

SC REVENUE RULING #99-10

SUBJECT: Motion Picture Project Credits
(Income Tax)

EFFECTIVE DATE: Applies to all periods open under the statute.

SUPERSEDES: All previous documents and any oral directives in conflict herewith.

REFERENCES: S. C. Code Ann. Section 12-6-3510 (Supp. 1998)

AUTHORITY: S. C. Code Ann. Section 12-4-320 (Supp. 1998)
SC Revenue Procedure #97-8

SCOPE: A Revenue Ruling is the Department of Revenue's official advisory opinion of how laws administered by the Department are to be applied to a specific issue or a specific set of facts, and is provided as guidance for all persons or a particular group. It is valid and remains in effect until superseded or modified by a change in the statute or regulations or a subsequent court decision, Revenue Ruling or Revenue Procedure.

I. INTRODUCTION

South Carolina Code §12-6-3510 provides for income tax credits for investments in: (1) a qualified South Carolina motion picture project and (2) a motion picture production facility. Credits may be claimed for qualifying investments made in tax years beginning after December 31, 1998. These credits, when combined with all the taxpayer's other South Carolina income tax credits, cannot exceed 50% of the taxpayer's South Carolina income tax liability. Any unused credit can be carried forward for 5 years.

The two credits are briefly summarized as follows:

1. Credit for investment in qualified South Carolina motion picture project. An income tax credit equal to 33% of a taxpayer's investment in a qualified South Carolina motion picture project. A taxpayer's total credit for a project is limited to \$15,000 for all years. (See Questions and Answers 1-13.)
2. Credit for investment in South Carolina motion picture production facility. An income tax credit equal to 33% of the value of a taxpayer's investment in constructing,

converting, or equipping a motion picture production facility in South Carolina in which the taxpayer purchases an ownership interest with his investment. The total credit claimed by all investors for a single motion picture production facility is limited to \$5 million for all years. (See Questions and Answers 14-27.)

The purpose of this document is to provide the Department's opinions with respect to questions which have arisen concerning the new credits. Note that Code '12-6-3510 is repealed for taxable years beginning after June 30, 2004, however, the repeal does not affect credits previously earned.

NOTE: In the near future the Department will initiate procedures under the Administration Procedures Act to promulgate a regulation concerning the income tax credits for investments in qualified South Carolina motion picture projects and motion picture production facilities. At such time when that regulation is promulgated, it will supersede this ruling.

II. QUESTIONS AND ANSWERS

CREDIT FOR INVESTMENT IN A QUALIFIED SOUTH CAROLINA MOTION PICTURE PROJECT

1. Q. What requirements must be met to be a qualified South Carolina motion picture project?
 - A. To qualify for the credit for investing in a qualified South Carolina motion picture project, the following criteria must be met:
 1. The project must incur at least \$1 million of costs to produce a master negative motion picture for theatrical or television exhibition in the United States.
 2. The taxpayer must invest cash in the qualified South Carolina motion picture project.
 3. The project certifies to the Department that the lesser of the following amounts have been expended directly in South Carolina: (1) 2.5 times the total amount invested by all South Carolina investors in a single motion picture project or (2) 100% of the expenses related to the South Carolina motion picture project. See Question 4.
 4. The project certifies to the Department that at least 20% of the filming days of principal photography, but not less than 10 filming days of principal photography, is filmed in South Carolina.

5. The project registers with the Department prior to claiming the credit and provides necessary documentation. §§12-6-3510(F)(4) and (5).

2. Q. Who is the taxpayer entitled to this credit?

A. The taxpayer is the person (e.g., C corporation, S corporation, limited liability company, partnership, or sole proprietor) directly making the cash investment in the qualified South Carolina motion picture project. The taxpayer is **not** the person who invests in an entity that invests in a qualified motion picture project.

The credit is earned by the taxpayer (see above explanation.) If the taxpayer is a pass through entity, the credit is allocated to the taxpayer's partners, shareholders, or members based on the percentage of their interest. §§12-6-3510(A), (C), (F)(1).

An example best illustrates who earns the credit and how the credit is allocated. This example is based on the following: (1) "Film One" Limited Liability Company (LLC) is a qualified South Carolina motion picture project taxed as a partnership. (2) "Investors LLC" is an LLC taxed as a partnership with four members each investing \$200,000 cash and each receiving a 25% interest in "Investors LLC." "Investors LLC" invests \$800,000 in "Film One" and receives an 80% interest in "Film One." (3) Two producers invest \$100,000 each in cash in "Film Partnership" and each receives a 50% ownership interest in "Film Partnership." "Film Partnership" invests its \$200,000 in "Film One" and receives a 20% interest in "Film One." (4) An individual makes a gift of property to "Film One," but does not receive an ownership interest.

Based on the above facts, "Film One" is the taxpayer who earns the credit. The credit is the lesser of 33% of the investment or \$15,000. Since "Film One," the taxpayer, is a pass through entity, the \$15,000 credit is allocated 80% (\$12,000) to "Investors LLC" and 20% (\$3,000) to "Film Partnership." The four members in "Investors LLC" are each allocated 25% of "Investor LLC's" \$12,000 credit (\$3,000 each). Each producer in "Film Partnership" is allocated 50% of "Film Partnership's" \$3,000 credit (\$1,500 each). No credit is allocated to the individual making a gift since he did not receive an ownership interest in "Film One." Even if the individual received an ownership interest, the credit would not be available to him since he did not make a cash investment in "Film One."

3. Q. Who are "South Carolina investors" for purposes of the definition of qualified South Carolina motion picture project in §12-6-3510(F)(5)?

- A. Code §12-6-3510(F)(5) requires that “an amount equal to at least fifty percent of the total amount invested by all South Carolina investors in a single motion picture project, multiplied by five, has been expended directly in this State....”

A South Carolina investor is a person who meets the following criteria:

1. is subject to tax in South Carolina, and
2. has an ownership interest in the taxpayer (see discussion of taxpayer in Question 2.)

4. Q. How much investment must be spent in South Carolina?

- A. Code §12-6-3510(F)(5) requires “an amount equal to at least fifty percent of the total amount invested by all South Carolina investors in a single motion picture project, multiplied by five, has been expended directly in this State....”

Accordingly, the lesser of the following amounts must be expended directly in South Carolina: (1) 250% of the total amount invested by all South Carolina investors in the motion picture project or (2) 100% of the expenses for the South Carolina motion picture project.

For example, if three South Carolina investors invest a total of \$1,000,000 in a qualified motion picture project, then the taxpayer must spend (a) \$2,500,000 directly in South Carolina, or (b) the total cost of the South Carolina motion picture project, if it is less than \$2,500,000. If the taxpayer is operating in more than one state, then the taxpayer must demonstrate use of the investment directly in South Carolina. §12-6-3510(F)(5).

5. Q. When must cash investments be made to qualify for the credit?

- A. All investments must be cash investments made after June 9, 1998, the effective date of §12-6-3510, in order to qualify for the credit. Cash investments include checks that clear in the normal course of business and funds the taxpayer borrows and invests, including amounts charged on third party credit cards, at the time the credit is extended. Purchases on time after June 9, 1998 by means of a purchase money mortgage or two person credit card qualify as an investment when the payments on the loan are made and not when the property is received, or set aside for, or used in the project. §12-6-3510(A).

6. Q. When is the credit earned?

- A. The credit is initially earned and the credit period begins in the year the project first meets all requirements as a qualified South Carolina motion picture project.

The requirements are:

1. the cash investment in a qualified project has been made;
2. the project incurred at least \$1 million of costs to produce a master negative picture;
3. at least 20% of the filming days of principal photography, but not less than 10 days of principal photography, was filmed in South Carolina; and,
4. if there are South Carolina investors, then the lesser of the following amounts was expended directly in South Carolina: (1) 2.5 times the total amount invested by all South Carolina investors in a single motion picture project or (2) 100% of the expenses related to the South Carolina motion picture project. See Question 4.

Once requirements 1 through 4 listed above have been met, the taxpayer has earned the credit. The project must register with the Department prior to a taxpayer claiming the credit on a South Carolina income tax return. The credit period may not be postponed by registering or submitting records at a future date. The credit is first available for tax years beginning after December 31, 1998. §§12-6-3510(A), (F)(4), and (F)(5).

7. Q. What costs meet the investment requirement?
 - A. The project must spend \$1 million to produce a master negative motion picture for theatrical or television exhibition in the United States. Examples of costs which qualify include: costs incurred for machinery, equipment, furniture, land, buildings, infrastructure, scripts, and actor and production crew salaries. Examples of costs which do not qualify include: costs incurred for public relations, distribution, advertising, and other costs not directly related to producing a master negative motion picture for theatrical or television exhibition in the United States. §12-6-3510(F)(4).
8. Q. What does the term “expended directly in this State” mean?
 - A. The term “expended directly in this State” means that the investment was spent for services performed in South Carolina, for the use of intangible personal property in South Carolina, on tangible personal property dedicated to first use in South Carolina, or on real property located in South Carolina. The term does not include money spent on technological or other services performed outside of South Carolina or equipment used outside of South Carolina. §12-6-3510(F)(5).

9. Q. What is “total filming days of principal photography”?
- A. To qualify for the credit, a project must film in South Carolina at least 20% of the total filming days of principal photography, but not less than 10 filming days of principal photography. A filming day of principal photography is a day during which scenes with dialogue or major action are photographed. '12-6-3510(F)(5).
10. Q. How is the credit computed and claimed?
- A. The credit is 33% of a taxpayer’s investment (see discussion of taxpayer in Question 2) up to a maximum of \$15,000 for all years for a single qualified motion picture project. The credit, when combined with all other state income tax credits, cannot reduce the South Carolina income tax liability of the taxpayer more than 50% (see below for explanation of 50% limitation for pass through entities.) Any unused credit may be carried forward 5 succeeding tax years. The credit is claimed on the South Carolina income tax return on Form TC-13. §§12-6-3510(A) and (D).
11. Q. How is the amount of the pass through credit by the entity determined?
- A. In the case of pass through entities, the credit (up to the \$15,000 maximum credit) earned by the taxpayer passes through as a nonrefundable credit against income taxes and is allocated based on the partner’s, shareholder’s, or member’s interest. The credit may be used against any South Carolina income tax reported by the partner, shareholder, or member. It is not limited to use only against the partnership, S corporation, or limited liability company income from the entity that passes through the credit. Further, if the partner, shareholder, or member files a joint income tax return, the credit may be used to offset the income of both spouses, even if only one spouse is the partner, shareholder, or member. The credit is limited as follows: (1) the credit cannot exceed 50% of the partner’s, shareholder’s, or member’s income tax liability or married couple’s income tax liability and (2) the credit, when combined with all other state income tax credits, cannot reduce the South Carolina income tax liability of the taxpayer more than 50%. Note: The credit is not affected by the entity’s income or loss. Once a credit is passed through, it may not later be used by the entity. §§12-6-3510(A) and (C).
12. Q. When must the taxpayer register with the Department as a qualified South Carolina motion picture project?
- A. The taxpayer must register with the Department after all the statutory requirements (see Question 6) have been met and before claiming the credit. §12-6-3510(F)(5).

13. Q. What documentation must be submitted to the Department to certify the investment in the project and the expenditures in South Carolina?
- A. South Carolina Form TC-13A-Certification and Affidavit must be remitted by the taxpayer after all the statutory requirements have been met and before the credit is claimed. The taxpayer does not have to submit receipts and other documentation, but should have this information available in the event it is requested for review by the Department. All documentation provided is considered a tax return and is subject to penalty provisions of '12-54-40(f). §§12-6-3510(E) and (F)(5).

To notify the Department of the qualified South Carolina motion picture project, the taxpayer should mail Form TC-13A-Certification and Affidavit to the following address:

South Carolina Department of Revenue
Office Services Division/Research and Review
P.O. Box 125
Columbia, SC 29214-0019

CREDIT FOR INVESTMENT IN A SOUTH CAROLINA MOTION PICTURE PRODUCTION FACILITY

14. Q. What requirements must be met to be a South Carolina motion picture production facility?
- A. To qualify for the credit for investing in a South Carolina motion picture production facility, the following criteria must be met:
1. The taxpayer must purchase an ownership interest in a South Carolina motion picture production facility with cash or real property or both. Only cash and the value of the real property qualify for the credit.
 2. The total amount invested must be expended directly in South Carolina.
 3. The total investment must be (a) at least \$2 million, excluding land costs, if the investment is in a motion picture production facility or (b) at least \$1 million, excluding land costs, if the investment is in a post-production facility.
 4. The taxpayer must submit documentation to the Department to confirm the investment prior to claiming the credit.

15. Q. What must a motion picture production facility include?

A. A motion picture production facility must contain the following which complement the production needs and orientation of the overall facility purpose:

1. Soundstages designed for the express purpose of both film and television production (including motion pictures, made for television movies, and episodic television) for both theatrical and video release;
2. Production offices;
3. Construction shops/mills;
4. Prop and costume shops;
5. Storage area; and,
6. Parking for production vehicles.

16. Q. What must a post production facility include?

A. A post production facility is a facility designed for the express purpose of accomplishing the post production stage of film and television production for both theatrical and video release (including creation of visual effects, editing, and sound mixing for motion picture/television projects). A post production facility that meets all the statutory requirements can qualify for the credit.

A post production facility is not required to contain a soundstage nor be physically located at or near soundstages. Further, a post production facility is not required to contain items 2 through 6 listed for a motion picture production facility in Question 15. §12-6-3510(F)(3).

17. Q. What are examples of facilities that do not qualify as a motion picture production facility?

A. To qualify for the credit, a motion picture production facility must contain soundstages designed for the express purpose of film and television production for both theatrical and video release and must be used to produce motion pictures, made for television movies, episodic television, or other similar products designed for showing or selling to the public at large. The term “episodic television” means the series of films each of which contains a separate complete story with a character or characters common to each of the films in a

series. It does not include a series of shows intended for broadcast as single shows, such as a daily news program or monthly public service talk show. Based on these requirements, the following facilities will generally not qualify as a motion picture production facility: television stations, facilities to produce industrial training and advertising films, and recording studios. §12-6-3510(F)(3).

18. Q. Who is the taxpayer entitled to this credit?

A. Code §12-6-3510(B) provides that the credit is allowed for 33% of “the value of a taxpayer’s investment in the construction or conversion, or equipping, or any combination of these activities, of a motion picture production facility in this State in which the taxpayer purchases an ownership interest with the taxpayer’s investment.” (Emphasis added.) Code §12-6-3510(C) provides that “[c]redits allowed under this section are allocated to partners, limited liability company members, and subchapter ‘S’ corporation shareholders based on the percentage of their interest.”

An “ownership interest” is an ownership interest in a motion picture production facility or post production facility; an ownership interest is not an investment in the entity that owns or operates the facility.

The taxpayer is the person (e.g., C corporation, S corporation, limited liability company, partnership, or sole proprietor) that constructs, converts, or equips a South Carolina motion picture production facility or post production facility. The taxpayer is not the person who invests in an entity that constructs, converts, or equips a South Carolina motion picture production facility or post production facility.

The credit is earned by the taxpayer (see discussion of taxpayer above.) If the taxpayer is a partnership, S corporation, or limited liability company taxed as a partnership or S corporation, then the credit is allocated to the taxpayer’s partners, shareholders, or members based on the percentage of their ownership interest. §§12-6-3510(B), (C), (F)(1).

An example best illustrates who earns the credit. This example is based on the following. “Film Two” is a C corporation with thousands of stockholders. It does business in California and invests \$10 million in the construction and equipping of its new South Carolina motion picture production facility. “Film Two” is the taxpayer who earns the credit. (See example in Question 2 involving pass through entities.)

19. Q. When is the credit earned?
- A. Once the taxpayer has spent at least \$2 million, excluding land costs directly in South Carolina on a qualifying motion picture production facility or has spent at least \$1 million, excluding land costs directly in South Carolina on a qualifying post production facility, the taxpayer has earned the credit. The statute does not require that the construction, conversion, or equipping of the facility be complete in order to claim the credit nor does the statute allow the credit to be earned at the time the investment is made. The facility must register with the Department prior to any taxpayer claiming the credit on a South Carolina income tax return. The credit period begins in the year the required amounts have been spent and the facility meets all other requirements (see Question 14.) The credit period may not be delayed by applying for the credit at a future date. The credit is first available for tax years beginning after December 31, 1998. §§12-6-3510(B).
20. Q. What costs meet the investment requirement?
- A. A South Carolina motion picture production facility must spend \$2 million, exclusive of land costs and a post production facility must spend \$1 million, exclusive of land costs directly in South Carolina. The investment must be cash or real property with any improvements thereon. Cash investments include funds the taxpayer borrows and invests, including amounts charged on third party credit cards, at the time the credit is extended. Purchases on time after June 9, 1998 by means of a purchase money mortgage or two person credit card qualify as an investment when the payments on the loan are made and not when the property is received, or set aside for, or used in the project. Expenditures must be made directly in South Carolina after June 9, 1998, the effective date of §12-6-3510 and before June 30, 2004, the date the statute is repealed. The investment in real property includes: site preparation, infrastructure development, buildings and fixtures. Costs that do not meet the investment requirement include: advertising, public relations, and travel and entertainment. §§12-6-3510(B) and (F)(1).
21. Q. How much of the investment must be spent in South Carolina?
- A. The total amount invested in a motion picture production facility or post production facility in South Carolina must be expended directly in South Carolina. This amount cannot be less than: (a) \$2 million, excluding land costs, for a motion picture production facility or (b) \$1 million, excluding land costs, for a post production facility.

22. Q. What does the term “expended directly in South Carolina” mean?
- A. The term “expended directly in South Carolina” means that the investment was spent for services performed in South Carolina, for the use of intangible personal property in South Carolina, on tangible personal property dedicated to first use in South Carolina, or on real property located in South Carolina. §12-6-3510(B).
23. Q. What is the “value” of the investment in the motion picture production facility?
- A. The value of the investment is: (1) the amount of cash invested and (2) the fair market value of the real property at the time the real property is set aside or otherwise dedicated for use as a motion picture production facility or post production facility by the taxpayer.
24. Q. How is the credit computed and claimed?
- A. The credit is 33% of the value of a taxpayer’s investment up to a maximum of \$5 million for all years for a single South Carolina motion picture production facility or post production facility. If a motion picture facility and post production facility are in the same facility, then the \$5 million cap applies to the entire facility. As discussed above, taxpayer is the person (e.g., C corporation, S corporation, limited liability company, partnership, or sole proprietor) that constructs, converts, or equips a South Carolina motion picture production facility or post production facility. The taxpayer is not the person who invests in an entity that constructs, converts, or equips a South Carolina motion picture production facility or post production facility.

The credit, when combined with any other state income tax credits, cannot reduce South Carolina income tax liability more than 50% (see below explanation of 50% limitation for pass through entities.) Any unused credit may be carried forward 5 succeeding tax years. The credit is claimed on the South Carolina income tax return on Form TC-13. §§12-6-3510(B) and (D).

25. Q. How is the amount of the pass through credit by the entity determined?
- A. In the case of pass through entities, the credit (33% of the value of the investment by the taxpayer) passes through as a nonrefundable credit against income taxes and is allocated based on the partner’s, shareholder’s, or member’s interest. The credit may be used against any South Carolina income tax reported by the partner, shareholder, or member. It is not limited to use only against the partnership, S corporation, or limited liability company income from the entity that passes through the credit. Further, if the partner, shareholder, or member files a joint income tax return, the credit may be used to offset the income of both spouses,

even if only one spouse is the partner, shareholder, or member. The credit is limited as follows: (1) the credit cannot exceed 50% of the partner's, shareholder's, or member's income tax liability or married couple's income tax liability and (2) the credit, when combined with all other state income tax credits, cannot reduce the South Carolina income tax liability of the taxpayer more than 50%. Note: The credit is not affected by the entity's income or loss. Once the credit is passed through, it may not later be used by the entity. §§12-6-3510(B) and (C).

26. Q. When must the taxpayer apply to the Department as a motion picture production facility or post production facility?
- A. The taxpayer must register with the Department after the qualifications have been met (i.e. the required amounts have been spent and taxpayer meets all other requirements) and before the credit is claimed. §12-6-3510(B).
27. Q. How does a motion picture production facility apply for the credit?
- A. South Carolina Form TC-13B-Certification and Affidavit must be remitted by the taxpayer after all the statutory requirements have been met and before the credit is claimed. The taxpayer does not have to submit receipts and other documentation, but should have this information available in the event it is requested for review by the Department. The taxpayer must also certify that the \$5 million maximum credit has not been exceeded. All documentation provided is considered a tax return and is subject to penalty provisions of '12-54-40(f). '12-6-3510(B) and (E).

To notify the Department of the qualified South Carolina motion picture project, the taxpayer should mail Form TC-13B-Certification and Affidavit to the following address:

South Carolina Department of Revenue
Office Services Division/Research and Review
P.O. Box 125
Columbia, SC 29214-0019

SOUTH CAROLINA DEPARTMENT OF REVENUE

s/ Elizabeth Carpentier
Elizabeth Carpentier, Director

Columbia, South Carolina
August 30 , 1999