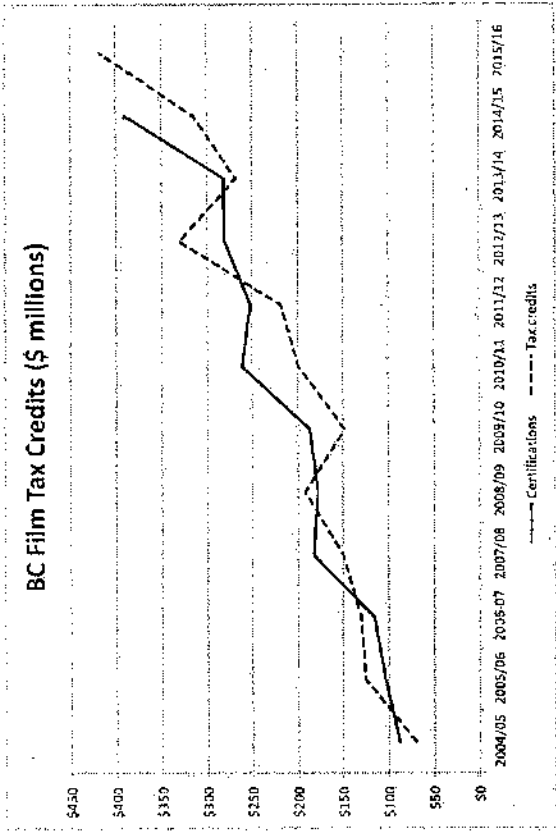
**From:** Karp, David FIN:EX  
**Sent:** Wednesday, January 27, 2016 2:20 PM  
**To:** Flanagan, Paul FIN:EX  
**Subject:** Excel sheet for film chart  
**Attachments:** David's analysis.xlsx

See 'Exchange rates' tab

*David Karp*  
Tax Policy Analyst | Policy & Legislation Division | Ministry of Finance  
107 – 617 Government Street, Victoria, BC V8W 9V8  
Tel. 250-387-5044 | Email: [David.Karp@gov.bc.ca](mailto:David.Karp@gov.bc.ca)

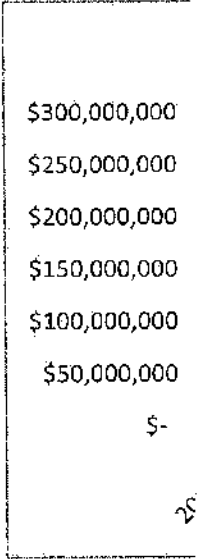
Year	1999/00	2000/01	2001/02	2002/03	2003/04	2004/05	2005/06	2006/07	2007/08	2008/09	2009/10	2010/11	2011/12	2012/13	2013/14	2014/15	2015/16	2016/17*	2017/18*	2018/19*	2019/20*	YTD (to Sept. 30)
Assessments	6,784,783	23,682,812	50,987,893	90,829,725	41,368,304	74,407,025	105,915,535	126,225,458	182,764,814	124,995,731	140,394,540	211,151,011	254,248,401	272,588,170	242,667,957	303,815,438						175,450,582
Certifications					88,197,583	103,374,819	115,683,681	182,924,705	182,924,705	178,035,319	186,902,805	260,457,184	251,682,648	280,243,699	281,404,256	389,844,942						155,200,893
Tax credits					700,000,000	125,000,000	130,000,000	130,000,000	150,000,000	192,000,000	148,000,000	199,000,000	218,000,000	331,000,000	268,000,000	315,000,000	417,500,000	427,500,000	437,500,000	447,500,000	457,500,000	

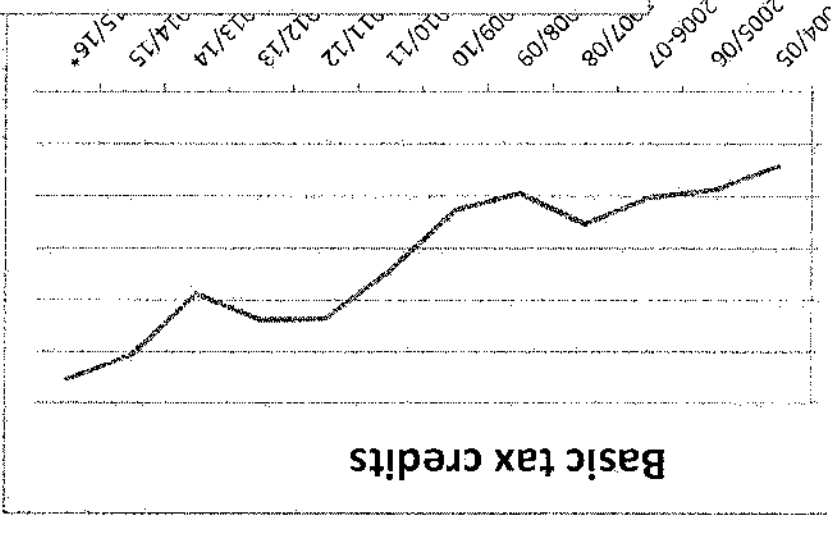
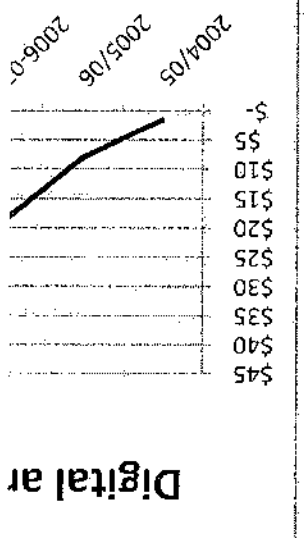
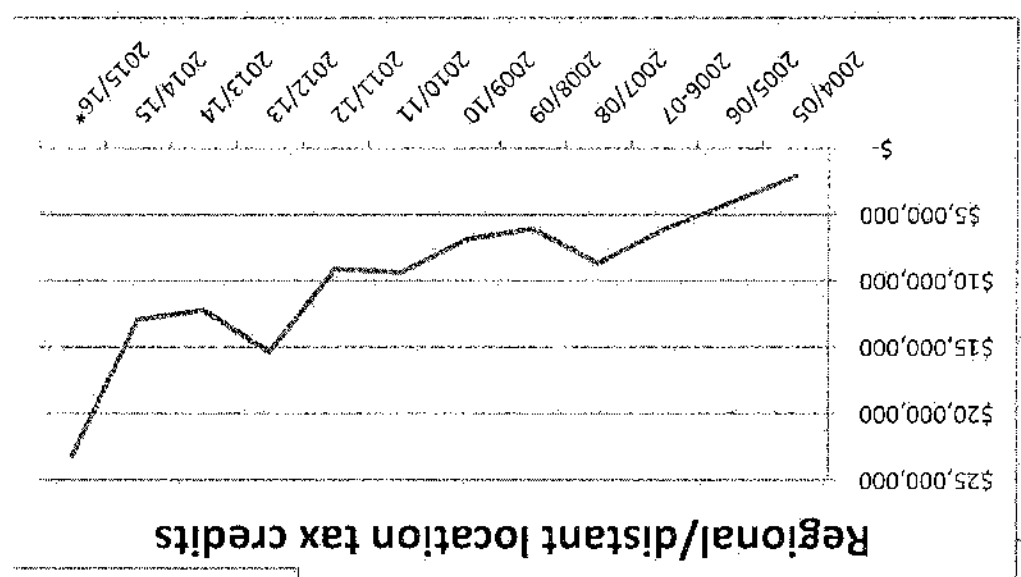
Actuals data are all forecasts. Assessments and certification data are actuals up to Sept. 2015, and forecasts thereafter.



	2004/05	2005/06	2006-07	2007/08	2008/09	2009/10
Basic	\$ 70,801,018	\$ 93,732,653	\$ 101,028,037	\$ 126,771,695	\$ 97,138,569	\$ 113,320,919
Regional/d	\$ 2,072,162	\$ 4,114,367	\$ 6,099,359	\$ 8,648,260	\$ 6,062,517	\$ 6,840,760
DAVE	\$ 1,473,778	\$ 8,036,941	\$ 19,078,988	\$ 17,321,535	\$ 21,790,706	\$ 20,190,987

Data is based on assessments, 2015-16 is a forecast based on year-to-date totals.

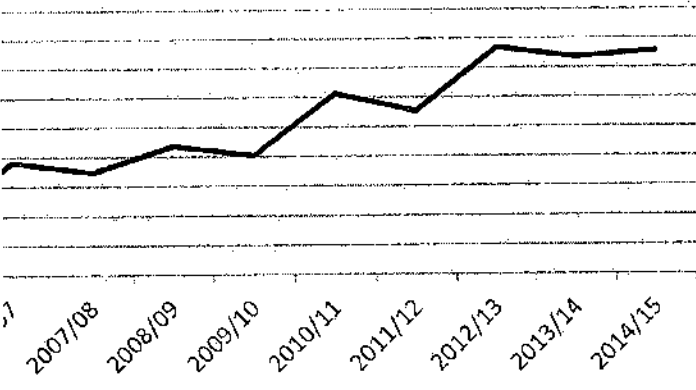




2010/11	\$ 171,169,911	\$ 217,497,055	\$ 218,767,941	\$ 193,704,984	\$ 252,864,190	\$ 276,926,030
2011/12	\$ 9,366,289	\$ 9,090,631	\$ 15,363,959	\$ 12,215,253	\$ 12,917,603	\$ 23,226,590
2012/13	\$ 30,610,926	\$ 27,615,094	\$ 38,443,193	\$ 36,727,114	\$ 37,826,411	\$ 50,766,316
2013/14						
2014/15						
2015/16*						

YTD (to Sept. 30)  
\$ 138,463,015  
\$ 11,613,295  
\$ 25,383,158

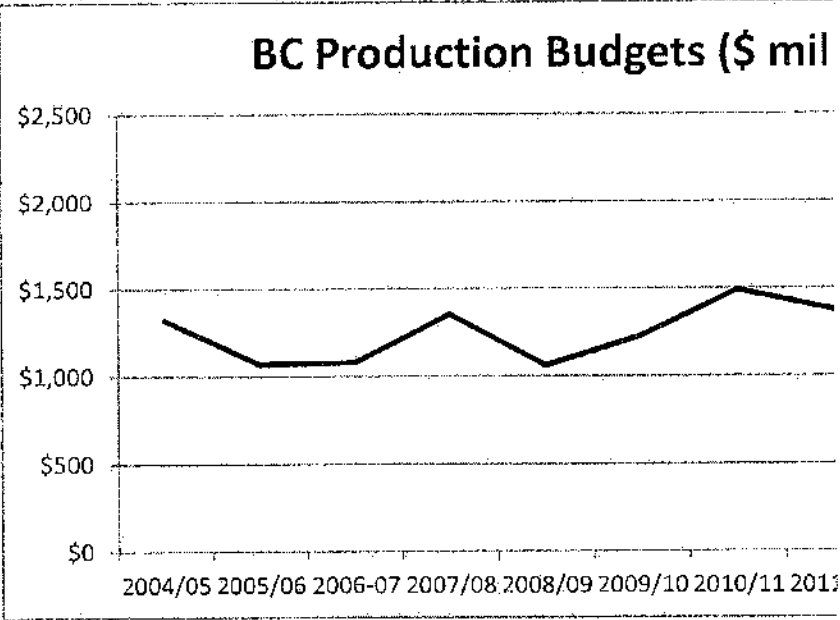
Animation or visual effects tax  
credits (\$ millions)



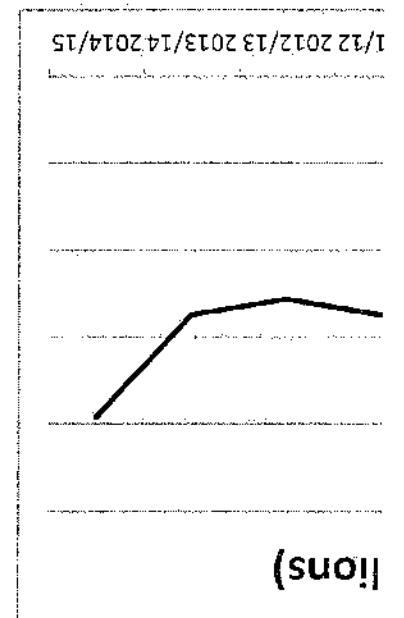


2004/05	Film Incentive BC	\$151	150684510	1168786375
	Production Services	\$1,169		
		\$1,319		
2005/06		\$94	94342580	973268106
		\$973		
		\$1,068		
2006-07		\$94	93766924	982320991
		\$982		
		\$1,076		
2007/08		\$179	178506585	1174097705
		\$1,174		
		\$1,353		

2008/09	2009/10	2010/11	2011/12	2012/13	
\$158		\$135	\$126	\$98	\$197
\$900		\$1,092	\$1,364	\$1,277	\$1,086
\$1,058		\$1,228	\$1,489	\$1,375	\$1,283
158081660	135168594	125786747	97848758	196799053	
900311288	1092404202	1363504688	1277161984	1086477631	

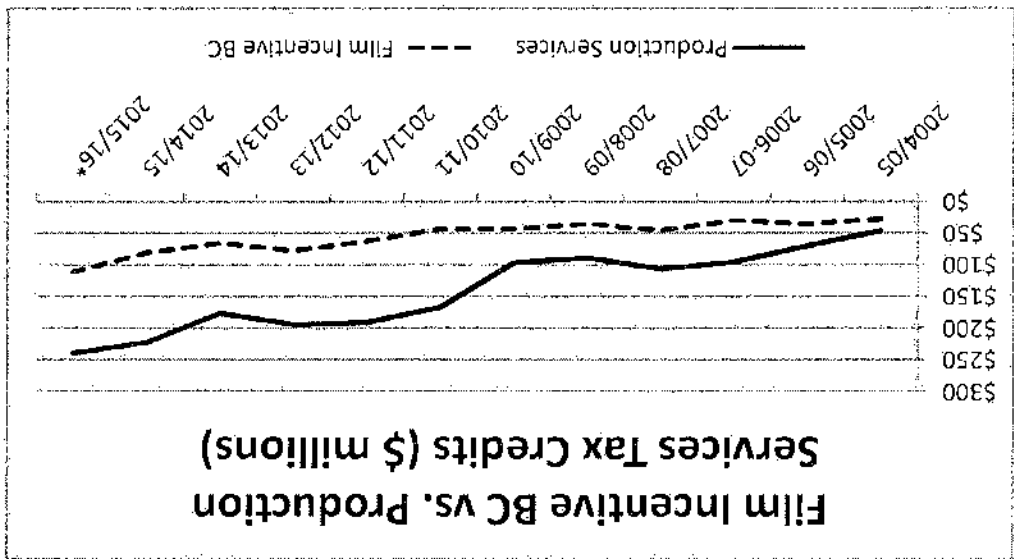


2013/14	\$292			
	\$1,082			
	\$1,373			
2014/15	\$289			
	\$1,672			
	\$1,962			
2015/16*	\$330			
	\$1,578			
	\$1,909			
YTD (to Oct. 30)	\$174			
	\$672			
		173,977,123		
		672158893		



<b>Fiscal Year</b>	2004/05	2005/06	2006-07	2007/08	2008/09
Film Incentive BC	27,624,321	35,314,409	30,221,536	46,198,905	35,712,426
Production Services	46,776,704	70,601,126	96,004,922	106,565,909	89,287,305
% PSTC	0.63	0.67	0.76	0.70	0.71
PSTC average claim	429,144.07	547,295.55	640,032.81	715,207.44	522,147.98
FIBC average claim	207,701.66	257,769.41	190,072.55	224,266.53	197,306.22
Ration	2.066156188	2.123198222	3.367307913	3.189095786	2.646383778

2009/10	43,403,844	96,990,696	0.69	468,554.09	224,890.38	2.083477647
2010/11	43,866,701	167,284,310	0.79	972,583.20	192,397.81	5.055063727
2011/12	62,842,348	191,406,053	0.75	902,858.74	267,414.25	3.376255197
2012/13	78,095,047	194,494,123	0.71	944,146.23	306,058.78	3.094964965
2013/14	65,795,164	176,862,793	0.73	803,921.79	270,761.99	2.969108704
2014/15	81,398,614	222,276,824	0.73	1,028,781.59	340,579.97	3.020675519



2015/16\*

110,795,010

240,126,154

0.68

0.71

1,212,758.35

553,975.05

2.189193094

April	FIBC	7%	4%	8%	8%	8%	7%	5%	5%	5%	16%
	PSTC	5%	8%	8%	5%	5%	5%	5%	5%	5%	8%
	Total	5%	7%	8%	6%	6%	6%	6%	6%	6%	8%

The purpose of this sheet is to come up with a formula to seasonally adjust partial year certification data.

November	December	January	February	March		
14%	8%	6%	12%	7%	319472261	0.218302
14%	5%	12%	19%	8%	1143970438	0.781698
14%	5%	11%	17%	8%	1463442699	



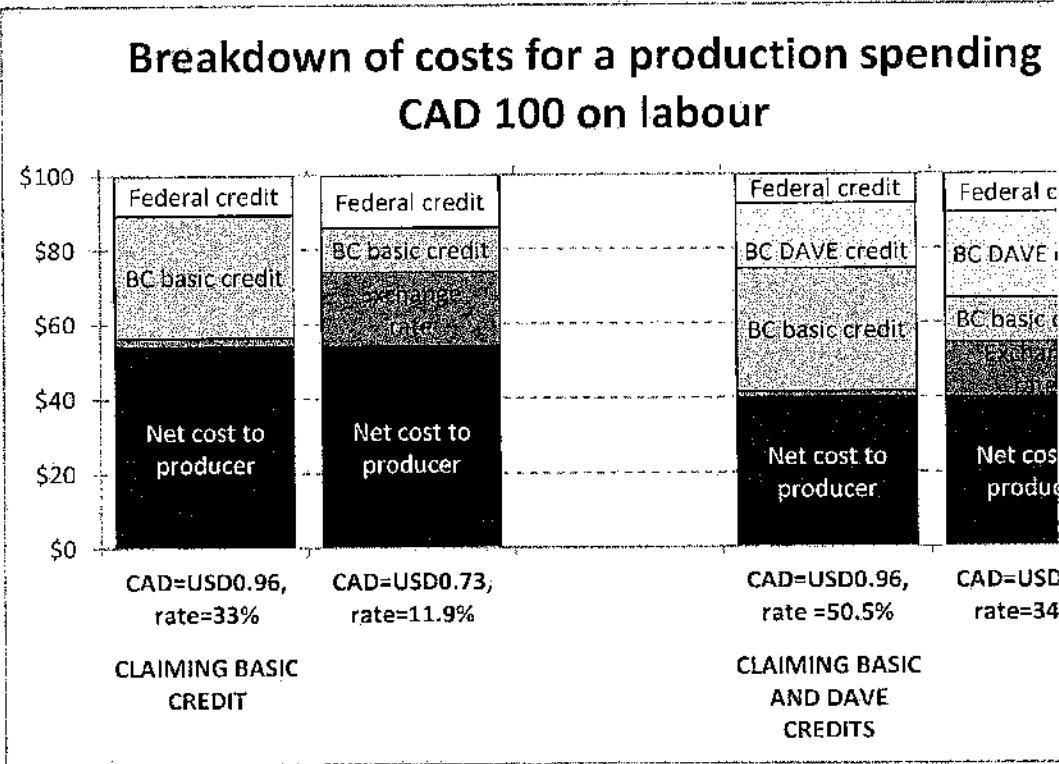
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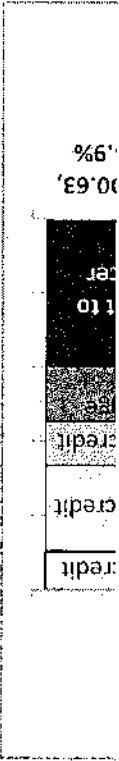
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CLAIMING BASIC CREDIT		CAD=USD0.96, rate=33%	
BC basic credit	33		
BC DAVE credit	0		
Federal credit	10.72		
Exchange rate	2.25		
Net cost to producer	54.03		
Dummy	0		
			100

CLAIMING BASIC AND DAVE CREDITS			
CAD=USD0.73, rate=11.9%		CAD=USD0.96, rate =50.5 CAD=USD0.63, rate=34.9%	
\$11.90	\$0.00	\$33.00	\$11.90
\$0.00	\$0.00	\$17.50	\$23.01
\$14.10	\$0.00	\$7.92	\$10.42
\$19.98	\$0.00	\$1.66	\$14.76
\$54.02	\$0.00	\$39.92	\$39.92
0	0	0	0
99.996	0	100	100.006





	Film Incentive BC productions	Film Incentive BC credit	Production services productions
Direct to DVD	s.21		11
Feature film	20 \$	2,575,482	53
Mini-series	s.21		
Movie of the week	50 \$	21,426,022	11
TV pilot	s.21		12
TV program	20 \$	2,513,305	s.21
TV series	40 \$	48,067,495	55
Web-based/other	s.21		

Production services credit	Number of product	Total tax credits	Average tax credit	Percentage of tax cred
\$ 12,178,893	s.21			
\$ 106,406,937	73	\$ 108,982,419	\$ 1,492,910	28%
\$ s.21				
\$ 8,803,655	61	\$ 30,229,677	\$ 495,568	8%
\$ 7,602,838	15	\$ 8,168,656	\$ 544,577	2%
\$ s.21				
\$ 174,533,148	95	\$ 222,600,643	\$ 2,343,165	57%
\$ s.21				

its

**Karp, David FIN:EX**

---

**From:** Flanagan, Paul FIN:EX  
**Sent:** Thursday, January 28, 2016 1:17 PM  
**To:** Purnell, Richard FIN:EX; Karp, David FIN:EX  
**Subject:** FW: Film  
**Attachments:** Factsheet - Film and Television 2016.docx

Did I forward this to you?

---

**From:** Lamare, Karen JTST:EX  
**Sent:** Wednesday, January 27, 2016 9:09 AM  
**To:** Flanagan, Paul FIN:EX; Sit, Vera JTST:EX  
**Subject:** RE: Film

Hi Paul,

Here is a Film and Television Fact sheet I prepared. It has some info including employment which is estimated at 20,000.

Please let me know if you need further info and I can see what I can find.

Thanks, K

---

**From:** Flanagan, Paul FIN:EX  
**Sent:** Wednesday, January 27, 2016 7:50 AM  
**To:** Sit, Vera JTST:EX; Lamare, Karen JTST:EX  
**Subject:** Film

I need some basic stats on the film industry this morning. Employment etc.

Paul Flanagan  
Executive Director, Tax Policy Branch  
BC Ministry of Finance



## Factsheet: B.C. Film, Television, Digital Animation and Visual Effects Production Activity

Date: January 25, 2016

### Film and Television Industry overview:

- B.C. is one of the top centres for screen-production excellence in North America.
- The province is known globally for excellence in physical and post-production, visual effects, animation and interactive games as well as original content by B.C.-based production companies.
- Over the last five years, British Columbia has grown to become one of the world's largest cluster for visual effects and digital animation companies, confirming our reputation as a global full-service production centre capable of performing the complete spectrum of services required for major productions.
- Our new and renewed supports for these industries which include an extension of the Interactive Digital Media tax credit till August 31, 2018 and an expansion of the Digital Animation or Visual Effects (DAVE) tax credit to include post-production activities will mean even more film and television production, visual effects work, video games development, and jobs and investment coming through B.C.'s creative sector.

### Film and Television Industry Statistics:

- B.C. production expenditures reached an estimated \$2 billion in fiscal year 2014-15 compared to \$1.45 billion in fiscal 2013-14. This represents the highest volume of tax credit certifications for film and television production in B.C. since incentives were first introduced in 1998.
- Creative BC tax credit certifications projections for 2015/16 are close to \$2 billion in BC production expenditures (\$296 million for FIBC and \$1.69 billion for PSTC) with an estimated tax credit of \$375 million (\$59 million FIBC and \$316 million for PSTC).
- British Columbia's motion picture industry supports approximately 20,000 direct and indirect quality jobs that make up a talented, highly experienced and knowledge-driven workforce.
- U.S. originated film and television production activity in B.C. has been very robust in 2015/16 driven by a low Canadian dollar and B.C.'s growth as one of the world's largest clusters for visual effects and digital animation companies.
- U.S. production budgets based on PSTC tax credit certifications in 2014/15 equalled \$1.67 billion, compared to \$1.08 billion in 2013/14. Much of this increase was driven by growth in U.S. television series production activity.

### Recent Productions:

- British Columbia has recently hosted many large budget feature films including *Deadpool*, *The BFG*, *Star Trek into Darkness*, *Planet of the Apes*, *Warcraft* and *Monster Trucks*. Over 50 U.S. TV series were completed during the last year including the highly popular series *Flash*, *Bates Motel*, *Arrow*, *DC: Legends of Tomorrow* and *Disney's Once Upon a Time*.

#### **Digital Animation and Visual Effects (DAVE) Activity**

- Digital animation and visual effects only projects spent an estimated \$380 million based on tax certifications in 2014/15, an increase of over \$130 million from 2013/14. This amount does not include visual effects work on projects that are filmed in British Columbia so does not represent the total VFX activity in the province. (Requested 2015/16 data from CrBC)
- The success and strong talent base within B.C.'s digital cluster motivated Sony Pictures Imageworks to move its head office from California to Vancouver. The company's new state-of-the-art facility can accommodate up to 700 artists, the largest footprint for a VFX facility in Vancouver. Current Sony Imageworks projects include Disney's *Alice in Wonderland: Through the Looking Glass* and Rovio's *Angry Birds* movies.
- Industrial Light and Magic (ILM) which opened its first Canadian studio in Vancouver in 2013 recently expanded into a new 30,000 square foot studio in Gastown. The company is already planning to expand its studio to 70,000 square feet to accommodate its workforce which is expected to grow from 300 to up to 700 artists and management in the next two years. Recent ILM visual effects projects include *Star Wars: The Force Awakens*, *Spectre-007* and *Warcraft*.
- Australian production company Animal Logic, responsible for international animated hit *The Lego Movie*, opened a new office in Vancouver in September 2015. The BC branch is opening specifically to produce *The Lego Movie Sequel*, plus two additional movies.

#### **Provincial Government Enhancements to Tax Credits:**

- Budget 2015 clearly demonstrated the Province's support for this sector with an expansion of the Digital Animation or Visual Effects (DAVE) tax credit to include post-production activities. This expansion is effective where principal photography begins on or after March 1, 2015.
- Creative BC tax credit data demonstrates that the broadening of the DAVE credit to post production sound and editing has resulted in more domestic and international producers completing their projects in BC.
- Budget 2015 also extended the Interactive Digital Media Tax Credit (IDMTC) to August 31, 2018 to continue providing support for the video games development and digital media industry.
- The IDMTC had already been effective in creating 1,738 direct development jobs and the motion picture industry already spends approximately \$2-billion per year on production activity generating an estimated 20,000 direct and indirect jobs each year.
- The British Columbia government's recent measures to enhance the B.C. screen production industries' competitive position have facilitated industry growth and investment and continue to position B.C. as a true global digital centre.

**Karp, David FIN:EX**

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**From:** Purnell, Richard FIN:EX  
**Sent:** Thursday, January 28, 2016 4:57 PM  
**To:** Flanagan, Paul FIN:EX; Karp, David FIN:EX  
**Subject:** film topic box\_dk comments.docx  
**Attachments:** film topic box\_dk comments.docx

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

Paul, here's the revised.

Page 188 to/à Page 190

Withheld pursuant to/removed as

s.13

## Karp, David FIN:EX

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**From:** Karp, David FIN:EX  
**Sent:** Thursday, February 4, 2016 9:14 AM  
**To:** Flanagan, Paul FIN:EX  
**Subject:** FW: Budget materials: Film Industry  
**Attachments:** BG\_Film Tax Credits\_2Feb2016\_DRAFT.docx; IN\_Budget 2016 - Film Tax Credits\_29Jan16\_DRAFT.docx

Paul, Jamie wants our comments on film backgrounders by noon tomorrow. I don't think Richard had a chance to review, so can you please review the links below.

Thanks,

David.

---

**From:** Karp, David FIN:EX  
**Sent:** Wednesday, February 3, 2016 10:00 AM  
**To:** Purnell, Richard FIN:EX  
**Subject:** FW: Budget materials: Film Industry

Richard, my comments are here:

[G:\TPB\BUDGETS\Budget 2016\Comms materials\BG\\_Film Tax Credits\\_2Feb2016\\_DRAFT\\_TPB edits.docx](#)  
[G:\TPB\BUDGETS\Budget 2016\Comms materials\IN\\_Budget 2016 - Film Tax Credits\\_29Jan16\\_DRAFT\\_TPB edits.docx](#)

*David Karp*  
Tax Policy Analyst | Policy & Legislation Division | Ministry of Finance  
107 – 617 Government Street, Victoria, BC V8W 9V8  
Tel. 250-387-5044 | Email: [David.Karp@gov.bc.ca](mailto:David.Karp@gov.bc.ca)

---

**From:** Zoeller, Sonja GCPE:EX  
**Sent:** Tuesday, February 2, 2016 3:42 PM  
**To:** Karp, David FIN:EX  
**Subject:** Budget materials: Film Industry

Hi David,

Drafts of backgrounder and issues note for film tax credits are attached for first review. Will call you with the password.

Thanks,

**Sonja Zoeller**  
Public Affairs Officer  
Ministry of Finance  
Direct: 250-387-1248  
Cell: 250-812-6844

**CONFIDENTIALITY NOTICE:**  
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## ADVICE TO MINISTER

**CONFIDENTIAL**  
**DRAFT GCPE-FIN ISSUE NOTE**

Ministry of Finance  
Date: February 2, 2016

Minister Responsible: Michael de Jong

### **Film Tax Credits Budget 2016**

#### **DRAFT**

#### **ADVICE AND RECOMMENDED RESPONSE:**

- The Province will be sitting down with film and television industry representatives to explore how government can continue to support and grow the sector in a fiscally sustainable way.
- The film industry has recognized the pressure increasing costs of film tax credits are having on government's fiscal capacity and has offered to work with government on solutions that address this pressure s.13

s.13

s.13

- Most significantly, the US dollar gained considerable strength relative to the Canadian dollar in 2015, which made it substantially more affordable to base productions in B.C.

s.13

- At \$500 million, film tax credits would average \$108 in per capita subsidy paid to the industry.

## ADVICE TO MINISTER

s.13

- **As production increases, so does the amount of subsidy granted by the Province.**
- **Film tax credits do not reduce the tax paid by companies – they are direct subsidies to the companies based on their spending.** <sup>s.13</sup>

s.13

s.13

**That means that film and TV companies get the tax credits based on eligible labour costs even if they pay very little or no provincial tax themselves.**

s.16

### KEY FACTS REGARDING THE ISSUE:

The province's film tax credits are labour-based credits, which means the tax credit applies to a production's British Columbia labour costs and effectively reduces labour costs. For productions meeting Canadian content requirements, the basic tax credit rate is 35% of British Columbia labour. For other productions, the basic tax credit rate is 33% of British Columbia labour. Productions can qualify for additional British Columbia tax credits for work done outside the Vancouver area, or for digital animation, visual effects or post-production work.

The federal government also provides tax credits worth 25% of labour expenditures for productions meeting Canadian content requirements, and 16% for other productions. From 2010-11 to 2013-14, the cost of provincial tax credits averaged about \$265 million per year. However, with the strengthening of the US dollar in 2015, foreign production activity in British Columbia increased by more than 50% to \$1.6 billion and likely will continue at historically high levels. As a result, the cost of the province's film tax credits could increase to around \$500 million annually.

s.16

Saskatchewan eliminated its tax credits in 2012. Ontario, Quebec and New Brunswick, have reduced their tax credits in recent years. California and New Mexico cap the cost of their tax credits, while North Carolina eliminated its film tax credit altogether in 2015. When industry size is taken into account, British Columbia offers very generous credits. British Columbia's film industry spent about C\$2 billion on qualifying labour expenses in 2014-15, with a tax credit cost of approximately C\$300 million. California's industry spent about US\$17 billion on qualifying labour expenses, with a tax credit cost of approximately US\$330 million.

### History

On January 15, 2016, the Province published an op-ed by Jordan Bateman of the Canadian Taxpayers Federation (<http://blogs.theprovince.com/2016/01/14/jordan-bateman-its-time-to-wean-film-industry-off-corporate-welfare/>) calling for government to reduce the amount of taxpayer-funded support for the industry, noting that the "provincial government cut cheques for \$1.5 billion in film subsidies over the past five years. That's more than taxpayers spent on the ministries of aboriginal relations, agriculture and environment combined".

On January 14, 2016, film industry representatives were on the radio discussing Oscar nominations for B.C.-based productions and attributing their success, at least in part, to B.C.'s film tax credits. (Lynda Steele CKNW/CBC Daybreak South). "We cannot bank on the dollar, it has to be our great tax credits which are always going to be the thing that help us get our films here in the Okanagan."

ADVICE TO MINISTER

JTST Minister Shirley Bond said in July 2015 that despite the weak Canadian dollar, government is not considering changing the film incentive structure (<http://www.cknw.com/2015/07/27/85053/>).

In 2013, the film industry called on the B.C. government to match Ontario and Quebec's film and television tax credits to keep productions from leaving B.C. At the time, B.C. declined to increase the tax credits, calling it a race to the bottom. (<http://www.theglobeandmail.com/news/british-columbia/bc-film-advocacy-group-disbands/article14820208/>)

s.13

Current support:

- B.C. offers two distinct tax credit programs for the film and television industry:
- o Domestic: Film Incentive BC (FIBC) is a labour based tax incentive that provides refundable tax credits to Canadian controlled production companies based on eligible BC labour costs.
  - o Foreign: The Production Services Tax Credit (PSTC) is a labour based tax incentive that provides refundable tax credits to international or Canadian film and television production corporations that have incurred costs in British Columbia. The PSTC is not subject to any Canadian content requirements.
- B.C.'s film tax credits reduce the cost of wages for film and television companies and make operating in B.C. more competitive. For each dollar spent by a production company on eligible labour, B.C.'s film tax credits can return between 33 – 71 cents to that company. Film tax credits offered by the federal government are also available and add to these provincial payments.
  - Budget 2014 announced an amendment to the Film and Television Production Regulation to include the Capital Regional District (CRD) in the Distant Location Tax Credit, effective for productions beginning on or after February 19, 2014. This extension applies to both the Production Services Tax Credit and the Film Incentive BC tax credit.
  - Government established Creative BC, an independent society working with creative industries in B.C. to develop and implement a broad strategy capitalizing on the sector's strengths and identifying future opportunities.

Table 1: Creative BC Tax Credit Certifications

	Film Incentive BC (domestic productions)	Production Services tax credit (foreign productions)	Total
2012-13	s.13		
2013-14			
2014-15			



ADVICE TO MINISTER

s.13

Communications Contact: Sonja Zoeller, 387-1248  
Program Area Contact: David Karp, 387-5044  
File Created: February 2, 2016  
File Updated:  
File Location: J:\Secure Folder\Budget 2016\Issues Notes

Program Area	Comm. Director	Deputy	Minister's Office

**Karp, David FIN:EX**

---

**From:** Flanagan, Paul FIN:EX  
**Sent:** Wednesday, February 3, 2016 11:30 AM  
**To:** Purnell, Richard FIN:EX; Karp, David FIN:EX  
**Subject:** FW: Film Industry credits by Tax & Fiscal Year

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

---

**From:** Nair, Anita A FIN:EX  
**Sent:** Wednesday, February 3, 2016 10:28 AM  
**To:** Flanagan, Paul FIN:EX  
**Cc:** Riley, Dave FIN:EX  
**Subject:** Film Industry credits by Tax & Fiscal Year

s.13

*Anita Nair*

Strategic Advisor, Revenue Projections  
Fiscal Planning and Estimates Branch  
Treasury Board Staff, BC Ministry of Finance,  
Phone : (250) 387-9004 Cell : (250) 516-0193 Fax : (250) 387-0300  
Email: [Anita.Nair@gov.bc.ca](mailto:Anita.Nair@gov.bc.ca)

**Karp, David FIN:EX**

---

**From:** Flanagan, Paul FIN:EX  
**Sent:** Thursday, February 4, 2016 9:38 AM  
**To:** Karp, David FIN:EX  
**Subject:** IN\_Budget 2016 - Film Tax Credits\_29Jan16\_DRAFT  
**Attachments:** IN\_Budget 2016 - Film Tax Credits\_29Jan16\_DRAFT.docx

ADVICE TO MINISTER

<p>CONFIDENTIAL</p> <p>DRAFT GCPE-FIN ISSUE NOTE</p> <p>Ministry of Finance</p> <p>Date: February 2, 2016</p> <p>Minister Responsible: Michael de Jong</p>	<p>Film Tax Credits</p> <p>Budget 2016</p>
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Formatted: French (Canada)

DRAFT

ADVICE AND RECOMMENDED RESPONSE:

- The Province will be sitting down with film and television industry representatives to explore how government can continue to support and grow the sector in a fiscally sustainable way.
- The film industry has recognized the pressure increasing costs of film tax credits are having on government's fiscal capacity and has offered to work with government on solutions that address this pressure s.13

s.13

- 
- 
- Most significantly, the US dollar gained considerable strength relative to the Canadian dollar in 2015, which made it substantially more affordable to base productions in B.C.
- Our factors include B.C.'s pool of skilled labour, one-of-a-kind scenery, proximity to major U.S. studios and the certainty and simplicity of tax credit incentives.
- Foreign production activity increased by more than 50% in 2015 to a record level of \$1.6 billion – and this is likely to continue. Foreign productions now make up about 80% of film industry spending in B.C.

s.13

## ADVICE TO MINISTER

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s.13 ..... As production increases, so does the amount of subsidy granted by the Province.

- Film tax credits do not reduce the tax paid by companies – they are direct subsidies to the companies based on their spending. That means that film and TV companies get the tax credits based on eligible labour costs even if they pay very little or no provincial tax themselves.

s.16

### KEY FACTS REGARDING THE ISSUE:

The province's film tax credits are labour-based credits, which means the tax credit applies to a production's British Columbia labour costs and effectively reduces labour costs. For productions meeting Canadian content requirements, the basic tax credit rate is 35% of British Columbia labour. For other productions, the basic tax credit rate is 33% of British Columbia labour. Productions can qualify for additional British Columbia tax credits for work done outside the Vancouver area, or for digital animation, visual effects or post-production work.

The federal government also provides tax credits worth 25% of labour expenditures for productions meeting Canadian content requirements, and 16% for other productions. From 2010-11 to 2013-14, the cost of provincial tax credits averaged about \$265 million per year. However, with the strengthening of the US dollar in 2015, foreign production activity in British Columbia increased by more than 50% to \$1.6 billion and likely will continue at historically high levels. As a result, the cost of the province's film tax credits could increase to around \$500 million annually.

s.16

Saskatchewan eliminated its tax credits in 2012. Ontario, Quebec and New Brunswick, have reduced their tax credits in recent years. California and New Mexico cap the cost of their tax credits, while North Carolina eliminated its film tax credit altogether in 2015. When industry size is taken into account, British Columbia offers very generous credits. British Columbia's film industry spent about C\$2 billion on qualifying labour expenses in 2014-15, with a tax credit cost of approximately C\$300 million. California's industry spent about US\$17 billion on qualifying labour expenses, with a tax credit cost of approximately US\$330 million.

### History

On January 15, 2016, the Province published an op-ed by Jordan Bateman of the Canadian Taxpayers Federation (<http://blogs.theprovince.com/2016/01/14/jordan-bateman-its-time-to-wean-film-industry-off-corporate-welfare/>) calling for government to reduce the amount of taxpayer-funded support for the industry, noting that the "provincial government cut cheques for \$1.5 billion in film subsidies over the past five years. That's more than taxpayers spent on the ministries of aboriginal relations, agriculture and environment combined".

On January 14, 2016, film industry representatives were on the radio discussing Oscar nominations for B.C.-based productions and attributing their success, at least in part, to B.C.'s film tax credits. (Lynda

ADVICE TO MINISTER

Steele CKNW/CBC Daybreak South). "We cannot bank on the dollar, it has to be our great tax credits which are always going to be the thing that help us get our films here in the Okanagan."

JTST Minister Shirley Bond said in July 2015 that despite the weak Canadian dollar, government is not considering changing the film incentive structure (<http://www.cknw.com/2015/07/27/85053/>).

In 2013, the film industry called on the B.C. government to match Ontario and Quebec's film and television tax credits to keep productions from leaving B.C. At the time, B.C. declined to increase the tax credits, calling it a race to the bottom. (<http://www.theglobeandmail.com/news/british-columbia/bc-film-advocacy-group-disbands/article14820208/>)

s.13

Current support:

B.C. offers two distinct tax credit programs for the film and television industry:

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ADVICE TO MINISTER

2014-15

s.13

s.13

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Communications Contact: Sonja Zoeller, 387-1248  
Program Area Contact: David Karp, 387-5044  
File Created: February 2, 2016  
File Updated:  
File Location: J:\Secure Folder\Budget 2016\Issues Notes

Program Area	Comm. Director	Deputy	Minister's Office

**Karp, David FIN:EX**

---

**From:** Karp, David FIN:EX  
**Sent:** Thursday, February 4, 2016 12:46 PM  
**To:** Flanagan, Paul FIN:EX  
**Subject:** Film

s.13

G:\TPB\ANALYSTS\DAVID\Budget 2016\Film\Table A1.2 numbers.xlsx

*David Karp*  
Tax Policy Analyst | Policy & Legislation Division | Ministry of Finance  
107 – 617 Government Street, Victoria, BC V8W 9V8  
Tel. 250-387-5044 | Email: David.Karp@gov.bc.ca



**Karp, David FIN:EX**

---

**From:** Karp, David FIN:EX  
**Sent:** Thursday, February 4, 2016 3:01 PM  
**To:** Flanagan, Paul FIN:EX  
**Subject:** Film issue note and backgrounder  
**Attachments:** IN\_Budget 2016 - Film Tax Credits\_29Jan16\_DRAFT\_TPB edits.docx; BG\_Film Tax Credits\_2Feb2016\_DRAFT\_TPB edits.docx

Hi Paul,

I tried to consolidate our comments. Let me know if you're OK with me sending back to Jamie.

Thanks,

David.

*David Karp*  
Tax Policy Analyst | Policy & Legislation Division | Ministry of Finance  
107 – 617 Government Street, Victoria, BC V8W 9V8  
Tel. 250-387-5044 | Email: [David.Karp@gov.bc.ca](mailto:David.Karp@gov.bc.ca)

ADVICE TO MINISTER

<p>CONFIDENTIAL DRAFT GCPE-FIN ISSUE NOTE</p> <p>Ministry of Finance Date: February 2, 2016 Minister Responsible: Michael de Jong</p>	<p>Film Tax Credits Budget 2016</p>
---	---

DRAFT

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• s.13

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## ADVICE TO MINISTER

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s.16

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ADVICE TO MINISTER

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ADVICE TO MINISTER

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2014-15			

Table 2: Updated budget forecasts

	Film Incentive BC (domestic productions)	Production Services tax credit (foreign productions)	Total
2012-13	s.13		
2013-14			
2014-15			

Communications Contact: Sonja Zoelner, 387-1248  
Program Area Contact: David Karp, 387-5044  
File Created: February 2, 2016  
File Updated:  
File Location: J:\Secure Folder\Budget 2016\Issues Notes

Program Area	Comm. Director	Deputy	Minister's Office

## Karp, David FIN:EX

---

**From:** Karp, David FIN:EX  
**Sent:** Friday, February 5, 2016 10:41 AM  
**To:** Zoeller, Sonja GCPE:EX  
**Subject:** RE: Film topic box  
**Attachments:** Film credit TBox\_2016\_02\_04.rtf

Here's the text. It hasn't yet been provided to TBS for formatting.

---

**From:** Zoeller, Sonja GCPE:EX  
**Sent:** Friday, February 5, 2016 10:40 AM  
**To:** Karp, David FIN:EX  
**Subject:** Film topic box  
**Importance:** High

Can you send me the latest version of the film topic box, reflecting yesterday's changes?

**Sonja Zoeller**  
Public Affairs Officer  
Ministry of Finance  
Direct: 250-387-1248  
Cell: 250-812-6844

**CONFIDENTIALITY NOTICE:**  
This e-mail was intended for a specific recipient. It may contain information that is privileged, confidential or exempt from disclosure. Any privilege that exists is not waived. If you are not the intended recipient, do not distribute it to another person or use it for any other purpose. Please delete it and advise me by return e-mail or telephone.

Page 209 to/à Page 210

Withheld pursuant to/removed as

s.13

**Karp, David FIN:EX**

---

**From:** Michielin, Peter M FIN:EX  
**Sent:** Friday, February 5, 2016 12:25 PM  
**To:** Flanagan, Paul FIN:EX; Karp, David FIN:EX  
**Cc:** Mills, Daphna FIN:EX; DeVries, Jennifer FIN:EX  
**Subject:** Film TBox  
**Attachments:** Film Credit Topic Box.pdf

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

Yo

Attached is a PDF of the updated Film Tbox. The PDF is also in the shared directory.



Page 212 to/à Page 213

Withheld pursuant to/removed as

s.13

Karp, David FIN:EX

---

**From:** Karp, David FIN:EX  
**Sent:** Wednesday, February 10, 2016 9:42 AM  
**To:** Flanagan, Paul FIN:EX  
**Subject:** RE: Film tax rate note

Here is Jeff's response about doing the entire rate in regulation (i.e. having a 0% de minimis threshold in legislation):

s.13

---

**From:** Karp, David FIN:EX  
**Sent:** Tuesday, February 9, 2016 4:18 PM  
**To:** Flanagan, Paul FIN:EX  
**Subject:** RE: Film tax rate note

Great. I accepted your revisions. s.14  
s.14 it's good to go.

---

**From:** Flanagan, Paul FIN:EX  
**Sent:** Tuesday, February 9, 2016 4:03 PM  
**To:** Karp, David FIN:EX  
**Subject:** RE: Film tax rate note

I made some more edits/comments.

---

**From:** Karp, David FIN:EX  
**Sent:** Tuesday, February 9, 2016 3:49 PM  
**To:** Flanagan, Paul FIN:EX  
**Cc:** Purnell, Richard FIN:EX  
**Subject:** RE: Film tax rate note

Thanks, it's a lot cleaner now. I accepted most of your changes but have a few minor comments.

---

**From:** Flanagan, Paul FIN:EX  
**Sent:** Tuesday, February 9, 2016 3:29 PM  
**To:** Karp, David FIN:EX  
**Subject:** RE: Film tax rate note

I made a couple of suggestions.

---

**From:** Karp, David FIN:EX  
**Sent:** Tuesday, February 9, 2016 2:16 PM  
**To:** Flanagan, Paul FIN:EX  
**Cc:** Purnell, Richard FIN:EX  
**Subject:** Film tax rate note

Hi Paul,

As requested, here is a draft decision note on the film change.

G:\TPB\BUDGETS\Budget 2016\Revenue Binder Notes\Film rates.doc

Thanks,

David.

*David Karp*

Tax Policy Analyst | Policy & Legislation Division | Ministry of Finance

107 – 617 Government Street, Victoria, BC V8W 9V8

Tel. 250-387-5044 | Email: David.Karp@gov.bc.ca

**Karp, David FIN:EX**

---

**From:** Karp, David FIN:EX  
**Sent:** Wednesday, February 10, 2016 11:17 AM  
**To:** Flanagan, Paul FIN:EX  
**Subject:** RE: Film tax rate note

OK. Updated again.

---

**From:** Flanagan, Paul FIN:EX  
**Sent:** Wednesday, February 10, 2016 10:58 AM  
**To:** Karp, David FIN:EX  
**Subject:** RE: Film tax rate note

Clear as mud.

See my comments in the document. I think we need to work out differently the deminus and maximum rates as separate decision points.

---

**From:** Karp, David FIN:EX  
**Sent:** Wednesday, February 10, 2016 10:21 AM  
**To:** Flanagan, Paul FIN:EX  
**Subject:** RE: Film tax rate note

OK I have updated the note to include Jeff's comment.

---

**From:** Karp, David FIN:EX  
**Sent:** Wednesday, February 10, 2016 9:42 AM  
**To:** Flanagan, Paul FIN:EX  
**Subject:** RE: Film tax rate note

Here is Jeff's response about doing the entire rate in regulation (i.e. having a 0% de minimis threshold in legislation):

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Thanks,

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*David Karp*  
Tax Policy Analyst | Policy & Legislation Division | Ministry of Finance  
107 – 617 Government Street, Victoria, BC V8W 9V8  
Tel. 250-387-5044 | Email: [David.Karp@gov.bc.ca](mailto:David.Karp@gov.bc.ca)

Page 218 to/à Page 230

Withheld pursuant to/removed as

s.13

**Karp, David FIN:EX**

---

**From:** Clarke, Brennan GCPE:EX  
**Sent:** Thursday, February 18, 2016 2:48 PM  
**To:** Karp, David FIN:EX  
**Cc:** Zoeller, Sonja GCPE:EX  
**Subject:** Media Request: CHEK TV, Tess Van Stratten, film tax credit

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

Hi Dave,

Tess Van Stratten at CHEK News has some questions that attempt to get a firm commitment from the ministry about what will happen with the review.

She referred to chart on top of page 61 that says "could be reduced by over 50 per cent and still ensure a net cost.... less than during the period from 2010 to 2014."

Does that mean government is planning to cut the credits by 50 per cent? People are worried about that.  
What are the options the ministry is looking at?  
Will DAVE be affected?

The answer on all three counts I believe is we want to conduct a thoughtful and thorough review before making any kind of commitment

She also wants to know....

Does the 45 per cent credit mean that for every \$100 a company spends they get \$45 back? (Sounds like an oversimplification to me what can we say..?)

B.

**Brennan Clarke**  
Senior Public Affairs Officer  
Ministry of Finance  
Office: 250 387-3514  
Cell: 778 679-3252  
[Brennan.Clarke@gov.bc.ca](mailto:Brennan.Clarke@gov.bc.ca)

Karp, David FIN:EX

---

**From:** Zoeller, Sonja GCPE:EX  
**Sent:** Thursday, February 18, 2016 2:56 PM  
**To:** Karp, David FIN:EX; Flanagan, Paul FIN:EX  
**Subject:** RE: film q - please approve

**Importance:** High

s.13

---

**From:** Zoeller, Sonja GCPE:EX  
**Sent:** Thursday, February 18, 2016 2:36 PM  
**To:** Karp, David FIN:EX  
**Subject:** film q  
**Importance:** High

can you find someone who can get me the amount of \$\$\$ the film/TV industry spent in BC in 2015/16 in order to generate for government the \$493m in tax credit costs it anticipates for this year. That's out of how many billions in in spending?

**Sonja Zoeller**  
Public Affairs Officer  
Ministry of Finance  
Direct: 250-387-1248  
Cell: 250-812-6844

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Withheld pursuant to/removed as

s.13

**Karp, David FIN:EX**

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**From:** Clarke, Brennan GCPE:EX  
**Sent:** Thursday, February 18, 2016 3:18 PM  
**To:** Flanagan, Paul FIN:EX  
**Cc:** Karp, David FIN:EX  
**Subject:** Media Request: CHEK TV, Tess Van Stratten, film tax credit

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

How does this look?

- The Province will be sitting down with film and television industry representatives to explore how government can continue to support the sector in a fiscally sustainable way.
- The film industry recognizes the pressure increasing costs of film tax credits have on government’s fiscal capacity.
- Government will work collaboratively with industry to develop an approach that supports a healthy and robust film and television sector, while ensuring tax credit costs are affordable for British Columbians.
- The ministry isn’t going to prejudge the outcome of the conversations initiated with the industry.

s.13

**Brennan Clarke**  
Senior Public Affairs Officer  
Ministry of Finance  
Office: 250 387-3514  
Cell: 778 679-3252  
[Brennan.Clarke@gov.bc.ca](mailto:Brennan.Clarke@gov.bc.ca)

**Karp, David FIN:EX**

---

**From:** Karp, David FIN:EX  
**Sent:** Thursday, February 18, 2016 3:55 PM  
**To:** Flanagan, Paul FIN:EX  
**Subject:** RE: Media Request: CHEK TV, Tess Van Stratten, film tax credit

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

Paul, recommended changes below.

---

**From:** Clarke, Brennan GCPE:EX  
**Sent:** Thursday, February 18, 2016 3:18 PM  
**To:** Flanagan, Paul FIN:EX  
**Cc:** Karp, David FIN:EX  
**Subject:** Media Request: CHEK TV, Tess Van Stratten, film tax credit

How does this look?

- The Province will be sitting down with film and television industry representatives to explore how government can continue to support the sector in a fiscally sustainable way.
- The film industry recognizes the pressure increasing costs of film tax credits have on government’s fiscal capacity.
- Government will work collaboratively with industry to develop an approach that supports a healthy and robust film and television sector, while ensuring tax credit costs are affordable for British Columbians.
- The ministry isn’t going to prejudge the outcome of the conversations initiated with the industry.

s.13

**Brennan Clarke**  
Senior Public Affairs Officer  
Ministry of Finance  
Office: 250 387-3514  
Cell: 778 679-3252



**Karp, David FIN:EX**

---

**From:** Karp, David FIN:EX  
**Sent:** Thursday, February 18, 2016 3:58 PM  
**To:** Flanagan, Paul FIN:EX  
**Subject:** RE: film q - please approve

Paul, recommended changes below.

---

**From:** Zoeller, Sonja GCPE:EX  
**Sent:** Thursday, February 18, 2016 2:56 PM  
**To:** Karp, David FIN:EX; Flanagan, Paul FIN:EX  
**Subject:** RE: film q - please approve  
**Importance:** High

s.13

---

**From:** Zoeller, Sonja GCPE:EX  
**Sent:** Thursday, February 18, 2016 2:36 PM  
**To:** Karp, David FIN:EX  
**Subject:** film q  
**Importance:** High

can you find someone who can get me the amount of \$\$\$ the film/TV industry spent in BC in 2015/16 in order to generate for government the \$493m in tax credit costs it anticipates for this year. That's out of how many billions in in spending?

**Sonja Zoeller**  
Public Affairs Officer  
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Direct: 250-387-1248  
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From: Karp, David FIN:EX  
Sent: Thursday, February 18, 2016 4:06 PM  
To: Flanagan, Paul FIN:EX  
Subject: RE: film q - please approve

I think the general answer is that film tax credit rates have increased over time. The last time the Canadian dollar was this low (around 2003-2004), the credit rates were much lower than they are now (Film Incentive BC rate was 20%, production services was 11%, 12.5% regional rate for Film Incentive BC and 6% for production services, no distant location credits, DAVE credit was 15%). See table below.

Budget 1998	<ul style="list-style-type: none"><li>Film Incentive BC credit introduced for productions meeting Canadian content requirements. Rate set at 20 per cent for basic credit, plus a 12.5 per cent regional credit for productions shot outside Vancouver.</li></ul>
June 1998 income tax bill	<ul style="list-style-type: none"><li>Production services tax credit introduced. Rate set at 11 per cent for basic credit.</li></ul>
Budget 2003	<ul style="list-style-type: none"><li>Film tax credits are extended by five years.</li><li>Digital animation or visual effects tax credit introduced at a rate of 15 per cent.</li><li>Production services tax credit films become eligible for a regional tax credit of 6 per cent.</li></ul>
Budget 2005	<ul style="list-style-type: none"><li>Film Incentive BC tax credit rate increased temporarily to 30 per cent.</li><li>Production services tax credit rate increased temporarily to 18 per cent.</li></ul>
Budget 2006	<ul style="list-style-type: none"><li>Temporary enhancements from Budget 2005 are extended to 2008.</li></ul>
Budget 2008	<ul style="list-style-type: none"><li>Film tax credits are extended by five years.</li><li>Film Incentive BC tax credit rate temporarily increased to 35 per cent.</li><li>Production services tax credit rate temporarily increased to 25 per cent.</li><li>Distant location tax credits are introduced for productions in areas more distant from Lower Mainland, at a rate of 6 per cent (for both Film Incentive BC and production services tax credits).</li></ul>
Budget 2009	<ul style="list-style-type: none"><li>Film tax credits are made permanent at the temporarily enhanced rates in effect at that time.</li></ul>
Budget 2010	<ul style="list-style-type: none"><li>Production services tax credit rate increased to 33 per cent.</li><li>Digital animation or visual effects tax credit rate is increased to 17.5 per cent.</li></ul>
Budget 2014	<ul style="list-style-type: none"><li>Distant location tax credit is expanded to the Capital</li></ul>

	Regional District.
Budget 2015	<ul style="list-style-type: none"><li>Digital animation or visual effects tax credit is expanded to post-production activities.</li></ul>

**From:** Zoeller, Sonja GCPE:EX  
**Sent:** Thursday, February 18, 2016 3:00 PM  
**To:** Karp, David FIN:EX; Flanagan, Paul FIN:EX  
**Subject:** RE: film q - please approve  
**Importance:** High

More questions from Shaw:

Also, editors are interested in longer look at stats on industry – do we have numbers that go back further than what’s in the budget – the annual amounts brought in by industry and paid out by gov...? Is that handy? The question being – what happened last time Cdn dollar was low and why wasn’t this an issue then?

Please call me.

**From:** Zoeller, Sonja GCPE:EX  
**Sent:** Thursday, February 18, 2016 2:56 PM  
**To:** Karp, David FIN:EX; Flanagan, Paul FIN:EX  
**Subject:** RE: film q - please approve  
**Importance:** High

s.13

**From:** Zoeller, Sonja GCPE:EX  
**Sent:** Thursday, February 18, 2016 2:36 PM  
**To:** Karp, David FIN:EX  
**Subject:** film q  
**Importance:** High

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**Sonja Zoeller**  
Public Affairs Officer  
Ministry of Finance  
Direct: 250-387-1248  
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**Karp, David FIN:EX**

---

**From:** Zoeller, Sonja GCPE:EX  
**Sent:** Thursday, February 18, 2016 4:11 PM  
**To:** Karp, David FIN:EX  
**Cc:** Flanagan, Paul FIN:EX  
**Subject:** RE: film q - please approve

I just cornered him, we are good to go. Thanks.

---

**From:** Karp, David FIN:EX  
**Sent:** Thursday, February 18, 2016 4:11 PM  
**To:** Zoeller, Sonja GCPE:EX  
**Cc:** Flanagan, Paul FIN:EX  
**Subject:** RE: film q - please approve

Paul hasn't approved but I think he got called into Kim's office so don't know if he'll have a chance to review before Rob's deadline.

---

**From:** Karp, David FIN:EX  
**Sent:** Thursday, February 18, 2016 3:58 PM  
**To:** Flanagan, Paul FIN:EX  
**Subject:** RE: film q - please approve

Paul, recommended changes below.

---

**From:** Zoeller, Sonja GCPE:EX  
**Sent:** Thursday, February 18, 2016 2:56 PM  
**To:** Karp, David FIN:EX; Flanagan, Paul FIN:EX  
**Subject:** RE: film q - please approve  
**Importance:** High

s.13

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**From:** Zoeller, Sonja GCPE:EX  
**Sent:** Thursday, February 18, 2016 2:36 PM  
**To:** Karp, David FIN:EX  
**Subject:** film q  
**Importance:** High

can you find someone who can get me the amount of \$\$\$ the film/TV industry spent in BC in 2015/16 in order to generate for government the \$493m in tax credit costs it anticipates for this year. That's out of how many billions in in spending?

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Public Affairs Officer  
Ministry of Finance



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	Year 1	Year 2	Year 3	Year 4	Year 5
Number of productions					
Total ACBLE (line 405)					
Average ACBLE (line 405) for all productions	#DIV/0!	#DIV/0!	#DIV/0!	#DIV/0!	#DIV/0!
Total value of line 520					
Average line 520 for all productions	#DIV/0!	#DIV/0!	#DIV/0!	#DIV/0!	#DIV/0!
Number of productions with nil for line 520					
Total ACBLE for productions with nil for line 520					
Average ACBLE for productions with nil for line 520	#DIV/0!	#DIV/0!	#DIV/0!	#DIV/0!	#DIV/0!
Number of productions where line 520 is not nil	0	0	0	0	0
Total ACBLE for productions where line 520 is not nil	0	0	0	0	0
Average ACBLE for productions where line 520 is not nil	#DIV/0!	#DIV/0!	#DIV/0!	#DIV/0!	#DIV/0!
Total value of line 520 for productions where line 520 is not nil	0	0	0	0	0
Average line 520 for productions where line 520 is not nil	#DIV/0!	#DIV/0!	#DIV/0!	#DIV/0!	#DIV/0!
Number of productions where (line 520 / line 405) = 0	0	0	0	0	0
Number of productions where (line 520 / line 405) > 0 and <= 0.05					
Number of productions where (line 520 / line 405) > 0.05 and <= 0.10					
Number of productions where (line 520 / line 405) > 0.10 and <= 0.15					
Number of productions where (line 520 / line 405) > 0.15 and <= 0.20					
Number of productions where (line 520 / line 405) > 0.20 and <= 0.25					
Number of productions where (line 520 / line 405) > 0.25 and <= 0.30					
Number of productions where (line 520 / line 405) > 0.30 and <= 0.35					
Number of productions where (line 520 / line 405) > 0.35 and <= 0.40					
Number of productions where (line 520 / line 405) > 0.40 and <= 0.45					
Number of productions where (line 520 / line 405) > 0.45 and <= 0.50					
Number of productions where (line 520 / line 405) > 0.50 and <= 0.55					
Number of productions where (line 520 / line 405) > 0.55 and <= 0.60					
Number of productions where (line 520 / line 405) > 0.60 and <= 0.65					
Number of productions where (line 520 / line 405) > 0.65 and <= 0.70					
Number of productions where (line 520 / line 405) > 0.70 and <= 0.75					
Number of productions where (line 520 / line 405) > 0.75 and <= 0.80					
Number of productions where (line 520 / line 405) > 0.80 and <= 0.85					
Number of productions where (line 520 / line 405) > 0.85 and <= 0.90					
Number of productions where (line 520 / line 405) > 0.90 and <= 0.95					
Number of productions where (line 520 / line 405) > 0.95					

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	Year 1	Year 2	Year 3	Year 4	Year 5
Number of productions					
Total ACBLE (line 405)					
Average ACBLE (line 405) for all productions	#DIV/0!	#DIV/0!	#DIV/0!	#DIV/0!	#DIV/0!
Total value of line 520					
Average line 520 for all productions	#DIV/0!	#DIV/0!	#DIV/0!	#DIV/0!	#DIV/0!
Number of productions with nil for line 520					
Total ACBLE for productions with nil for line 520					
Average ACBLE for productions with nil for line 520	#DIV/0!	#DIV/0!	#DIV/0!	#DIV/0!	#DIV/0!
Number of productions where line 520 is not nil	0	0	0	0	0
Total ACBLE for productions where line 520 is not nil	0	0	0	0	0
Average ACBLE for productions where line 520 is not nil	#DIV/0!	#DIV/0!	#DIV/0!	#DIV/0!	#DIV/0!
Total value of line 520 for productions where line 520 is not nil	0	0	0	0	0
Average line 520 for productions where line 520 is not nil	#DIV/0!	#DIV/0!	#DIV/0!	#DIV/0!	#DIV/0!
Number of productions where (line 520 / line 405) = 0	0	0	0	0	0
Number of productions where (line 520 / line 405) > 0 and <= 0.05					
Number of productions where (line 520 / line 405) > 0.05 and <= 0.10					
Number of productions where (line 520 / line 405) > 0.10 and <= 0.15					
Number of productions where (line 520 / line 405) > 0.15 and <= 0.20					
Number of productions where (line 520 / line 405) > 0.20 and <= 0.25					
Number of productions where (line 520 / line 405) > 0.25 and <= 0.30					
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Number of productions where (line 520 / line 405) > 0.40 and <= 0.45					
Number of productions where (line 520 / line 405) > 0.45 and <= 0.50					
Number of productions where (line 520 / line 405) > 0.50 and <= 0.55					
Number of productions where (line 520 / line 405) > 0.55 and <= 0.60					
Number of productions where (line 520 / line 405) > 0.60 and <= 0.65					
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Number of productions where (line 520 / line 405) > 0.70 and <= 0.75					
Number of productions where (line 520 / line 405) > 0.75 and <= 0.80					
Number of productions where (line 520 / line 405) > 0.80 and <= 0.85					
Number of productions where (line 520 / line 405) > 0.85 and <= 0.90					
Number of productions where (line 520 / line 405) > 0.90 and <= 0.95					
Number of productions where (line 520 / line 405) > 0.95					

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Page 255 to/à Page 258

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## Karp, David FIN:EX

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**From:** Lamare, Karen JTST:EX  
**Sent:** Wednesday, February 24, 2016 4:14 PM  
**To:** Karp, David FIN:EX  
**Subject:** FW: Budget and Film Tax Credit estimates

---

**From:** Lamare, Karen JTST:EX  
**Sent:** Tuesday, February 23, 2016 2:58 PM  
**To:** Flanagan, Paul FIN:EX  
**Subject:** RE: Budget and Film Tax Credit estimates

Hi Paul,

Further to my message I have some questions with respect to the tax credit estimates in the budget.

I am unclear as to why on page 60/61 in the Budget it says the estimate for film and television tax credits are \$493 million in 2015/16 and then in the Supplement to the Estimates on page 74-76, the estimates for 2015/16 are film and television tax credits are \$252M plus \$80M for a total of \$332 million – not including the \$50 M for IDMTC.

Then for 16/17 the estimates are \$310M for PSTC and \$90M for FIBC so \$400M. It looks like IDMTC is reduced to \$45M.

[http://bcbudget.gov.bc.ca/2016/estimates/2016\\_Supplement\\_to\\_the\\_Estimates.pdf](http://bcbudget.gov.bc.ca/2016/estimates/2016_Supplement_to_the_Estimates.pdf)

I understand these are only estimates but I am not sure which numbers to use when writing Briefing Notes etc.

If you can please explain the differences and which numbers I should use that would be very helpful.

Thanks in advance, Karen

Karen Lamare  
Director, Creative Sector Policy  
Ministry of Jobs, Tourism & Skills Training  
Mobile: 604 506-3520  
Email: [karen.lamare@gov.bc.ca](mailto:karen.lamare@gov.bc.ca)

---

**From:** Flanagan, Paul FIN:EX  
**Sent:** Thursday, January 21, 2016 3:57 PM  
**To:** Lamare, Karen JTST:EX  
**Subject:**

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	Film Incentive BC productions	Film Incentive BC credit	Production services productions	Production services credit	Number of produc	Total tax credits	Average tax credit	Percentage of tax credits
Direct to DVD	s.21		11	\$ 12,178,893	s.21			
Feature film	20	\$ 2,575,482	53	\$ 106,406,937	73	\$ 108,982,419	\$ 1,492,910	28%
Mini-series	s.21			s.21				
Movie of the week	50	\$ 21,426,022	11	\$ 8,803,655	61	\$ 30,229,677	\$ 495,568	8%
TV pilot	s.21		12	\$ 7,602,838	15	\$ 8,168,656	\$ 544,577	2%
TV program	20	\$ 2,513,305	s.21	s.21				
TV series	40	\$ 48,067,495	55	\$ 174,533,148	95	\$ 222,600,643	\$ 2,343,165	57%
Web-based/other	s.21			s.21				

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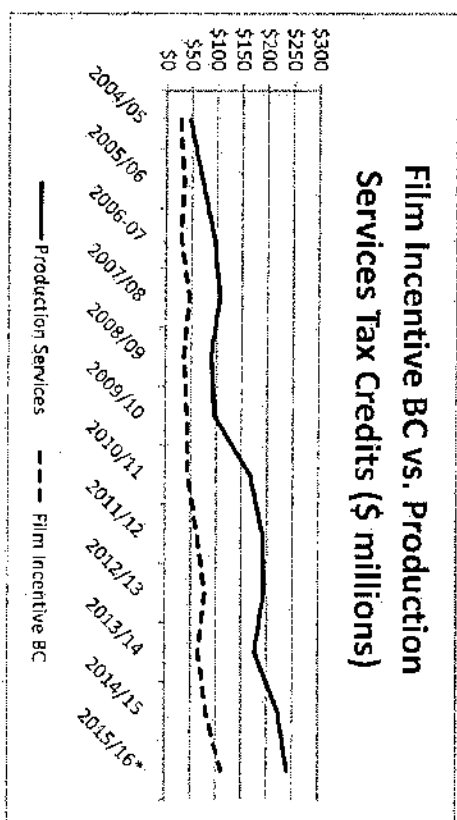
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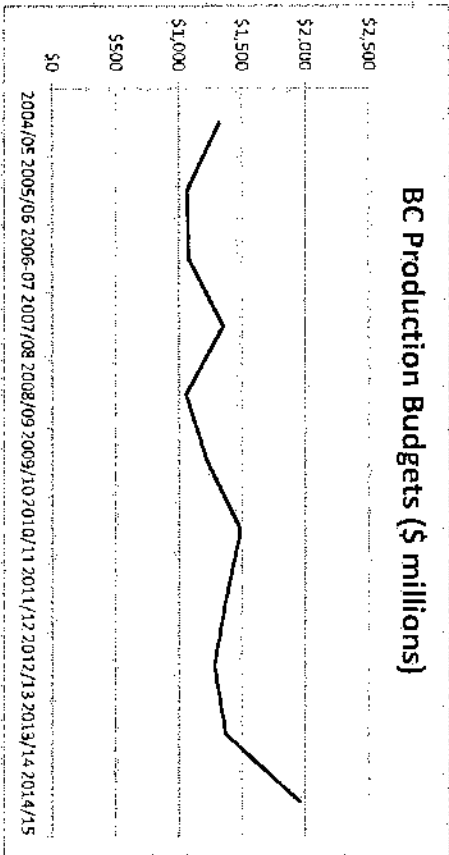
	April	May	June	July	August	September	October	November	December	January	February	March			
FIBC		7%	4%										319472261	0.218302	
PSTC		5%	8%										1143970A38	0.781698	
Total		5%	7%										1463442699		

The purpose of this sheet is to come up with a formula to seasonally adjust partial year certification data.

Fiscal Year	2004/05	2005/06	2006-07	2007/08	2008/09	2009/10	2010/11	2011/12	2012/13	2013/14	2014/15	2015/16*
Film Incentive BC	27,624,321	35,314,409	30,221,536	46,198,905	35,712,426	43,403,844	43,866,701	62,842,348	78,095,047	65,795,164	81,388,614	110,796,010
Production Services	46,776,704	70,601,126	96,004,922	106,565,909	89,287,305	96,990,696	167,284,310	151,405,053	194,494,123	176,862,793	222,216,824	240,126,154
% PSTC	0.63	0.67	0.76	0.70	0.71	0.69	0.79	0.75	0.71	0.73	0.73	0.68
PSTC average claim	429,144.07	547,295.55	640,032.81	715,207.44	522,147.98	468,554.09	972,583.20	902,858.74	944,146.23	803,921.79	1,028,781.59	1,212,758.35
FIBC average claim	207,701.66	257,769.41	190,072.55	224,266.53	197,306.22	224,890.38	192,397.81	267,414.25	305,058.78	270,761.99	340,579.97	553,975.05
Ration	2.066156188	2.123198222	3.367307913	3.189095786	2.646383778	2.083477647	5.055063727	3.378255197	3.094964965	2.969108704	3.020675519	2.189193094



BC Prices	2004/05	2005/06	2006-07	2007/08	2008/09	2009/10	2010/11	2011/12	2012/13	2013/14	2014/15	2015/16*	YTD (to Oct. 30)
	\$151	\$94	\$94	\$79	\$158	\$136	\$126	\$98	\$197	\$292	\$289	\$330	\$174
	\$1,169	\$973	\$982	\$1,174	\$900	\$1,092	\$1,364	\$1,277	\$1,086	\$1,082	\$1,672	\$1,578	\$672
	\$1,319	\$1,068	\$1,076	\$1,353	\$1,058	\$1,226	\$1,489	\$1,375	\$1,283	\$1,373	\$1,962	\$1,909	
	150684510	94342580	93765924	178506565	158081660	135168994	125786747	97848758	156799053	291901866	289495705	470153396.7	173,977,123
	1168786375	973266106	982320991	1174087705	800311288	1082404202	1363504688	1277161984	1086477631	1081551737	1672475933	1610416735	672158893



## Tong, Jessie FIN:EX

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**From:** Banning, Kathy FIN:EX  
**Sent:** Wednesday, February 3, 2016 12:46 PM  
**To:** Hallin, Lillian MTIC:EX  
**Cc:** Karp, David FIN:EX  
**Subject:** Data Request  
**Attachments:** Updated Summary 2012 Production Statistics.xlsx

Hi Lillian,

I've updated the document to include the animation and VFX only productions as well. I kept the animation productions separated the same as the original list from Creative BC however please note only one of the "domestic" animation productions on the list applied for the domestic FTTC credit, the other two that I have data for applied under the PSTC credit.

In addition for the foreign animation list there were two productions which I couldn't match, we likely have info in our system on them but I was unable to determine which production exactly they were as we don't have those titles in our system and Jill at Creative BC was unable to help me to determine which ones they were based on the total spent in BC column either. Of the other foreign animation productions all of them but two the total spent in BC column matched exactly what we had in our system, the two with differences were lower on the Creative BC list you had sent me so that may skew the numbers slightly, if you wanted to use the figures from our system you may want to add \$4,364,710 to the "Total Spent in BC" column under animation-foreign.

The VFX only section the total spent in BC amounts seemed to be all over the place compared to what we show in our system as well so wanted you to be aware of that.

Again if you have any questions on the document, please let me know.

Regards,

### Kathy Banning, CPA, CGA


Team Leader, Tax Credit Programs  
Income Taxation Branch  
Ministry of Finance  
Phone: 250 953-3089, Fax: 250 356-9243  
<< [mail to: Kathy.Banning@gov.bc.ca](mailto:Kathy.Banning@gov.bc.ca)>>



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---

**From:** Banning, Kathy FIN:EX  
**Sent:** Friday, January 29, 2016 3:15 PM  
**To:** Hallin, Lilli  MTIC:EX  
**Cc:** Karp, David FIN:EX  
**Subject:** Data Request



Hi Lillian,

Please find attached the summary figures I've compiled based on the 2012 Production List that was prepared by Creative BC. I put notes after each summary to explain the figures but if you have any questions please let me know and I can provide further details.

I just noticed the second tab in the spreadsheet you sent over for the Animation and VFX only productions. I didn't include any of those in the summary detail so will work on those right away and will send you a summary for those productions as well as soon as I get that done. Sorry I completely missed the second spreadsheet and that will likely reduce the figures I have for the middle table in the attached document.

Again if you have any questions please let me know.

Thanks,

**Kathy Banning, CPA, CGA**

Team Leader, Tax Credit Programs

Income Taxation Branch

Ministry of Finance

Phone: 250 953-3089, Fax: 250 356-9243

<< [mail to: Kathy.Banning@gov.bc.ca](mailto:Kathy.Banning@gov.bc.ca)>>



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Productions from Creative BC List "BC Production Statistics 2012"  
Matched Against CRA Assessment Data By Production

Please note: the BC Labour Expenditure values are from the assessed tax returns where available so this would be amounts paid to BC-based individuals (i.e. typically 100% employees/sole shareholder corporations and 65% payments made to multi-shareholder corporations). These figures may have been adjusted by CRA if BC residency was not confirmed for specific individuals or corporations. If assessed figures weren't available the BC labour expenditures were estimated using the basic claim amount if known. Data is based on tax information processed up to 2015-11-20. These figures may not represent all the BC labour expenditures for these productions as corporations have 3 years from the end of their FYE to file a claim plus CRA processing times once a complete claim is received. These figures are for labour only and do not include any other types of costs or expenditures for the production.

**Productions with Principal Photography Start Date in 2012 Not Included in Production List Above**

FYE	Number of Productions	BC Labour Expenditure Assessed
2012	22	11,747,826
2013	74	67,094,471
2014	28	27,763,792
s.21		

These productions all show a 2012 principal photography start date on their tax returns and were not included in the production summaries above. The same production could have filed for multiple years (i.e. 2012 and 2013) and would therefore be counted in each year under the number of productions. Some of these productions might only be doing service work for a production so the work performed in BC would only be in the year of the claim with possibly no work being done in BC in 2012.

**Productions with BC Labour Expenditures in 2012 Not Included in Production List Above With Principal Photography Start Date Prior to 2012**

FYE	Number of Productions	BC Labour Expenditure Assessed
2012	224	319,637,250

These productions all show a principal photography start date prior to 2012 on their tax returns and have claimed BC Labour Expenditures for work performed in their 2012 FYE. None of these productions are included in the production summaries above.

**From:** [Banning, Kathy FIN:EX](#)  
**To:** [Reaveley, Travis FIN:EX](#)  
**Subject:** 813 Data Query Request - Film Tax Stats  
**Date:** Monday, January 25, 2016 5:58:00 PM

---

Hi Travis,

Can you also run the same thing for the corporations with a 2014 and 2015 tax year (if any). All the other info and sorting etc. would be the same as below.

Thanks,

Kathy

---

**From:** Banning, Kathy FIN:EX  
**Sent:** Friday, November 20, 2015 6:39 PM  
**To:** Reaveley, Travis FIN:EX; Pasquotti, Ric I FIN:EX  
**Subject:** 813 Data Query Request - Film Tax Stats  
Hi Ric/Travis,

I've been asked to compile some information for BC Stats on the film industry. I've spoken with Steve and he has approved providing this information in aggregate figures to them. When you have a chance can you please run a few queries in the 813 file for me.

I'll need information for any BC FTTC and PSTC claims assessed for the corporation's 2012 and 2013 tax years (separated by tax year (2012 or 2013) and by FTTC and PSTC would be great). The final assessment should be fine if there are multiple assessments for the same tax year.

For the FTTC – Schedule 422 I'd like the following fields (if it's not too many fields, otherwise I can cut back on a few of them if needed).

BN

Corporation Name

Tax Year End

Then the following fields from the Schedule 422

301 – Production Title

302 – Principal Photography Start Date

303 – Certificate #

505 – Salary & Wages (Employees)

515 – BC-Based Individuals

516 – Solely-owned corporations

520 – Multi-owned corporations

521 – Partnerships

Line H – if we get it, could possibly be line 0003 in the 813?

525 – Tsf to parent corporation

Line J – if we get it, could possibly be line 0005 in the 813?

620 – Basic TC

705 – Regional TC

670 – Distant Location TC

685 – Training TC

760 – DAVE TC

800 – Total FTTC

For the PSTC – Schedule 423 I'd like the following fields (again if it's too much let me know).

BN

Corporation Name

Tax Year End

Then the following fields from the Schedule 423

301 – Production Title

302 – Principal Photography Start Date

303 – Certificate #

405 – Salary & Wages (Employees)

420 – BC-Based Individuals (and possibly 421 – saw that in one 813 record and I'm not sure what field it is capturing as it's not a field on the 2012 form?)

425 – Solely-owned corporations (same as above with 426? – possibly a line from an old form that is still being captured?)

430 – Multi-owned corporations

432 – Partnerships

Line B – if we get it – one record I looked at I couldn't find it?

435 – Tsf to parent corporation

490 – Labour expenditure for current tax year

800 – Basic TC

810 – Additional Basic TC

830 – Regional TC

845 – Distant Location TC

805 – DAVE TC

850 – Total FTTC

Let me know if you need any other info.

Thanks,

**Kathy Banning, CPA, CGA**

Team Leader, Tax Credit Programs

Income Taxation Branch

Ministry of Finance

Phone: 250 953-3089, Fax: 250 356-9243

<< [mail to: Kathy.Banning@gov.bc.ca](mailto:Kathy.Banning@gov.bc.ca)>>



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**From:** [Banning, Kathy FIN:EX](#)  
**To:** ["Robert Wong"](#)  
**Subject:** FYI - Film Case  
**Date:** Tuesday, February 23, 2016 11:05:00 AM  
**Attachments:** [CCH-News-2016-02-224118\\_fittracker.pd.pdf](#)

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Hi Bob,

Here's the English version of the film tax court case that I sent you a little while ago.

In summary:

The judge ruled that CAVCO hadn't been transparent in their advance notice of revocation and their final decision in letting the taxpayer know that they used a "decision tree" to determine its eligibility and therefore the production company didn't have a chance to properly provide representations. He stated they "breached their duty of procedural fairness towards the applicant; in addition, the reasons for denial are seriously inadequate"

Judge also said that the fact the Quebec provincial certifying body (SODEC) had certified it as a documentary series and other similar productions were certified in the past had an impact on his decision. The judge ordered CAVCO to review the application again using the legislation and regulations and not solely the decision tree again.

s.13

**Kathy Banning, CPA, CGA**

Team Leader, Tax Credit Programs

Income Taxation Branch

Ministry of Finance

Phone: 250 953-3089, Fax: 250 356-9243

<< [mail to: Kathy.Banning@gov.bc.ca](mailto:Kathy.Banning@gov.bc.ca)>>



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**Date: 20160122**

**Docket: T-317-15**

**Citation: 2016 FC 75**

[UNREVISED ENGLISH CERTIFIED TRANSLATION]

**Ottawa, Ontario, January 22, 2016**

**PRESENT: The Honourable Mr. Justice Martineau**

**BETWEEN:**

**ZONE3-XXXVI INC.**

**Applicant**

**and**

**ATTORNEY GENERAL OF CANADA**

**Respondent**

**JUDGMENT AND REASONS**

[1] The applicant is seeking to have set aside a decision rendered on February 2, 2015, by and on behalf of the Minister of Canadian Heritage [Minister], refusing to issue a Canadian Film or Video Production Certificate [certificate], and a declaration from this Court stating that the television series **ON PASSE À L'HISTOIRE** [the Production] is eligible for a Canadian Film or Video Production Tax Credit [CPTC].

[2] The respondent, the Attorney General of Canada, submits that the Minister's refusal is legal and seeks the dismissal of this application for judicial review.

[3] The Court rejects the respondent's preliminary objections regarding the admissibility or relevance of any particular evidence considered in these reasons and relies, *mutatis mutandis*, on the factors and reasons set out in the interlocutory decision disposing of the respondent's motion to strike (*Zone3-XXXVI Inc v Attorney General of Canada*, 2015 FC 7), and on the applicant's arguments supporting that motion's dismissal.

[4] For the following reasons, this application for judicial review is allowed in part.

## **I Statutory and regulatory framework**

[5] The impugned decision was rendered under the supposed authority of section 125.4 of the *Income Tax Act*, RSC 1985, c 1 (5th Supp) [Act] and section 1106 of the *Income Tax Regulations*, CRC, c 945 [Regulations]. The relevant excerpts from these provisions are reproduced in Annex A. The French version of these reasons uses the masculine in references to the Minister even though the Minister at the time was the Honourable Shelly Glover.

[6] Under subsections 125.4(1) and (3) of the Act, a "qualified corporation" may claim a CPTC for a "Canadian film or video production" described in subsection 1106(4) of the Regulations [eligible production]—that is, a production other than an "excluded production" within the meaning of subsection 1106(1) of the Regulations.



[7] Subparagraphs 1106(1)(b)(i) to (xi) of the Regulations list 11 types of production that are ineligible because they fall under the “excluded production” category. In the matter at bar, the Minister denied the application for a certificate [Part A] submitted by the applicant on September 25, 2013, for the first season (26 episodes) of the Production, **ON PASSE À L’HISTOIRE (I)**, on the ground that it was an “excluded production”, in accordance with subparagraph 1106(1)(b)(iii) of the Regulations, which covers

(iii) a production in respect of a game, questionnaire or contest (other than a production directed primarily at minors),

[Emphasis added]

(iii) une production comportant un jeu, un questionnaire ou un concours, sauf celle qui s’adresse principalement aux personnes mineures,

[Soulignements ajoutés]

[8] As its production was ineligible, the applicant was unable to obtain a certificate of completion [Part B] for **ON PASSE À L’HISTOIRE (I)**, resulting in its production not qualifying for a CPTC. The series’ second season, **ON PASSE À L’HISTOIRE (II)**, followed the same formula. Consequently, it also did not qualify as a “Canadian film or video production” under the Act and Regulations.

[9] The CPTC program is administered jointly by the Department of Canadian Heritage [Department], through the Canadian Audio-Visual Certification Office [CAVCO], and by the Canada Revenue Agency [CRA]. In practice, CAVCO determines whether a production meets the requirements of section 125.4 of the Act and section 1106 of the Regulations, while the CRA verifies the qualified labour expenditure used in determining the CPTC.

[10] To obtain a CPTC, a qualified corporation must file with its T2 income tax return to the CRA: a Canadian film or video production certificate [Part A certificate]; the CRA T1131 CPTC claim form (T1131); and a certificate of completion [Part B certificate], once the production is completed. Producers must apply for all certificates [A and B] through CAVCO's online eSubmission system. In administrative terms, following a positive recommendation from CAVCO based on an analysis of detailed cost estimates and financing plans, including amounts deemed assistance, and a verification of whether the production meets the Canadian content requirements of the CPTC program, a Part A certificate is issued for and on behalf of the Department.

[11] The Part A certificate is delivered with a condition precedent. Indeed, there are strict time frames for issuing a certificate of completion [Part B certificate]. For example, under subparagraph 1106(1)(a)(ii), "excluded production" is defined as "a film or video production . . . in respect of which . . . a certificate of completion has not been issued before the production's certification". The CPTC Program sets a strict deadline for the issuance of a Part B certificate by the Minister. This deadline must be calculated as of the end of the corporation's taxation year in which the production's principal photography began. The certificate of completion confirms that a CPTC-"eligible production" was completed within the prescribed time frame for Part B certification, that is, 30 months from the corporation's first fiscal year-end following commencement of principal photography, or 48 months from this date where the Waiver Declaration for a Part B application has been completed in respect of the production (see subsection 1106(1) of the Regulations).

[12] As one can see, it is very important for both producers and CAVCO to respect these deadlines. Producers cannot obtain a certificate of completion—or can even have their [Part A] certificate revoked—if the deadlines have expired, in which case they would lose any tax credit to which they would otherwise have been entitled. In this case, even if the Minister and CAVCO are themselves responsible for the deadlines, the Federal Court determined in *Production Tooncan (XIII) Inc v Canada (Heritage)*, 2011 FC 1520 at para 85 [*Tooncan*] that even in “a difficult situation . . . , which can only be deplored, . . . [the Court] cannot order that a certificate be issued in contravention of the clear provisions of the Act”.

[13] In practice, each certificate application is analyzed by a CAVCO analyst [tax credit officer]. In principle, the tax credit officer has no discretion. The tax credit officer merely verifies whether the application satisfies the regulatory requirements. If the application is incomplete, the tax credit officer communicates with the producer to obtain any missing information or documents. Where necessary, the officer calls on CAVCO’s Advisory Committee, which is composed of senior CAVCO analysts. When a tax credit officer wishes to recommend the refusal or revocation of a certificate, the file is submitted for review by CAVCO’s Compliance Committee, composed of managers and senior analysts.

[14] CAVCO’s Advisory and Compliance committees have only the power to recommend; they are not statutorily empowered to render final determinations of issues of law or to dispose of the merits of a certificate application. They are merely part of an internal process set up to ensure administrative consistency in how the Act and the Regulations are administered. CAVCO’s recommendations nonetheless have determinative weight in the final decision by the Minister or

his or her representative. In practice, therefore, when CAVCO intends to make a negative recommendation to the Minister, it sends the producer an advance notice of denial setting out its reasons and conclusions in order to allow the producer to make representations and submit any additional evidence that could affect CAVCO's final recommendation.

## **II Importance of the CPTC Program and eligibility requirements**

[15] The purpose of the CPTC Program is to encourage and stimulate the development of a national film and video production sector. The CPTC is a federal tax credit that can amount to up to 25% of the qualified labour expenditures for an eligible production under subsection 1106(4) of the Regulations. Where no federal tax is payable for a given fiscal year, the corporation will be reimbursed by the amount of the tax credit, subject to the right of the CRA to offset any other amount owed by the corporation.

[16] The CPTC has a provincial counterpart. In Quebec, eligible cultural enterprises involved in producing films and videos broadcast by Canadian channels may claim a tax credit for Quebec film productions [provincial tax credit]. The Société de développement des entreprises culturelles [SODEC] plays a similar role here as that played by CAVCO at the federal level. A certificate issued by SODEC allows the producer to claim a tax credit from Revenu Québec (*Act Respecting the Sectoral Parameters of Certain Fiscal Measures*, CQLR c P-5.1).

[17] It must be remembered that to achieve the objectives of the *Broadcasting Act*, SC 1991, c 11, broadcasting and programming undertakings are subject to various licensing conditions requiring them to broadcast a certain percentage of Canadian programming over the broadcast

year and during specific periods of each broadcast day. Programs certified as Canadian by the Department on recommendation by Telefilm Canada and CAVCO are recognized as Canadian by the Canadian Radio-television and Telecommunications Commission [CRTC]. However, for tax reasons, CAVCO does not automatically recognize CRTC-certified programs for CPTC purposes.

[18] When a production receives a CPTC, the production company must include “Canadian Film or Video Production Tax Credit” and the Canada wordmark in the screen credits of each program. The genre, general format of the series and particular content of a program become public knowledge when a program is broadcast on Canadian television under CRTC regulations (broadcasters are required to keep a record to this effect) even though the information and documents provided by a producer in its application for certification or a tax credit may be confidential under section 241 of the Act.

[19] The Minister has “quasi-regulatory” authority under subsection 125.4(7) of the Act. Indeed, the Minister may adopt “guidelines respecting the circumstances under which the conditions in the definition Canadian film or video production certificate in subsection (1) are satisfied”. Even though these guidelines are not “statutory instruments” as defined in the *Statutory Instruments Act*, RSC 1985, c S-22, subsection 125.4(7) of the Act nonetheless requires them to be issued by the Minister.

[20] In practice, producers rely on the Guidelines and CAVCO’s established practices to plan new productions. It is hard to imagine that an experienced producer would propose a series to be

broadcast on prime-time TV to a broadcaster without having looked at previous cases and evaluated its chances of obtaining a tax credit.

[21] On April 2, 2012, the Minister published a 58-page guide entitled “CPTC Program Guidelines” [Guidelines], which sets out the eligibility requirements found in the Act and the Regulations (Part I – Requirements), provides technical details regarding the documents and information required (Part II – How to Apply), and includes a glossary of definitions of the various production genres accepted by the cinema and television industry (Part III – Definitions). The Guidelines were therefore developed to assist producers in anticipating how the Minister is likely to determine whether a production is eligible and to organize themselves accordingly.

[22] A preliminary version of the new Guidelines was disseminated beforehand on the Department’s website on March 31, 2010, and on CAVCO’s online application system. This gave all cinema and television industry stakeholders an opportunity to comment. In an official letter dated February 8, 2011, sent to the Association des producteurs de films et de télévision du Québec [APFTQ], Canadian Heritage’s Deputy Director General of Cultural Industries informed the APFTQ’s Deputy General Director that the updating of CAVCO’s Guidelines should not result in any policy changes with respect to the genre definitions and the eligibility requirements.

[23] The Deputy Director General explained that it was not the Department’s [TRANSLATION] “intention to change [the CPTC] program eligibility requirements, including in relation to the intended scope of the definitions for ineligible genres. CAVCO will continue to apply the definitions for these genres, as well as other policy related to the CPTC, in a manner consistent

with the Income Tax Act (Act) and Regulations and its established practices”, meaning that industry members could legitimately expect the Minister and CAVCO to continue interpreting and enforcing the Act and the Regulations in the same manner and in accordance with established practices, unless of course the Minister publicly announces that he or she has decided to change the policies or any past interpretation of “excluded” or “eligible production”.

[24] In addition to the Guidelines, the Department of Canadian Heritage occasionally publishes public notices describing the policy followed by CAVCO or the criteria it applies when processing certificate applications. For example, Public Notice 2014-01 published on the Department’s website outlines the definitive policy for how CAVCO will determine which performers are eligible for lead performer points for the CPTC. The Department has not published any public notices concerning game shows and the criteria used to determine whether a hybrid production—that is, one that combines elements from an excluded genre with elements from one or more qualifying genres—is primarily a game show.

### **III Application process for certification of the Production**

[25] The applicant is a television and film production corporation incorporated under the *Canada Business Corporations Act*, RSC 1985, c C-44. It is a production subsidiary of Zone3 Inc., a leader in television production in Quebec and one of the key players in this field in Canada. In fact, Zone3 Inc. produces over 850 hours of television a year for the Francophone and Anglophone markets. To fund the production of its television programs, Zone3 Inc. subsidiaries frequently obtain both provincial and federal tax credits. The applicant and its staff are therefore very familiar with the eligibility requirements for tax credits and how the credits work.

[26] In 2013, the applicant produced 26 episodes of the first season of the Production **ON PASSE À L'HISTOIRE (I)**, and, in 2014, 26 episodes of the second season, **ON PASSE À L'HISTOIRE (II)**. All the episodes have since been broadcast on specialized French-language channel TV5 Québec Canada [TV5] in 2014 and 2015. The applicant assumed all the costs associated with the Production. On August 22, 2013, the funding for **ON PASSE À L'HISTOIRE (I)** was structured in the following manner: about two-thirds came from TV5, which undertook to pre-buy the program rights; the remaining third of the funding was to come from the Bell Broadcast and New Media Fund in the form of a licence fee top-up, from the public purse in the form of the provincial tax credit and the CPTC, and lastly, from the applicant, in the form of a private investment.

[27] Under the program rights pre-purchase agreement the applicant entered into with TV5 on September 19, 2013, the delivery and acceptance of the 26 episodes of **ON PASSE À L'HISTOIRE (I)** followed a strict schedule ending on December 6, 2013. To receive the final amounts owed by TV5, the applicant had to provide TV5 with the Part A certificate and the Canadian content certificate (CRTC) or the Part B certificate issued by CAVCO.

[28] On September 25, 2013, the applicant submitted its online application for a Part A certificate. To obtain its CPTC, once the production is completed, it has to receive its certificates (A and B) by no later than October 31, 2017. It estimated its CPTC at \$188,396.

[29] In its application, the applicant describes the Production as being in the “magazine” genre—a genre that qualifies for the CPTC Program and that is not explicitly covered by the



definition of “excluded production” (see subparagraphs 1101(1)(b) (i) to (xi) of the Regulations).

The Guidelines provide the following definition of “magazine”:

**Magazine:** A production genre covering disparate but contemporary topics that may include lifestyle programming, culture, instruction and entertainment.

[30] In fact, according to the synopsis provided by the applicant, the Production

[TRANSLATION] “is a new general knowledge quiz that is both fun and educational, with each episode dealing with the life and times of a real historical or contemporary figure”. However, even though the applicant describes the Production as a quiz, it then states that this is a

[TRANSLATION] “pretext”:

[translation]

The premise is a simple one: the program delves into the story of Cleopatra, Molière or even J.F. Kennedy. . . . This pretext gives rise to 60 minutes of questions covering a range of categories—facts, curiosities and pop culture—about the person chosen and the world in which he or she lived. The three contestants—Quebec stars or celebrities—are lively, witty and funny.

To flesh out the educational component of the program, the presenter is supported by a learned historian, who will provide additional insight on a variety of topics. In addition, a multi-instrumentalist will provide musical entertainment by playing music adapted to each episode.

[Emphasis added]

[31] On October 1, 2013, the applicant paid all the necessary fees, and its application for a Part A certificate was complete. According to the evidence on the Court record, the usual time for making a decision, once an application is complete, is 90 days (cross-examination on affidavit by the Director of CAVCO, answers to questions 57 to 60). Despite the fact that the

Minister did not issue a certificate, the applicant's president felt confident that the applicant would obtain a CPTC. The applicant relied on the fact that, in the past, the Minister had certified several quiz shows and shows where performers competed in friendly competitions with no money involved.

[32] In the matter at bar, according to the case report prepared afterwards by the tax credit officer (Version 3) [at issue here is the first season, filming of which took place between April 11, 2013, and December 13, 2013], the Production satisfied the following requirements of the CPTC Program:

[TRANSLATION]

- (a) the Canadian producer has and maintains full control over the development of the project from the time at which the producer has secured underlying rights;
- (b) the Canadian producer has and maintains full responsibility and control over all aspects (creative and financial) of the production of the project;
- (c) the Canadian producer has and maintains full responsibility and control over the negotiation of initial exploitation agreements;
- (d) the producer has reasonable and demonstrable monetary participation in terms of budgeted fees and overhead, and participation in revenues of exploitation;
- (e) the budget and/or the audited statement or the review engagement report have been verified and do not contain any irregularities;

- (f) all the applicable application deadlines and the Waiver Declaration (T2029), and the production respects the applicable deadlines;
- (g) the production company is a qualified taxable Canadian corporation;
- (h) there has not been a distribution made in Canada by a non-Canadian entity within two years of the production being commercially exploitable.
- (i) all the financing agreements were reviewed and verified, and the production is fully financed;
- (j) the mandatory key creative points were acquired. Since this is a series, each episode has acquired the mandatory points;
- (k) the production will be distributed / broadcast in Canada within two years of it being commercially exploitable; and
- (l) the production company retains the exclusive worldwide copyright ownership in the production for the 25-year period that begins once the production is commercially exploitable.

[33] The only regulatory criterion to which the tax credit officer responded negatively is the following one: [TRANSLATION] “I have reviewed the genre and confirm it is not an ‘excluded production’”. The officer responded [TRANSLATION] “no” [emphasis added].

[34] On October 11, 2013, the tax credit officer asked the applicant to provide him with a DVD of an episode of the Production. On November 13, 2013, the DVD of the episode on Catherine the Great was sent to him. On November 28, 2013, the tax credit officer watched the DVD and verified the production genre (CAVCO analysis report, page 16). However, for a

reason that the Director of CAVCO did not explain in her affidavit or under cross-examination, several months went by before the tax credit officer communicated with CAVCO's Advisory and Compliance committees.

[35] In the meantime, the applicant was informed by SODEC on February 4, 2014, that the first season of the series had been reclassified as a “documentary series” and not as “magazine”, but that this would not have [TRANSLATION] “any impact” on the provincial tax credit. In passing, let us note that in the Guidelines, the “documentary” genre—another genre that is not excluded under the Regulations—is described as follows:

**Documentary:** An original work of non-fiction, primarily designed to inform but which may also educate and entertain, providing an in-depth critical analysis of a specific subject or point of view.

[36] On June 12, 2014, with still no decision from the Minister, the applicant filed online with CAVCO its application for certification for the second season of the series, **ON PASSE À L'HISTOIRE (II)**, filming of which began on February 18, 2014, with an expected completion date of August 15, 2014. In the summary of the new application, the applicant estimated a CPTC of \$178,209. To obtain its CPTC, once production was completed, the production had to be certified [A and B] by no later than October 31, 2018.

[37] On August 25, 2014, CAVCO sent the applicant advance notice of denial for the first season of the series, writing as follows:

[translation]

I am writing to you about your application for a Canadian film or video production certificate (commonly referred to as Part A) for

the production **ON PASSE À L'HISTOIRE (I)** (26 episodes) that you produced on behalf of the corporation Zone3-XXXVI Inc.

The analysis of your case reveals that the production **ON PASSE À L'HISTOIRE (I)** is not a *Canadian film or video production* under section 125.4 of the *Income Tax Act* (“Act”) and section 1106 of the *Income Tax Regulations* (“Regulations”) for the following reason: the production is a production in respect of a game, questionnaire or contest and is therefore an “excluded production” under subparagraph 1106(1)(b)(iii) of the Regulations (definition of “excluded production”).

The guidelines published by the Canadian Audio-Visual Certification Office (CAVCO) for the administration of the Canadian Film or Video Production Tax Credit (CPTC) program provide more information on the various types of excluded production which do not qualify for the CPTC. CAVCO considers a production to be a “game show” when it features “games of skill and chance, as well as quizzes”.

CAVCO’s viewing of the production **ON PASSE À L'HISTOIRE (I)** revealed that each episode follows a game show format with a historical theme. The host of the show introduces the contestants, who compete against each other by answering a series of questions on the topic(s) chosen for the episode. In addition, **ON PASSE À L'HISTOIRE (I)** is associated with a “quiz”-type computer application that viewers can use to play along with the contestants at home while watching the series.

The Minister of Canadian Heritage cannot issue a certificate for a production that does not meet the requirements of the Act and the Regulations.

You may send the undersigned any new information that could affect our assessment of this application within 30 days of the date of this advance notice. Upon expiration of the 30 days, CAVCO will recommend that the Minister of Canadian Heritage deny the certificate unless the additional information provided establishes that the production is eligible.

[38] In response to the various points raised in the advance notice of denial, on September 23, 2014, the applicant’s representative provided written arguments explaining why the Production was not a “game show”, but primarily a [TRANSLATION] “a magazine-type program characterized

by its high informational content presented in an entertaining, lively manner”. Furthermore, even though [TRANSLATION] “in its form”, the show used [TRANSLATION] “some aspects” of the [TRANSLATION] “question and answer” format, this merely served as a [TRANSLATION] “pretext and tool for making the informational content of the program more interesting”. The rules of the [TRANSLATION] “game” are very [TRANSLATION] “flexible”, and the determination of the [TRANSLATION] “winner” is of hardly any or no importance: [TRANSLATION] “Very often, it is hard to determine at the end of the episode which of the performers is the ‘winner’ and how the victor’s ‘honours’ were awarded since the rules for giving ‘points’ are rarely followed”. The applicant also argued that several other [TRANSLATION] “programs similar” to the Production did receive certificates from CAVCO in the past. In addition, SODEC classified the Production as a program in the “documentary” genre.

[39] On September 29, 2014, the Compliance Committee met to examine the case and drafted a request for further information on the allegedly similar programs certified by the Minister in the past. On October 17, 2014, the applicant’s representative provided CAVCO with a detailed explanation and non-exhaustive illustrative list of programs [TRANSLATION] “featuring games of skill and chance, as well as quizzes” that all obtained a certificate from the Minister. The list includes programs featuring performers competing in games of skill or quizzes such as the series *Fidèles au poste* in which [TRANSLATION] “[e]very week, two teams of three celebrities from the arts world participated in various original and entertaining games”; the series *Dieu Merci!*, in which every week [TRANSLATION] “four performers participated in a friendly competition testing their wit and ability to improvise”; and the series *Le match des étoiles*, in which [TRANSLATION] “[e]very week, guest performers participated in a friendly dance competition”. The applicant’s

representative mentioned the following series as examples where the contestants were not performers: *Occupation Double* and *Loft Story* [TRANSLATION] “where, every week, one or more participants were eliminated”; *Allume-moi*, a festive [TRANSLATION] “entertainment show during which three or four suitors were faced with a group of 30 single women in an elaborate selection process”; and *La course Évasion autour du monde*, [TRANSLATION] “a 10-week race around the world, the participants being young people who have to produce a report each week”. From these examples, the applicant’s representative concluded that [TRANSLATION] “when the ‘game’, ‘quiz’ or ‘competition’ is secondary to the program’s main objective, which is to entertain, the use of such a format is not considered to be a ground for refusing Canada’s production tax credit”.

#### IV Decision challenged by the applicant

[40] On February 2, 2015, almost a year and a half after it applied for a certificate for **ON PASSE À L’HISTOIRE (I)**, the applicant was informed of the Minister’s final decision regarding the first season of the program in the form of a notice of denial, which reads as follows:

[translation]

I am writing to you about your application for a Canadian film or video production certificate (commonly referred to as Part A) [“certificate”] for the production **ON PASSE À L’HISTOIRE (I)** (26 episodes) that you produced on behalf of Zone3-XXXVI Inc.

On August 25, 2014, the Canadian Audio-Visual Certification Office (CAVCO) sent you advance notice of denial of your application for a certificate for this production. CAVCO informed you that the production **ON PASSE À L’HISTOIRE (I)** is not a *film or video production* within the meaning of section 125.4 of the *Income Tax Act* (“Act”) and section 1106 of the *Income Tax Regulations* (“Regulations”) for the following reason: the production is a production in respect of a game, questionnaire or contest and is therefore an “excluded production” under

subparagraph 1106(1)(b)(iii) of the Regulations (definition of “excluded production”). CAVCO considers a production to be a “game show” when it features “games of skill and chance, as well as quizzes”.

Through your legal representative, André Véronneau, you made submissions to CAVCO in response to the advance notice of denial in letters dated September 23, 2014, and October 17, 2014. CAVCO reviewed the arguments set out in these letters. It is CAVCO’s opinion that the additional information provided does not establish that the production is eligible.

Consequently, for the reasons described in the advance notice of denial sent to you by CAVCO, I agree with CAVCO’s recommendation that the production **ON PASSE À L’HISTOIRE (I)** is a production in respect of a game, questionnaire or contest. The fact that the production is described as a “general entertainment” program or that the contestants are celebrities does not change the fact that the production does in fact include a game, a quiz or a contest and that this type of production is excluded under the Regulations. Furthermore, how SODEC deals with this production is irrelevant to the determination of the status of the production under the regime of the Canadian Film or Video Production Tax Credit (CPTC) program. Lastly, each application under the CPTC Program is decided upon its own merit, and the eligibility of each production is determined according to the requirements of the Act and the Regulations.

I therefore regret to inform you, for and on behalf of the Minister of Canadian Heritage, that your application for a certificate for the production **ON PASSE À L’HISTOIRE (I)** is denied. This decision is final.

[41] The notice of application for judicial review was served and filed with the Court on March 2, 2015; it was amended on October 2, 2015, following the applicant’s discovery of new facts that would have a determinative impact on the matter. Indeed, it was not until after the filing of the affidavit of the Director of CAVCO and her cross-examination that the applicant was informed during the course of summer 2015 of the actual criteria that were used in this case to determine whether the Production was a production in respect of “a game, questionnaire or



contest” under the Regulations and learned of the existence of the “Decision Tree” reproduced in Annex B of these reasons and which was used in this case by CAVCO to determine whether the Production was eligible in the “game show” genre.

## **V Parties’ general arguments**

[42] The applicant essentially alleges that CAVCO and/or the Minister failed to observe a principle of natural justice or procedural fairness in the processing of the application for certification of the Production, given that the Minister’s refusal to issue a certificate affected the applicant’s legitimate expectations, was contrary to the Act and the Regulations, or was otherwise unreasonable. The Minister’s decision was arbitrary and unpredictable, completely ignoring previous decisions that certified programs “featuring games of skill and chance, as well as quizzes”. Moreover, the advance notice and notice of denial are seriously deficient and do not mention the actual criteria used in this matter. The applicant was deprived of its right to make useful representations regarding the use of the Decision Tree used by CAVCO to determine whether a particular genre of program “in respect of a game, questionnaire or contest” is covered by the exclusion defined at subparagraph 1106(1)(b) of the Regulations. The applicant also argues that it suffered a high monetary loss, exacerbated by the unreasonably long time it took to process the application for certification. In addition, therefore, to seeking that the impugned decision be set aside, the applicant is asking the Court, in the exercise of its discretion, to declare that the Production qualifies for a certificate as a “Canadian film or video production”, which would entitle it to a CPTC.

[43] The respondent is challenging this application for judicial review. In the matter at bar, the assessment process was transparent, and the application for a certificate was processed in a timely manner. The impugned decision is supported by reasons and relies on the evidence on file. The doctrine of legitimate expectations does not confer any substantive rights, only procedural ones. The advance notice of denial was sufficient here. The fact that SODEC certified the Production as being eligible for a provincial tax credit is irrelevant, and the Minister is not bound by positive precedents of CPTC-eligible game shows. The Minister's refusal was reasonable. It must be assumed that the Minister considered all the evidence on file and the applicant's arguments that the Production is similar to previous productions featuring "games of skill and chance, as well as quizzes" that CAVCO considered to be eligible in the past. Even if the Court finds that a reviewable error was committed, the matter should not be referred back to the Minister because the result would be the same. When a production features "a game, questionnaire or contest", CAVCO is not restricted to asking, according to the Guidelines, whether this production features "games of skill and chance, as well as quizzes" but applies an analysis grid—the "Decision Tree"—to determine whether or not the production is an "excluded production" under subparagraph 1106(1)(b)(iii) of the Regulations. In the matter at bar, if the Court answers the questions in the Decision Tree, it must exclude the Production in light of the evidence on file because the quizzes have "objective outcomes", rather than "subjective" ones.

## **VI Scope of the review of the legality of the Minister's denial**

[44] The appropriate standard of review for issues involving whether the decision-maker respected the rules of procedural fairness is that of correctness, while the standard of reasonableness applies to the review of questions of fact and/or of law: *Tooncan* at paras 41 and

42; *Tricon Television29 Inc v Canada (Canadian Heritage)*, 2011 FC 435 at para 31 [*Tricon*]. In the matter at bar, the eligibility requirements for the CPTC Program are not found solely in the Act and the Regulations; in addition, under subsection 125.4(7) of the Act, the Minister may issue guidelines respecting the circumstances under which the conditions in the definition of “Canadian film or video production certificate” in subsection (1) are satisfied.

[45] In reviewing the reasonability of the impugned decision, courts should not substitute their own reasons, but they may, if they find it necessary, look to the record for the purpose of assessing the reasonableness of the outcome: *Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 at para 15, [2011] 3 SCR 708 [*Newfoundland Nurses' Union*]. Moreover, the direction that courts are to give “respectful attention to the reasons” which could be offered in support of an administrative decision is not a *carte blanche* to reformulate a tribunal’s decision in a way that casts aside an unreasonable chain of analysis in favour of the court’s own rationale for the result, nor should it be taken as diluting the importance of giving proper reasons for an administrative decision: *Alberta (Information and Privacy Commissioner) v Alberta Teachers' Association*, 2011 SCC 61 at para 54, [2011] 2 SCR 654; *Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 at para 63, [2009] 1 SCR 339) [*Khosa*].

[46] Consequently, with respect to the transparency and intelligibility of the administrative decision under review, when the Minister decides to enforce a recommendation from CAVCO not to certify a production, the Minister’s notice of denial, or failing that, CAVCO’s advance notice of denial, must include the particular criteria that were used to determine that the

production is not eligible under the Act and the Regulations and the reasons why this production is not—in light of the evidence on file—part of the admissible genre described by the producer in the application for certification. (For an example of “adequate and even exemplary” reasons provided by CAVCO to deny an application for certification, see *Tricon* at paras 22, 28, 38 and 39).

[47] On the other hand, the duty of procedural fairness is flexible and variable, and depends on an appreciation of the context of the particular statute and the rights affected (*Baker v Canada (Minister of Citizenship and Immigration)*, 1999 CanLII 699 (SCC) at para 21, [1999] 2 SCR 817 [*Baker*]). The following factors were identified in *Baker* to determine the content of the duty of procedural fairness: (1) the nature of the decision being made and process followed in making it; (2) the nature of the statutory scheme and the terms of the statute pursuant to which the body operates; (3) the importance of the decision to the individual or individuals affected; (4) the legitimate expectations of the person challenging the decision; (5) the choices of procedure made by the agency itself. This list is not exhaustive. The Court may consider any other relevant factors appropriate to the statutory, institutional, and social context of the decision (*Baker* at paras 23-28). We will not revisit in detail each of the aspects already described in paragraphs 5 to 14 (statutory and regulatory framework) and paragraphs 15 to 24 (importance of the CPTC Program and eligibility requirements), except to say that we will keep them in mind when analyzing the five factors set out in *Baker*.

[48] In practice, the Minister’s powers with respect to the issuance of certificates A and B, which producers must obtain in order to receive a CPTC, are exercised by a senior level

designate acting on the Minister's behalf. However, before a notice of denial is sent to a producer, the producer will have received an advance notice of denial to allow it to argue its perspective and submit additional evidence. Even though CAVCO has no decision-making power, CAVCO's recommendations can generally be expected to carry significant weight in the Minister's final decision. Since certificates are issued by the Minister, the Minister's decisions are very important for how production corporations organize future activities (*VIA Rail Canada Inc v National Transportation Agency* (FCA), [2001] 2 FCR 25 at para 20).

[49] There is nothing in *Baker* to suggest that administrative decisions affecting economic rights are by their nature less important than judicial or quasi-judicial decisions affecting individual rights, and it would be conceptually wrong to describe from the outset such decisions as being less important: *Uniboard Surfaces Inc v Kronotex Fussboden GmbH and Co KG*, 2006 FCA 398 at para 27 [*Uniboard Surfaces Inc*]. Certainly, the Minister's decisions do not affect the lives of individuals, but they do play a key role in the cinema and television sector by supporting the funding and production of Canadian programs to be broadcast or distributed throughout Canada.

[50] Let us not forget that the production of films and television programs by qualifying Canadian production companies is central to the expression of Canadian identity. The funding of these productions plays an active part in enriching Canadian heritage and the cultural diversity of peoples across the country, in light of the regional particularities and special needs of the French- and English-language markets. In the matter at bar, the monetary loss the applicant will suffer if it does not obtain the sought tax credits for the Production (approximately \$500,000) is

substantial, in terms of the money the applicant will have to invest in the Production and which, consequently, will not be available for it to fund other independent Canadian productions.

[51] The production of a series of 26 episodes per season involves significant human and financial challenges for an independent producer. It is a complex undertaking that demands a great deal of time and effort as the producer must apply to several agencies and obtain pre-financing or bridge financing from a financial institution. While “the doctrine of legitimate expectations cannot lead to substantive rights outside the procedural domain” (*Baker* at para 26), it does offer producers some assurance as to the analysis framework and criteria used by CAVCO and the Minister to determine whether a production is eligible. This is the idea behind having guidelines and not using esoteric analytical tools known only to a select few and not generally available to producers on the Department’s website.

[52] Procedural fairness requires the criteria used by CAVCO and the Minister to be transparent and intelligible, and it must be assumed that these criteria are not discriminatory, arbitrary or capricious. Consequently, if CAVCO and the Minister decide to unilaterally change their practices and to differently interpret which productions qualify for the CPTC Program, producers have a legitimate expectation that any such change be advertised by those responsible.

[53] Upon considering all the evidence submitted by the parties in light of the relevant factors set out in *Baker*, giving particular weight to legitimate expectations and the statutory, institutional, and social context of the impugned decision, it is my opinion that the duty of procedural fairness requires CAVCO and the Minister to be transparent and predictable in the

criteria they adopt and their practical application of any general analytical framework, especially when dealing with a seemingly hybrid production genre, which, according to the uncontradicted evidence on the record, is the case here.

[54] For the following reasons, I conclude that CAVCO and the Minister breached their duty of procedural fairness towards the applicant; in addition, the reasons for denial are seriously inadequate, which makes the impugned decision, in every respect, reviewable by this Court.

## VII Reviewability of the impugned decision

[55] The Minister had to determine whether, under subsections 125.4(1) and (3) of the Act, the Production is a “Canadian film or video production”, that is, one that is not otherwise excluded by subsections 1106(1) and (4) of the Regulations. However, according to the reasoning of the Regulations, a production is eligible in principle, unless it is principally a production in one of the excluded genres described in subparagraphs 1106(1)(i) to (xi) of the Regulations.

[56] When reviewing whether the reasons for the Minister’s denial are reasonable, the Court must consider both the notice of denial and the advance notice of denial. In the notice of denial, the Minister concludes that the Production is [TRANSLATION] “a production in respect of a game, questionnaire or contest” and is therefore an [TRANSLATION] “excluded production” under subparagraph 1106(1)(b)(iii) of the Regulations (definition of “excluded production”). According to the Guidelines, a production is a game show when it features “games of skill and chance, as well as quizzes”. Yet [TRANSLATION] “[the] viewing of the production **ON PASSE À**

**L'HISTOIRE (I)** reveal[ed] that each episode follows a game show format with a historical theme”, while [TRANSLATION] “[t]he host of the show introduces the contestants, who compete against each other by answering a series of questions on the topic(s) chosen for the episode”. The Production also [TRANSLATION] “is associated with a ‘quiz’-type computer application viewers can use to play along with the contestants at home while watching the series”. Furthermore, [TRANSLATION] “[t]he fact that the production is described as a ‘general entertainment’ program or that the contestants are celebrities does not change the fact that the production does in fact include a game, a quiz or a contest and that this type of production is excluded under the Regulations”.

[57] The applicant alleges that the above reasons are quite inadequate and seriously deficient given the actual issues raised during the review of the Production’s eligibility for a CPTC. I share this view. The applicant and the respondent in this case agree on one basic point at least. A production is not necessarily excluded if it features “games of skill and chance, as well as quizzes”: this depends on the circumstances and the specific evidence submitted to CAVCO and the Minister. The fundamental flaw of the advance notice and the notice of denial in this case is that the reasons do not include a serious analysis of the true nature or the main feature of the Production based on the substantial physical and documentary evidence the applicant submitted to CAVCO.

[58] The DVD containing the episode on Catherine the Great speaks for itself: the series is not merely a continuous stream of “quizzes”. Indeed, the reasons for the denial do not directly dispute the fact that, according to the evidence on file, the series **ON PASSE À L'HISTOIRE** is



a general entertainment program with high informational and/or educational content and that the question-and-answer format used merely serves as a pretext or vehicle for effectively presenting the information content.

[59] According to the evidence on the record, each program of the **ON PASSE À L'HISTOIRE** series follows the same order and presents historical and cultural content aside from the questions the guest performers are asked:

- Each episode starts with a short video produced by the applicant and providing an overview of the featured figure;
- Throughout the episode, an historian is there to provide additional information (and the research for the program is performed by two historians);
- Two further video clips produced by the applicant and a film excerpt with commentary from one of the historians are shown during the episode in order to provide further information on the figure whose story is being told.

[60] Moreover, the reasons provided by CAVCO and the Minister do not actually deal with the applicant's main argument regarding its description of the Production as a "magazine" or "documentary" series—which qualifies the production for a CPTC because these two genres are not mentioned in subparagraphs 1701(1)(b)(i) to (xi) of the Regulations. In the absence of articulate reasoning, the final outcome is arbitrary and capricious. The sparse reasons of the advance notice and notice of denial do not allow this Court to verify whether the Minister actually questioned whether the Production is primarily a "game" or a "contest" under subparagraph 1106(1)(b)(iii) of the Regulations. The current reasons do not allow the Court to understand why, in practice, several productions also featuring "games of skill and chance, as

well as quizzes” were certified in the past by the Minister because they were “eligible productions”.

[61] When, as in this case, factors, precedents and elements favour the description the applicant gave to the Production, the reasons provided must allow the Court to determine that these were actually examined by the Minister. Empty or boilerplate phrases such as “the evidence, precedents or relevant factors were considered by the decision-maker” are not sufficient to allow the reviewing court to determine whether the outcome is an acceptable one. While it is true that the Minister is not bound by the positive decision made by SODEC when determining whether the Production is eligible for a CPTC, one may well ask why the Production was classified as a “documentary series” by a provincial organization with a high level of expertise in the same area of activity.

[62] As reiterated by the Federal Court of Appeal in *Turner v Canada (Attorney General)*, 2012 FCA 159 at para 40 [*Turner*], the decision-maker need not address each and every argument made by a party. It must nonetheless consider the important points in issue, and its reasons must reflect consideration of the main relevant factors (*Turner* at para 41).

Consequently, when an applicant establishes that it raised an important relevant point, and where, taking into account the record as a whole, the reasons of the tribunal do not allow a reviewing court to understand why the point was disregarded, a reviewable error may be found to exist (*Turner* at para 42). When the reviewing court is not in a position to determine if the decision on that point or argument falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and the law, the decision will usually be found to be

unreasonable, unless the reviewing court can itself reasonably find that the outcome of the proceedings would not have changed even if the point or argument has been dealt with by the tribunal one way or the other (*Turner* at para 45). The same reasoning applies in the case under review.

[63] The current reasons are certainly vague and do not really respond to the applicant's main argument. The respondent is therefore now asking this Court to go beyond the current reasons and the contents of the Certified Tribunal Record. According to the respondent, additional information provided by the Director General of CAVCO, Ms. Mennie, in her affidavit dated June 1, 2015, fill any clear gaps in the reasons for denial given to the applicant.

[64] The Director of CAVCO provides the following explanation at paragraphs 40 and 41 of her affidavit:

[translation]

40. When a program is a "game", CAVCO generally considers the following questions:

- a. Does one of the contestants win the game, contest or quiz?
- b. Does the production feature participants or characters that the audience can watch develop from one episode to the next?
- c. Are the games or questions in the production objective (true or false) or subjective (to be decided by a judge)?

41. The features of the production revealed by these questions are used to identify the key elements of productions in the game or quiz genre. By applying such an analytical framework to each case involving a production with respect to a game, contest or quiz, CAVCO aims to ensure that its analyses are consistent in order to treat each case fairly.

[65] On July 15, 2015, the Director of CAVCO was cross-examined at length about these statements by counsel for the applicant. She admitted that, in this case as in previous cases, CAVCO had used [TRANSLATION] “a working tool”—the Decision Tree. Its use in this case was determinative of the outcome. The new evidence submitted by the respondent—which was unknown to the applicant—corroborates, however, that, in practice, CAVCO and the Minister have always interpreted administratively and narrowly the concept of “game show” and the scope of the exclusion defined in subparagraph 1106(1)(b)(iii) of the Regulations.

[66] The basic problem in this case is that the reasoning and justification provided by the Director of CAVCO in her affidavit and examination *a posteriori* not only do not appear in the reasons for the impugned decision, but they also contradict some important aspects. For example, the advance notice of denial provides a particular reason for the denial, namely, the use of a computer application that allows viewers to play along at home and which, as the Director of CAVCO admitted herself under examination, is not a relevant or determinative factor here (Ms. Mennie’s answers to questions 154 to 157).

[67] The respondent relies on *Newfoundland Nurses Union*, but adequacy of reasons is not a matter to be trifled with that can be fixed through an exercise in judicial creativity. To quote this Court in *Komolafe v Canada (Citizenship and Immigration)*, 2013 FC 431 at para 11, “[i]t is ironic that Newfoundland Nurses, a case which at its core is about deference and standard of review, is urged as authority for the supervisory court to do the task that the decision maker did not do, to supply the reasons that might have been given and make findings of fact that were not made”.

[68] While the application of “the doctrine of legitimate expectations cannot lead to substantive rights outside the procedural domain” (*Baker* at para 26), the fact remains that

[t]he values underlying the duty of procedural fairness relate to the principle that the individual or individuals affected should have the opportunity to present their case fully and fairly, and have decisions affecting their rights, interests, or privileges made using a fair, impartial, and open process, appropriate to the statutory, institutional, and social context of the decision.

[Emphasis added] (*Baker* at para 28)

[69] In truth, if one examines the document reproduced in Annex B and the type of pointed questions it features, it is obvious that the Decision Tree is much more than a mere [TRANSLATION] “working tool”. The Decision Tree provides new, additional criteria that do not appear in the Regulations or the Guidelines for determining whether or not a “program featuring games of skill and chance, as well as quizzes” is eligible for a CPTC. For example, according to the Decision Tree, a “game show” is considered to be an “eligible production” under the Regulations if “the games being played or the tasks being completed” have “outcomes” that are “subjective” rather than “objective”, or if the series “keep[s] the same group of contestants for the duration of the series”. With respect to the latter criterion, the Director of CAVCO referred to these contestants as [TRANSLATION] “participants whose character develops”, which would make such a production eligible for a CPTC even if the contestants are competing in games of skill or quizzes (transcript, Ms. Mennie’s answers to questions 112 to 145).

[70] Furthermore, the applicant had a legitimate expectation that the advance notice of denial list the exact criteria used by CAVCO to allow it to make timely, relevant representations and to

submit additional information in order to satisfy CAVCO that it would meet these criteria or that these criteria were not relevant or applicable in the case of the Production.

[71] As noted by the Supreme Court in *Canada (Attorney General of Canada) v Mavi*, 2011 SCC 30 at para 39, [2011] 2 SCR 504, “it is certainly not to be presumed that Parliament intended that administrative officials be free to deal unfairly with people subject to their decisions”. Yet it is clear that the process that was followed in this case was neither fair nor open, nor did it allow the applicant to fully present its case. The lack of transparency resulted in various harms to the applicant that can no longer be rectified at this stage of the case.

[72] In short, whether the Minister’s denial is examined in terms of whether the reasons were reasonable or whether the Minister breached procedural fairness, the Court’s interference is clearly warranted.

## **VIII Legal remedy**

[73] The applicant would like the Court not only to set aside the impugned decision, but also to grant a declaration in its favour; in turn, the respondent invites the Court to dismiss the application for judicial review because the answers to the questions of the Decision Tree suggest that the Production is not eligible. Even though the decision made by the Minister is reviewable, any relief this Court may grant is discretionary (*Khosa* at para 36).

[74] First, I am not satisfied that, as the respondent submits, this is a case where the Court, in exercising its discretion, should dismiss the application for judicial review on the ground that the

final result would be the same (*Mobil Oil Canada Ltd v Canada-Newfoundland Offshore Petroleum Board*, [1994] 1 SCR 202, 1994 CanLII 114 (SCC) at p 228).

[75] For one thing, it cannot be held here that “because of the inconsequential, trivial or mere technical nature of the breach, the relief sought should not be granted” (*Uniboard Surfaces Inc* at para 24). The applicant has suffered actual prejudice here, and the final outcome is not predetermined. There are a number of possible outcomes, all depending on how the definitions of eligible production and excluded production are interpreted and applied. The present situation is therefore very different from the case in *Tooncan*, where, in the absence of an international treaty and the expiry of the 48-hour regulatory deadline, the Minister could not lawfully certify a coproduction and the Court could not order that “a certificate be issued in contravention of the clear provisions of the Act” (*Tooncan* at para 85).

[76] Secondly, the Decision Tree (Annex B) on which the respondent is now relying to seek the dismissal of this application is not a binding regulation—or even a guideline to give direction. Consequently, the Decision Tree cannot limit the Minister’s discretion. The Minister must examine the true or primary nature of a production in order to determine whether it is a “Canadian film or video production” under subsection 1106(4) of the Regulations or an “excluded production” as defined in subsection 1106(1) of the Regulations.

[77] According to the evidence on the record, the Production includes a number of extrinsic elements—animation, stock footage, reports, and documentaries—that have nothing in common with the usual quiz format. Indeed, the respondent is not challenging the fact that the Production

has high informational content (up to 30%), with each episode telling a different story, that of a real or fictional person, in respect of which the additional information provided by a historian and the video clips produced by the applicant provide a more complete picture. The Minister had to determine therefore whether, based on the facts, the Production is primarily a “game show”, a “magazine” or a “documentary” program, as indicated in the “notes” following the Decision Tree: “If there are non-game show /contest elements then we need to determine whether it is ‘primarily’ a game show/contest or not”.

[78] The applicant, citing specific examples of other productions featuring quizzes or games of skill that received a CPTC, submits that some of the criteria in the Decision Tree are irrational and inconsistent, and bear no relation to the objectives of the CPTC Program; in addition, they are applied inconsistently by the Minister. The applicant should make its arguments directly to the Minister. It is not this Court’s role to determine whether the applicant’s arguments against the use of the criteria in the Decision Tree have any merit, nor is its role to reconsider the evidence and to substitute its interpretation for the interpretation CAVCO or the Minister gave or might give to section 1106 of the Regulations.

[79] I am not prepared today to issue a declaration that the television series **ON PASSE À L’HISTOIRE** qualifies for a CPTC, or even to order the Minister to issue a certificate to the applicant. There is no evidence that CAVCO or the former Minister acted in bad faith. At this stage, we must also assume that the current Minister (the Honourable Mélanie Joly) will act in good faith and that she will take this Court’s reasons into consideration. This is what distinguishes the present matter from *LeBon v Canada (Public Safety and Emergency*



*Preparedness*), 2012 FC 1500 at paras 25 to 27, aff'd 2013 FCA 55 at paras 10 to 15, where the Court issued an order obliging the Minister of Public Safety and Emergency Preparedness to act in a certain manner. Following the Federal Court of Appeal's setting aside of his decision to deny a transfer request (*LeBon v Canada (Attorney General)*, 2012 FCA 132 at paras 25 to 28), the Minister of Public Safety and Emergency Preparedness clearly chose to ignore the reasons and directions given by the Federal Court of Appeal.

[80] In the matter at bar, the Minister, in the past, seems to have given a broad interpretation to "eligible production", and the respondent did not argue before this Court that previous similar productions referred to by the applicant should not have been certified because they were excluded according to a new and correct interpretation of the Act and the Regulations. On the other hand, the positive precedents cited by the applicant only draw their value from how they are interpreted and applied by the Minister. We can also not make any assumptions about the outcome or any future interpretation that might be given to the concept of "game show", should, for example, the Guidelines be amended in the meantime as a result of public consultation with industry stakeholders or a change in policy with respect to the CPTC Program's eligibility requirements from the new government.

[81] The application for judicial review will therefore be allowed in part. The request for a declaration that the television series **ON PASSE À L'HISTOIRE** qualifies for a CPTC is denied. In exercising my discretion, it seems sufficient here to simply set aside the impugned decision and to refer the matter back for redetermination by the Minister within 90 days, which

seems a reasonable time frame to me, given that the record is complete and we are not close to the expiration dates for the issuance of certificates of completion for the Production.

[82] In light of this outcome, the applicant is entitled to costs.

**JUDGMENT**

**THIS COURT ORDERS AND ADJUDGES** that the application for judicial review is allowed in part. The request for a declaration that the television series **ON PASSE À L'HISTOIRE** [the Production] is eligible for a tax credit for a Canadian film or video production [CPTC] is denied. The February 2, 2015, decision is set aside, and the matter is referred back to the Minister for redetermination within 90 days of the date of this decision. The Minister shall take the reasons accompanying this decision into account and allow the applicant to make its case regarding any aspect concerning the use of the Decision Tree and the Production's eligibility for a CPTC. With costs in favour of the applicant.

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"Luc Martineau"

Judge

Certified true translation  
Johanna Kratz, Translator

## ANNEX A

Section 125.4 of the *Income Tax Act*, RSC 1985, c 1 (5th Supp)

### **Canadian Film or Video Production Tax Credit**

### **Crédit d'impôt pour production cinématographique ou magnétoscopique canadienne**

#### **Definitions**

#### **Définitions**

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

125.4 (1) Les définitions qui suivent s'appliquent au présent article.

**Canadian film or video production certificate** means a certificate issued in respect of a production by the Minister of Canadian Heritage certifying that the production is a Canadian film or video production in respect of which that Minister is satisfied that, except where the production is a treaty co-production (as defined in subsection 1106(3) of the *Income Tax Regulations*), an acceptable share of revenues from the exploitation of the production in non-Canadian markets is, under the terms of any agreement, retained by

**certificat de production cinématographique ou magnétoscopique canadienne**  
Certificat délivré par le ministre du Patrimoine canadien relativement à une production et attestant qu'il s'agit d'une production cinématographique ou magnétoscopique canadienne relativement à laquelle ce ministre est convaincu que, sauf s'il s'agit d'une coproduction prévue par un accord, au sens du paragraphe 1106(3) du *Règlement de l'impôt sur le revenu*, une part acceptable des recettes provenant de l'exploitation de la production sur les marchés étrangers est retenue, selon les modalités d'une convention, par:

(a) a qualified corporation that owns or owned an interest in, or for civil law a right in, the production;

a) une société admissible qui est ou était propriétaire d'un intérêt ou, pour l'application du droit civil, d'un droit sur la production;

(b) a prescribed taxable Canadian corporation related

b) une société canadienne imposable visée par règlement

to the qualified corporation; or

qui est liée à la société  
admissible;

(c) any combination of corporations described in paragraph (a) or (b).  
(certificate de production cinématographique ou magnétoscopique canadienne)

c) toute combinaison de sociétés visées aux alinéas a) ou b). (Canadian film or video production certificate)

...

[...]

**Canadian film or video production** has the meaning assigned by regulation.  
(production cinématographique ou magnétoscopique canadienne)

**production cinématographique ou magnétoscopique canadienne**  
S'entend au sens du Règlement de l'impôt sur le revenu. (Canadian film or video production)

...

[...]

**Tax credit**

**Crédit d'impôt**

(3) Where

(3) La société qui est une société admissible pour une année d'imposition est réputée avoir payé, à la date d'exigibilité du solde qui lui est applicable pour l'année, un montant au titre de son impôt payable pour l'année en vertu de la présente partie égal à 25 % de sa dépense de main-d'oeuvre admissible pour l'année relativement à une production cinématographique ou magnétoscopique canadienne, si les conditions suivantes sont réunies:

(a) a qualified corporation for a taxation year files with its return of income for the year

a) la société joint les documents suivants à la déclaration de revenu qu'elle produit pour l'année:

(i) a Canadian film or video production certificate issued in

(i) le certificat de production cinématographique ou

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 its balance-due day for the year an amount on account of its tax payable under this Part for the year equal to 25% of its qualified labour expenditure for the year in respect of the production.

...

#### **Revocation of certificate**

(6) If an omission or incorrect statement was made for the purpose of obtaining a Canadian film or video production certificate in respect of a production, or if the production is not a Canadian film or video production,

(a) the Minister of Canadian Heritage may

(i) revoke the certificate, or

(ii) if the certificate was issued in respect of productions

magnétoscopique canadienne délivré relativement à la production,

(ii) un formulaire prescrit contenant les renseignements prescrits,

(iii) tout autre document visé par règlement relativement à la production;

b) les principaux travaux de prise de vue ou d'enregistrement de la production ont commencé avant la fin de l'année.

[...]

#### **Révocation d'un certificat**

(6) Si une omission ou un énoncé inexact a été fait en vue d'obtenir un certificat de production cinématographique ou magnétoscopique canadienne relativement à une production ou s'il ne s'agit pas d'une production cinématographique ou magnétoscopique canadienne, les règles ci-après s'appliquent:

a) le ministre du Patrimoine canadien peut:

(i) soit révoquer le certificat,

(ii) soit, si le certificat a été délivré relativement à des

included in an episodic television series, revoke the certificate in respect of one or more episodes in the series;

(b) for greater certainty, for the purposes of this section, the expenditures and cost of production in respect of productions included in an episodic television series that relate to an episode in the series in respect of which a certificate has been revoked are not attributable to a Canadian film or video production; and

(c) for the purpose of subparagraph (3)(a)(i), a certificate that has been revoked is deemed never to have been issued.

### **Guidelines**

(7) The Minister of Canadian Heritage shall issue guidelines respecting the circumstances under which the conditions in the definition *Canadian film or video production certificate* in subsection (1) are satisfied. For greater certainty, those guidelines are not statutory instruments as defined in the *Statutory Instruments Act*.

[Emphasis added]

productions faisant partie d'une série télévisuelle à épisodes, révoquer le certificat relatif à un ou plusieurs épisodes de la série;

b) il est entendu que, pour l'application du présent article, les dépenses et le coût de production relatifs à des productions faisant partie d'une série télévisuelle à épisodes qui se rapportent à un épisode de la série relativement auquel un certificat a été révoqué ne sont pas attribuables à une production cinématographique ou magnétoscopique canadienne;

c) pour l'application du sous-alinéa (3)a)(i), le certificat révoqué est réputé ne jamais avoir été délivré.

### **Lignes directrices**

(7) Le ministre du Patrimoine canadien publie des lignes directrices sur les circonstances dans lesquelles les conditions énoncées dans la définition de *certificat de production cinématographique ou magnétoscopique canadienne* au paragraphe (1) sont remplies. Il est entendu que ces lignes directrices ne sont pas des textes réglementaires au sens de la *Loi sur les textes réglementaires*.

[Soulignements ajoutés]

Section 1106 of the *Income Tax Regulations*, CRC, c 945

DIVISION VII  
Certificates Issued by the  
Minister of Canadian Heritage

**Interpretation**

**1106 (1)** The following definitions apply in this Division and in paragraph (x) of Class 10 in Schedule II.

...

**certificate of completion**, in respect of a film or video production of a corporation, means a certificate certifying that the production has been completed, issued by the Minister of Canadian Heritage before the day (in this Division referred to as “the production’s certification deadline”) that is six months after the production’s application deadline.  
 (certificat d’achèvement)

...

**application for a certificate of completion**, in respect of a film or video production, means an application by a prescribed taxable Canadian corporation in respect of the production, filed with the Minister of Canadian Heritage before the day (in this Division referred to as “the production’s application deadline”) that is the later of

SECTION VII  
Certificats délivrés par le  
ministre du Patrimoine  
canadien

**Définitions**

**1106 (1)** Les définitions qui suivent s’appliquent à la présente section et à l’alinéa x) de la catégorie 10 de l’annexe II.

[...]

**certificat d’achèvement**  
 Certificat attestant l’achèvement d’une production cinématographique ou magnétoscopique d’une société, délivré par le ministre du Patrimoine canadien avant le jour (appelé “date limite d’attestation de la production” à la présente section) qui suit de six mois la date limite de demande relative à la production. (certificate of completion)

[...]

**demande de certificat d’achèvement**  
 Demande relative à une production cinématographique ou magnétoscopique qu’une société canadienne imposable visée présente au ministre du Patrimoine canadien avant le jour (appelé “date limite de demande relative à la production” à la présente section) qui correspond au dernier en date des jours



suivants :

(a) the day that is 24 months after the end of the corporation's taxation year in which the production's principal photography began, or

(b) the day that is 18 months after the day referred to in paragraph (a), if the corporation has filed, with the Canada Revenue Agency, and provided to the Minister of Canadian Heritage a copy of, a waiver described in subparagraph 152(4)(a)(ii) of the Act, within the normal reassessment period for the corporation in respect of the first and second taxation years ending after the production's principal photography began.

**producer** means a producer of a film or video production, except that it does not include a person unless the person is the individual who

(a) controls and is the central decision maker in respect of the production;

(b) 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) is identified in the production as being the producer of the production.

a) le jour qui suit de 24 mois la fin de l'année d'imposition de la société au cours de laquelle ont débuté les principaux travaux de prise de vue relatifs à la production;

b) le jour qui suit de 18 mois le jour visé à l'alinéa a), si la société a présenté à l'Agence du revenu du Canada la renonciation visée au sous-alinéa 152(4)a)(ii) de la Loi — et en a fourni une copie au ministre du Patrimoine canadien — au cours de la période normale de nouvelle cotisation qui lui est applicable pour les première et deuxième années d'imposition se terminant après le début des principaux travaux de prise de vue relatifs à la production.

**producteur** Est le producteur d'une production cinématographique ou magnétoscopique le particulier qui, à la fois:

a) contrôle la production et en est le principal décideur;

b) est directement responsable de l'acquisition de l'intrigue ou du scénario de la production ainsi que de l'élaboration, du contrôle créatif et financier et de l'exploitation de la production;

c) est identifié dans la production comme en étant le

(producteur)

producteur.

**excluded production** means a film or video production, of a particular corporation that is a prescribed taxable Canadian corporation.

**production exclue** Production cinématographique ou magnétoscopique d'une société canadienne imposable visée (appelée "société donnée" à la présente définition), qui, selon le cas:

(a) in respect of which

a) est une production à l'égard de laquelle l'un des faits suivants se vérifie:

(i) the particular corporation has not filed an application for a certificate of completion before the production's application deadline,

(i) la société donnée n'a pas présenté de demande de certificat d'achèvement la concernant avant la date limite de demande relative à la production,

(ii) a certificate of completion has not been issued before the production's certification deadline,

(ii) aucun certificat d'achèvement la concernant n'a été délivré avant la date limite d'attestation de la production,

(iii) if the production is not a treaty co-production, a person (other than the particular corporation or a prescribed person)

(iii) dans le cas où elle n'est pas une coproduction prévue par un accord, une personne (sauf la société donnée ou une personne visée):

(A) is a copyright owner of the production for any commercial exploitation purposes at any time during the 25-year period that begins at the earliest time after the production was completed that it is commercially exploitable, or

(A) ou bien est titulaire du droit d'auteur sur la production en vue de son exploitation commerciale à tout moment de la période de vingt-cinq ans qui commence dès que la production est exploitable commercialement après son achèvement,

(B) controls the initial licensing of commercial exploitation,

(B) ou bien contrôle le processus de concession de la licence d'exploitation commerciale initiale,

- |  |  |
|--|--|
| <p>(iv) there is not an agreement in writing, for consideration at fair market value, to have the production shown in Canada within the 2-year period that begins at the earliest time after the production was completed that it is commercially exploitable,</p> | <p>(iv) aucune convention écrite, faisant état d'une contrepartie à la juste valeur marchande, n'a été conclue à son égard avec l'une des personnes suivantes pour qu'elle soit diffusée au Canada au cours de la période de deux ans qui commence dès qu'elle est exploitable commercialement après son achèvement:</p> |
| <p>(A) with a corporation that is a Canadian and is a distributor of film or video productions, or</p>   | <p>(A) une société, ayant la qualité de Canadien, qui est distributrice de productions cinématographiques ou magnétoscopiques,</p>   |
| <p>(B) with a corporation that holds a broadcasting license issued by the Canadian Radio-television and Telecommunications Commission for television markets, or</p>   | <p>(B) une société titulaire d'une licence de radiodiffusion délivrée par le Conseil de la radiodiffusion et des télécommunications canadiennes pour les marchés de la télévision,</p>   |
| <p>(v) distribution is made in Canada within the 2-year period that begins at the earliest time after the production was completed that it is commercially exploitable by a person that is not a Canadian, or</p>  | <p>(v) la production a été distribuée au Canada au cours de la période de deux ans qui commence dès qu'elle est exploitable commercialement, après son achèvement, par une personne qui n'a pas la qualité de Canadien;</p>  |
| <p>(b) <u>that is</u></p>  | <p>b) <u>est une production qui est, selon le cas:</u></p>   |
| <p>(i) news, current events or public affairs programming, or a programme that includes weather or market reports,</p>   | <p>(i) une émission d'information, d'actualités ou d'affaires publiques ou une émission qui comprend des bulletins sur la météo ou les marchés boursiers,</p>  |
| <p>(ii) a talk show,</p>   | <p>(ii) <u>une interview-variétés,</u></p>   |

- |   |  |
|---|--|
| (iii) a production in respect of a game, questionnaire or contest (other than a production directed primarily at minors), | (iii) une production comportant un jeu, un questionnaire ou un concours, sauf celle qui s'adresse principalement aux personnes mineures, |
| (iv) a sports event or activity,  | (iv) la présentation d'une activité ou d'un événement sportif,   |
| (v) a gala presentation or an awards show,  | (v) la présentation d'un gala ou d'une remise de prix,   |
| (vi) a production that solicits funds,  | (vi) une production visant à lever des fonds,  |
| (vii) reality television,   | (vii) de la télévision vérité,   |
| (viii) pornography,   | (viii) de la pornographie,   |
| (ix) advertising,   | (ix) de la publicité,  |
| (x) a production produced primarily for industrial, corporate or institutional purposes, or                               | (x) une production produite principalement à des fins industrielles ou institutionnelles,  |
| (xi) a production, other than a documentary, all or substantially all of which consists of stock footage.                 | (xi) une production, sauf un documentaire, qui consiste en totalité ou en presque totalité en métrage d'archives.                        |

...

[...]

**Canadian Film or Video Production**

(4) Subject to subsections (6) to (9), 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 in respect of

**Production cinématographique ou magnétoscopique canadienne**

(4) Sous réserve des paragraphes (6) à (9), pour l'application de l'article 125.4 de la Loi, de la présente partie et de l'annexe II, production cinématographique ou magnétoscopique canadienne s'entend d'une production

which the Minister of Canadian Heritage has issued a certificate (other than a certificate that has been revoked under subsection 125.4(6) of the Act) and that is

cinématographique ou magnétoscopique, à l'exception d'une production exclue, d'une société canadienne imposable visée, à l'égard de laquelle le ministre du Patrimoine canadien a délivré un certificat (sauf un certificat qui a été révoqué en vertu du paragraphe 125.4(6) de la Loi) et qui, selon le cas:

(a) a treaty co-production; or

a) est une coproduction prévue par un accord;

(b) a film or video production

b) remplit les conditions suivantes:

(i) whose producer is a Canadian at all times during its production,

(i) son producteur a la qualité de Canadien tout au long de sa production,

(ii) in respect of which the Minister of Canadian Heritage has allotted not less than six points in accordance with subsection (5),

(ii) le ministre du Patrimoine canadien y a attribué au moins six points en conformité avec le paragraphe (5),

(iii) in respect of which not less than 75% of the total of all costs for services provided in respect of producing the production (other than excluded costs) was payable in respect of services provided to or by individuals who are Canadians, and for the purpose of this subparagraph, excluded costs are

(iii) au moins 75 % du total des coûts des services fournis dans le cadre de sa production, à l'exception des coûts exclus, était à payer relativement à des services fournis à ou par des particuliers qui ont la qualité de Canadien; pour l'application du présent sous-alinéa, sont des coûts exclus:

(A) costs determined by reference to the amount of income from the production,

(A) les coûts déterminés en fonction du revenu provenant de la production,

(B) remuneration payable to, or in respect of, the producer or individuals described in any

(B) la rémunération payable au producteur ou aux particuliers visés à l'un des

of subparagraphs (5)(a)(i) to (viii) and (b)(i) to (vi) and paragraph (5)(c) (including any individuals that would be described in paragraph (5)(c) if they were Canadians),

(C) amounts payable in respect of insurance, financing, brokerage, legal and accounting fees, and similar amounts, and

(D) costs described in subparagraph (iv), and

(iv) in respect of which not less than 75% 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 that are determined by reference to the amount of income from the production and remuneration that is payable to, or in respect of, the producer or individuals described in any of subparagraphs (5)(a)(i) to (viii) and (b)(i) to (vi) and paragraph (5)(c), including any individuals that would be described in paragraph (5)(c) if they were Canadians) was incurred in respect of services provided in Canada.

...

[Emphasis added]

sous-alinéas (5)a)(i) à (viii) et b)(i) à (vi) ou à l'alinéa (5)c), ou à leur égard, (y compris les particuliers qui seraient visés à l'alinéa (5)c) s'ils avaient la qualité de Canadien),

(C) les sommes à payer au titre des frais d'assurance, de financement et de courtage et des frais juridiques et comptables et les sommes semblables,

(D) les coûts visés au sous-alinéa (iv),

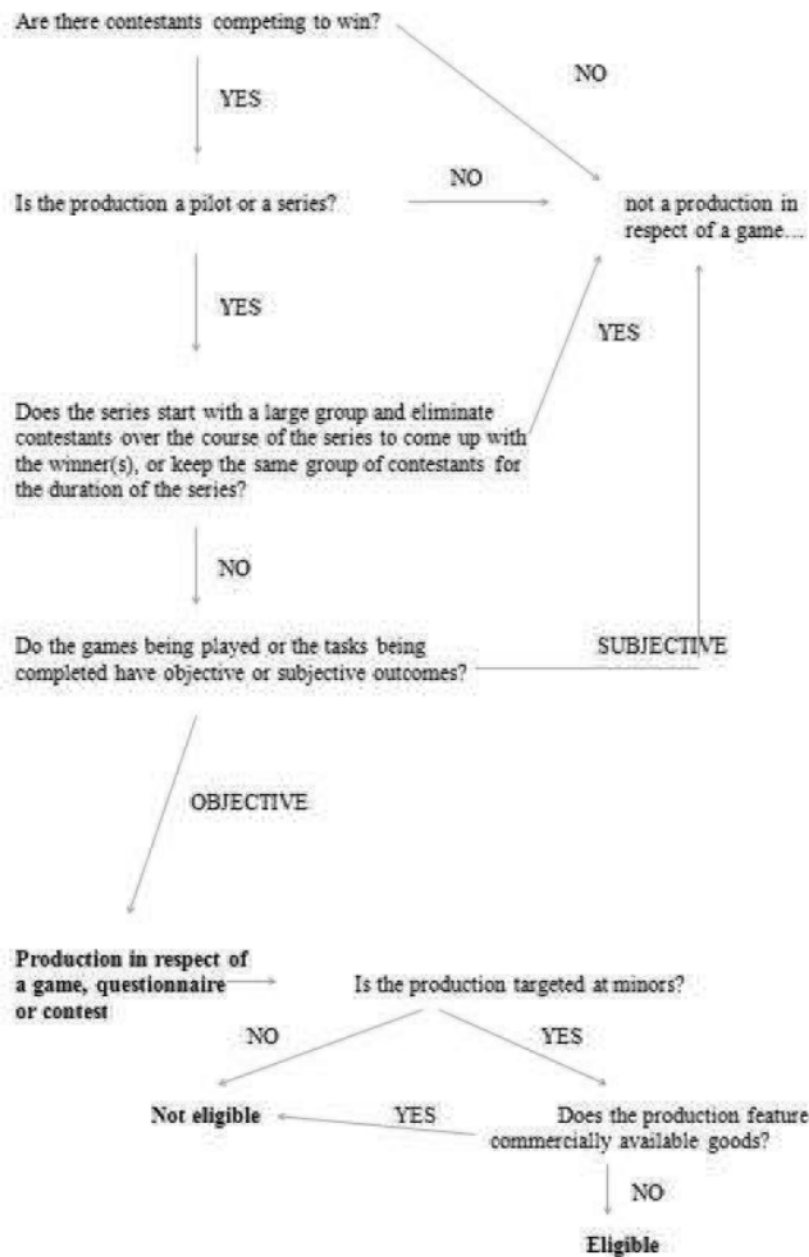
(iv) au moins 75 % du total des coûts se rapportant à sa postproduction, y compris les travaux de laboratoire, la prise de son et le montage de la bande sonore et de l'image, (à l'exception, d'une part, des coûts déterminés en fonction du revenu provenant de la production et, d'autre part, de la rémunération payable au producteur ou aux particuliers visés à l'un des sous-alinéas (5)a)(i) à (viii) et b)(i) à (vi) ou à l'alinéa (5)c), ou à leur égard, y compris aux particuliers qui seraient visés à l'alinéa (5)c) s'ils avaient la qualité de Canadien) ont été engagés relativement à des services fournis au Canada.

[...]

[Soulignements ajoutés]

**ANNEX B**  
**Decision Tree**

**Production in respect of a game, questionnaire or contest  
(other than a production directed primarily at minors)**



**Notes:**

- Whether or not there is a prize does not factor into the decision
- If there are non-game show /contest elements then we need to determine whether it is “primarily” a game show/contest or not. Prolonged set-up to a challenge should still be considered part of the challenge.
- If the winner of each episode of a series returns in the next episode until they are beaten by a new challenger, it is still considered to have new contestants in every episode.

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** T-317-15

**STYLE OF CAUSE:** ZONE3-XXXVI INC. v ATTORNEY GENERAL OF CANADA

**PLACE OF HEARING:** MONTRÉAL, QUEBEC

**DATE OF HEARING:** DECEMBER 8, 2015

**JUDGMENT AND REASONS:** MARTINEAU J.

**DATED:** JANUARY 22, 2016

**APPEARANCES:**

Madeleine Renaud  
Anne Elisabeth

FOR THE APPLICANT

Michelle Khellam

FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

McCarthy Tétrault LLP  
Montréal, Quebec

FOR THE APPLICANT

William F. Pentney  
Deputy Attorney General of Canada  
Montréal, Quebec

FOR THE RESPONDENT



**From:** [Banning, Kathy FIN:EX](#)  
**To:** [Karp, David FIN:EX](#)  
**Cc:** [Gunther, Mark FIN:EX](#)  
**Subject:** RE: DAVE credit issue  
**Date:** Tuesday, January 5, 2016 3:08:00 PM  
**Attachments:** [ITA - DAVE v2.docx](#)

---

Hi David,

No further changes or comments made to the document, I think you've summarized it well. I've added a few comments to your questions regarding the actual reg changes. I'll see what kind of information I can get for you for Option #2 for determining a cost.

Any other questions please let me know.

Thanks,

Kathy

---

**From:** Karp, David FIN:EX  
**Sent:** Tuesday, January 5, 2016 10:02 AM  
**To:** Banning, Kathy FIN:EX  
**Cc:** Gunther, Mark FIN:EX  
**Subject:** RE: DAVE credit issue

Hi Kathy,

Thanks again for your very helpful comments and discussion yesterday. I've overhauled the note somewhat – would you be able to take another look?

Thanks!

- David

---

**From:** Banning, Kathy FIN:EX  
**Sent:** Monday, January 4, 2016 11:58 AM  
**To:** Karp, David FIN:EX  
**Cc:** Gunther, Mark FIN:EX  
**Subject:** DAVE credit issue

Hi David,

Happy New Year! s.22

I've added my comments and changes in the attached document. I based the estimates on the DAVE certificates issued in fiscal 2014/15, let me know if you want me to check the figures for an earlier fiscal year as well? s.13

s.13

Let me know if you have any questions on what I added/commented on.

Regards,

Kathy

---

**From:** Karp, David FIN:EX  
**Sent:** Thursday, December 24, 2015 11:01 AM  
**To:** Banning, Kathy FIN:EX  
**Cc:** Gunther, Mark FIN:EX  
**Subject:** DAVE credit issue

Hi Kathy,

Richard asked me to draft a note on the DAVE issue. I was hoping you could look over my draft before I send it to him once s.22 to make sure I've characterized the issue correctly and that the proposed solution makes sense, as I think you've got a much better understanding of the issue than I do. I've flagged a few questions for you in the document, but feel

free to comment on anything.

Also, a head's up that my Word has been very buggy – tech support is mystified and so I don't know whether it's the files that are a problem or just my computer. At any rate, if you're making comments in the document, you may want to save your work very frequently just in case everything you've written magically turns into windings.

Thanks (and Merry Christmas!),

David.

*David Karp*

Tax Policy Analyst | Policy & Legislation Division | Ministry of Finance

107 – 617 Government Street, Victoria, BC V8W 9V8

Tel. 250-387-5044 | Email: [David.Karp@gov.bc.ca](mailto:David.Karp@gov.bc.ca)

Page 338 to/à Page 342

Withheld pursuant to/removed as

s.13

From: [Young, Tonya FIN:EX](#)  
To: [Banning, Kathy FIN:EX](#)  
Subject: film - key animation - queries  
Date: Friday, January 8, 2016 3:16:50 PM  
Attachments: [queries for KB - draft 1 - 8Jan16 ty.docx](#)  
[image003.jpg](#)

---

Hi Kathy,

We have the following additional queries after receiving draft 1 of the legislation for film – key animation. I've password protected the document and will send you the password by messenger.

If you could send the document back password protected, that would be most appreciated.

Thanks!

Tonya

*Tonya Young*

*Senior Income Tax Specialist*

Income Taxation Branch

Ministry of Finance

Phone: 250 356-6868 Fax: 250-356-9243

email: [Tonya.Young@gov.bc.ca](mailto:Tonya.Young@gov.bc.ca)

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s.21

Page 347 to/à Page 348

Withheld pursuant to/removed as

s.14

Page 349 to/à Page 352

Withheld pursuant to/removed as

s.13



From: [Banning, Kathy FIN:EX](#)  
To: [Masi, Joe FIN:EX](#)  
Cc: [Pleva, Steve W FIN:EX](#)  
Subject: 1st Draft Film Tax Credit Program Estimates Note  
Date: Friday, February 26, 2016 3:02:14 PM  
Attachments: [Estimates Note Film Tax Credits February 26 2016.docx](#)

---

Here's the first kick at the can for the draft estimates note for the film tax credit programs. I know the tables in the appendixes don't follow the normal format for an estimates note but I wasn't sure how much info we wanted to include so I've left them there for now to either pull the info from and put in the note itself or leave as is. I also wasn't sure if we should be using the CRA assessed data we have in our film system or using the figures that treasury board uses to report out since this is going to potentially be used by the Minister? For example I have no idea where his figures came from that were announced in the news article I sent out this morning unless it was an estimate prepared by someone for the rest of this fiscal year? Please feel free to pick apart and let me know what changes are needed.

Thanks,

**Kathy Banning, CPA, CGA**

Team Leader, Tax Credit Programs

Income Taxation Branch

Ministry of Finance

Phone: 250 953-3089, Fax: 250 356-9243

<< [mail to: Kathy.Banning@gov.bc.ca](mailto:Kathy.Banning@gov.bc.ca)>>



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**FEBRUARY 26, 2016**

**DRAFT**

## **ISSUE: FILM TAX CREDIT PROGRAMS**

### **ADVICE AND RECOMMENDED RESPONSE:**

- ◆ **\$268 million in film tax credits for 314 claims have been issued from April 1 to December 31, 2015. \$304 million in film tax credits were issued in fiscal 2014/15 for 455 claims.**
- ◆ **228 productions have been certified from April 1, 2015 to January 31, 2016 for estimated film tax credits totaling \$314 million. \$390 million was certified in fiscal 2014/15 for 287 productions.**
- ◆ **The Film and Television Tax Credit (FTTC) program is for domestic productions with qualifying levels of Canadian content (number of key creative positions are filled by Canadians) and majority of filming is done in BC. Basic rate is 35% of labour expenditures paid to BC-based individuals or corporations.**
- ◆ **The Production Services Tax Credit (PSTC) program is for domestic or foreign productions with no Canadian content requirement. No filming requirement in BC and corporations doing service work (i.e. VFX) for a component of the production can qualify. Basic rate is 33% of labour expenditures paid to BC-based individuals or corporations.**

### **SECONDARY MESSAGES:**

- ◆ **Additional credits are available under both the FTTC and PSTC programs in addition to the basic credits; these credits are stackable on top of the basic credit.**
- ◆ **Digital Animation, Visual Effects or Post-Production Tax Credit (DAVE) is for labour performed in BC on digital animation, visual effects or post-production work. Rate is an additional 17.5% of labour expenditures paid to BC-based individuals or corporations.**
- ◆ **Regional Tax Credit is for labour performed outside the designated Vancouver area (Greater Vancouver area out to 200<sup>th</sup> Street in Langley). Rate is an additional 12.5% under the FTTC program and 6% under the PSTC program.**

- ◆ **Distant Location Tax Credit is for labour performed in a distant location (rest of BC beyond Whistler and Hope and all of Vancouver Island). Rate is an additional 6% of labour paid to BC-based individuals or corporations incurred in a distant location.**

#### **CURRENT STATUS:**

- Film tax credit certificates increased by 38% (\$108 million) between fiscal 2013/14 and 2014/15.
- Film tax credit claims issued increased by 25% (\$61 million) between fiscal 2013/14 and 2014/15.
- Low Canadian dollar is contributing to the increase in production seen in the province.

#### **KEY FACTS REGARDING THE ISSUE:**

- Film Tax Credit programs have been in place since 1998, there have been numerous enhancements and increases to the credits and rates since then.
- Creative BC issues certificates for each production certifying the production is eligible for the various film tax credits they are applying for. Creative BC estimates the film tax credit amounts based on figures provided in the application which can be budgeted or actual figures.
- Applicants can apply for a certificate at any stage of the production. Under the FTTC program, corporations have 30 months after the first tax year end to receive their certificates.
- The Canada Revenue Agency (CRA) reviews, processes and issues the film tax credit claims on behalf of the province.
- Corporations claim the credits when they file their T2 Corporate Income Tax Return. Corporations have 3 years after the end of the tax year to make a film tax credit claim. This can result in a delay of 3 or more years between productions being certified by Creative BC and their credit being issued by the CRA.

s.13

- The film tax credits are refundable, credits are first applied against taxes owing and the remainder is issued to the corporation.
- The film tax credit programs do not have a legislated end date.
- See Appendix A for the breakdown of certificates issued by Creative BC for fiscal 2013/14, 2014/15 and 2015/16 Year-to-Date.
- See Appendix B for the breakdown of credits issued by CRA during fiscal 2013/14, 2014/15 and 3 quarters of 2015/16.

Contact: Paula Harper

Phone  
number 250-  
387-3968

File Created:  
File Updated:  
File Location:

## Appendix A

### Creative BC Certifications

#### Film and Television Tax Credit (FTTC)

Fiscal Year	2013/14	2014/15	April 1, 2015 to January 31, 2016
Number of Productions Certified	119	136	94
Basic Credit	\$56,330,265	\$57,024,025	\$42,519,699
Regional Credit	7,965,593	13,735,126	8,106,135
Distant Location Credit	690,580	1,754,746	853,936
DAVE Credit	3,510,691	3,343,978	1,925,570
Film Training Tax Credit	8,807	4,476	15,360
Total Estimated FTTC Certified	\$68,505,936	\$75,862,351	\$53,420,700

#### Production Services Tax Credit (PSTC)

Fiscal Year	2013/14	2014/15	April 1, 2015 to January 31, 2016
Number of Productions Certified	130	151	134
Basic Credit	\$167,143,611	\$245,426,959	\$206,599,866
Regional Credit	1,429,079	5,291,946	3,829,200
Distant Location Credit	450,854	4,208,549	2,364,922
DAVE Credit	43,874,776	58,855,137	33,789,441
Total Estimated PSTC Certified	\$212,898,320	\$313,782,591	\$260,583,429

Total Estimated FTTC and PSTC Certified	\$281,404,256	\$389,644,942	\$314,004,129
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Note: Figures above are based on certificates issued by Creative BC during the fiscal years noted. They do **NOT** necessarily correspond to the corporation's fiscal year end or the year in which filming or production occurred. These figures are often based on budgeted amounts or estimates, actual claims with the CRA for these productions can be different (claims are often higher).

## Appendix B

### CRA Assessments

#### Film and Television Tax Credit (FTTC)

Fiscal Year	2013/14	2014/15	April 1, 2015 to December 31, 2015
Number of Claims Processed	243	239	150
Basic Credit	\$51,990,630	\$66,687,304	\$52,764,572
Regional Credit	9,545,585	9,339,458	10,451,481
Distant Location Credit	316,585	814,216	943,049
DAVE Credit	3,931,768	4,550,402	3,023,702
Film Training Tax Credit	10,596	7,234	2,349
Total FTTC Credits Assessed	\$65,795,164	\$81,398,614	\$67,185,153

#### Production Services Tax Credit (PSTC)

Fiscal Year	2013/14	2014/15	April 1, 2015 to December 31, 2015
Number of Claims Processed	220	216	164
Basic Credit	\$141,714,364	\$186,176,886	\$152,120,886
Regional Credit	1,697,476	2,158,235	2,030,488
Distant Location Credit	655,607	605,694	1,461,194
DAVE Credit	32,795,346	33,276,009	44,898,747
Total PSTC Credits Assessed	\$176,862,793	\$222,216,824	\$200,511,315

Total FTTC and PSTC Credits Assessed	\$242,657,957	\$303,615,438	\$267,696,468
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Note: Figures above are claims assessed by the CRA during the fiscal years noted. They do **NOT** correspond to the corporation's fiscal year end or the year in which filming or production occurred. Corporations have 3 years after their tax year end to file a claim for the credits, factored with the CRA processing time if an audit is undertaken can result in claims being processed 3 or 4 years after the work was performed in BC.

From: [Pleva, Steve W FIN:EX](#)  
To: [Banning, Kathy FIN:EX](#)  
Subject: RE: CRA Appeals Providing Incorrect Court Information  
Date: Wednesday, January 20, 2016 10:34:54 AM

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Hi Kathy, to close the loop – I spoke with Tom Graham about this case, he will discuss it with John Marquis who is in charge of Pacific region appeals to ensure John is aware, and that appeals staff are aware of correct process.

Steve

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From: Banning, Kathy FIN:EX  
Sent: Tuesday, January 19, 2016 12:05 PM  
To: Pleva, Steve W FIN:EX  
Subject: CRA Appeals Providing Incorrect Court Information  
Hi Steve,

Further to our discussion, the taxpayer I spoke with yesterday from s.21 advised she had received a letter from Christopher Flemming in the Appeals Division in Pacific Region that stated if she wanted to appeal the determination made by the CRA appeals branch she had to file an appeal with the Tax Court of Canada within 90 days. As the federal Film Tax Credit claims were processed and the only amount in dispute was the BC Film and Television Tax Credit, under the BC *Income Tax Act*, the appeal has to be filed with the Supreme Court of British Columbia not the Tax Court of Canada within 90 days. Unfortunately in her situation the 90 day time period has lapsed to file an appeal with the Supreme Court of British Columbia.

This would apply in any situation where the amount in dispute is a provincial tax or tax credit and there is no federal component under dispute. Perhaps this can be brought up at the next meeting with the Pacific Region to ensure the appeals branches are aware of the correct process when an amount under dispute is a provincial tax or tax credit only?

Thanks,

**Kathy Banning, CPA, CGA**

Team Leader, Tax Credit Programs

Income Taxation Branch

Ministry of Finance

Phone: 250 953-3089, Fax: 250 356-9243

<< [mail to: Kathy.Banning@gov.bc.ca](mailto:Kathy.Banning@gov.bc.ca)>>



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Page 361 to/à Page 363

Withheld pursuant to/removed as

s.21