

Ontario Media Development Corporation (OMDC)
An Agency of the Ontario Ministry of Tourism, Culture and Sport

**ONTARIO COMPUTER ANIMATION AND SPECIAL EFFECTS
TAX CREDIT**

(OCASE)

GUIDELINES

Updated August 2018

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INTRODUCTION

The August 2018 version of the Guidelines has been updated to reiterate that talk shows remain ineligible for the OCASE Tax Credit, acknowledge definitions of ineligible genres and advertising included in CAVCO Public Notices 2017-02 and 2017-03 and provide links to these Notices in Appendix 1. The documents checklist has been updated and excerpts of provincial and federal legislation and regulations have been replaced with links to the most recent legislation and regulations in Appendix 1. As the deadline to apply for grandfathering and the Transitional Grant have closed, reference to these have been removed.

The Guidelines

These Guidelines have been prepared to assist applicants in applying for an Ontario Computer Animation and Special Effects (“OCASE”) Tax Credit.

The OCASE Tax Credit legislation (Section 90 of the Taxation Act, 2007) and OCASE Tax Credit regulation (Regulation 37/09) take precedence over any provision of these Guidelines. Links to the legislation and regulation can be found in Appendix 1.

Overview of the OCASE Tax Credit

This section sets out the key features of the OCASE Tax Credit. For a complete list of the applicable requirements, please consult the subsequent sections of these Guidelines and the OCASE Tax Credit legislation and regulation.

What Is It?

The OCASE Tax Credit is a refundable tax credit, which means that the amount of the credit, minus any Ontario taxes payable, will be paid to the qualifying corporation. The OCASE Tax Credit is based upon the eligible Ontario labour expenditures incurred by a qualifying corporation during a taxation year with respect to eligible computer animation and special effects activities. Eligible labour expenditures include salaries and wages paid to employees and amounts paid to freelancers, including those who are arm’s-length incorporated individuals, such as loan-out corporations. The OCASE Tax Credit may be claimed on eligible expenditures in addition to the Ontario Film and Television Tax Credit or the Ontario Production Services Tax Credit.

How Much Is The Tax Credit?

The OCASE Tax Credit is calculated as 18% of the eligible Ontario labour expenditures incurred by a qualifying corporation with respect to eligible computer animation and special effects activities in the corporation’s taxation year.

There is no cap for eligible Ontario labour expenditures.

Who Is Eligible?

A qualifying corporation is a Canadian corporation that is Canadian-or foreign-owned and has a permanent establishment in Ontario (and as a result must file an Ontario corporate tax return). Qualifying corporations may include animation or visual effects houses, post-production houses and film and television production companies.

What Is An Eligible Production?

Eligible productions are film or television productions produced for commercial exploitation, which are not in an excluded genre or productions for which financial support would be contrary to public policy. In addition, a production must have received a certificate for either an Ontario Film and Television Tax Credit or an Ontario Production Services Tax Credit in order to be eligible for the OCASE tax credit.

Excluded genres of production are: news, current events or public affairs programming, or a program that includes weather or market reports, talk shows, productions in respect of a game, questionnaire or contest; a sports event or activity, a gala presentation or awards show; a production that solicits funds; reality television, pornography, advertising or a production produced primarily for industrial, corporate or industrial purposes.

What Activities Are Eligible?

Eligible computer animation and special effects activities are activities carried out in Ontario directly in support of the production of eligible animation or visual effects for use in eligible productions.

Eligible animation or visual effects means animation or visual effects created with digital technologies, but does not include:

- audio effects
- in-camera effects
- credit rolls
- subtitles
- animation or visual effects all or substantially all of which are created by editing activities, or
- animation or visual effects for use in promotional material for the eligible production

Eligible computer animation and special effects activities include designing, modelling, rendering, lighting, painting, animating and compositing but do not include activities that are scientific research and experimental development.

Production companies that carry out eligible activities may make an OCASE claim for conventional cast and crew (ie non-VFX-specific roles) that directly support the creation of eligible digital animation or digital visual effects. Please refer to the “Eligible Positions for a Producer’s OCASE Claim” posted on our website for the list of the conventional cast and crew that the OMDC considers as eligible for purposes of establishing the estimated amount of the OCASE tax credit when issuing the Certificate of Eligibility.

What Expenditures Are Eligible?

Eligible Ontario labour expenditures are a) salaries and wages and b) remuneration paid to freelancers who are individuals, partnerships or arm’s-length incorporated individuals (such as loan-out corporations). Eligible Ontario labour expenditures must be directly attributable to eligible computer animation and special effects activities carried out by a qualifying corporation, incurred by the qualifying corporation and paid to Ontario residents who report to a permanent establishment of the qualifying corporation in Ontario at which the eligible activities are carried out. Qualifying activities must be performed in Ontario. Ontario residents are individuals resident in Ontario at the end of the calendar year immediately preceding the calendar year in which he or she undertook the activities.

In order to be eligible Ontario labour expenditures for a corporation’s taxation year, the expenditures must be incurred in the taxation year and paid in the taxation year or within 60 days after the end of the taxation year.

Is a Screen Credit Required on the Production?

A screen credit recognizing financial support from the Ontario Government is available for the convenience of producers to recognize the Ontario tax credits contribution to their production. Although it is not required, due to the fact that tax credit information is considered confidential, a screen credit for an Ontario tax credit is certainly a welcome and appropriate way to acknowledge taxpayer support. The Ontario wordmark logo and accompanying guidelines can be downloaded from:

http://www.omdc.on.ca/film_and_tv/tax_credits/Ontario_Wordmark.htm



How Is The Credit Administered?

The OCASE Tax Credit is jointly administered by the Ontario Media Development Corporation (OMDC) – an agency of the Ontario Ministry of Tourism –Culture and Sport - and the Canada Revenue Agency (CRA). The qualifying corporation submits an application to the OMDC for a Certificate of Eligibility for all eligible activities during the corporation’s taxation year. The OMDC reviews the application and if applicable, issues a Certificate of Eligibility which certifies eligibility and the amount of the OCASE Tax Credit. In order to claim the OCASE Tax Credit, the qualifying corporation files its Federal corporate tax return (T2) with Schedule T2SCH554 and the Certificate of Eligibility with the CRA. The CRA audits the return and then issues a notice of assessment and, if applicable, a refund. The amount of the credit may be reduced by any federal and Ontario taxes owing by the qualifying corporation.

LEGISLATIVE REQUIREMENTS

The following is an overview of the legislative requirements for an OCASE Tax Credit as well as commentary regarding the legislative requirements.

Links to the OCASE Tax Credit legislation and regulation can be found in Appendix 1.

1. What Types of Corporations Are Eligible?

Legislative Requirements

In order to be eligible for an OCASE Tax Credit for a taxation year, a corporation must be a qualifying corporation throughout the year.

A qualifying corporation is a corporation which satisfies all of the following requirements:

1. it is a “Canadian corporation” as defined in the *Income Tax Act* (Canada);
2. it performs “eligible computer animation and special effects activities” (see 4(i) below), for
 - an eligible production it produces, or
 - an eligible production under contract with the producer of the production;
3. such activities are performed at a “permanent establishment” (see link provided in Appendix 1) in Ontario operated by it; and
4. it is not “controlled directly or indirectly in any manner” (see link in Appendix 1) by one or more corporations that are exempt from tax under Part II of the *Corporations Tax Act* (Ontario), nor is it a labour-sponsored venture capital corporation as defined in the *Income Tax Act* (Canada).

Commentary

A qualifying corporation may be the producer of an eligible film or television production. Alternatively, where the qualifying corporation is not the producer of an eligible production (for example, an animation or visual effects house or a post-production house), it may be performing eligible activities “under contract with” the producer of the eligible production.

There may be one or more qualifying corporations in respect of an eligible production, either because the production is being produced by more than one corporation or because eligible activities are being performed by more than one corporation that is under contract with the production company. The OMDC may issue a Certificate of Eligibility to each qualifying corporation in respect of its qualifying expenditures with respect to eligible activities for an eligible production.

A “Canadian corporation” is generally one which was incorporated in Canada (either federally or in one of the provinces), although the corporation may be controlled by foreign or Canadian owners (see link in Appendix 1).

A corporation may be subject to Ontario tax if it has a permanent establishment in Ontario at which it is carrying on business. A “permanent establishment” generally refers to a fixed place

of business (see link in Appendix 1). However, whether a fixed place of business is a “permanent establishment” is a question of fact which must be determined on a case-by-case basis. In interpreting the term “permanent establishment”, the courts have considered factors such as: the degree of the corporation’s control over the place of business, the degree of continuity and permanence of the place of business and the presence of personnel and routine activities.

The meaning of “controlled, directly or indirectly in any manner” for purposes of the definition of qualifying corporation is set out in subsection 256(5.1) of the *Income Tax Act* (Canada) (see link in Appendix 1). Corporations which are exempt from tax under Part III of the *Taxation Act* include non-profit or registered charitable corporations.

2. What Is An Eligible Production?

Legislative Requirements

The OCASE Tax Credit may be claimed by a qualifying corporation in respect of eligible computer animation and special effects activities it performs for an eligible production.

An eligible production is a film or television production which satisfies all of the following requirements:

- (a) The production is produced for commercial exploitation;
- (b) The production is not in one of the following excluded genres: news, current events or public affairs programming or a production that includes weather or market reports, a talk show, a game show, a sports event or activity, a gala presentation or awards show, a production that solicits funds, reality television, pornography, advertising, or a production produced primarily for industrial, corporate or institutional purposes;
- (c) It is not a production for which public financial support would be contrary to public policy; and
- (d) Productions must also have received an OFTTC or OPSTC certificate.

Commentary

A production which has a broadcast or distribution agreement will generally be considered to satisfy the requirement that an eligible production be “produced for commercial exploitation”. Where no such agreement exists, the OMDC will look at the facts of the situation to determine whether the production was produced for commercial exploitation.

Excluded programming genres for the OCASE Tax Credit are the same as for an Ontario Film or Television Tax Credit (OFTTC). Talk shows have always been and continue to be ineligible for all provincial tax credits including OCASE. CAVCO issued Public Notices 2017-02 and 2017-03 on March 6, 2017. Public Notice 2017-02 sets out definitions for ineligible genres, and Public Notice 2017-03 deals with the definition of advertising. OMDC uses these definitions but we conduct our own assessment of a production’s genre. Links to these CAVCO Public Notices can be found in Appendix 1.

Animation or special effects activities on a production are only eligible for OCASE if the production has already been certified for OFTTC or OPSTC. Please see the OFTTC and OPSTC Guidelines for production eligibility requirements under those tax credits.

3. What Activities Are Eligible?

Legislative Requirements

An OCASE Tax Credit may be claimed in respect of “eligible computer animation and special effects activities” for eligible productions (see 4(i) below).

Eligible computer animation and special effects activities are activities undertaken in Ontario to produce “eligible animation or visual effects” (see 4 below) for use in eligible film and television productions.

4. Eligible Animation or Visual Effects

Legislative Requirements

Eligible animation or visual effects means,

- (a) animation or visual effects created using digital technologies, but does not include:
 - (i) audio effects,
 - (ii) in camera effects,
 - (iii) credit rolls,
 - (iv) subtitles,
 - (v) animation or visual effects all or substantially all of which are created by editing activities, or
 - (vi) animation or visual effects for use in promotional material for a film or television production

Commentary

Eligible animation or visual effects means animation or visual effects created using digital technologies.

For the purposes of the OCASE Tax Credit, the terms “animation” and “visual effects” are intended to have their common or usual meaning in the industry. For example, “animation” is commonly used to refer to an animated sequence or production created by recording still images or objects one frame at a time with incremental changes in position, form or appearance between frames to create the impression of movement. “Animation” may be contrasted to a live action sequence or production which records live subjects in motion.

Similarly, the phrase “visual effect” is commonly used in connection with live action productions or sequences to refer to a special effect which is usually inserted into the production after filming to create a visual impression which it would be impossible, impractical or unsafe to achieve during shooting using physical effects.

The phrase “digital technologies” refers to equipment or processes controlled or executed by a computer using digital information (information represented by the digits one and zero) or techniques using digital information.

If the production is live action and a portion of the work is related to digital effect creation, such as labour for blue or green screen shooting, plate shots, digital scanning, motion capture or other mechanical work, the producer can make a direct OCASE claim for these costs. These claims would

only include a portion of the applicant's costs for activities directly in support of the production of an eligible visual effect. For example, a producer that wishes to make an OCASE claim for such work could divide the VFX related shooting time by the total shooting time and apply that percentage to the eligible labour. Only labour costs directly in support of the creation of the visual effect or animation would be eligible. Labour costs for drivers, catering, production office staff and other peripheral personnel are not eligible.

As a general rule of thumb, key roles and first assistants that contribute directly to a shot onto which a digital visual effect will be applied are eligible. While roles that do not contribute directly (ie are not involved in a hands-on way) will be ineligible. Generally, supervisors and coordinators would not be eligible. Please refer to the "Eligible Positions for a Producer's OCASE Claim" posted on our website for the list of the conventional cast and crew that can be included in this type of claim. (See the Downloads sidebar at http://www.omdc.on.ca/film_and_tv/tax_credits/OCASE.htm).

Certain effects are specifically excluded from the definition of eligible animation or visual effects, such as in-camera effects, effects for use in promotional material and effects all or substantially all of which are created by editing activities. An "in camera effect" is one that is achieved using single or multiple passes of film through a camera (rather than by the composite of multiple elements). Animation or visual effects created for use in promotional material, such as a promotional trailer, are excluded unless they appear in the eligible production in the same form. The term "all or substantially all" will be given the meaning "at least 90%"; therefore, effects at least 90% of which were created by editing activities would be excluded.

Eligible animation or visual effects for an eligible production generally result from the performance of multiple eligible computer animation and special effects activities in Ontario. Individual activities performed in order to produce an eligible animation or effect will therefore generally not constitute an "eligible animation or visual effect" in and of themselves, although they may be eligible activities if they are activities resulting in the creation of an eligible animated sequence or production.

(i) Eligible Computer Animation and Special Effects Activities

Legislative Requirements

Eligible computer animation and special effects activities are activities carried out in Ontario directly in support of the production of eligible animation or visual effects for use in eligible film and television productions,

including: designing, modelling, rendering, lighting, painting, animating and compositing; and

excluding activities that are scientific research and experimental development for the purposes of paragraph 37(1)(a) of the *Income Tax Act*(Canada) or subparagraph 37(1)(b)(i) of that Act.

Commentary

Although examples of included “eligible computer animation and special effects activities” are listed in the definition, the list of included activities is not exhaustive. Any activity carried out in Ontario directly in support of the creation of eligible animation or visual effects, other than an activity that is scientific research and experimental development (which is specifically excluded), may be an eligible computer animation and special effects activity. Accordingly, activities which are indirectly related to the creation of eligible animation or effects, such as overhead activities, would not be included activities.

Subsection 37(1) of the *Income Tax Act* (Canada) provides for a deduction from a taxpayer’s income from business for expenditures on scientific research and experimental development. The definition of “scientific research and experimental development” for the purposes of paragraph 37(1)(a) and subparagraph 37(1)(b)(i) of the *Income Tax Act* (Canada) is set out in subsection 248(1) of that Act (see link in Appendix 1).

5. How Much Is The Credit?

(i) Calculation of the Credit

A qualifying corporation’s OCASE Tax Credit for a taxation year is calculated as follows.

The eligible labour expenditure amount for the taxation year with respect to each eligible production is set out in paragraph 6 below. The total eligible labour expenditure amount is multiplied by the credit rate of 18%.

6. Eligible Labour Expenditure For a Production

Legislative Requirements

The “eligible labour expenditure” of a qualifying corporation in respect of an eligible production for a taxation year is the amount, if any, by which “A” exceeds “B” where,

“A” is the corporation’s Ontario labour expenditure for the year for eligible computer animation and special effects activities in respect of the eligible production, determined without reference to any equity investment in the production held by a Canadian government film agency, and

“B” is an amount in respect of assistance relating to expenditures with respect to the eligible production, other than excluded government assistance, that, on the qualifying corporation’s filing-due date for the year, the qualifying corporation or any other person or partnership has received, is entitled to receive or may reasonably expect to receive, equal to the sum of,

(a) the amount of the assistance directly attributable to the portion of the Ontario labour expenditure referred to in the definition of “A”, and

(b) the amount determined by multiplying the amount of the assistance that is not directly attributable to the portion of the Ontario labour expenditure referred to in the definition of “A” by the ratio of the amount of that portion of the Ontario labour expenditure in respect of the production to the amount of the prescribed cost of eligible computer animation and special effects activities of the eligible production.

(See definitions of “government assistance” and “assistance” below in 6(c).)

Commentary

The OCASE Tax Credit for the taxation year is determined by multiplying the credit rate by the total of such eligible labour expenditure amounts for all eligible productions for which the qualifying corporation performs work during the taxation year.

There is no cap for eligible Ontario labour expenditures. Assistance (whether from government or private sources) will be deducted in proportion to labour to determine the eligible labour expenditures. Note that equity investment held by a Canadian government film agency is not considered to be government assistance.

(a) Ontario Labour Expenditure

Legislative Requirements

(1) For the purposes of section 90 of the Act, the amount of a qualifying corporation’s Ontario labour expenditure for a taxation year with respect to an eligible production is the sum of,

(a) the qualifying wage amount, as described in subsection (2), of the qualifying corporation for the year with respect to the eligible production;

(b) for expenditures incurred before March 27, 2009, 50 per cent of the qualifying remuneration amount of the corporation, as described in subsection (3), of the qualifying corporation for the year with respect to the eligible production; and

(c) for expenditures incurred after March 26, 2009, the qualifying remuneration amount of the corporation, as described in subsection (3), of the qualifying corporation for the year with respect to the eligible production.

(2) Subject to subsections (2.1) and (6), the qualifying wage amount of a qualifying corporation for a taxation year with respect to an eligible production is the sum of,

(a) the amount incurred by it during the taxation year on account of salaries and wages that are directly attributable to eligible computer animation and special effects activities carried out by the qualifying corporation in Ontario for the eligible production; and

(b) if principal photography for the eligible production commenced after March 22, 2007, the amount, if any, of the eligible reimbursement of salaries and wages as determined under subsection (5) made by the qualifying corporation with respect to the eligible production for the taxation year.

(2.1) If the qualifying corporation is a taxable Canadian corporation described in paragraph 4 of subsection (4), the qualifying wage amount of the qualifying corporation does not include an amount that,

(a) is incurred by the corporation after March 26, 2009; and

(b) is paid to an employee of the corporation in connection with eligible computer animation and special effects activities undertaken by the corporation on behalf of another qualifying corporation.

(3) Subject to subsection (6), the qualifying remuneration amount of a qualifying corporation for a taxation year with respect to an eligible production is the sum of,

(a) the amount determined under subsection (4); and

(b) if principal photography for the eligible production commenced after March 22, 2007, the amount, if any, of the eligible reimbursement of remuneration as determined under subsection (5) made by the qualifying corporation with respect to the eligible production for the taxation year.

(4) The amount determined under this subsection is an expenditure incurred during the taxation year that is directly attributable to eligible computer animation and special effects activities undertaken for the eligible production on behalf of the qualifying corporation and that is paid to any of the following in the following circumstances:

1. An individual who is not an employee of the corporation and who deals at arm's length with the qualifying corporation, to the extent that the expenditure is attributable to activities personally undertaken by the individual.

2. An individual described in paragraph 1 for activities undertaken by the individual's employees, to the extent that the expenditure does not exceed the salaries and wages of those employees for personally undertaking those activities.

3. An eligible partnership described in subsection (8),

i. for activities personally undertaken by a member of the eligible partnership, or

ii. for activities personally undertaken by employees of the eligible partnership, to the extent that the expenditure does not exceed the salaries and wages of those employees for personally undertaking those activities.

4. If the expenditure is incurred after March 26, 2009, a taxable Canadian corporation for services rendered personally by an individual if,

i. all of the issued and outstanding shares of the capital stock of the taxable Canadian corporation (other than directors' qualifying shares) belong to the individual,

- ii. the individual deals at arm's length with the qualifying corporation, and
- iii. the activities of the taxable Canadian corporation consist principally of the provision of the individual's services.

(5) The amount of the eligible reimbursement of salaries and wages or of remuneration made by a qualifying corporation in respect of an eligible production for a taxation year is the amount of the reimbursement made by the qualifying corporation to its parent of an expenditure that was previously incurred by the parent in respect of the eligible production if all of the following conditions are met:

1. The parent is a taxable Canadian corporation.
2. The qualifying corporation and its parent have filed with the Minister an agreement that this subsection applies with respect to costs incurred for the eligible production.
3. The reimbursement is made by the qualifying corporation in the taxation year or within 60 days after the end of the taxation year.
4. If the amount is being determined for the purposes of clause (2) (b), the expenditure was incurred in a particular taxation year of the parent and would have been included in the qualifying wage amount of the qualifying corporation in respect of the eligible production for the particular taxation year under clause (2) (a),
 - i. if the qualifying corporation had had that particular taxation year, and
 - ii. if the expenditure had been incurred by the qualifying corporation for the same purpose as it was incurred by its parent and had been paid at the same time and to the same person or partnership as it was paid by its parent.
5. If the amount is being determined for the purpose of clause (3) (b), the expenditure was incurred in a particular taxation year of the parent and would have been included in the qualifying remuneration amount of the qualifying corporation in respect of the eligible production for the particular taxation year under clause (3) (a),
 - i. if the qualifying corporation had had that particular taxation year, and
 - ii. if the expenditure had been incurred by the qualifying corporation for the same purpose as it was incurred by its parent and had been paid at the same time and to the same person or partnership as it was paid by its parent.

(6) An expenditure is not included under clause (2) (a) in the qualifying wage amount or under clause (3) (a) in the qualifying remuneration amount of a qualifying corporation for a taxation year with respect to an eligible production unless it meets all of the following conditions:

1. The expenditure is paid by the qualifying corporation no later than 60 days after the end of the year.
2. The expenditure was incurred for activities personally undertaken by an individual who was resident in Ontario at the end of the last calendar year ending before he or she undertook the activities.
3. In the case of the qualifying wage amount, the expenditure is paid to an employee of the qualifying corporation who reported to a permanent establishment of the qualifying corporation in Ontario where the eligible computer animation and special effects activities were undertaken for the eligible production.
4. In the case of the qualifying remuneration amount, the expenditure is paid for activities undertaken at a permanent establishment in Ontario of the qualifying corporation or of an individual, eligible partnership or corporation described in paragraph 1, 2, 3 or 4 of subsection (4).

5. The expenditure is not the subject of an agreement in respect of the eligible production referred to in paragraph 2 of subsection (5) between the qualifying corporation and a wholly-owned subsidiary of the qualifying corporation.

(7) Despite paragraph 3 of subsection (5) and paragraph 1 of subsection (6), an expenditure that is excluded from the qualifying wage amount or qualifying remuneration amount of the qualifying corporation for a taxation year because it was not paid within 60 days after the end of the year may be included in the corporation's qualifying wage amount or qualifying remuneration amount for a subsequent taxation year if it is paid within 60 days after the end of that subsequent taxation year.

(8) For the purposes of this section, an eligible partnership is a partnership carrying on business in Canada whose members are all individuals. However, a partnership is not an eligible partnership in relation to a qualifying corporation if more than 50 per cent of the income of the partnership is allocable (or would be allocable, if it had income) to one or more members of the partnership who,

(a) directly or indirectly control the qualifying corporation; or

(b) are related to one or more persons who directly or indirectly control the qualifying corporation.

Commentary

Eligible Ontario Labour Expenditures are the sum of "salary or wages" paid by the qualifying corporation, and remuneration paid to freelancers who are individuals, partnerships, or arm's-length incorporated individuals (such as loan-out corporations). Only payments made to loan-out corporations that are wholly owned by the individual providing the services are eligible. The meaning of "arm's length" is set out in Section 251(i) of the *Income Tax Act* (Canada) (see link in Appendix 1). Eligible activities must be performed in Ontario.

The expression "salary or wages" refers to income of a taxpayer from an office or employment as described in subdivision a of Division B of Part I of the *Income Tax Act* (Canada). However, an amount that is salary or wages is only included in a qualifying corporation's "Ontario labour expenditure" to the extent that the amount satisfies all of the requirements above.

Salary or wages may include the value of benefits which are taxable to an employee or officer, including vacation pay and employer contributions to a registered retirement savings plan. Benefits paid by the employer but not taxable to the employee or officer such as the employer's portion of payroll source deductions would not be included in "salary or wages". Generally, the amount which appears on the federal T4 Form (Statement of Remuneration Paid) of an employee or officer is the correct amount to claim as "salary or wages".

Salary or wages may be only included in a corporation's Ontario labour expenditure if they are paid to Ontario resident individuals who "report to" the qualifying corporation's permanent establishment in Ontario at which eligible activities are performed. Individuals who perform eligible activities at the qualifying corporation's permanent establishment in Ontario would be considered to "report to" that establishment. In addition, depending on the facts of the case, individuals who perform eligible activities elsewhere in Ontario but are subject to control and direction regarding their work activities from the permanent establishment of the qualifying corporation in Ontario may be considered to "report to" that establishment.

"Remuneration" is amounts paid to individuals who deal at arm's length with the qualifying corporation for activities personally undertaken by the individual, employees of individuals who deal at arm's length with the qualifying corporation, and eligible partnerships for activities

personally undertaken by a member of the eligible partnership or its employees. Remuneration may be only included in a corporation's Ontario labour expenditure if it is paid for activities undertaken at a permanent establishment in Ontario of the qualifying corporation, by an eligible individual who is not an employee, or an eligible partnership.

Amounts incurred in the qualifying corporation's taxation year but paid more than 60 days following the end of the taxation year may not be claimed in the taxation year, nor may they be claimed in the corporation's following taxation year.

In order to be included in the corporation's Ontario labour expenditure, amounts must be paid to individuals who were subject to Ontario personal income tax (under clause 2(a) of the *Income Tax Act (Ontario)*) for the calendar year before the year in which the activities were undertaken. For example, if an individual worked on a production between January 1, 2016 and December 31, 2016, it would be necessary to confirm that individuals claimed as Ontario labour expenditures were subject to tax in Ontario for the 2015 calendar year.

In order to be subject to personal income tax under clause 2(a) of the *Income Tax Act (Ontario)* (see Appendix 3), an individual must have been resident in Ontario on the last day of the calendar year.

Whether an individual is "resident in Ontario" is a question of fact which must be determined on a case-by-case basis. In interpreting whether an individual is "resident" in a jurisdiction, the courts have considered factors including whether the individual has an address, bank account, family and social ties to the jurisdiction.

A wholly owned subsidiary may claim eligible labour expenditures incurred by its parent corporation in respect of the subsidiary's production. Except for such reimbursements, labour expenditures paid to incorporated entities, other than arms-length single shareholder loan-out corporations, are not eligible.

(b) Prescribed Cost of Eligible Activities

Legislative Requirements

The "prescribed cost" means, in respect of costs incurred by a qualifying corporation in a taxation year in respect of an eligible production, the sum of all costs incurred by the corporation in the year in respect of the production each of which satisfies the following conditions:

1. The cost is incurred by the corporation in carrying on eligible computer animation and special effects activities for the eligible production.
2. The amount of the cost is reasonable in the circumstances.
3. The cost is,
 - i. included in the amount of the corporation's cost or, in the case of a depreciable property, its capital cost of the eligible production that incorporates the results of the eligible computer animation and special effects activities, or
 - ii. incurred by the corporation in performing eligible computer animation and special effects activities under a contract entered into,
 - A. with the producer of the eligible production, or

- B. with another qualifying corporation that is carrying on eligible computer animation and special effects activities for the eligible production.

Commentary

Amounts included in the prescribed cost of eligible activities may be directly or indirectly related to the eligible computer animation and special effects activities for an eligible production. Accordingly, amounts such as labour expenditures for activities which support the performance of the eligible computer animation and special effects activities (e.g. administrative labour), and non-labour costs such as costs of computer hardware, software, equipment, materials and corporate overhead may be included in the prescribed cost of eligible activities, to the extent such costs meet the requirements described above.

The OMDC will verify the amounts included in the prescribed cost of eligible computer animation and special effects activities. Where the applicant is the producer of a production, the costs set out in the industry-standard budget formats (including Telefilm Canada or Movie Magic formats) will be considered as a guide to the relevant categories of costs for inclusion in the prescribed cost of the eligible cost of prescribed activities. Where the applicant is performing eligible activities under contract to the producer of the production, the contract price will generally be considered as a ceiling on the prescribed cost of eligible activities.

(c) Government Assistance and Assistance

Legislative Requirements

Government assistance means assistance from a government, municipality or other public authority in any form,

- including a grant, subsidy, forgivable loan, deduction from tax and investment allowance
- but excluding:
 - (a) a tax credit under this Part,
 - (b) a tax credit under any of sections 43.3 to 43.13 of the *Corporations Tax Act*,
 - (c) a tax credit under section 125.4 or 125.5 of the Federal Act; or
 - (d) payments from the 2015 Ontario Production Services and Computer Animation and Special Effects Transitional Fund. (“aide gouvernementale”)

Assistance means an amount that would be included under paragraph 12 (1)(x) of the *Income Tax Act* (Canada) in computing a corporation’s income for a taxation year if that paragraph were read without reference to subparagraphs (v) to (vii).

Commentary

Assistance (which includes government assistance) which the qualifying corporation has received, is entitled to receive or may reasonably be expected to receive must be deducted in calculating the corporation’s eligible labour expenditure for an eligible production. Accordingly, assistance received by a party other than the qualifying corporation claiming the OCASE Tax Credit, such as the producer or another qualifying corporation performing eligible activities, will not affect the calculation of the qualifying corporation’s tax credit.

The relevant amount of assistance must be determined as of the date that the corporation's tax return is required to be delivered to the Canada Revenue Agency. This date is generally the last day of the sixth month after the end of the corporation's taxation year.

The Ontario tax credits relating to film and television (the Ontario Film and Television Tax Credit, the Ontario Production Services Tax Credit and the OCASE Tax Credit) have been excluded from the definition of "government assistance" for the purposes of the OCASE Tax Credit. In addition, the Canadian Film or Video Production Tax Credit and the Film or Video Production Services Tax Credit are excluded from the definition of "government assistance". Note that equity investment by a Canadian government film agency will no longer reduce the corporation's eligible labour. As well, the 2015 Ontario Production Services and Computer Animation and Special Effects Transitional Fund is not assistance for purposes of OCASE.

Under the definition of "eligible labour expenditure," the government assistance to be deducted is that which relates to the corporation's eligible computer animation and special effects activities for the production for the taxation year. The OMDC will calculate the portion of the assistance which relates to the eligible activities as follows.

Where assistance is directly attributable to Ontario labour expenditures, the full amount of the assistance must be deducted.

Where assistance is related to the production (such as grants from a film or television fund), and not directly attributable to labour, the portion which must be deducted is determined by dividing the corporation's Ontario labour expenditures by the prescribed cost of eligible activities for the production and multiplying the result by the value of the assistance.

ADMINISTRATIVE PROCESS

The OCASE Tax Credit is jointly administered by the OMDC and the Canada Revenue Agency (CRA), as described below.

1. OMDC Role

(i) Issuance of Certificates of Eligibility

The OMDC is responsible for issuing Certificates of Eligibility, which the qualifying corporation files with the Canada Revenue Agency with its corporate tax return for the applicable taxation year in order to claim the OCASE Tax Credit.

A Certificate of Eligibility sets out (i) the eligibility of an applicant corporation; and (ii) an estimate of the credit to be allocated to eligible activities for eligible productions for the taxation year.

Certificates of Eligibility will be issued for each taxation year of the qualifying corporation encompassing the costs of the production incurred in that taxation year and paid within 60 days after the end of the year.

OMDC reserves the right to ask any question necessary to determine eligibility issues. As issues and fact patterns will differ depending on the specifics of any application, so too may the line of inquiry. Please note that receipt of a certificate for one production may not be relied upon as a guarantee of certification for subsequent filings.

(ii) Amendment and Revocation of Certificates of Eligibility

A Certificate of Eligibility may be amended to correct an error and, under certain circumstances, may be revoked by the OMDC.

An amended Certificate of Eligibility replaces any Certificate of Eligibility previously issued for the production. If a Certificate of Eligibility is revoked by the OMDC, the revoked Certificate of Eligibility is treated as if it had never been issued and any OCASE Tax Credit refund previously issued must be repaid.

Please note that there is a fee of \$100 for amended Certificates.

2. Canada Revenue Agency Role

The Canada Revenue Agency (CRA) is responsible for the review or audit of the T2 Corporation Income Tax Return (T2 return) along with the Schedule T2SCH554 which must be filed by the qualifying corporation in order to claim OCASE. The CRA also processes T2 tax returns and issues notices of assessment and tax refunds.

3. Filing of a Corporate Tax Return

The Canada Revenue Agency administers both Federal and Ontario corporate taxes. A corporation must file its T2 return for a taxation year with the CRA within six (6) months after the end of the corporation's taxation year. To claim the OCASE tax credit a qualifying corporation must file its T2 return with Schedule T2SCH554 and the Certificate of Eligibility with the CRA. Following its review or audit of the OCASE tax credit claim, the CRA processes the T2 return and issues a notice of assessment and, if applicable, a refund. The amount of refund may be reduced by any of the qualifying corporation's outstanding federal and Ontario taxes.

The T2 Corporation Income Tax Return and applicable schedules are available on the CRA website at: <http://www.cra.gc.ca/formspubs/menu-eng.html>

For additional information, visit the following CRA website: <http://www.cra.gc.ca/filmservices>

Inquiries should be directed to CRA's Toronto Film Services Unit at (416) 973-3407 or (416) 952-7349.

4. Payment of a Corporate Tax Refund

If the qualifying corporation is owed a tax refund (which may include the OCASE tax credit) for the taxation year, a cheque or direct deposit may be issued by the CRA. The amount of refund may be reduced by any of the qualifying corporation's outstanding federal and Ontario taxes (such as corporate income taxes, retail sales tax, provincial sales tax, etc.).

5. Applying For a Certificate of Eligibility

(i) Who Applies to The OMDC?

The qualifying corporation submits a completed OCASE Tax Credit Application to the OMDC for all eligible activities in respect of eligible productions in the corporation's taxation year. For administrative convenience, the qualifying corporation may appoint an agent to apply on its behalf, but any Certificate of Eligibility issued will be in the name of the qualifying corporation.

(ii) When Should Application Be Made to the OMDC?

An application for an OCASE Tax Credit Certificate of Eligibility can be made to the OMDC at the end of the qualifying corporation's taxation year. A Certificate of Eligibility may be issued by the OMDC before the end of the taxation year, in limited circumstances but activities must be completed and a copy of the animation or effect(s) must be submitted on DVD or USB stick. However, the Certificate of Eligibility will be based on actual expenditures.

Please note that there is a fee for filing claims that are more than 24 months old.

(iii) Is There An Administration Fee?

There is an administration fee for each application for an OCASE Tax Credit Certificate of Eligibility in accordance with the OCASE Tax Credit Administration Fee Schedule, payable at the time of submission of the application. OCASE Tax Credit administration fees are used by the OMDC to partially offset its costs of administering the OCASE Tax Credit.

The OCASE tax credit administration fee is calculated as 0.15% of eligible expenditures for the application. There is a minimum fee of \$500 per application and maximum fee of \$10,000 per application.

The fee is payable by cheque or money order made payable to the Ontario Media Development Corporation at the time the OCASE Tax Credit application is submitted to the OMDC. Please note that the administration fee is required in order for the application to receive an Eligibility Review.

(iv) What Documentation is Required?

The applicant must submit to the OMDC a completed Application and the documents set out in the OCASE Tax Credit Documents Checklist. In some cases the OMDC may require additional documentation or information in order to issue a Certificate of Eligibility. All documentation or information received from an applicant is subject

to the confidentiality provisions of the Taxation Act and will be maintained in strictest confidence by the OMDC and the Canada Revenue Agency.

(v) How Long Does the Process Take?

The OMDC Tax Credits Department will only review complete applications on a first-come, first-served basis and processing time will depend on the volume of applications received. Companies which file incomplete applications will be notified about deficiencies with their filing but an eligibility review will only be conducted once the applicant has supplied the required documentation. Where significant delays are encountered in obtaining responses from applicants, OMDC reserves the right to close the file after 30 days.

(vi) Online Application

In an effort to streamline our tax credit administration process, the OMDC has a mandatory policy that all OMDC tax credit applications must be submitted via our Online Application Portal (OAP). Please ensure that your application includes all of the required documentation and information as only complete applications can be transmitted through the OAP.

When you start an application on the OAP you can save your work and come back to it before submitting the application online. However, please note that once you have started the application on the OAP you have 90 days to submit it before the application expires.

CONTACT INFORMATION

OMDC Tax credits department Who's Who

Listed below are the members of the Tax Credits Department who work on the OCASE tax credit. For general information, forms or information on the status of an application, please contact the Programs Officer. For specific questions on eligibility, labour expenditure calculations, definitions or any issue concerning a specific project; please contact the Tax Credits Phone Duty line (416) 642-6659 or mailbox at taxcredits@omdc.on.ca.

Please leave a detailed message including your name, company, phone number and which tax credit or file you are inquiring about. Phone calls and emails will be responded to within one business day. Policy issues may be addressed to the Director.

Director

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APPENDIX 1**LINKS TO LEGISLATION, REGULATIONS AND CAVCO NOTICES****Provincial Legislation and Regulation:**

[Taxation Act, 2007, s. 90 – OCASE](#)

[Taxation Act Regulation, O. Reg 37/09, s.23 – 25](#)

[Income Tax Act \(Ontario\), s.2 – liability for Ontario personal income tax](#)

Federal Legislation and Regulation:

[Income Tax Act \(Canada\)](#)

[s. 89\(1\)](#) – definition of Canadian corporation:

[s.248\(1\)](#) – Scientific Research and Experimental Development

[s.251](#) – definition of arm’s length

[s.256\(5.1\)](#) – definition of control in fact

[Income Tax Act Regulations](#)

[s.400\(2\)](#) – definition of permanent establishment

<http://laws-lois.justice.gc.ca/eng/regulations/C.R.C., c. 945/>

CAVCO Public Notices:

[20017-02 – Definitions for ineligible genres of production for the purpose of the federal film or video production tax credit programs](#)

[2017-03 – Definition of advertising for the purpose of the federal film or video production tax credit programs](#)

APPENDIX 2 - OCASE DOCUMENTS CHECKLIST

<p>It is the responsibility of the applicant to ensure that all documentation is current. Please forward changes as they occur.</p>	
<p>Required for a Certificate of Eligibility</p>	
1.	<p>Completed OCASE Tax Credit Application (via the OMDC Online Application Portal)</p>
2.	<p>Administration Fee – calculated as 0.15% of eligible labour expenditures for the application. There is a minimum fee of \$500 per application and maximum fee of \$10,000 per application.</p> <p>Note: There is an additional filing fee of \$100 for applications that are submitted more than 24 months from the company’s relevant year-end; and there is a fee of \$100 for amended Certificates.</p>
3.	<p>Applicant Declaration completed and signed by an authorized signing officer of the corporation.</p>
4.	<p>Incorporation documents for the qualifying corporation</p>
5.	<p>Corporate Chart - indicating percentages of shareholdings in the applicant production company, and nationality of shareholders.</p>
6.	<p>Contract with the producer of the eligible production (or with another qualifying corporation) <u>or</u> where the applicant is the producer or production services provider, chain of title documentation.</p> <p>NOTE: Where there is no contract, please submit the invoice(s).</p>
7.	<p>List of Employees/Contractors claimed as eligible labour, with job titles and Ontario residency addresses (for each production).</p> <p>NOTE: for a producer’s OCASE claim, please refer to the “Eligible Positions for a Producer’s OCASE Claim” for the conventional cast and crew positions (ie the non-VFX-specific roles) that can be included.</p>
8.	<p>Production Schedule - including start and end dates of eligible activities by applicant (for each production).</p>
9.	<p>A description of the process by which the animation or visual effects are created, including a list and description of the digital technologies and software used (for each production).</p>

10.	<p>Where the producer/production services provider is making an OCASE claim, please provide the following documentation:</p> <p>(i) Copy of all the VFX services agreements to support the digital component of the on-set claim, as well as any change orders to the VFX services agreements.</p> <p>(ii) Daily Production Reports (DPR's) and Call Sheets, - for a producer's OCASE claim you must provide detailed DPR's and call sheets.</p> <p>Note: OMDC reserves the right to ask for further supporting documentation such as the VFX breakdown, the percentage of VFX shots in screen time and/or the VFX shots database, etc.</p> <p>(iii) A reasonable methodology and calculation (with back-up) used to determine what percentage of labour is directly related to the creation of the visual effects (the "VFX %"). For example, divide the VFX shooting time by the total shooting time, and apply that percentage to the eligible labour. (See "Eligible Positions for a Producer's OCASE Claim" for the conventional cast and crew positions (ie. the non-VFX-specific roles) that can be included.)</p> <p>Note: Separate VFX percentage calculations are required for the Main Unit and the Second/Splinter Unit.</p>
11.	<p>Breakdown/schedule of eligible Ontario labour expenditures for eligible activities for the taxation year (per production).</p> <p>The schedules should make a clear distinction between, and provide subtotals for:</p> <p>(i) Qualifying Wage Amounts incurred by the qualifying corporation on account of salaries and wages of its employees.</p> <p>(ii) Qualifying Remuneration Amounts (i.e. paid to arm's length parties who are not employees of the corporation) incurred by the qualifying corporation.</p>
12.	<p>Financing Plan (for each production) – where the applicant is the producer of the production, include a copy of all signed distribution, exploitation and financing agreements noted therein. Where the applicant is the production services provider, submit the production services agreement.</p>
13.	<p>Descriptive list of the visual effects or animation being claimed (for each production).</p>
14.	<p>Copy of the completed animation (one episode, if a series), or a sampling of the visual effects (if available), on DVD or USB stick.</p>

APPENDIX 3 - ADMINISTRATION FEES

A non-refundable administration fee is charged with respect to each OCASE Tax Credit application submitted to the Ontario Media Development Corporation (OMDC) and is used to offset operating costs of the OCASE Tax Credit program.

The amount of the administration fee is 0.15% of eligible expenditures for the application. There is a minimum fee of \$500 per application and a maximum fee of \$10,000 per application.

The fee is payable by cheque or money order made payable to the Ontario Media Development Corporation at the time the OCASE Tax Credit application is submitted to the OMDC. Please note that the administration fee is required in order for the application to receive an Eligibility Review.

There is an additional filing fee of \$100 applied to applications for Certificates of Eligibility received more than 24 months after the year-end of the claim. As well, there is a fee of \$100 for each Amended Certificate.