

## Chapter 19

### Motion Picture Production Companies

South Carolina Code Title 12, Chapters 36 and 62 contain two film industry sales and use tax incentives designed to promote South Carolina as a filming location.

The incentive available in Chapter 62 is a sales and use tax exemption for all qualifying tangible personal property used in connection with the South Carolina filming by a “motion picture production company” that is approved by the South Carolina Film Commission at the South Carolina Department of Parks, Recreation and Tourism.

The other incentive is a sales and use tax exemption for certain supplies, machinery, and electricity used by a “motion picture company” for use in filming or producing motion pictures in South Carolina. Since the qualifying requirements and approval process of each incentive differs, the applicable South Carolina law should be carefully reviewed.

A general overview of each incentive is provided below.

#### A. “Motion Picture Production Company” Comprehensive Exemption

To qualify for the sales and use tax exemption in South Carolina Code §12-62-30 on funds expended in South Carolina in connection with the filming or production of motion pictures in South Carolina, a motion picture production company must meet the following criteria:

1. The company must be a “motion picture production company” as defined in South Carolina Code §12-62-20(4). It is a company engaged in the business of producing motion pictures intended for a national theatrical release or for television viewing. It is not a company owned, affiliated, or controlled, in whole or in part, by a company or person that is in default on a loan made by the State or a loan guaranteed by the State.

A “motion picture” is defined in South Carolina Code §12-62-20(3) as a feature-length film, video, television series, or commercial made in whole or in part in South Carolina, and intended for national theatrical or television viewing or as a television pilot produced by a motion picture production company. It does not include the production of television coverage of news and athletic events or a production produced by a motion picture production company if records, as required by 18 U.S.C. § 2257, are to be maintained by that motion picture production company with respect to any performer portrayed in that single media or multimedia program.

2. The company must intend to spend \$250,000 or more in the aggregate in connection with the filming or production of one or more motion pictures in South Carolina within a consecutive 12-month period.

3. The company must complete an application and obtain approval as a certified motion picture production company from the South Carolina Department of Parks, Recreation and Tourism. An estimate of the total expenditures expected to be made in South Carolina in connection with the filming or production must be filed with the South Carolina Department of Parks, Recreation and Tourism before South Carolina filming begins.

The application and certification procedures can be obtained from the South Carolina Film Commission at the South Carolina Department of Parks, Recreation and Tourism at 803-737-0490. There is no application fee.

### Important Points to Remember

1. Once the South Carolina Department of Parks, Recreation and Tourism notifies the Department of Revenue that the company is approved and meets the qualifying requirements, the Department of Revenue will issue the motion picture production company a Form ST-433, "Motion Picture Production Company Sales and Use Tax Exemption Certificate." The company should provide a copy of the exemption certificate to the retailer to purchase items used in connection with the South Carolina filming free of sales and use tax.
2. This exemption applies to the 6% state sales and use taxes, the 7% state sales tax on accommodations, the 6% sales tax on additional guest charges, the 11% sales and use tax on 900/976 telephone numbers, and any local sales and use taxes collected by the Department on behalf of a local jurisdiction.
3. The exemption expires on the date filming or production ends.
4. An approved company that fails to spend \$250,000 within a consecutive 12-month period is liable for the sales and use taxes that would have been paid had the approval not been granted.
5. This incentive does not apply to the production of television coverage of news and athletic events.
6. Expenditures that qualify toward the \$250,000 requirement include purchases of services or intangibles in South Carolina, purchases or rentals of tangible personal property in South Carolina, and purchases or rentals of real property located in South Carolina.
7. The exemption certificate may only be used by the motion picture production company in whose name the exemption certificate has been issued since the exemption only applies to sales to or purchases by the motion picture production company.

Examples of persons who are not authorized to use the exemption certificate include, but are not limited to, (1) cast and crew purchasing items for their personal use and (2) subcontractors or others providing services to the motion picture production company.

## Examples of Exempt Tangible Personal Property<sup>1</sup>

Aircraft  
Animals  
Cameras and camera parts  
Catering  
Cleaning supplies  
Cleanup equipment  
Computer equipment  
Construction and hardware materials  
Copies  
Copy machines  
Filming supplies (e.g., film stock, flats (panels of scenery), sandbags, etc.)  
Food  
Gasoline and other fuels (however, motor fuel user fees may apply)<sup>2</sup>  
Hairstyle supplies  
Hand tools  
Make-up  
Office supplies and equipment  
Portable toilets  
Production supplies (e.g., editing supplies)  
Props (e.g., furniture, books, paintings, clothing, shrubbery)  
Technical equipment and machinery (e.g., boom, cables, dolly, editing equipment, matte, tape, teleprompter)  
Telephones  
Walkie talkies  
Wardrobe

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<sup>1</sup> The exemption only applies to purchases by the motion picture production company, provided such purchases are used in connection with the filming or production of a motion picture, purchased by the motion picture production company, and all other requirements of the statute are met. For example, the purchase of hairstyling supplies by a motion picture production company are exempt, but the purchase of such supplies by an independently owned hairstyling service company that has been hired by a motion picture production company to provide hairstyling services are subject to the tax.

<sup>2</sup> As a general rule, gasoline and undyed diesel fuel are subject to a motor fuel user fee and are exempt from sales and use taxes. Dyed diesel fuel and dyed kerosene are subject to sales and use taxes (unless otherwise exempt under the law) and exempt from the motor fuel user fee. As such, the exemption certificate (Form ST-433) issued to the motion picture production company does not need to be presented upon the purchase of gasoline and undyed diesel fuel, but should be presented to the retailer to purchase dyed diesel fuel and dyed kerosene exempt from the sales and use tax. The statute does not provide an exemption for the motor fuel user fee for motion picture production companies.

## Examples of Exempt Services and Charges<sup>3</sup>

Communication services, such as

- Cable and satellite programming television services
- Database access transmission services (On-line information services)
- E-mail services
- Fax transmission services
- Paging services
- Prepaid wireless calling arrangements
- Teleconferencing services
- Telephone services, including cell phone service

Additional guest charges at places furnishing sleeping accommodations, such as

- In-room movies
- Laundering and drycleaning services
- Rentals of meeting rooms
- Room service
- Telephone service

Electricity

Laundering, drycleaning, dyeing or pressing services<sup>4</sup>

Sleeping/lodging accommodations/services

900/976 telephone services

Warranty, maintenance and similar service contracts for tangible personal property

Note: For more detailed information concerning the taxation of additional guest charges at places furnishing sleeping accommodations, see SC Regulation 117-307.1. For more detailed information concerning the taxation of certain communication services, see SC Regulation 117-329 and South Carolina Revenue Ruling #17-2.

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<sup>3</sup> The services and charges listed in this category are normally subject to the tax under South Carolina Code §§12-36-910(B), 12-36-920, 12-36-1310(B), 12-36-1110 and 12-36-2645, but are exempt when purchased by a motion picture production company meeting the requirements of the South Carolina Motion Picture Incentive Act for use in connection with the filming or production of a motion picture.

<sup>4</sup> Certain drycleaning facilities are participating in the Drycleaning Facility Restoration Trust Fund and are subject to a 1% drycleaning surcharge. While this surcharge is administered and collected in the same manner as the state sales and use tax, it is not a sales tax. As such, drycleaning services purchased by a motion picture production company are not exempt from the 1% drycleaning surcharge.

## Examples of Nontaxable Services, Nontaxable Intangibles, and Nontaxable Real Property Transactions<sup>5</sup>

The following are examples of professional and other personal services, intangibles, and real property transactions upon which the South Carolina sales and use tax is not imposed.

### Services

- Accounting services
- Airline and aircraft charter services
- Casting services
- Chauffeured limousine services
- Clerical services
- Construction services
- Filming and production services provided by the director, the actors, the crew, writers, editors, choreographers, stunt persons, dialog coaches, musicians, technical advisors, designers, hairstylists, makeup artists, wardrobe persons, and similar persons providing services
- Garbage disposal services
- Hairstyling/cosmetic services
- Janitorial services
- Legal services
- Meteorological services
- Musical services
- Payroll services
- Research services
- Scouting services
- Security services
- Taxi services
- Typing services

### Intangibles

- Music royalties
- Story rights payments

### Real Property Transactions

- Auditorium rentals
- Back lot rentals
- Casting facility rentals
- Dressing room rentals

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<sup>5</sup> These are examples of professional and other personal services, intangibles, and real property transactions upon which the South Carolina sales and use tax is not imposed. Since the film industry operates in many states and must deal with varying sales and use tax laws, this list merely provides examples of services, intangibles, and real property transactions the charges for which are not taxable in South Carolina. However, it is important to note that purchases by persons providing these services to a motion picture production company or any other person are subject to the tax. For example, charges by a janitorial service company to a motion picture production company or any other person are not subject to the tax; however, the sale to, or purchase by, the janitorial service company of the supplies (mops, floor cleaners, trash bags, etc.) it uses in providing its service are subject to the sales and use tax.

Location rentals or fees  
Office space rentals  
Parking lot rentals  
Screening room rentals  
Stage rentals  
Warehouse rentals

For additional information concerning this exemption, see South Carolina Revenue Ruling #08-12.

## **B. “Motion Picture Company” Limited Exemption for Supplies and Equipment**

South Carolina Code §12-36-2120(43) exempts from sales and use tax supplies, technical equipment, machinery, and electricity sold to motion picture companies for use in filming or producing motion pictures in South Carolina.

The terms “motion picture company” and “motion picture” defined in Chapter 36 of Title 12 differ from the terms “motion picture production company” and “motion picture” defined in Chapter 62 of Title 12, as discussed above in item (a). The definitions applicable to this exemption are:

1. “Motion picture company” is a company generally engaged in the business of filming or producing motion pictures.
2. “Motion picture” is any audiovisual work with a series of related images either on film, tape, or other embodiment, where the images shown in succession impart an impression of motion together with accompanying sound, if any, which is produced, adapted, or altered for exploitation as entertainment, advertising, promotional, industrial, or educational media.

### Important Points to Remember

1. To receive an exemption certificate for this limited exemption, the motion picture company must apply to the Department on Form ST-10, “Application for Certificate.” There is no application fee. Usually, a visit will be made to the company’s site to determine if a certificate should be issued.
2. Once approved, the Department will issue the company an exemption certificate on Form ST-9. A copy of this certificate should be given to the retailer upon purchase of the exempt item.
3. The exemption applies to all state sales and use taxes and all local sales and use taxes collected by the Department on behalf of a local jurisdiction.
4. An application or approval from the South Carolina Film Commission is not needed for this exemption.