



ADMINISTRATIVE RULES OF MONTANA

42.4.3402 MEDIA PRODUCTION TAX CREDITS - DETERMINATION OF CREDIT BASE

- (1) The media production tax credit is the sum of one or more of the production tax credits provided under 15-31-1007, MCA. The basis for each tax credit is determined separately.
 - (a) Production expenditures, as defined in 15-31-1003, MCA, include expenditures incurred by a production company or a hired production company, including preproduction expenses. Production expenditures paid to an entity which is also a loan-out company must be segregated from personal services as a separate item of expense. Production expenditures paid to another company, which is not a hired production company or a loan-out company, may be included regardless of whether the expenditures include compensation. The basis of an additional tax credit as provided in 15-31-1007(3)(b)(v) through (vii), MCA, may include the same expenditure used under 15-31-1007(3)(a)(i), MCA.
 - (b) Compensation, as described in 15-31-1003(3), MCA, can only be used in one of the credits provided in 15-31-1007(3)(b)(i) through (iv), MCA, and includes the portion of a payment to a loan-out company for personal services. Compensation incurred in Montana within six months of state certification of the production may be included.
 - (c) Payments to a loan-out company cannot be included in any credit base if the production company, its affiliate, or hired production company did not pay withholding on the compensation portion, as provided in 15-31-1003(3), MCA, and ARM 42.4.3403.
- (2) If a production company or hired production company is organized as a corporation and files a combined report under ARM 42.26.204, or files a consolidated return under 15-31-141, MCA, the company may aggregate the production expenditures and compensation of its affiliates or subsidiaries in its credit base. A production company may not aggregate expenses incurred from entities in which they own an interest - including partnerships - unless the entity is disregarded for federal tax purposes under CFR 301.7701-1, 301.7701-3, and 301.7701-5, or the entity is a hired production company. A production company must disclose to the department the names and federal identification numbers of all disregarded entities, affiliates, and hired production companies for each category of expenses included in the credit base. No tax credits shall be allowed for expenses incurred by an undisclosed hired production company.
- (3) To be included in the base investment and in the credit base, production expenditures and compensation must directly relate to a state-certified production's qualified expenditures.
- (4) Production expenditures representing the cost of tangible personal property used in a state-certified production in Montana may be included under the following conditions. For these purposes, "used in a state-certified production" means a production physically located in Montana during principal photography, but not during any series interim production period.

- (a) The cost of acquiring personal property with a useful life of less than a year through a vendor that has a permanent place of business in Montana may be included in qualified expenditures. Personal property acquired through a vendor that acts like a conduit to enable purchases that would otherwise not qualify as an expenditure incurred in Montana shall not qualify as a production expenditure. All other costs for the use of personal property with a useful life of less than one year shall not qualify as a production expenditure.
 - (b) If the personal property has a useful life of more than one year, production expenditures are allowed for the lesser of the depreciation cost taken on the production company's federal income tax return for the tax year or tax years when principal photography occurs, or the yearly depreciation calculated using the straight-line method multiplied by the number of days the personal property was used in the state-certified production divided by 365.
- (5) When a production company owns or leases vehicles and uses the optional standard mileage rate to account for transportation costs in lieu of actual costs and depreciation on their income tax return, then the same method is used for the inclusion of such costs in production expenditures. Regardless of the method used, miles or distance traveled must be in Montana - even if the out-of-state destination is part of the same production - and is directly related to the state-certified production.
- (6) Production expenditures for services not included in compensation may be included in production expenditures as follows.
 - (a) Equipment rentals, including the cost of placing the equipment in service, must be made through a vendor that has a permanent place of business in Montana. All other rental equipment or services do not qualify as production expenditures.
 - (b) Costs directly related to the manufacturing, assembly, or alteration of costumes, wardrobe, or accessories completed in Montana. Costs for out-of-state services provided shall not be included - even if the products are being shipped or transported to Montana.
 - (c) Shipping or transportation costs for equipment used in a state-certified production for transport between an original storage location and the Montana production location only; and only when the transportation service provider maintains a permanent place of business in Montana. All other shipping or transportation costs may not be included.
 - (d) Cost of airfare purchased through a Montana travel agency for employees to the extent that the purpose of the travel is directly related to the state-certified production. Airfare purchased to attend to business that is not related to the state-certified production, airfare that is not related to the state-certified production, airfare for personal reasons, and airfare not purchased through a Montana travel agency shall not be included - even if directly related to a state-certified production.
 - (e) Insurance purchased through a Montana insurance agency for any tangible personal property or real property in Montana, or for an activity directly related to the state-certified production. If the insurance pertains to a combination of state-certified production and nonstate-certified production purposes, costs that may be included are expenses incurred in the tax year multiplied by the number of days used in the state-certified production divided by the total number of days for the insurance coverage in the tax period.

- (f) Per diem or actual cost for meals and lodging as set forth by the United States General Services Administration to the extent the per diem can be taken as a business deduction on the income tax return of the production company, its affiliate, or hired company.
 - (g) The cost of lodging or housing paid in Montana to accommodate crew members, employees, actors, directors, writers, and producers. Rental housing must be substantiated with a copy of the signed lease or rental agreement identifying the name and address of the landlord, the address of the rental, the stated term of the rental, and the rental amount. The cost of lodging or housing in Montana to accommodate individuals involved directly or indirectly in the marketing function of the state-certified production shall not be included.
 - (h) Entertainment expenses shall not be included.
- (7) Preproduction expenditures may be included:
- (a) in the first tax year's expenditures if they are attributable to production expenditures and compensation incurred no more than six months prior to production certification by the Montana Department of Commerce.
 - (b) in the production expenditures of the second state-certified production for series interim production period. Series interim production expenditures include only the cost of safe storage of sets and equipment and do not include the cost recovery of stored material.
- (8) Compensation paid to crew members, actors, writers, producers, and directors who are employees of the production company, one of its affiliates, or a hired company for personal services rendered in a state-certified production must conform with the applicable individual income tax and estimated tax and withholding requirements provided in 15-30-2501, et. seq., MCA, and the department's administrative rules, to be eligible for inclusion in the base investment or the compensation credit base.
- (9) The residency status of crew members on their first day of work in a state-certified production must be reported to the department on a department form. The residency status on the first day of work of an employee on a state-certified production determines whether the production company may include the compensation paid to the employee in the credit base for resident crew members or nonresident crew members.
- (10) Fringe benefits paid directly by the production company, one of its affiliates, or a hired production company may be included in compensation if they are directly related to the personal services performed in a state-certified production. Fringe benefits corresponding to compensation provided by a loan-out company may be included in a compensation credit base only if the withholding in ARM 42.4.3403 was applied to the compensation. Fringe benefits may be included as compensation without being subject to the loan-out withholding requirement. Fringe benefits such as contributions to qualified plans or other expenses incurred under a qualified deferred compensation plan paid for the benefit of employees may be included based on the annual total contributions or deductible expenses, for tax purposes, multiplied by the number of days of personal services rendered in a state-certified production over a given year.
- (11) Production expenditures and compensation included in a credit base, whether incurred by the production company, an affiliate, or a hired company, must be added as additional income to federal adjusted income in calculating the Montana net income of the production company that files a claim for the media production tax credit. This inclusion must be made in the tax year the production expenditures were incurred and compensation was paid.

- (12) If production expenditures or compensation are excluded from the base investment or a credit base after the production company files its income tax return, the production company may amend its return or informational return to make an adjustment to the addition of income and claim a refund within one year of the final exclusion determination. If the production company makes an election as provided in ARM 42.4.3408, this addition to federal adjusted income must be made on the return of the second tax year that is part of the election.
- (13) The inclusion of production expenditures in Montana net income does not create any change in depreciation or amortization recovery schedules for future tax years.

Authorizing statute(s): 15-31-1012, MCA

Implementing statute(s): 15-1-201, 15-31-1012, MCA

History: NEW, 2020 MAR p. 1638, Eff. 8/29/20.