

1998

CHAPTER F-13.11

An Act respecting a Film Employment Tax Credit

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(Assented to June 11, 1998)

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of Saskatchewan, enacts as follows:

PART I Short Title and Interpretation

Short title

1 This Act may be cited as *The Film Employment Tax Credit Act*.

Interpretation

2(1) In this Act:

(a) “**eligible corporation**” means a corporation that meets the criteria set out in section 5;

(b) “**eligible employee**” means an employee who, subject to section 4, resided in Saskatchewan on the last day of each of the employee’s taxation years for which an eligible corporation claims the salary or wages paid to that employee as eligible salaries;

- (c) **“eligible film”** means a film, video or multimedia production that is registered as an eligible film pursuant to section 7;
- (d) **“eligible individual”** means an individual, other than a trust or an estate, who, subject to section 4, resided in Saskatchewan on the last day of each of the individual’s taxation years for which an eligible corporation claims the remuneration paid to that individual as eligible salaries;
- (e) **“eligible salaries”** means the eligible salaries of an eligible corporation determined pursuant to section 3 that have not previously been claimed in an application for a film employment tax credit;
- (f) **“federal Act”** means the *Income Tax Act* (Canada);
- (g) **“film employment tax credit”** means a film employment tax credit allowed pursuant to section 12;
- (h) **“fixed base of operations”** means the location where:
 - (i) an eligible corporation’s production office is situated; and
 - (ii) the majority of days of principal photography on an eligible film takes place;
- (i) **“government assistance”** means the amount of assistance that an eligible corporation receives or is entitled to receive from any government, government agency, municipality or other public authority, or from Saskatchewan Film and Video Development Corporation, whether as a grant, subsidy, forgivable loan, deduction from tax, investment allowance or any other form of assistance, but does not include:
 - (i) any film employment tax credit allowed pursuant to this Act;
 - (ii) any tax credit allowed pursuant to the federal Act with respect to film employment costs;
 - (iii) any equity investment provided by the Canada Television and Cable Production Fund or Telefilm Canada that is recoupable or repaid; or
 - (iv) any amount received or receivable pursuant to the Canada Television and Cable Production Fund Licence Fee Program;
- (j) **“inspector”** means a person appointed as or designated to be an inspector pursuant to this Act;
- (k) **“minister”** means the member of the Executive Council to whom for the time being the administration of this Act is assigned;
- (l) **“post-production services and activities”** means prescribed post-production services and activities;
- (m) **“prescribed”** means prescribed in the regulations;
- (n) **“production”** means all stages of production, and includes pre-production and post-production services and activities;
- (o) **“record”** means any record, book, invoice, account, statement or other document, and includes any information that is recorded or stored by electronic means;

- (p) **“total production costs”** means all outlays or expenses made or incurred by an eligible corporation, including all outlays, leases or replacements of capital, for the production of an eligible film, less the value of any government assistance.
- (2) For the purposes of this Act and the regulations, except where they are at variance with the definitions and interpretations contained in this Act or the regulations, the definitions and interpretations contained in or made by or pursuant to the federal Act or *The Income Tax Act* apply.
- (3) If there is any conflict between the definitions or interpretations found in the federal Act and those found in *The Income Tax Act*, the definitions or interpretations found in *The Income Tax Act* prevail.

Eligible salaries

- 3(1)** Notwithstanding any other provision of this Act, an eligible corporation that applies for a film employment tax credit respecting an eligible film shall not claim as eligible salaries with respect to that eligible film an amount exceeding 50% of the total production costs of the eligible film.
- (2) An eligible corporation's eligible salaries with respect to an eligible film are the total of the following amounts to the extent that they are reasonable in the circumstances and are included in the total production costs of the eligible film:
- (a) the salaries or wages of eligible employees of the eligible corporation paid by the eligible corporation that are directly attributable to the production of the eligible film and incurred by the eligible corporation on or after January 1, 1998;
 - (b) that portion of the remuneration that is directly attributable to the production of the eligible film, that relates to services rendered on or after January 1, 1998 to the eligible corporation, and that is paid by the eligible corporation to any or all of the following:
 - (i) an eligible individual who is not an employee of the eligible corporation, to the extent that the amount paid:
 - (A) is attributable to services personally rendered by the individual for the production of the eligible film; or
 - (B) is attributable to and does not exceed the salaries or wages of the individual's eligible employees for personally rendering services for the production of the eligible film;
 - (ii) another corporation, to the extent that the amount paid is attributable to and does not exceed the salaries or wages of the other corporations's eligible employees for personally rendering services for the production of the eligible film;
 - (iii) another corporation, all of the issued and outstanding shares of the capital stock of which, except directors' qualifying shares, belong to an eligible individual and the activities of which consist principally of the provision of the individual's services, to the extent that the amount paid:
 - (A) is attributable to services rendered personally by the individual for the production of the eligible film; or
 - (B) is attributable to and does not exceed the salaries or wages of the individual's eligible employees for personally rendering services for the production of the eligible film;

- (iv) a partnership that is carrying on a business in Canada, to the extent that the amount paid:
 - (A) is attributable to services personally rendered for the production of the eligible film by an eligible individual who is a member of the partnership; or
 - (B) is attributable to and does not exceed the salaries or wages of the partnership's eligible employees for personally rendering services for the production of the eligible film; and
- (c) where the eligible corporation is a wholly-owned subsidiary corporation of another corporation, in this clause referred to as the "**parent**", and the eligible corporation and the parent have agreed that this clause applies with respect to the production, the reimbursement made by the eligible corporation of an expenditure that was incurred by the parent with respect to the production and that would be included in the eligible salaries of the eligible corporation with respect to the eligible film pursuant to clause (a) or (b) if the expenditure:
 - (i) was incurred by the eligible corporation for the same purpose as it was by the parent; and
 - (ii) was paid at the same time and to the same person or partnership as it was by the parent.
- (3) For the purposes of subsection (2):
 - (a) remuneration does not include remuneration determined by reference to profits or revenues; and
 - (b) salaries or wages do not include an amount determined by reference to profits or revenues.

Waiver by minister

- 4(1)** Notwithstanding any other provision of this Act, an eligible corporation may apply to the minister to have the residency requirements imposed by this Act waived by the minister with respect to a person to allow that person to qualify as an eligible employee or an eligible individual for the purpose of allowing the eligible corporation to claim as eligible salaries the salary or wages paid to that employee or the remuneration paid to that individual.
- (2) An eligible corporation shall apply pursuant to subsection (1) on or before December 31, 2001.
- (3) On an application pursuant to subsection (1), the minister may, subject to the regulations, approve the application if the minister is satisfied that it is consistent with the purposes and intent of this Act.
- (4) The minister may impose any terms and conditions the minister considers appropriate on an approval pursuant to subsection (3), and no eligible corporation whose approval is made subject to terms and conditions shall fail to comply with those terms and conditions.

PART II

Registration of Eligible Film

Eligible corporation

5 To qualify as an eligible corporation, a corporation must, at the time of registration of an eligible film and throughout the production of the eligible film, meet the following criteria:

- (a) it must be incorporated pursuant to an Act of Saskatchewan or an Act of the Parliament of Canada or of the legislature of any other province of Canada;
- (b) it must not be a corporation all or part of whose income is exempt from tax pursuant to Part I of the federal Act;
- (c) it must primarily carry on the business of film, video or multimedia production;
- (d) it must not:
 - (i) hold a broadcasting licence issued by the Canadian Radio-Television and Telecommunications Commission; or
 - (ii) deal at non-arm's length with a corporation that holds a licence mentioned in subclause (i);
- (e) it must not be controlled, directly or indirectly in any manner whatever, by:
 - (i) another corporation that does not or a group of corporations that do not have a permanent establishment in Saskatchewan; or
 - (ii) an individual who does not or a group of individuals who do not reside in Saskatchewan;
- (f) it must have a permanent establishment in Saskatchewan.

Application for registration of eligible film

6(1) Subject to subsection (2), a corporation that wishes to register a film, video or multimedia production as an eligible film shall submit to the minister:

- (a) an application in the prescribed form;
- (b) the estimated total production costs:
 - (i) within Saskatchewan; and
 - (ii) outside of Saskatchewan;
- (c) the estimated eligible salaries;
- (d) a financing plan, including recoupment schedules;
- (e) expected revenue from the sale of the production;
- (f) a script of the production; and
- (g) any additional material or information that the minister may request or that may be prescribed.

(2) A corporation must meet the criteria set out in section 5 at the time of registering a film, video or multimedia production in order to be eligible to register the production pursuant to this Act.

(3) A corporation may apply to register a production pursuant to this section at the time it applies for a film employment tax credit with respect to the production or at any time before it applies for the film employment tax credit.

Eligible film

7(1) Subject to subsection (2), on receipt of an application in accordance with section 6, the minister may register a film, video or multimedia production as an eligible film if:

- (a) the production is intended for a television, cinema, videotape, digital, CD-ROM, multimedia or non-theatrical production;
- (b) the subject of the production is drama, variety, animation, children's programming, music programming, an educational resource, an informational series or a documentary; and
- (c) the production meets any additional prescribed criteria.

(2) The following productions are not eligible to be registered as eligible films:

- (a) news, current events or public affairs programming, or programs that include weather or market reports;
- (b) talk shows;
- (c) productions with respect to games, questionnaires or contests, other than productions directed primarily at persons under 18 years of age;
- (d) sports events or activities;
- (e) gala presentations or award shows;
- (f) productions that solicit funds;
- (g) reality television;
- (h) pornography;
- (i) advertising;
- (j) productions produced primarily for industrial, corporate or institutional purposes;
- (k) productions, other than documentaries, all or substantially all of which consist of stock footage;
- (l) any other prescribed production or prescribed category of productions.

Notification of registration

8 After registering a production as an eligible film, the minister shall notify the corporation requesting the registration that the production has been registered as an eligible film.

Change in circumstances

9 Every corporation that registers a production as an eligible film and that applies or intends to apply for a film employment tax credit with respect to the eligible film shall immediately notify the minister of:

- (a) any change in circumstances that might affect the continued eligibility of the production to be registered as an eligible film; and
- (b) any change in the corporation's affairs, business, status or circumstances that causes it to not meet the criteria set out in section 5.

Suspension or cancellation of registration

10(1) Subject to subsection (2), at any time after the minister has registered a production as an eligible film, the minister may suspend or cancel the registration if:

- (a) the minister receives information that there has been:
 - (i) any change in circumstances relating to the production that affects the continued eligibility of the production to be registered as an eligible film; or
 - (ii) any change in the affairs, business, status or circumstances of the corporation that registered the production that causes that corporation to not meet the criteria set out in section 5; or
- (b) the corporation that registered the production otherwise fails to comply with this Act or the regulations.

(2) Before suspending or canceling the registration of a production as an eligible film, the minister shall give the corporation that registered the production an opportunity to be heard.

PART III**Application for Tax Credit****Qualified eligible corporation**

11 In this Part, “**qualified eligible corporation**” means an eligible corporation that:

- (a) has completed production of an eligible film;
- (b) throughout production of the eligible film, has paid at least 25% of its salaries and wages to eligible employees; and
- (c) throughout production of the eligible film and on the last day of the taxation year for which the tax credit is claimed, has a permanent establishment in Saskatchewan.

Calculating tax credit

12(1) A qualified eligible corporation may apply to the minister in accordance with section 13 for a film employment tax credit respecting an eligible film.

(2) Subject to subsection 3(1), on an application pursuant to subsection (1), the minister may allow the qualified eligible corporation a film employment tax credit respecting an eligible film in an amount equal to 35% of the eligible salaries with respect to the eligible film that are paid by the qualified eligible corporation on or after January 1, 1998.

(3) Where a qualified eligible corporation has its fixed base of operations in Saskatchewan and more than 40 kilometres from Saskatoon or Regina, the qualified eligible corporation may apply to the minister in accordance with section 13 for an additional film employment tax credit respecting an eligible film.

(4) On an application pursuant to subsection (3), the minister may allow the qualified eligible corporation an additional film employment tax credit respecting an eligible film in an amount equal to 5% of total production costs for the eligible film incurred in Saskatchewan on or after January 1, 1998.

(5) Where the minister allows a qualified eligible corporation a film employment tax credit pursuant to this section, the minister shall issue to the qualified eligible corporation a form certifying the qualified eligible corporation's entitlement to the film employment tax credit that was allowed.

Application for tax credit

13(1) A qualified eligible corporation that wishes to apply for a film employment tax credit shall submit to the minister, after completion of the eligible film and within the period set by the minister:

- (a) an application in the prescribed form;
- (b) an audited statement satisfactory to the minister detailing the total production costs for the eligible film;
- (c) a list of eligible individuals and eligible employees whose eligible salaries are being claimed respecting the eligible film, including the name, eligible salary, occupation and address of each eligible individual and each eligible employee;
- (d) a statutory declaration in the prescribed form from each eligible individual and each eligible employee listed pursuant to clause (c) concerning the residency of that individual or employee for the taxation years of the individual or employee for which the qualified eligible corporation claims the remuneration paid to that individual as an eligible salary or the salary or wages paid to that employee as an eligible salary;
- (e) any additional material or information that the minister may request or that may be prescribed.

(2) For greater certainty, only one application for a film employment tax credit is to be submitted per eligible film.

Claiming tax credit

14(1) Subject to subsection (2), a qualified eligible corporation that is allowed a film employment tax credit pursuant to section 12 is entitled to claim the film employment tax credit for a taxation year in accordance with section 8.3 of *The Income Tax Act*.

(2) Where a qualified eligible corporation claims a film employment tax credit for a taxation year pursuant to section 8.3 of *The Income Tax Act*, the qualified eligible corporation's annual return required pursuant to *The Income Tax Act* for the taxation year is to be accompanied by the form certified by the minister and issued to the qualified eligible corporation pursuant to subsection 12(5).

PART IV

Administration and Enforcement

Record keeping requirements

15(1) A corporation registering a production as an eligible film or applying for a film employment tax credit shall:

- (a) maintain any records that relate or may relate to:
 - (i) the status or eligibility of the corporation to register the production or to receive the film employment tax credit; or
 - (ii) the amount of any film employment tax credit; and

(b) forward to the minister for the purpose of inspection, examination or audit, any records required to be maintained pursuant to clause (a), or any extract from those records, at the time and in the manner that the minister considers appropriate.

(2) The records mentioned in subsection (1) are to be maintained in any prescribed form and are to contain any prescribed information.

(3) The minister may specify that a corporation required to maintain records pursuant to this section must maintain those records in Saskatchewan unless other suitable arrangements are made with the minister, and, if the minister so specifies, the corporation shall maintain those records in Saskatchewan.

(4) The records mentioned in subsection (1) are to be retained until the later of:

(a) six years after the end of the taxation year for which the corporation is allowed a film employment tax credit pursuant to section 12; and

(b) the final disposition of any objection, appeal or other proceedings to which the records may be relevant.

Inspectors

16(1) Inspectors required for the administration of this Act may be appointed in accordance with *The Public Service Act*.

(2) Every member of the Royal Canadian Mounted Police is, by virtue of that position, an inspector pursuant to this Act and has the same powers and duties that are conferred or imposed on an inspector by this Act.

(3) The Lieutenant Governor in Council may designate any person or category of persons employed by the Government of Saskatchewan or the Government of Canada to be *ex officio* an inspector or inspectors pursuant to this Act.

Routine inspection

17(1) Subject to subsection (2), for the purpose of ensuring that any person governed by this Act and the regulations is complying with this Act and the regulations, an inspector may do all or any of the following:

(a) enter at any reasonable time and inspect any premises used by the person;

(b) audit or examine any records that relate or may relate to the registration of a production as an eligible film or to an application for a film employment tax credit;

(c) require any person, including any agent, representative, director, officer or employee of a corporation, to provide reasonable assistance;

(d) make any inquiries of a person mentioned in clause (c);

(e) after giving a receipt, remove any records mentioned in clause (b) and retain them for any time the inspector considers appropriate in order to examine them and make copies in accordance with section 19.

(2) An inspector shall not enter a private dwelling without the consent of the occupant or without a warrant obtained pursuant to section 18.

Warrant

18(1) Where a justice of the peace or a provincial court judge is satisfied by information on the oath of an inspector that there are reasonable grounds to believe that an offence against this Act or the regulations has occurred and that evidence of that offence is likely to be found, the justice of the peace or the provincial court judge may issue a warrant to do all or any of the following:

- (a) enter and search any place or premises named in the warrant;
 - (b) stop and search any vehicle described in the warrant;
 - (c) seize and remove anything that may be evidence of an offence against this Act or the regulations.
- (2) With a warrant issued pursuant to subsection (1), an inspector may:
- (a) enter at any time and search any place or premises named in the warrant;
 - (b) stop and search any vehicle described in the warrant;
 - (c) open and examine any trunk, box, bag, parcel, closet, cupboard or other receptacle that the inspector finds in the place, premises or vehicle;
 - (d) require the production of and examine any record that the inspector believes, on reasonable grounds, may contain information related to an offence against this Act or the regulations;
 - (e) remove, for the purposes of making copies, any records examined pursuant to this section; and
 - (f) seize and remove from any place, premises or vehicle searched anything that may be evidence of an offence against this Act or the regulations.
- (3) Subject to subsection (4), an inspector may exercise all or any of the powers mentioned in subsection (2) without a warrant if:
- (a) the conditions for obtaining a warrant exist; and
 - (b) the inspector has reasonable grounds to believe that the delay necessary to obtain a warrant would result in the loss, removal or destruction of evidence.
- (4) An inspector shall not enter a private dwelling without a warrant issued pursuant to this section unless the occupant of the private dwelling consents.

Copies of records

19(1) Where any records are removed pursuant to section 17 or 18, the inspector may make copies of those records.

- (2) The inspector shall:
- (a) make copies of the records with reasonable dispatch; and
 - (b) promptly return the originals of the records to:
 - (i) the place from where they were removed; or
 - (ii) any other place that may be agreed to by the inspector and the person who furnished the records or from whom they were seized.

- (3) A record certified by the inspector to be a copy made pursuant to this section:
 - (a) is admissible in evidence without proof of the office or signature of the person making the certificate; and
 - (b) has the same probative force as the original record.

Co-operation with inspector

20 No person shall resist, obstruct, hinder or interfere with an inspector who is acting in the course of his or her duties.

Offences and penalties

21(1) Every person is guilty of an offence who:

- (a) makes or assists in making a statement in any document required by or for the purposes of this Act or the regulations that:
 - (i) at the time and in the light of the circumstances pursuant to which the statement was made, is false or misleading with respect to a material fact; or
 - (ii) omits to state any material fact, the omission of which makes the statement false or misleading;
 - (b) is required to keep records pursuant to this Act and fails or refuses to:
 - (i) keep those records; or
 - (ii) forward those records or extracts from those records to the minister when required by the minister to do so;
 - (c) resists, obstructs, hinders or interferes with an inspector who is acting in the course of his or her duties; or
 - (d) contravenes any provision of this Act or the regulations.
- (2) Every person who is guilty of an offence is liable on summary conviction to:
- (a) in the case of an individual, a fine not exceeding \$10,000 and, in default of payment, to imprisonment for a term not exceeding 90 days; and
 - (b) in the case of a corporation, a fine not exceeding \$100,000.
- (3) If a corporation commits an offence pursuant to this Act, any officer or director of the corporation who directed, authorized, assented to, acquiesced in or participated in the commission of the offence is guilty of the offence and liable on summary conviction to the penalties mentioned in this section whether or not the corporation has been prosecuted or convicted.

Recovery

22(1) Where a corporation obtains a film employment tax credit to which it was not entitled pursuant to this Act, the amount of the film employment tax credit is a debt due to the Crown in right of Saskatchewan and may be recovered:

- (a) by deducting that amount from any payments or tax credits pursuant to *The Income Tax Act* for which the corporation is eligible;
- (b) by any other manner authorized by *The Financial Administration Act, 1993*; or
- (c) by filing with the Court of Queen's Bench, at any judicial centre, a certificate of the minister certifying the amount of the film employment tax credit, together with interest at the prescribed rate to the date of the certificate.

(2) A certificate filed pursuant to clause (1)(c) has the same force and effect as if it were a judgment obtained in the Court of Queen's Bench for the recovery of a debt in the amount specified in the certificate, together with any reasonable costs and charges with respect to its filing.

Limitation on prosecution

23 No proceedings to enforce any provision of this Act or the regulations may be instituted later than six years after the time the subject-matter of the proceedings arose.

PART V

Regulations and Coming into Force

Regulations

24(1) For the purpose of carrying out this Act according to its intent, the Lieutenant Governor in Council may make regulations:

- (a) defining, enlarging or restricting the meaning of any word or phrase used in this Act but not defined in this Act;
- (b) prescribing forms for the purposes of this Act;
- (c) prescribing any additional material or information to be provided by an eligible corporation applying for a film employment tax credit;
- (d) prescribing any additional criteria for a production to qualify as an eligible film;
- (e) prescribing any additional material or information to be provided by an eligible corporation applying for registration of a production as an eligible film;
- (f) for the purposes of clause 2(1)(l), prescribing the services and activities that constitute the post-production services and activities of a production;
- (g) prescribing the circumstances pursuant to which the minister may waive the residency requirement for a person to qualify as an eligible employee or an eligible individual;
- (h) respecting the information and records that must be supplied or maintained by an eligible corporation for the purposes of this Act;
- (i) prescribing any rate of interest that is to be prescribed and the method by which it is to be calculated;
- (j) prescribing any matter or thing required or authorized by this Act to be prescribed in the regulations;
- (k) respecting any other matter that the Lieutenant Governor in Council considers necessary to carry out the intent of this Act.

(2) Notwithstanding any other Act or law, any regulations made pursuant to this Act may be made retroactive to a day not earlier than January 1, 1998.

Coming into force

25 This Act comes into force on assent but is retroactive and is deemed to have been in force on and from January 1, 1998.