

Tennessee Film, Entertainment & Music Commission

Film and Television Incentives

The State of Tennessee has developed TWO incentive plans to create economic and community development and to promote film and television production in the state.

With the combination of the TWO incentives, your production can receive a *possible total of 32% cash rebate* for your qualified Tennessee Spend! Explore exciting and fresh location possibilities with our NEW Film and Television incentives!

The incentive information can be found on <http://film.tennessee.gov/incentives>

*IT IS HIGHLY RECOMMENDED THAT ALL PRODUCTION COMPANIES CONTACT THE TENNESSEE FILM, ENTERTAINMENT & MUSIC COMMISSION TO DISCUSS THEIR PROJECT AND INCENTIVE ELIGIBILITY **BEFORE** APPLYING.*

INCENTIVE #1 (administered by the Tennessee Film, Entertainment & Music Commission)

13/15/17% Film & Television Production Incentive

- A. Requirements
- B. Eligible TN Expenditures
- C. 13/15/17% Procedure
- D. Forms
 - Form A: Registration for Certification of Conditional Eligibility
 - Form B: Declaration of Residency Form
 - Form C: Incentive Application

INCENTIVE #2 (administered by the Tennessee Department of Revenue)

15% Headquarters Refund

- A. Requirements
- B. Sample Letter

13 / 15 / 17% FILM AND TELEVISION PRODUCTION INCENTIVE REQUIREMENTS

Receive **13%** of your total qualified production expenditures for a feature film or television program in the State of Tennessee. At the present time concerts, award shows, music talk shows (*consisting primarily of “b-roll” and interviews*), sporting events, news shows and music videos do not qualify for the incentive.

Plus 2% more if at least 25% of the cast and/or crew are Tennessee residents. (“Day players” and extras are not included in determining the 25%)

Plus 2% more (maximum cash rebate of \$100,000) if the Production Company spends at least \$20,000 per production/per episode for music created by Tennessee residents or for recording music in Tennessee.

The incentive is calculated on the total qualified Tennessee spend with “caps” on the above-the-line Tennessee spend. *All above the line personnel, with either single or multiple job functions, will have a salary and fee cap of \$100,000 for each function performed within a production.*

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REQUIREMENTS

- § A Production Company headquartered outside the state must spend at least \$500,000 per production/per episode, and a Production Company headquartered within the state must spend at least \$200,000 per production/per episode, on qualified expenditures in Tennessee *within 12 months after Certificate of Conditional Eligibility is issued*. If for some reason the production can not be completed within 12 months, an extension may be granted in writing by the Executive Director of the Tennessee Film, Entertainment & Music Commission.
- § Pre-production/Production must begin within 90 days of TFEMC’s certification that the Production Company qualifies for an incentive, unless an extension has been granted in writing by the Executive Director of the TFEMC. **Certification should be done prior to making any production related expenses in the state.**
- § *PRIOR TO THE START OF PRE-PRODUCTION, A MEETING **MUST** TAKE PLACE BETWEEN THE TFEMC (WHICH MAY ALSO INCLUDE THE DEPARTMENT OF REVENUE), THE HEAD ACCOUNTANT, LINE PRODUCER AND/OR UNIT PRODUCTION MANAGER AND/OR PRODUCTION SUPERVISOR..*
- § All productions must submit final application package within 15 months from the date the Certificate of Conditional Eligibility is issued, unless an extension has been granted in writing by the Executive Director of the Tennessee Film, Entertainment & Music Commission.
- § The Production Company must provide the Tennessee Film, Entertainment and Music Commission (TFEMC) adequate assurances (financial and otherwise) of their ability to complete production. In order to apply for the incentive (Form A) a production should be greenlit/fully-funded.
- § **Should there be an anticipated increase in the production’s budget and TN spend, please apprise the TFEMC in writing.** Failure to do so could potentially impact the amount of incentive funds available to your production.
- § Script and resulting production must not be obscene in nature, and the Production Company must affirm that the production does not require that records be maintained pursuant to 18 U.S.C. Sec. 2257 with respect to any performer portrayed therein.

- § All obligations incurred in state must be satisfied. Upon the completion of principal photography, the Production Company must post a notice, once a week for 3 consecutive weeks, in local newspapers in each Tennessee location where production took place, notifying the public of the need to file creditor claims with the Production Company by a specified date. The Production Company agrees that outstanding obligations are not waived by a creditor failing to file such claim by the specified date. The Production Company will not be entitled to receive any incentives, nor will they file any of their claims therefor with the state, until the Tennessee Department of Revenue notifies TFEMC that the Production Company has complied with all its obligations under this program.
- § The Production Company shall maintain a detailed account (ledger), in print and electronic form (Excel or Access – *see Data Requirements*) of all expenditures incurred in Tennessee. Full vendor names and addresses must be clearly indicated and visible. The Production Company shall keep copies of receipts and other satisfactory documentation of ALL monies spent in Tennessee. All financials will be audited by TFEMC, the Tennessee Department of Revenue, and/or the Department of Economic Community and Development.
- § The Production Company shall have each Tennessee resident, engaged for the production, complete and execute a Declaration of Residency form. In determining whether 25% Tennessee cast and/or crew threshold achieved, extras and day players shall be excluded.
- § The production must be completed, and TFEMC must be shown the completed production and given a copy (upon completion) prior to the Production Company being entitled to any incentives hereunder.
- § The Production Company must provide appropriate production credits to the Governor and the State of Tennessee, TFEMC, and the regional film commission(s) (if applicable) providing services to the Production Company, as well as an acknowledgement that the production was filmed/videotaped in the State of Tennessee.
- § The Production Company must provide TFEMC with complete crew and vendor lists for the production, along with a final copy of the budget and payroll expenses.
- § The production must comply with all applicable State and Federal laws.
- § The Production Company must agree to indemnify and hold harmless the State of Tennessee as well as its officers, agents, and employees from and against any and all claims, liabilities, losses, and causes of action which may arise, accrue, or result to any person, firm, corporation, or other entity which may be injured or damaged as a result of acts, omissions, or negligence on the part of the Production Company, its employees, or any person acting for or on its or their behalf relating to the production.

DETERMINATION OF INCENTIVE:

- § This is not a “first come, first serve” program nor one of unlimited resources. All applications will be reviewed by the Economic and Community Development Loans and Grants Committee and applicants will be notified of the committee’s decision. Currently the incentive fund available is approximately \$20,000,000. The TFEMC and the Tennessee Department of Economic and Community Development shall have the sole discretion of awarding these incentives, in furtherance of the best interests of the State of Tennessee, which would include, but not be limited to, job creation and training, economic growth and new business opportunities.

Generally, the criteria for the Film and Television Production Incentive will be as described herein. However, where it is determined that a production will have a beneficial impact on the film industry and the economy of the State, the TFEMC, along with the Loans and Grants Committee, shall have the discretion to deviate from the criteria for the Film and Television Production Incentive. Please note that this discretion does not apply to the headquarters refund. The TFEMC, along with the Loans and Grants Committee, also has discretion for areas where the State of Tennessee does not have key people. No exception will be considered valid if it has not been agreed upon in writing PRIOR to the start of production.

ELIGIBLE EXPENDITURES FOR THE 13 / 15 / 17% FILM AND TELEVISION PRODUCTION INCENTIVE

Expenditures are considered “qualified expenses” only to the extent that the costs are clearly and demonstrably incurred in Tennessee in the pre-production, production or postproduction phases of a qualified production.

Incurring in the state means payments made for goods or services used in the state in connection with a qualified production and purchased from a local Tennessee vendor or paid to a Tennessee resident.

- § All qualified spend on TN services, equipment and personnel
- § Wages, salaries, fees, per diem and fringe benefits of TN cast and crew (All above the line personnel, with either single or multiple job functions, will have a salary and fee cap of \$100,000 for each function performed within a production).
- § Tennessee residents MUST meet Tennessee resident criteria (must have a Tennessee Driver's License or State issued ID).
- § Housing, and travel of out-of-state cast and crew
- § Commercial airfare purchased through a TN based travel agency for travel to and from TN and within TN
- § All TN spend associated with the production including art direction, wardrobe, make-up, hair, location fees, rental of facilities and equipment, scoring, special effects and all other customary post production costs.

NON-ELIGIBLE EXPENDITURES

- § Wages, salaries, per diems, fees and fringe benefits of out-of-state cast and crew members
- § Costs associated with advertising, marketing, distribution, financing, insurance, and completion bonds
- § Internet purchases
- § Cell phone reimbursements
- § Payments made to the Federal Government. This would include permits and postage.
- § Expenditures made to Section 501(c), non-profit organizations (including Goodwill, Salvation Army, churches, museums, schools, etc.)

Please note – the information found above applies ONLY to the 13/15/17% Film Incentive. The Department of Revenue should be contacted to determine what expenses may qualify for their program.

Data Requirements for the TENNESSEE Film Incentives

- The data must be in one Excel spreadsheet (not multiple tabs) or one Access database table (not multiple tables).
- The data cannot be submitted in any other format such as PDF, XML, delimited, CSV, PRN, reports etc.
- The data must contain specific identifying information about the transaction that is sufficient to locate the source document (paper receipt) such as vendor/supplier, date, invoice number/transaction number, account number, proof of payment (check number, envelope number, etc), description, etc. This is not an exhaustive list, but rather an example of the detail needed on each transaction/line of data.
- The amount of the qualified Tennessee spend must be in one data column and have an amount on every line of the data for the transaction. The sum of this column must represent the total Tennessee spend for the time period represented. If the column is summed in Excel or Access and does not sum to the number represented at the bottom of the column, the data will be returned for correction.
- Every effort should be made to list the net spend for each transaction and not multiple payments or advances toward a single transaction/spend.

The 13/15/17% Tennessee Film and Television Incentive Procedure

*You do not need to complete these steps until you are “greenlit” for Tennessee production.
Please read through all of the forms prior to beginning the application process.*

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BEFORE PRODUCTION:

1. Register your Production Company for a Certificate of Conditional Eligibility with the Tennessee Film, Entertainment & Music Commission (TFEMC) using **Form A**. Forms can be found at www.film.tennessee.gov under “Incentives.” Mail or fax the form. **Please include all contact information!** You will be contacted once the TFEMC has received your form.

If approved, the state will issue a certificate of conditional eligibility to the authorized applicant. The receipt of the certificate of conditional eligibility does not guarantee availability of the incentive nor the amount of the incentive which is contingent on the final budget and the productions meeting the requirements of the incentive plan. In addition the actual receipt of the incentive is subject to the availability of incentive funds for the program and a mutually executed Tennessee state contract.

2. Submit a copy of the script to the TFEMC. Preferred method for sending script is in PDF via email to perry.gibson@state.tn.us or by mailing a hard copy. If you are requesting any location assistance, please also include a location breakdown.
3. Production Company must provide adequate assurances (financial and otherwise) of their ability to complete production.
4. Once the production is approved for a Certificate of Conditional Eligibility, a meeting **MUST** be scheduled with the TFEMC (which may also include the Department of Revenue) prior to the start of pre-production. This meeting should include your *Head Accountant, Line Producer and/or UPM and/or Production Supervisor*.

DURING PRODUCTION:

Each Tennessee resident employed on your production must complete **Form B**, a Declaration of Residency form **and** provide proof of residency, which must be a copy of a valid Tennessee driver's license or state-issued ID.

5. Keep a detailed account (ledger) to submit in electronic form (CD or e-mail) an Excel or Access file (see *Data Requirements*) listing ALL expenditures incurred in Tennessee that were paid to TN Vendors and Residents during pre-production, production and post (where applicable).
 - o Maintain copies of all vendor invoices. Full vendor names and addresses must be clearly visible.
 - o Maintain copies of all credit card purchases, which must also include detail of purchases/vendor names.
 - o Obtain copies of each employee's *Declaration of Residency* form and attach proof of residency and sort alphabetically by last name
 - o Maintain copies of petty cash envelope summaries (copy the front of each petty cash envelope) and sort by PC envelope number
 - o Maintain copies of all receipts (always keep the originals for your records).

AFTER PRODUCTION:

6. Once production is completed, use your records to compile a comprehensive ledger of Tennessee expenditures and calculate your potential incentive. Do not complete your ledger until your very last Tennessee expenditure, which would include any post-production. (*Please note, productions participating in BOTH the 13/15/17% and the HQ Incentive could potentially have multiple submissions if they choose.*) Then submit an electronic copy of the Excel ledger in electronic form (CD or e-mail). Should you choose to e-mail the file, the TFEMC will provide you with the e-mail address to submit it to.

7. **Please provide proof of the following:** *"Upon the completion of principal photography, Production Company must post a notice, once a week for 3 consecutive weeks, in local newspapers in each Tennessee location where production took place, notifying the public of the need to file creditor claims with the production company by a specified date. Production company agrees that outstanding obligations are not waived by a creditor failing to file such claim by the specified date. Production company will not be entitled to receive any incentives, nor will they file any of their claims therefore with the state, until the Tennessee Department of Revenue notifies TFEMC that the production company has complied with all its obligations under this program."*

Please include production title, address, phone, fax, and contact name(s) for your primary or corporate office - not your Tennessee production office - as vendors need to be able to contact you after you have closed your local production office. Please submit this information to the TFEMC *and* fax a copy of the newspaper bill for all three weeks to the TFEMC. This information will also be posted on the web site of the TFEMC for sixty (60) days.

8. The TFEMC will need copies of the following information submitted along with Form C:
- œ Final Budget
 - œ General ledger (which includes **Total** dollar amount spent in Tennessee, including labor)
 - œ Total Tennessee payroll figure (paid to TN residents)
 - œ Total Payroll report (excluding/obscuring individual social security numbers)
 - œ Certificate of Legal Existence from the Tennessee (*or other state*) Secretary of State
 - œ Certificate of Insurance
 - œ Total number of Tennessee crew members hired (please include prep crew, construction, caterers, teamsters, production office, etc... Do not include day players or extras.)
 - œ Crew call sheets
 - œ Average Tennessee crew size (per day) for prep
 - œ Average Tennessee crew size (per day) for shoot
 - œ Declaration of Residency Forms - attach proof of residency and alphabetize by last name
 - œ Prep dates & Number of prep days
 - œ Shoot dates & Number of shoot days
 - œ Distribution Plan
 - œ List of all Tennessee locations used
 - œ Final Crew list
 - œ Final Vendor list
 - œ At least one copy of the production (due upon completion)
9. Complete **Form C**, the incentive application. Mail your completed package. Make sure to submit the **application** and **all supporting documents**.

NOTE: FEWER MISTAKES EQUAL A FASTER INCENTIVE!

Upon review by the TFEMC, this package will be forwarded to the TN DEPT. OF REVENUE. They will review and audit your claim and return the form to you with the approved amount. Sorry, the TFEMC nor TN DEPT. OF REVENUE cannot estimate the length of time the review process will take.

10. Once your incentive application is received, the production contact will be notified by the TFEMC. In order to receive the incentive at the end of production, all productions will need to enter a contract with the State of Tennessee. Productions will also be required to submit a substitute W9, an ACH Form (*contract requires that funds be direct deposited*) and to register on our Service Provider Registry.

ACH Form

<http://tennessee.gov/finance/rds/AppG.pdf>

W-9

http://tennessee.gov/finance/rpa/DM_2007/BiddingDocs/Jan07/Pdf%20Files/005435SubstituteW-9Jan07.pdf

To register on the Service Provider Registry:

<http://tennessee.gov/finance/rds/ocr/register.html>

For questions regarding the tax incentive program, you may contact the TFEMC: (615) 741-3456 or perry.gibson@state.tn.us



Office of the Governor
Perry A. Gibson, Executive Director

tn.film@state.tn.us

312 8th Avenue North, 9th Fl.
Nashville, TN 37243
(615) 741-3456
(615) 741-5554 - fax

Form A
Registration for Certification of Conditional Eligibility

1. Production Information:

- a) Name of Production Company _____
- b) Director _____
- c) Producer(s) _____
- d) Executive Producer(s) _____
- e) Type of Production (e.g. feature, short film, documentary, TV pilot, series, etc.)
*Note - At the present time, award shows and music videos do not qualify for the incentive.

- f) Production Title _____

2. Production Company Headquarters Information:

- a) Name _____
- b) Address _____

- c) Phone _____
- d) Fax _____
- e) Website Address _____
- f) Contact Name/Title _____
- g) Contact Phone, Cell & Email _____
- h) Type of entity (e.g. "C" or "S" Corporation, LLC, Partnership, Trust, etc.)

- i) State in which Incorporated or Registered _____
- j) Federal Tax I.D. Number (FEIN) _____

3. Production Company Tennessee Information:

- a) Name (if different) _____
- b) Address _____

- c) Phone _____
- d) Fax _____
- e) Local Contact Name/Title _____

- f) Local Contact Phone, Cell & Email _____

- g) Type of Entity _____
- h) State in which Incorporated or Registered _____
- i) Federal Tax ID Number (FEIN) _____

4. Type of 13/15/17% Incentive production intends to apply for:

- ☐ Production company is headquartered outside of Tennessee, and qualified production costs expended in Tennessee in a 12 month period will equal or exceed \$500,000 per production/per episode, 13% of such costs.
- ☐ Production company is headquartered in Tennessee, and qualified production costs expended in Tennessee in a 12 month period will equal or exceed \$200,000 per production/per episode, 13% of such costs.
- ☐ Additional 2% for at least ¼ of cast and/or crew being Tennessee residents.
- ☐ Additional 2% of total qualified production costs expended in Tennessee if production company spends at least \$20,000 per production/per episode for music created by Tennessee residents or for recording music in Tennessee. Refund has a “cap” of \$100,000.

5. Headquarters Incentive production intends to apply for:

- ☐ Production company is headquartered in Tennessee and will incur at least \$1,000,000 in qualified expenses producing a theatrical film or television show in Tennessee. Applicant will register with the Department of Revenue and will apply for both incentives.
- ☐ Qualified investor is headquartered in Tennessee and invested in a production company that shall incur at least \$1,000,000 in qualified expenses producing a theatrical film or television show in Tennessee. Applicant will register with the Department of Revenue and will apply for both incentives.

6. Production Costs and Tennessee Production Information:

- a) Preliminary budget \$ _____
- b) Estimated TN expenditures: \$ _____

- c) It is anticipated that Tennessee residents will comprise ____% of total cast and ____% of total crew (____% of combined cast/crew). (25% cast and/or crew is defined as crew that makes the final crew list and does not include dayplayers.)
- d) It is anticipated that Tennessee production dates/days will be:

Period	Dates	No. of Days
Pre-production		
Production		
Post Production		

- e) Type of production: _____
- f) Please attach a written description of your project.
7. To extent known, please provide detailed current plans for distribution, including name(s) of distributor(s):
- _____
- _____
- _____
- _____
8. Prior to production, submit a copy of your insurance policy for production, including agent, insurance company(s) and policy amounts.
9. Please provide detailed information as to what assurances State of Tennessee will have that financing to complete production will be available (e.g. completion bond, financial guarantees, etc.).
10. Attach the following:
- a) Detailed preliminary budget.
 - b) Script and synopsis.
 - c) List of all creative elements currently known (e.g. director, cast, etc.).
11. Send completed application to:

Tennessee Film, Entertainment & Music Commission
312 8th Avenue North, 9th Floor
Nashville, TN 37211

I hereby certify that the information provided in this application is true and correct, and I am aware that any applicant that obtains incentives from the State of Tennessee by filing a knowingly false or fraudulent claim shall be liable to the State of Tennessee for reimbursement of all monies received. Reimbursement of such monies shall be in addition to payment of a fine and/or other penalties imposed pursuant to Title 39 of the Tennessee Code. I understand that submission of an application does not in any way guarantee receipt a rebate or that rebate funds will be available.

Signature

Print Name

Title

Date



Form B
Tennessee Declaration of Residency

The purpose of this form is to certify that Tennessee residents were hired as part of your cast/and or crew. Film production companies that choose to claim an additional 2% Film and Television Production Rebate for employing at least 25% Tennessee cast and/or crew for the production must have each employee fill out this Tennessee Declaration of Residency Form.

Name: _____ SS #: _____

For minors only – Parent or Guardian’s Name: _____

Permanent Residence: _____

City, State and Zip Code: _____

Title of Film or Television Project: _____

Are you presently a resident of Tennessee? _____

Tennessee License # _____ (or the minor’s parent or guardian’s license #)

Do you anticipate changing your residency status during the time that you are expected to work on the film or television project? _____

Tennessee residents employed with this project must provide proof of residency to the production company in the form of a copy of a current Tennessee driver’s license in order to show you reside in Tennessee. A minor would need to also present their parent’s proof of residency with their own.

I declare under penalty of perjury that I have examined this document and to the best of my knowledge and belief it is true, correct and complete.

Signature

Date

15% REFUND – HEADQUARTERS LOCATION

A 15% refund calculated upon Qualified Expenses that are necessary for the production of a theatrical film or television show in Tennessee. In order to qualify for the 15% refund the production company must be headquartered in Tennessee and it or its subsidiary must incur at least \$1,000,000 in qualified expenses in the state. **This refund is administered through the Department of Revenue.**

QUALIFICATIONS FOR HEADQUARTERS 15% REFUND.

- § Production Company must establish a permanent headquarters facility in Tennessee.
- § If the qualified production company does not have a headquarters facility, then any qualified investor that has a Tennessee headquarters may qualify for the refund. The qualified investor shall be allowed a refund equal to the amount of refund that the production company would have been entitled to had it established a headquarters facility, multiplied by the qualified investor's percentage ownership interest in the qualified production company.
- § Production Company must incur at least \$1,000,000 in qualified expenses. "Qualified expenses" means those expenses incurred in Tennessee that both the Commissioner of Revenue and the Commissioner of Economic and Community Development determine, in their sole discretion, are necessary for the production of a theatrical film or television show in Tennessee that is in the best interests of this state. For purposes of this subsection, "best interests of this state" includes, but is not limited to, a determination that production of the film does not require that records be maintained pursuant to 18 U.S.C. Section 2257 with respect to any performer portrayed in the film.
- § In order for either a qualified production company or a qualified investor to become entitled to a refund, the qualified production company must submit documentation to the state verifying the qualified expenses. The Commissioner of Revenue shall review documentation submitted and notify the qualified production company of the amount approved, if any.
- § The production company or the qualified investor may then submit a claim for refund.

**TENNESSEE DEPARTMENT OF REVENUE
LETTER RULING # 07-08**

WARNING

Letter rulings are binding on the Department only with respect to the individual taxpayer being addressed in the ruling. This presentation of the ruling in a redacted form is informational only. Rulings are made in response to particular facts presented and are not intended necessarily as statements of Department policy.

SUBJECT

Statutory requirements to qualify for incentives available for the production of a movie in Tennessee.

SCOPE

This letter ruling is an interpretation and application of the tax law as it relates to a specific set of existing facts furnished to the Department by the taxpayer. The rulings herein are binding upon the Department, and are applicable only to the individual taxpayer being addressed.

This letter ruling may be revoked or modified by the Commissioner at any time. Such revocation or modification shall be effective retroactively unless the following conditions are met, in which case the revocation shall be prospective only:

- (A) The taxpayer must not have misstated or omitted material facts involved in the transaction;
- (B) Facts that develop later must not be materially different from the facts upon which the ruling was based;
- (C) The applicable law must not have been changed or amended;
- (D) The ruling must have been issued originally with respect to a prospective or proposed transaction; and
- (E) The taxpayer directly involved must have acted in good faith in relying upon the ruling and a retroactive revocation of the ruling must inure to his detriment.

FACTS

[THE TAXPAYER] is a yet-to-be formed Tennessee limited liability company. It will be owned by two individuals, [INDIVIDUAL NAMES] (the “Producers”), both of whom currently reside in [CITY OUTSIDE TENNESSEE] where they produce a wide variety of movies, both in and out of the [STATE WHERE THE PRODUCERS RESIDE]. The Producers will form [THE TAXPAYER] in Tennessee and move their production work to Tennessee.

Each of the producers is currently in the process of purchasing a home in Tennessee and they plan to move to Tennessee during the coming months. Upon their relocation in Tennessee and the formation of [THE TAXPAYER], the Producers will permanently reside in Tennessee and will be domiciled in Tennessee. Although the Producers will continue to have some production work outside Tennessee, the majority of their production work will be in the State of Tennessee.

[THE TAXPAYER’S] headquarters and principal office will be in the State of Tennessee and will probably be located in the [TENNESSEE CITIES] area. The Producers and any other headquarters staff will be employed and located in this office and [THE TAXPAYER’S] primary headquarters related functions and services will be performed there. [THE TAXPAYER] will not produce any movies that 18 U.S.C. § 2257 requires records to be maintained with respect to any performer portrayed in the movie.¹

QUESTIONS PRESENTED

1. Will the formation of [THE TAXPAYER] as a Tennessee limited liability company, the establishment of its principal office and headquarters in the State of Tennessee and the Producer’s relocation to the State of Tennessee qualify as establishing a “headquarters facility,” Pursuant to Tenn. Code Ann. § 67-6-224(b)(3) and for purposes of Tenn. Code Ann. § 67-4-2109(k)(2)?
2. Will the costs and expenses incurred by [THE TAXPAYER] in Tennessee to produce movies in the State of Tennessee be deemed to be “qualified expenses,” as defined in Tenn. Code Ann. § 67-4-2109(k)(1)(A)?
3. If [THE TAXPAYER] incurs at least \$1,000,000 in “qualified expenses”, will it be deemed a “qualified production company,” as the term is defined in Tenn. Code Ann. § 67-4-2109(k)(1)(C)?
4. Assuming that each of the above questions are answered in the affirmative, will

¹ The facts stated in this paragraph were confirmed by [THE TAXPAYER’S ATTORNEY] in a March 15, 2007 telephone conversation with a representative of the Tennessee Department of Revenue. Title 18 U.S.C. § 2257 pertains to record keeping requirements for the producer of a film that contains one or more visual depictions made after November 1, 1990 of actual sexually explicit conduct.

[THE TAXPAYER] be entitled to the refund for qualified expenses as set forth in Tenn. Code Ann. § 67-4-2109(k)(2)?

5. Tenn. Code Ann. § 67-4-2109(k)(1)(C) states that to be deemed a “qualified production company,” an entity must incur at least \$1,000,000 in “qualified expenses.” Is this a one-time threshold requirement?
6. Tenn. Code Ann. § 67-4-2109(k)(1)(A) states that “qualified expenses” are those expenses incurred in Tennessee that “are necessary for the production of a movie in Tennessee that is in the best interests of the state.”
 - (a) What does the language “necessary for the production of a movie in Tennessee” mean?
 - (b) What does the language “in the best interests of this state” mean?
7. What documentation is required to evidence “qualified expenses”?

RULINGS

1. Yes.
2. Yes, provided that the costs and expenses are determined by the Commissioner of Revenue and the Commissioner of Economic and Community Development to be necessary for the production of a movie in Tennessee that is in the best interests of the State of Tennessee.
3. Yes.
4. Yes, provided that all applicable statutory requirements of Tenn. Code Ann. § 67-4-2109(k) are met.
5. No. The qualified production company must incur at least \$1,000,000 in qualified expenses for the production of each movie produced in Tennessee that is eligible for the incentive refund.
6. (a) Expenses “necessary for the production of a movie in Tennessee” are expenses incurred in Tennessee without which the movie could not have reasonably been made. The phrase “necessary for the production of a movie in Tennessee” does not mean only the expenses that would be necessary to make the movie in Tennessee on the lowest possible budget.
 - (b) A movie that contains one or more visual depictions of actual sexually explicit conduct, or a movie that, in the opinion of the Commissioner of Revenue and the Commissioner of Economic and Community Development, would bring disgrace, infamy, reproach or stigma to the State of Tennessee in the eyes of the general

public because of its subject matter or visual depictions, would not be “in the best interests of this state” and its producer will not be rewarded by the incentives provided in Tenn. Code Ann. § 67-4-2109(k) for making the movie in Tennessee.

7. Any documentation that, in the opinion of the Commissioner, is necessary to satisfy him that the expenses claimed are eligible for the statutory incentive will be required. Actual documentation required will be determined by the Commissioner on a case-by-case basis and may vary depending on the factual situation with which the Commissioner is presented.

The minimal documentation in every case will be a listing of the expenses incurred and the name and address of each vendor to whom each expense was paid. In any case, the Commissioner will not require any more documentation regarding “qualified expenses” than is absolutely and reasonably necessary to satisfy him that the expenses claimed are eligible for the statutory incentive.

ANALYSIS

APPLICABLE STATUTES

The following definitions are set forth in Tenn. Code Ann. § 67-4-2109(k)(1) with regard to the availability of a refund for a percentage of the expenses incurred in producing a movie in Tennessee:

- (A) “Qualified expenses” means those expenses incurred in Tennessee that both the commissioner of revenue and the commissioner of economic and community development determine, in their sole discretion, are necessary for the production of a movie in Tennessee that is in the best interests of this state. For purposes of this subdivision (k)(1)(A), “best interests of this state” includes, but is not limited to, a determination that production of the movie does not require that records be maintained pursuant to 18 U.S.C. § 2257 with respect to any performer portrayed in the movie.
- (B) “Qualified investor” means any entity that has established a headquarters facility as defined in § 67-6-224 that has invested in a qualified production company; and
- (C) “Qualified production company” means any entity that incurs at least one million dollars (\$1,000,000) in qualified expenses.

Tenn. Code Ann. § 67-6-224(b)(3), referenced in Tenn. Code Ann. § 67-4-2109(k)(1)((B) above, defines a “headquarters facility” as follows:

- (3) “Headquarters facility” means a facility in this state that houses the international, national, or regional headquarters of a taxpayer, where headquarters staff employees are located and employed, and where the primary headquarters

related functions and services are performed.

Tenn. Code Ann. § 67-4-2109(k) makes the following provisions for a qualified production company or a qualified investor that has established a headquarters facility in Tennessee to obtain a refund of a percentage of the expenses incurred in producing a movie in Tennessee:

- (2) A refund in an amount equal to fifteen percent (15%) of any qualified expenses shall be allowed to any qualified production company that has established a headquarters facility as defined in § 67-6-224. If the qualified production company does not have a headquarters facility as defined in § 67-6-224, then any qualified investor shall be allowed a refund equal to the amount of refund that the qualified production company would have been entitled to had it established a headquarters facility as defined in § 67-6-224, multiplied by the qualified investor's percentage ownership interest in the qualified production company.
- (3) In order for either a qualified production company or a qualified investor to become entitled to a refund, the qualified production company must submit documentation verifying the qualified expenses.
- (4) The commissioner shall review the documentation and notify the qualified production company of the approved amount.
- (5) Once the qualified production company has been notified of the approved amount, either the qualified production company or the qualified investment company, as appropriate, may submit a claim for refund. The refund shall be subject to the procedures of § 67-1-1802; provided, however; notwithstanding any procedure of § 67-1-1802 to the contrary, that a claim for refund shall be filed with the commissioner within three (3) years from December 31 of the year in which the qualified expenses were incurred. In no case shall a refund for the same qualified expenses be allowed twice.

APPLICATION OF THE STATUTES TO A QUALIFIED PRODUCTION COMPANY

The statutes set forth above provide that a "qualified production company" that produces a movie in Tennessee may qualify for a refund of 15% of the "qualified expenses" of producing the movie if the following requirements are met:

1. A "qualified production company" must be established in Tennessee that:
 - (a) Is a "headquarters facility" that houses the entity's international, national, or regional headquarters; and

- (b) Is the employment location and physical location of the entity's headquarters staff employees; and
 - (c) Is where the entity's primary headquarters related functions and services are performed.
2. The entity so established must:
- (a) Incur at least \$1 million in Tennessee "qualified expenses" in the production of a movie in Tennessee; and
 - (b) Secure a written determination by the Commissioner of Revenue and the Commissioner of Economic and Community Development stating that:
 - (i) The movie is in the best interest of Tennessee; and
 - (ii) The expenses incurred in producing the movie were necessary for the production of the movie in Tennessee; and
 - (iii) The movie does not contain 1 or more visual depictions, made after November 1, 1990, of actual sexually explicit conduct. (See 18 U.S.C. § 2257)
3. The "qualified production company" must submit documentation of the expenses incurred in producing the movie to the Commissioner of Revenue.
4. Upon review of the documentation submitted for the expenses incurred in producing the movie, the Commissioner of Revenue must notify the "qualified production company" of the approved amount.
5. Within 3 years from December 31 of the year in which the expenses are incurred, the "qualified production company" must file a refund claim with the Department of Revenue for the expenses approved.
6. The refund claim must be processed under the provisions of Tennessee law which requires approval of the Commissioner of Revenue and the Tennessee Attorney General.
7. A qualified production company meeting the above outlined requirements will be refunded 15% of the "qualified expenses" that it incurs in the production of a movie in Tennessee.

We turn now to an analysis of the rulings made with regard to the questions presented.

1. [THE TAXPAYER] WILL BE CONSIDERED A “HEADQUARTERS FACILITY” UNDER THE PROVISIONS OF TENN. CODE ANN. § 67-6-224(b)(3) AND FOR PURPOSES OF TENN. CODE ANN § 67-4-2109(k)(2)

[THE TAXPAYER] will be considered a “headquarters facility” under the provisions of Tenn. Code Ann. §§ 67-6-224(b)(3) and for purposes of 67-4-2109(k)(2), if it:

1. Establishes a facility in Tennessee that houses its international, national, or regional headquarters; and
2. Its headquarters staff employees are located and employed at its Tennessee “headquarters facility”; and
3. Its primary headquarters related functions and services are performed at the facility.

The headquarters and principal office of [THE TAXPAYER] will be located in the State of Tennessee, probably in the [TENNESSEE CITIES] area. This is where the Producers and any other headquarters staff will be employed and located and [THE TAXPAYER’S] primary headquarters related functions and services will be performed there.

The facts presented clearly show that [THE TAXPAYER] will establish its headquarters at a facility in Tennessee where its headquarters staff employees will be located and employed and where its primary headquarters related functions and services will be performed. [THE TAXPAYER] will thus be considered a “headquarters facility” under the provisions of Tenn. Code Ann. § 67-6-224(b)(3) and for purposes of Tenn. Code Ann. § 67-4-2109(k)(2).

2. COSTS AND EXPENSES INCURRED BY [THE TAXPAYER] IN TENNESSEE TO PRODUCE A MOVIE IN THE STATE OF TENNESSEE WILL BE CONSIDERED “QUALIFIED EXPENSES” PROVIDED PROPER APPROVAL IS SECURED

Tenn. Code Ann. § 67-4-2109(k)(1)(A) defines “qualified expenses” for purposes of the incentives available for production of a movie in Tennessee. The statute sets forth the following criteria:

1. The expenses must be incurred in Tennessee to produce a movie in the State of Tennessee.
2. The Commissioner of Revenue and the Commissioner of Economic and Community Development must make a written determination stating that:
 - (a) The movie is in the best interest of Tennessee; and

(b) The expenses incurred were necessary for the production of the movie in Tennessee; and

3. The movie must not contain 1 or more visual depictions, made after November 1, 1990, of actual sexually explicit conduct. (See 18 U.S.C. § 2257)

Tenn. Code Ann. § 67-4-2109(k)(1)(C) requires the “qualified expenses” to be incurred by a “qualified production company” and requires that the expenses so incurred amount to at least \$1,000,000.

As explained in #3 below, [THE TAXPAYER] will be considered a “qualified production company” if it incurs “qualified expenses” of at least \$1,000,000 in Tennessee in the production of a movie in the State of Tennessee.

The facts presented state that [THE TAXPAYER] will not produce any movies that contain any visual depictions of actual sexually explicit conduct (See 18 U.S.C. § 2257). Upon securing a written determination from the Commissioner of Revenue and the Commissioner of Economic and Community Development stating that the costs and expenses incurred by [THE TAXPAYER] were necessary for the production of a movie in Tennessee that is in the best interests of the State of Tennessee, such costs and expenses will be deemed to be “qualified expenses,” as defined in Tenn. Code Ann. § 67-4-2109(k)(1)(A).

3. [THE TAXPAYER] WILL BE CONSIDERED A “QUALIFIED PRODUCTION COMPANY” IF IT INCURS “QUALIFIED EXPENSES” IN TENNESSEE OF AT LEAST \$1,000,000 IN THE PRODUCTION OF A MOVIE IN THE STATE OF TENNESSEE

In order to be considered a “qualified production company,” Tenn. Code Ann. § 67-4-2109(k)(1)(C) requires that the entity incur “qualified expenses” in Tennessee of at least \$1,000,000 to produce a movie in Tennessee.

If [THE TAXPAYER] incurs “qualified expenses” in Tennessee of at least \$1,000,000 in the production of a movie in the State of Tennessee, it will be considered a “qualified production company” for purposes of being eligible for incentives available under Tenn. Code Ann. § 67-4-2109(k) for production of a movie in Tennessee.

4. [THE TAXPAYER] WILL BE ENTITLED TO A REFUND OF 15% OF ITS “QUALIFIED EXPENSES” PROVIDED THAT IT MEETS ALL APPLICABLE STATUTORY REQUIREMENTS SET FORTH IN TENN. CODE ANN. § 67-4-2109(k)

In view of the facts presented and the rulings in response to questions 1 through 3 above, there is no reason to believe that [THE TAXPAYER] will not meet all of the applicable statutory requirements set forth in Tenn. Code Ann. § 67-4-2109(k) and

outlined in this Letter Ruling to qualify for a 15% refund of the qualified expenses that it incurs in the production of a movie in Tennessee.

5. THE “QUALIFIED EXPENSES” THRESHOLD OF \$1,000,000
APPLIES TO EACH MOVIE PRODUCED
BY A “QUALIFIED PRODUCTION COMPANY” IN TENNESSEE

Tenn. Code Ann. § 67-4-2109(k)(1)(C) states that a “qualified production company” is an “. . . entity that incurs at least \$1,000,000 in “qualified expenses.”

Tenn. Code Ann. § 67-4-2109(k)(1)(A) states that “qualified expenses” are “. . . those expenses incurred in Tennessee that . . . are necessary for the production of a movie in Tennessee . . .” (Emphasis underline added.)

According to these statutes, one of the requirements that a “qualified production company” must meet to be eligible for the movie production incentive refund provided by Tenn. Code Ann. § 67-4-2109(k)(2) is that the expenses that it incurs for the production of “a movie” in Tennessee must amount to at least \$1,000,000.

For example, suppose that expenses for the first movie that [THE TAXPAYER] produces in Tennessee amount to \$1,000,000. Assuming that all applicable statutory requirements are met, [THE TAXPAYER] will receive a refund of \$150,000 (15% of \$1,000,000).

For its second movie produced in Tennessee, suppose that [THE TAXPAYER] incurs expenses of \$990,000. [THE TAXPAYER] will not receive any refund because the \$1,000,000 “qualified expenses” threshold has not been met.

Assume expenses for the third movie produced by [THE TAXPAYER] in Tennessee amount to \$1,050,000 and all applicable statutory requirements are met. [THE TAXPAYER] will receive a refund of \$157,500 (15% of \$1,050,000).

6. (a) REQUIREMENT THAT “QUALIFIED EXPENSES”
“ARE NECESSARY FOR THE PRODUCTION OF A MOVIE IN TENNESSEE”

Neither the term “necessary” nor any of the other terms in the phrase “. . . are necessary for the production of a movie in Tennessee . . .” found in Tenn. Code Ann. § 67-4-2109(k)(1)(A) are defined in the law.

The most basic rule of statutory construction is to ascertain and give effect to the intention and purpose of the legislature. *Worrall v. Kroger Co.*, 545 S.W.2d 736 (Tenn. 1977). Legislative intent or purpose is to be ascertained primarily from the natural and ordinary meaning of the language used, without forced or subtle construction that would limit or extend the meaning of the language. [*National Gas Distributors, Inc. v. State*, 804 S.W.2d 66 \(Tenn.1991\)](#). In seeking to determine the “natural and ordinary meaning” of statutory language, the usual and accepted source for such information is a

dictionary. *State v. Givens*, Slip op. 1994 WL406187 (Tenn.Crim.App. Aug. 4, 1994).

One of the definitions given for the word “necessary” in BLACK’S LAW DICTIONARY 928 (5th ed. 1979) is “. . . something which in the accomplishment of a given object cannot be dispensed with . . .” Among the definitions given for the word “necessary” in THE AMERICAN HERITAGE DICTIONARY 834 (2nd ed. 1982) are “[a]bsolutely essential; indispensable” and “[n]eeded to achieve a certain result . . .”

In view of the context of the phrase “. . . are necessary for the production of a movie in Tennessee . . .” and the definitions of the word “necessary” cited in the above paragraph, it appears that the legislative intent or propose is to classify expenses without which the movie could not have reasonably been made as a “qualified expenses.”

It does not appear that the legislature intended that only expenses that would be necessary to make the movie in Tennessee on the lowest possible budget will be allowed as “qualified expenses.”

It appears that the legislature only intended to give the Commissioner of Revenue and the Commissioner of Economic and Community Development the ability to review expenses that a “qualified production company” claims as “qualified expenses” to make sure that such expenses are reasonably related to the production of a movie in Tennessee.

For example, if a “qualified production company” had someone on its payroll that had nothing to do with making the movie in Tennessee, or who was merely present as a bystander when the movie was made, but did not actually do anything at any time in connection with the movie, then that person’s salary would not be allowed as a “qualified expense.” If a person in the employ of the “qualified production company” worked on many projects, including the making of a movie in Tennessee, then only the portion of such person’s salary paid while the person was actually working on making the particular movie in Tennessee would be allowed as a “qualified expense.” Expenses incurred outside Tennessee will not be allowed as “qualified expenses.”

6(b) MEANING OF THE LANGUAGE “IN THE BEST INTERESTS OF THIS STATE” IN TENN. CODE ANN. § 67-4-2109(k)(1)(A)

Tenn. Code Ann. § 67-4-2109(k)(1)(A) states that “qualified expenses” are limited to those expenses incurred in Tennessee that, in the sole discretion of the Commissioner of Revenue and the Commissioner of Economic and Community Development, are necessary for the production of a movie in Tennessee and “in the best interests of this state.”

By enactment of Tenn. Code Ann. § 67-4-2109(k), the Tennessee legislature obviously wants to encourage the making of movies in Tennessee. The legislature has provided an incentive to entities that choose to make movies in Tennessee and that meet the statutory requirements to qualify for the incentive offered. However, the legislature does

not want to encourage or reward the making of movies in Tennessee that are not “in the best interests of this state.”

The last sentence of Tenn. Code Ann. § 67-4-2109(k)(1)(A), set forth below, gives an example of a movie that would not be “in the best interests of this state:”

For purposes of this subdivision (k)(1)(A), “best interests of this state” includes, but is not limited to, a determination that production of the movie does not require that records be maintained pursuant to 18 U.S.C. § 2257 with respect to any performer portrayed in the movie.

Title 18 U.S.C. § 2257 is a federal law that pertains to record keeping requirements for the producer of a film that contains one or more visual depictions of actual sexually explicit conduct. The Tennessee legislature does not believe that the making of a movie in Tennessee that contains one or more visual depictions of actual sexually explicit conduct would be “in the best interests of this state” and does not want to reward entities who choose to make such movies in Tennessee.

A movie that, in the opinion of the Commissioner of Revenue and the Commissioner of Economic and Community Development, would bring disgrace, infamy, reproach or stigma to the State of Tennessee in the eyes of the general public because of its subject matter or visual depictions would not be “in the best interests of this state” and its producer would not be rewarded by the incentives provided in Tenn. Code Ann. § 67-4-2109(k) for making the movie in Tennessee.

7. DOCUMENTATION REQUIRED TO EVIDENCE “QUALIFIED EXPENSES”

Tenn. Code Ann. § 67-4-2109(k)(3) and (4) make the following provisions concerning the documentation of “qualified expenses” that are eligible for the statutory incentive for the making of a movie in Tennessee:

(3) In order for either a qualified production company or a qualified investor to become entitled to a refund, the qualified production company must submit documentation verifying the qualified expenses.

(4) The commissioner shall review the documentation and notify the qualified production company of the approved amount.

The statutes are so written that the Commissioner of Revenue may require any documentation that, in the opinion of the Commissioner, is necessary to satisfy him that the expenses are eligible for the statutory incentive. The actual documentation required will be determined by the Commissioner on a case-by-case basis and may vary depending on the factual situation with which the Commissioner is presented.

The minimal documentation in every case will be a listing of the expenses incurred and the name and address of each vendor to whom each expense was paid. If the nature of

the expense and its relationship to the movie produced is not obvious from such a listing, then a further explanation may need to be provided.

In some situations, the Commissioner may find it necessary to require a copy of the invoice evidencing each expense and/or a copy of the canceled check or other evidence of payment. Affidavits attesting to certain expenses, or certain work done in production of the movie in Tennessee could also be required in certain instances.

In any case, the Commissioner will not require any more documentation regarding “qualified expenses” than is absolutely and reasonably necessary to satisfy him that the expenses claimed are eligible for the statutory incentive.

Arnold B. Clapp
Special Counsel to the Commissioner

APPROVED: _____
Reagan Farr, Commissioner

DATE: 3-27-07

CHAPTER NO. 916

SENATE BILL NO. 3513

By Burchett, Norris, Curtis S. Person, Jr., Bowers, Woodson, Beavers, Black, Bryson, Burks, Cohen, Cooper, Crowe, Crutchfield, Finney, Fowler, Harper, Haynes, Henry, Herron, Jackson, Ketron, Kilby, Kurita, McLeary, McNally, Miller, Ramsey, Southerland, Tracy, Williams, Mr. Speaker Wilder

Substituted for: House Bill No. 3356

By John Deberry, Todd, Odom, Casada, Overbey, Kelsey, Marrero, Lois DeBerry, Larry Turner, Rowe, Kernell, Miller, Montgomery, Eldridge, Tindell, Rinks, Hargrove, Briley, Harmon, Baird, Hackworth, DuBois, Campfield, Hood, Gresham, McMillan, Fitzhugh, Bone, Ferguson, Fraley, Cobb

AN ACT to amend Tennessee Code Annotated, Title 4, Chapter 3, Part 50; Title 4, Chapter 3, Part 7; Title 49, Chapter 7; Title 49, Chapter 8 and Title 67, and to enact the "Visual Content Act of 2006".

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 4, Chapter 3, Part 50, is amended by adding the following as a new, appropriately numbered part.

SECTION 2. This part shall be known as "Visual Content Act of 2006" and is enacted for the purpose of providing incentive grants that encourage the production of films, movies, television pilots or programs, in the State of Tennessee.

SECTION 3. As used in this part, unless the context otherwise requires:

(1) "Commission" means the Tennessee film, entertainment and music commission;

(2) "Commissioner" means the Commissioner of Economic and Community Development;

(3) "Department" means the Department of Economic and Community Development;

(4) "Executive director" means the director of the Tennessee Film, Entertainment and Music Commission;

(5) "Film/TV Fund" means the Tennessee Film/Television Incentive Fund;

(6) "Minority participant" means an individual who is impeded from normal entry into the economic mainstream because of race, religion, sex or national origin;

(7) "Production activities" mean activities related to the production of entertainment properties;

(8) "Production company" means any person or entity that produces a film, movie, pilot or show in Tennessee;

(9) "State-certified production" means a film, movie, pilot or show that meets the criteria established by the commission to receive an incentive grant; and

(10) "Tennessee motion picture and television incentive grant" or "incentive grant" means a grant for a state-certified production that is approved by the department to receive such grant based upon the recommendation of the executive director of the commission.

SECTION 4.

(a) The "Tennessee Film/Television Incentive Fund", referred to as the "Film/TV Fund" is established as a separate account in the general fund and shall be administered by the Department of Economic and Community Development.

(b) The Film/TV Fund is composed of:

(1) Funds appropriated by the general assembly for the Film/TV Fund; and

(2) Gifts, grants and other donations received by the department or the commission for the Film/TV Fund.

(c) Moneys in the Film/TV Fund shall be appropriated and expended to provide incentive grants to production companies for use in producing state-certified productions and shall be used by the Department of Economic and Community Development to defray the expenses of administering the provisions of this section; provided, however, such expenses shall not exceed five percent (5%) of the total amount appropriated for the program in any fiscal year.

(d) Moneys in the Film/TV Fund shall be invested by the state treasurer pursuant to Title 9, Chapter 4, Part 6, for the sole benefit of the Film/TV Fund, and interest accruing on investments and deposits of such fund shall be returned to such fund and remain part of the Film/TV fund.

(e) Subject to the availability of revenue at the end of each fiscal year, the Commissioner of Finance and Administration is authorized to carry forward any amounts remaining in the Film/TV Fund or transfer any part of the fund to the revenue fluctuation reserve.

(f) It is the intent of the general assembly that, to the extent practicable, moneys from the Film/TV Fund shall be used to provide incentive grants to production projects in all areas of the state.

(g) It is the intent of the general assembly that the commission shall actively encourage independent producers and minority participants to apply for incentive grants.

(h) Incentive grants from the Film/TV Fund shall not exceed the amount available in the fund at any time. No less frequently than biannually, the executive director of the


commission shall report to the Commissioner of Finance and Administration on the status of the incentive grant program, such report to include at least the following information: the amount of each grant awarded since the previous report and the name of the production company receiving the benefit of such grant, the total amount of outstanding grants and the total unobligated amount in the Film/TV Fund. A copy of each such report shall be transmitted to the Speaker of the House of Representatives and the Speaker of the Senate, the chairs of the Finance, Ways and Means Committees, the state treasurer and the state comptroller.

(i) The Department of Economic and Community Development is authorized to promulgate rules and regulations as the department may deem necessary to effectuate the purposes of this act. All such rules and regulations shall be promulgated in accordance with the provisions of the Uniform Administrative Procedures Act, compiled in Title 4, Chapter 5.

SECTION 5. This act shall take effect upon becoming law, the public welfare requiring it.

PASSED: May 27, 2006


JOHN S. WILDER
SPEAKER OF THE SENATE


JIMMY NAIFEH, SPEAKER
HOUSE OF REPRESENTATIVES

APPROVED this 20th day of June 2006


PHIL BREDESEN, GOVERNOR

CHAPTER NO. 1019

HOUSE BILL NO. 4048

By Representative McMillan

Substituted for: Senate Bill No. 3930

By Senators Kyle, McNally

AN ACT to amend Tennessee Code Annotated, Title 45, Title 48, Title 55, Title 56, Title 57, and Title 67, relative to taxation.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 67-4-2009, is amended by deleting the language in subdivision (4) and substituting instead the following:

(4)(A) There shall be allowed against the sum total of the taxes imposed by the franchise tax law, compiled in part 21 of this chapter, and by the excise tax law, compiled in this part, a credit equal to one percent (1%) of the purchase price of industrial machinery purchased during the tax period covered by the return and located in Tennessee. For purposes of this section, "industrial machinery" means:

(i) "Industrial machinery" as defined by § 67-6-102; or

(ii) "Computer," "computer network," "computer software," or "computer system" as defined by § 39-14-601, and any peripheral devices, including, but not limited to, hardware, such as printers, plotters, external disc drives, modems, and telephone units, purchased by a taxpayer in the process of making the "required capital investment" in Tennessee described in § 67-4-2109(c)(1), if as a result of making such purchase and meeting the other requirements set forth in § 67-4-2109(c), the taxpayer qualifies for the job tax credit provided therein;

(B) The industrial machinery credit taken on any franchise and excise tax return, however, shall not exceed fifty percent (50%) of the combined franchise and excise tax liability shown by any such return before the credit is taken;

(C) Any unused credit may be carried forward in any tax period until such credit is taken; however, such credit may not be carried forward for more than fifteen (15) years;

(D) If any such industrial machinery, for the purchase of which a tax credit has been allowed, is sold or removed from this state during its useful life according to the depreciation guidelines in effect for excise tax purposes, the department shall be entitled to recapture a portion of the credit allowed by increasing the franchise and/or excise tax liability of any taxpayer, for the taxable period during which such machinery was sold or removed, in an amount equal to the percentage of useful life remaining on such industrial machinery at the time of sale or removal times the total credit taken on the purchase of such machinery;

(E) For purposes of the allowance of the credit against franchise and excise taxes under this section, any taxpayer who is a lessee of new industrial machinery and the original user thereof, including a lessee from an industrial development corporation as defined by title 7, chapter 53, or other tax exempt entity, shall be treated as having purchased such machinery during the tax period in which it is placed in service by the lessee, at an amount equal to its purchase price;

(F) If industrial machinery is leased for a period which constitutes less than eighty percent (80%) of its useful life, then the lessee shall be deemed to have purchased only a portion of such machinery, at an amount determined by multiplying the actual purchase price of the machinery by a fraction, the numerator of which is the lease term, and the denominator of which is the useful life of the leased machinery; and

(G) Notwithstanding any provision of law to the contrary, the industrial machinery franchise and excise tax credit provided in this subdivision (4) may be computed by a general partnership that operates a call center in Tennessee that is placed in service by such general partnership on or after June 30, 2003, and that would otherwise qualify for the credit provided in § 67-4-2109(c)(3). Such industrial machinery franchise and excise tax credit shall be computed as if the general partnership were subject to franchise and excise tax. With respect to the general partnership tax year during which a credit is so computed, a partner in such general partnership that is subject to franchise and excise tax and that directly holds a first tier ownership interest in such general partnership may take a percentage of such credit that equals the total amount of such credit for the general partnership multiplied by such partner's percentage interest in the general partnership on the last day of such general partnership tax year against such partner's franchise and excise tax liability for such partner's tax year that includes such last day. The industrial machinery franchise and excise tax credit passed through from the general partnership to the first tier partner under this section shall, in the hands of the first tier partner, be subject to applicable provisions and limitations otherwise provided by this section including carry forward provisions; provided, that in no case shall the credit or a carryover of a credit be taken by a business entity unless it was a partner in the general partnership and subject to franchise and excise tax at the time the credit was earned by the general partnership.

(H) Notwithstanding any provision to the contrary, a taxpayer that has established its international, national, or regional headquarters in this state and has met the requirements to qualify for the credit provided in § 67-6-224, or a taxpayer that has established an international, national, or regional warehousing or distribution hub in this state and has met the requirements to be a qualified new or expanded warehouse or distribution facility, shall be allowed to offset up to one-hundred percent (100%) of its franchise and/or excise tax liability by the industrial machinery credit provided in this subdivision (4), or any carryforward thereof, if the commissioner of revenue and the commissioner of economic and community development determine that increasing the percentage of offset above that allowed by subdivision (4)(B) is in the best interests of the state. For purposes of this subdivision, "best interests of the state" includes, but is not limited to, a determination that the taxpayer established its headquarters or a warehousing or distribution hub in this state, or converted a regional headquarters or regional warehousing or distribution hub in this state into its national or international headquarters or a national or international warehousing or distribution hub, as a result of such action. The commissioner of revenue and the commissioner of economic and community development shall determine the percentage of franchise and/or excise tax

liability allowed to be offset, above that otherwise allowed by subdivision (4)(B), and the period during which the increased offset shall continue.

SECTION 2. Tennessee Code Annotated, Section 67-4-2109(c)(1), is amended by adding the following as new, appropriately designated subdivisions:

() “Average industrial wage” means the average industrial wage for all manufacturing sectors as reported in the Monthly Labor Report published by the Tennessee department of labor and workforce development;

() “Investment period” means a period not to exceed three years from the filing of the business plan related to the qualified business enterprise during which the required capital investment must be made;

() “Industrial wage jobs” means full-time employee jobs with wages equal to or greater than Tennessee’s average industrial wage for the month of January of the year during which the job was created;

SECTION 3. Tennessee Code Annotated, Section 67-4-2109(c)(2), is amended by deleting the language in subdivision (I) and substituting instead the following:

(I)(i) If the business enterprise involves a required capital investment in excess of five hundred million dollars (\$500,000,000) and the creation of at least five hundred (500) net new industrial wage jobs during the investment period, the credit allowed in subdivision (c)(2) shall be five thousand dollars (\$5,000) for each net new industrial wage job created during the investment period. In addition to the job tax credits allowed to the taxpayer under this subsection (c) during the investment period, an additional tax credit shall be allowed on an annual basis to offset the taxpayer’s franchise and excise tax liability under this chapter for a period of twelve (12) years beginning with the first tax year after the investment and job threshold criteria are met. The additional credit shall equal five thousand dollars (\$5,000) for each net new industrial wage job created during the investment period provided that such jobs remain filled by employees, at wages equal to or greater than Tennessee’s average industrial wage for the month of January of the year during which the credit is being taken. This annual credit may be used to offset up to one hundred percent (100%) of the taxpayer’s franchise and excise tax liability for that year. Any unused annual credit, however, shall not be carried forward beyond the year in which the credit originated, notwithstanding subdivision (c)(2)(F) to the contrary. For purposes of this subdivision (c)(2)(I), a capital investment shall be deemed to have been made as of the date of payment or the date the business enterprise enters into a legally binding commitment or contract for purchase or construction.

(ii) If the business enterprise involves a required capital investment in excess of two hundred fifty million dollars (\$250,000,000) and the creation of at least two hundred fifty (250) net new industrial wage jobs during the investment period, the credit allowed in subdivision (c)(2) shall be five thousand dollars (\$5,000) for each net new industrial wage job created during the investment period. In addition to the job tax credits allowed to the taxpayer under this subsection (c) during the investment period, an additional tax credit shall be allowed on an annual basis to offset the taxpayer’s franchise and excise tax liability under this chapter for a period of six (6) years beginning with the first tax year after the investment and job threshold criteria are met. The additional credit shall equal

five thousand dollars (\$5,000) for each net new industrial wage job created during the investment period provided that such jobs remain filled by employees, at wages equal to or greater than Tennessee's average industrial wage for the month of January of the year during which the credit is being taken. This annual credit may be used to offset up to one hundred percent (100%) of the taxpayer's franchise and excise tax liability for that year. Any unused annual credit, however, shall not be carried forward beyond the year in which the credit originated, notwithstanding subdivision (c)(2)(F) to the contrary. For purposes of this subdivision (c)(2)(I), a capital investment shall be deemed to have been made as of the date of payment or the date the business enterprise enters into a legally binding commitment or contract for purchase or construction.

(iii) If the business enterprise involves a required capital investment in excess of one hundred million dollars (\$100,000,000) and the creation of at least one hundred (100) net new industrial wage jobs during the investment period, the credit allowed in subdivision (c)(2) shall be five thousand dollars (\$5,000) for each net new industrial wage job created during the investment period. In addition to the job tax credits allowed to the taxpayer under this subsection (c) during the investment period, an additional tax credit shall be allowed on an annual basis to offset the taxpayer's franchise and excise tax liability under this chapter for a period of three (3) years beginning with the first tax year after the investment and job threshold criteria are met. The additional credit shall equal five thousand dollars (\$5,000) for each net new industrial wage job created during the investment period provided that such jobs remain filled by employees, at wages equal to or greater than Tennessee's average industrial wage for the month of January of the year during which the credit is being taken. This annual credit may be used to offset up to one hundred percent (100%) of the taxpayer's franchise and excise tax liability for that year. Any unused annual credit, however, shall not be carried forward beyond the year in which the credit originated, notwithstanding subdivision (c)(2)(F) to the contrary. For purposes of this subdivision (c)(2)(I), a capital investment shall be deemed to have been made as of the date of payment or the date the business enterprise enters into a legally binding commitment or contract for purchase or construction.

(iv) The investment period for making the required capital investment may be extended by the commissioner of economic and community development for a reasonable period, not to exceed two (2) years, for good cause shown. For purposes of this subdivision (c)(2)(I), "good cause" includes, but is not limited to, a determination by the commissioner of economic and community development that the capital investment or jobs are a result of the credit provided in this subdivision (c)(2)(I).

SECTION 4. Tennessee Code Annotated, Section 67-4-2109(c)(2)(G), is amended by designating the existing language as subdivision (i) and adding the following language as subdivision (ii):

(ii) Notwithstanding subdivision (i), a taxpayer that has established its international, national, or regional headquarters in this state and has met the requirements to qualify for the credit provided in § 67-6-224, or a taxpayer that has established an international, national, or regional warehousing or distribution hub in this state and has met the requirements to be a qualified new or expanded warehouse or distribution facility, shall be allowed to offset up to one-hundred percent (100%) of its franchise and/or excise tax liability by job tax credits earned and not expended as of June 1, 2006, or any carryforward thereof, if the commissioner of revenue and the

commissioner of economic and community development determine that increasing the percentage of offset permitted to the taxpayer is in the best interests of the state. For purposes of this subdivision, "best interests of the state" includes, but is not limited to, a determination that the taxpayer established its headquarters or a warehousing or distribution hub in this state, or converted a regional headquarters or regional warehousing or distribution hub in this state into its national or international headquarters or a national or international warehousing or distribution hub, as a result of such action. The commissioner of revenue and the commissioner of economic and community development shall determine the percentage of franchise and/or excise tax liability allowed to be offset above that otherwise allowed by subdivision (i) and the period during which the increased offset shall continue.

SECTION 5. Tennessee Code Annotated, Section 67-4-2109, is amended by adding the following as a new subsection:

() A taxpayer that has established its international, national, or regional headquarters in this state and has met the requirements to qualify for the credit provided in § 67-6-224 shall be allowed a credit against the franchise tax imposed under this part equal to the rate of tax imposed under § 67-4-2007 multiplied by any net operating loss incurred by the taxpayer during the tax year covered by the return, or properly carried over from a previous tax year, in accordance with the provisions of § 67-4-2006; provided that the credit allowed in this subsection shall only be available if the taxpayer is unable to use the loss or loss carryover to offset net income during the current tax year for excise tax purposes. If a net operating loss or loss carryover is used to calculate a credit under this subsection, it shall no longer be available as a deduction for excise tax purposes, and under no circumstances shall the same net operating loss be used for both franchise and excise tax purposes. The credit in this subsection shall only be available upon a determination by the commissioner of revenue and the commissioner of economic and community development that the utilization of net operating losses or loss carryovers against the taxpayer's franchise tax liability is in the best interests of the state. For purposes of this subdivision, "best interests of the state" includes, but is not limited to, a determination that the taxpayer established its headquarters in this state or converted a regional headquarters in this state into its national or international headquarters as a result of such action. The commissioner of revenue and the commissioner of economic and community development shall determine the period during which the credit provided by this subsection shall be allowed to the taxpayer.

SECTION 6. Tennessee Code Annotated, Section 67-4-2004, is amended by adding the following as a new, appropriately designated subdivision:

() "Qualified new or expanded warehouse or distribution facility" means a new or expanded facility for the storage or distribution of finished tangible personal property; provided that such facility also meets all the qualifications necessary to allow the taxpayer to make purchases of material handling and racking systems exempt from sales and use tax under the definition of "industrial machinery" in § 67-6-102;

SECTION 7. Tennessee Code Annotated, Section 67-4-2006(c), is amended by adding the following as a new, appropriately designated subdivision:

() Notwithstanding subdivision (c)(1) to the contrary, a taxpayer that qualifies for the job tax credit provided in subdivision 67-4-2109(c)(2)(H) in connection with a required capital investment in excess of one billion dollars (\$1,000,000,000) shall be allowed to carry forward and deduct any qualified net operating loss until the loss is fully utilized, and shall not be limited to a carry-forward period of fifteen (15) years; provided that the commissioner of revenue and the commissioner of economic and community development determine that extending the period during which the loss can be utilized is in the best interests of the state. For purposes of this subdivision, "best interests of the state" includes, but is not limited to, a determination that the taxpayer made the required capital investment as a result of such action.

SECTION 8. Tennessee Code Annotated, Section 67-4-2109, is amended by adding the following as a new, appropriately designated subsection:

() (1) For purposes of this subsection:

(A) "Qualified expenses" means those expenses incurred in Tennessee that both the commissioner of revenue and the commissioner of economic and community development determine, in their sole discretion, are necessary for the production of a movie in Tennessee that is in the best interests of this state. For purposes of this subsection, "best interests of this state" includes, but is not limited to, a determination that production of the movie does not require that records be maintained pursuant to 18 U.S.C. § 2257 with respect to any performer portrayed in the movie;

(B) "Qualified production company" means any entity that incurs at least one million dollars (\$1,000,000) in qualified expenses; and

(C) "Qualified investor" means any entity that has established a headquarters facility as defined in § 67-6-224 that has invested in a qualified production company.

(2) A refund in an amount equal to fifteen percent (15%) of any qualified expenses shall be allowed to any qualified production company that has established a headquarters facility as defined in § 67-6-224. If the qualified production company does not have a headquarters facility as defined in § 67-6-224, then any qualified investor shall be allowed a refund equal to the amount of refund that the qualified production company would have been entitled to had it established a headquarters facility as defined in § 67-6-224, multiplied by the qualified investor's percentage ownership interest in the qualified production company.

(3) In order for either a qualified production company or a qualified investor to become entitled to a refund, the qualified production company must submit documentation verifying the qualified expenses.

(4) The commissioner shall review the documentation and notify the qualified production company of the approved amount.

(5) Once the qualified production company has been notified of the approved amount, either the qualified production company or the qualified investment company, as appropriate, may submit a claim for refund. Such refund shall be subject to the

procedures of § 67-1-1802; provided, however, notwithstanding any procedure of § 67-1-1802 to the contrary, that a claim for refund must be filed with the commissioner within three (3) years from December 31 of the year in which the qualified expenses were incurred. In no case shall a refund for the same qualified expenses be allowed twice.

SECTION 9. Tennessee Code Annotated, Section 67-4-2105, is amended by deleting subsection (b) in its entirety and redesignating subsequent subsections accordingly.

SECTION 10. Tennessee Code Annotated, Section 67-4-2108(a)(1), is amended by deleting the second sentence in its entirety.

SECTION 11. Tennessee Code Annotated, Section 67-4-2004, is amended by adding the following as a new, appropriately designated subdivision:

“Publicly traded real estate investment trust” or “Public REIT” means an entity which has an election in effect under § 856(c)(1) of the Internal Revenue Code that files with the Securities and Exchange Commission and whose shares are traded on a national stock exchange.

SECTION 12. Tennessee Code Annotated, Title 67, Chapter 4, Part 20, is amended by adding the following as a new section:

67-4-20__

There shall be exempt from the payment of the excise tax levied under this part any person treated as a partnership for federal tax purposes that directly or indirectly distributes one hundred percent (100%) of its net earnings or net losses to a publicly traded real estate investment trust.

SECTION 13. Tennessee Code Annotated, Section 67-4-2006(a)(4), is amended by deleting subdivision (C) and substituting instead the following:

(C) The amount contributed to qualified pension or benefit plans, including all plans described in 26 U.S.C. § 401, of any partner or member, provided, however, that this amount shall not create or increase any net loss; and

(D) As adjusted by subsections (b) and (c).

SECTION 14. Tennessee Code Annotated, Section 67-4-2006(a), is amended by adding the following as a new subdivision (5) and redesignating subsequent subdivisions accordingly:

(5)(A) In the case of a person or taxpayer treated as a partnership for federal tax purposes that is directly or indirectly owned by a public REIT, “net earnings” or “net loss” is defined as an amount equal to the amount determined pursuant to the provisions of subdivision (a)(4), less the amount distributed either directly or indirectly to a public REIT, provided that a schedule indicating the name and federal identification number of the public REIT receiving the distribution is attached; and

(B) As adjusted by subsections (b) and (c).

SECTION 15. Tennessee Code Annotated, Section 67-4-2006(b)(1)(J), is amended by inserting the word “and” at the end of subdivision (ii), deleting the word “and” from the end of subdivision (iii), and deleting subdivision (iv) in its entirety.

SECTION 16. Tennessee Code Annotated, Section 67-4-2006(b)(1), is amended by deleting subdivision (K) in its entirety and redesignating subsequent subdivisions accordingly.

SECTION 17. Tennessee Code Annotated, Section 67-4-2006(b)(2)(L), is amended by inserting the word “and” at the end of subdivision (ii), deleting the word “and” from the end of subdivision (iii), and deleting subdivision (iv) in its entirety.

SECTION 18. Tennessee Code Annotated, Section 67-4-2006(b)(2), is amended by deleting subdivision (M) in its entirety and redesignating subsequent subdivisions accordingly.

SECTION 19. Tennessee Code Annotated, Section 67-4-2012, is amended by deleting subsection (k) in its entirety.

SECTION 20. Tennessee Code Annotated, Section 67-4-2111, is amended by deleting subsection (k) in its entirety.

SECTION 21. Tennessee Code Annotated, Section 67-2-104, is amended by adding the following as a new, appropriately designated subsection:

() The income from stock in any publicly traded real estate investment trust, as defined in § 67-4-2004, is exempt from the tax imposed by this chapter.

SECTION 22. Tennessee Code Annotated, Section 67-4-2010, is amended by deleting the current language in its entirety and substituting instead the following:

(a) Any taxpayer having business activities that are taxable both inside and outside the state of Tennessee shall allocate or apportion its net earnings or losses as provided in this part. A taxpayer is considered taxable in another state only if the taxpayer is conducting activities in that state that, if conducted in Tennessee, would constitute doing business in Tennessee and would subject the taxpayer to either Tennessee’s franchise tax or excise tax.

(b) Nonbusiness receipts shall not be included in the numerator or denominator of any apportionment formula.

SECTION 23. Tennessee Code Annotated, Section 67-4-2110, is amended by deleting the current language in its entirety and substituting instead the following:

(a) Any taxpayer having business activities that are taxable both inside and outside the state of Tennessee shall allocate or apportion its net worth as provided in this part. A taxpayer is considered taxable in another state only if the taxpayer is conducting activities in that state that, if conducted in Tennessee, would constitute doing business in Tennessee and would subject the taxpayer to either Tennessee’s franchise tax or excise tax.

(b) Nonbusiness receipts shall not be included in the numerator or denominator of any apportionment formula.

SECTION 24. Tennessee Code Annotated, Section 67-4-2109(i), is amended by deleting the language in subdivisions (1) and (2) and substituting instead the following:

(1) There shall be allowed, for any financial institution, a credit against the sum total of the taxes imposed by the Franchise Tax Law, compiled in this part, and by the Excise Tax Law, compiled in part 20 of this chapter, an amount equal to either:

(A) Five percent (5%) of a qualified loan or qualified long-term investment made to an eligible housing entity for any eligible activity; or

(B) Three percent (3%) annually of the unpaid principal balance of a qualified loan made to an eligible housing entity for any eligible activity as of December 31 of each year for the life of the loan or fifteen (15) years, whichever is earlier.

(2) There shall be allowed, for any financial institution, a credit against the sum total of the taxes imposed by the Franchise Tax Law, compiled in this part, and by the Excise Tax Law, compiled in part 20 of this chapter, an amount equal to either:

(A) Ten percent (10%) of a grant, contribution, or qualified low-rate loan made to an eligible housing entity for any eligible activity; or

(B) Five percent (5%) annually of the unpaid principal balance of a qualified low-rate loan made to an eligible housing entity for any eligible activity as of December 31 of each year for the life of the loan or fifteen (15) years, whichever is earlier.

SECTION 25. Tennessee Code Annotated, Section 67-4-2109(i), is amended by deleting the language in subdivision (8) and substituting instead the following:

(8) Any unused credit allowed under subdivision (i)(1)(A) or (i)(2)(A) may be carried forward for fifteen (15) years after the tax year in which the credit originated. Any unused credit allowed under subdivision (i)(1)(B) or (i)(2)(B) shall not be carried forward beyond the tax year in which the credit originated.

SECTION 26. Tennessee Code Annotated, Section 67-4-2109, is amended by adding the following as a new subsection:

() (1) There shall be allowed, for any financial institution, a credit against the sum total of the taxes imposed by the Franchise Tax law, compiled in this part, and by the Excise Tax law, compiled in part 20 of this chapter, an amount equal to either:

(A) Five percent (5%) of a qualified loan or qualified long-term investment made to a community development financial institution that is certified by the United States Department of Treasury's Community Development Financial Institutions Fund; or

(B) Three percent (3%) annually of the unpaid principal balance of a qualified loan made to a community development financial institution that is certified by the United States Department of Treasury's Community Development

Financial Institutions Fund as of December 31 of each year for the life of the loan or fifteen (15) years, whichever is earlier.

(2) There shall be allowed, for any financial institution, a credit against the sum total of the taxes imposed by the Franchise Tax law, compiled in this part, and by the Excise Tax law, compiled in part 20 of this chapter, an amount equal to either:

(A) Ten percent (10%) of a grant, contribution, or qualified low-rate loan made to a community development financial institution that is certified by the United States Department of Treasury's Community Development Financial Institutions Fund; or

(B) Five percent (5%) annually of the unpaid principal balance of a qualified low-rate loan made to a community development financial institution that is certified by the United States Department of Treasury's Community Development Financial Institutions Fund as of December 31 of each year for the life of the loan or fifteen (15) years, whichever is earlier.

(3) For purposes of this subsection, the following definitions shall apply:

(A) "Financial institution" has the definition as provided in § 67-4-2004;

(B) "Qualified loan" means a loan that is at least two percent (2%) below the prime rate, as published by the Wall Street Journal at the time the loan is approved, that does not qualify as a qualified low-rate loan;

(C) "Qualified long-term investment" means an equity investment made for a period of more than five (5) years;

(D) "Qualified low-rate loan" means a loan that is at least four percent (4%) below the prime rate, as published by the Wall Street Journal at the time the loan is approved.

(4) Any unused credit allowed under subdivision () (1)(A) or () (2)(A) may be carried forward for fifteen (15) years after the tax year in which the credit originated. Any unused credit allowed under subdivision () (1)(B) or () (2)(B) shall not be carried forward beyond the tax year in which the credit originated.

SECTION 27. Tennessee Code Annotated, Section 67-4-2008(a)(5), is amended by deleting the first sentence and substituting instead the following:

Venture capital funds; provided, that for purposes of this part a venture capital fund is a limited liability company, limited liability partnership, or limited partnership, formed and operated for the exclusive purpose of buying, holding, and/or selling securities, including debt securities, primarily in non-publicly traded companies on its own behalf and not as a broker, and the capital of which fund is primarily derived from investments by entities and/or individuals that are not affiliated with the fund or investments by one or more affiliates if such affiliates also qualify as venture capital funds under this subdivision.

SECTION 28. Tennessee Code Annotated, Section 67-4-2006(b)(2)(Q), is amended by deleting the language in subdivision (i) and substituting instead the following:

(i) Seventy-five percent (75%) of the value of charitable donations, including those otherwise deductible under any other provision of this part, that are made to nonprofit corporations, associations and organizations that are exempt from federal income taxation under § 501(c)(3) of the Internal Revenue Code of 1986 (26 U.S.C. § 501(c)(3)), to not-for-profit civic leagues or organizations that are exempt from federal income taxation under § 501(c)(4) of the Internal Revenue Code of 1986 (26 U.S.C. § 501(c)(4)), and to associations and organizations that are exempt from federal income taxation under § 501(c)(5) of the Internal Revenue Code of 1986 (26 U.S.C. § 501(c)(5)), and meet all of the requirements of this subdivision (b)(2)(Q).

SECTION 29. Tennessee Code Annotated, Section 67-4-2109(h)(6), is amended by deleting the language “relocated to Tennessee” and substituting instead the language “initially filled in Tennessee”.

SECTION 30. Tennessee Code Annotated, Section 67-4-2004(1)(A)(iii), is amended by deleting the language “subdivision (1)(B)” and substituting instead the language “subdivision (1)(A)(ii)”.

SECTION 31. Tennessee Code Annotated, Section 67-4-2004(2)(D), is amended by deleting the word “have” and substituting instead the word “has”.

SECTION 32. Tennessee Code Annotated, Section 67-4-2007(f)(1)(C), is amended by deleting the language “67-4-2008(a)(8)” and substituting instead the language “67-4-2008(a)(9)”.

SECTION 33. Tennessee Code Annotated, Section 67-6-102(a)(32)(F)(i), is amended by adding the following language at the end of the subdivision:

However, “retail sale,” “sale at retail” and “retail sales price” do not include charges for or the value of the use of any time-share estate and do not include charges for or the value of the use of a perpetual interest in a trust, partnership, non-profit corporation or limited liability company that has as its substantial purpose the ownership and control of real property. Also, “retail sale,” “sale at retail” and “retail sales price” do not include amounts paid as a standard fee for the service of facilitating the exchange of one timeshare interval for another or the service of making a reservation for a timeshare interval via a reservation system.

SECTION 34. Tennessee Code Annotated, Section 67-6-102(a), is amended by adding the following as a new, appropriately designated subdivision:

() “Time-share estate” means an ownership or leasehold estate in property devoted to a time-share fee, tenants in common, time span ownership, interval ownership, and a time-share lease.

SECTION 35. Tennessee Code Annotated, Section 67-6-206(b)(7), is amended by inserting the language “, aluminum sheet and foil,” after the words “primary aluminum”.

SECTION 36. Tennessee Code Annotated, Section 67-6-224(b)(7), is amended by deleting the language in subdivision (B) and substituting instead the following:

(B) The minimum investment may include, but is not limited to, the purchase price of an existing building and the cost of building materials, labor, equipment, furniture, fixtures, parking facilities, and landscaping, but shall not include land or inventory;

SECTION 37. Tennessee Code Annotated, Section 67-6-224(b), is amended by deleting the language in subdivision (11) and substituting instead the following:

(11) "Qualified tangible personal property" means building materials, machinery, equipment, furniture, and fixtures used exclusively in the qualified headquarters facility and purchased or leased during the investment period. Qualified tangible personal property does not include supplies or repair parts. Qualified tangible personal property does not include any payments with respect to leases of qualifying tangible personal property that extend beyond the investment period. Qualified tangible personal property does not include any materials, machinery, equipment, furniture, or fixtures that replace tangible personal property that previously generated a credit under this section.

SECTION 38. Tennessee Code Annotated, Section 67-6-303(a), is amended by deleting the language in subdivision (1) and substituting instead the following:

(1)(A) There is exempt from the tax imposed by this chapter any sale of a motor vehicle which is sold in this state if such vehicle is registered in this state in accordance with the provisions of title 55 and such vehicle is sold to a reserve member of a uniformed service of the United States or a member of the Tennessee national guard who has been called into active military service of the United States, as defined in § 58-1-102, and is stationed outside the United States during hostilities in which such person is actually engaged and in which military personnel are entitled to combat compensation as determined by the United States department of defense. With respect to an individual, the exemption provided in this subdivision (a)(1)(A) shall apply from the effective date of official military orders assigning such individual to the combat zone and shall expire sixty (60) days after the effective date of official military orders releasing such individual from the combat zone.

(B) There is also exempt from the tax imposed by this chapter any sale of a motor vehicle which is sold in this state if such vehicle is registered in this state in accordance with the provisions of title 55 and such vehicle is sold to a member of a uniformed service, as defined in the Internal Revenue Code of 1954, who is stationed under orders of such member's branch of service at:

(i) A military reservation located partially within the boundary of Tennessee and that of another state;

(ii) A naval air station located entirely within this state; or

(iii) An air force base engineering development center located entirely within this state.

SECTION 39. Tennessee Code Annotated, Section 67-6-303(a)(3), is amended by deleting the language "This exemption" and substituting instead the language "The exemption provided in subdivision (a)(1)(B)".

SECTION 40. Tennessee Code Annotated, Title 67, Chapter 6, Part 3, is amended by adding the following language as a new, appropriately designated section:

67-6-3_____.

There is exempt from the tax imposed by this chapter the use of computer software that is developed and fabricated by an affiliated company. There is also exempt from the tax imposed by this chapter the repair of such computer software, provided that such repair is rendered by an affiliated company. For purposes of this section, companies are affiliated only if:

(1) either company directly owns or controls one hundred percent (100%) of the ownership interest of the other company; or

(2) one hundred percent (100%) of the ownership interest of both companies is owned or controlled by a common parent.

SECTION 41. Tennessee Code Annotated, Section 67-6-394, is amended by deleting the language in subsection (a) and substituting instead the following:

(a) A credit shall be granted, in the manner provided in subsection (b), for the amount of the sales tax due on a transaction accommodation fee included in the sales price of a sale or the gross proceeds of a lease.

SECTION 42. Tennessee Code Annotated, Section 67-6-394(c), is amended by deleting the language in subdivision (4) and substituting instead the following:

(4) "Transaction accommodation fee" means the standard charge made by a franchised motor vehicle dealer to a qualified motor vehicle manufacturer in consideration for selling or leasing a motor vehicle produced by the qualified manufacturer to one (1) of the qualified manufacturer's full-time employees. Records documenting the amount of the standard transaction accommodation fee must be maintained by the dealer in accordance with § 67-6-523.

SECTION 43. Tennessee Code Annotated, Section 67-6-542, is amended by deleting the current language and substituting instead the following:

67-6-542.

For the period of time that this state is an associate member of the Streamlined Sales and Use Tax Agreement, the commissioner shall have the authority to provide to volunteer sellers and certified service providers the monetary allowances required to be provided pursuant to Article VI of the Streamlined Sales and Use Tax Agreement; provided, however, Model 1 sellers under the Streamlined Sales and Use Tax Agreement shall not be entitled to the vendor's compensation set forth in § 67-6-509. During such period, a certified service provider has, and is subject to, all of the rights, liabilities, duties and

responsibilities imposed by this title as if it were the Model 1 seller for whom the certified service provider has agreed to perform all sales and use tax functions, except the Model 1 seller's obligation to remit tax on its own purchases. During such period, notwithstanding any other provision to the contrary, a certified service provider and a Model 1 seller contracting with the certified service provider may accept electronic data in lieu of obtaining copies of Tennessee exemption certificates from purchasers seeking to exempt a sale from the tax imposed by this chapter; provided that the electronic data includes the same information that is included on the Streamlined Exemption Certificate, excluding a signature, and shall include the purchaser's Tennessee sales and use tax registration number and any tax exemption license registration number issued by this state to the purchaser.

SECTION 44. Tennessee Code Annotated, Section 67-6-102(a), is amended by adding the following language as new, appropriately designated subdivisions:

() 'Certified service provider' means an agent certified under the Streamlined Sales and Use Tax Agreement to perform all of the seller's sales and use tax functions, other than the seller's obligation to remit tax on its own purchases;

() 'Model 1 seller' means a seller that has selected a certified service provider as its agent to perform all of the seller's sales and use tax functions, other than the seller's obligation to remit tax on its own purchases.

SECTION 45. Tennessee Code Annotated, Section 67-6-710, is amended by deleting subsection (h) and substituting instead the following:

(h)(1) Notwithstanding any provision of law to the contrary, the commissioner, based upon reporting of exempt sales under § 67-6-393 and any other data or information the commissioner deems relevant, shall substantially reimburse counties and municipalities for the loss of local tax under this part 7 resulting from the exemption provided by § 67-6-393. The amount of such reimbursement shall be approximately equal to the aggregate amount of local tax that would have been collected under this part on the sale or use of goods otherwise taxable but for the enactment of § 67-6-393.

(2) If the loss of local tax subject to reimbursement under this subsection (h) cannot be identified to a particular situs, the amount of such reimbursement shall be distributed to the counties based on the ratio of total local tax collections in the county under this part over the total local tax collections in all counties under this part. The amount received by the county under this subdivision (h)(2) shall be distributed first as provided for in § 67-6-712(a)(1). The remainder shall be distributed to each municipality in the county based on the ratio of total collections in that municipality over the total collections in the county and shall be distributed to the county based on the ratio of total collections in the unincorporated portions of the county over the total collections in the county.

(3) Notwithstanding any provision of § 67-6-103 to the contrary, the distribution required by this subsection (h) shall be made from state sales tax collections prior to distribution under § 67-6-103; provided, however, that no portion of the revenue derived from the increase in the rate of sales and use tax from six percent (6%) to seven percent (7%) contained in chapter 856, § 4, of the Public Acts of 2002 shall be distributed

pursuant to this subsection (h). All such revenue shall continue to be allocated as provided in chapter 856 of the Public Acts of 2002.

SECTION 46. Tennessee Code Annotated, Section 67-4-602(b), is amended by deleting the first sentence and substituting instead the following:

There is levied a privilege tax on litigation of twenty-three dollars and seventy-five cents (\$23.75) in all civil cases in this state in chancery court, circuit court, probate court, general sessions court when exercising state court jurisdiction, or in any other court exercising state court jurisdiction in a civil case in this state other than the court of appeals or the supreme court.

SECTION 47. Tennessee Code Annotated, Section 67-4-602, is amended by adding the following as a new subsection immediately after subsection (c) and by redesignating the remaining subsections accordingly:

() There is levied a privilege tax on litigation of thirteen dollars and seventy-five cents (\$13.75) in all civil cases in this state in the court of appeals or the supreme court.

SECTION 48. Tennessee Code Annotated, Title 67, Chapter 4, Part 10, is amended by adding the following as a new, appropriately designated section:

Section 67-4-10__.

(a) The commissioner is empowered and directed to refund the amount of any eligible bad debt credit incurred by a manufacturing distributor or wholesale dealer and jobber of tobacco products. No amount shall be refunded unless the debt has been found to be worthless and actually charged off for federal income tax purposes. If the taxpayer receives a refund pursuant to this section arising from any bad debt so charged off which is thereafter in whole or in part paid to the manufacturing distributor or wholesale dealer and jobber, the amount so paid shall be included in the first return filed after such collection and the tax paid accordingly.

(b) For purposes of this section, "eligible bad debt credit" means the taxes attributable to any portion of a debt arising from a sale of tobacco products subject to tax under this part that is not otherwise deductible or excludable, that has become worthless or uncollectible, and that has been actually charged off for federal income tax purposes. A bad debt shall not include any interest on the wholesale price of a tobacco product, uncollectible amounts of property that remain in the possession of the manufacturing distributor or the wholesale dealer and jobber until the full purchase price is paid, expenses incurred in attempting to collect any account receivable or any portion of the debt recovered, accounts receivable that have been sold to a third party, or repossessed property.

(c) Any claim for an eligible bad debt credit under this section shall be submitted as a claim for refund supported by the following:

(1) A copy of the original invoice;

(2) Evidence that the tobacco products described in the invoice were delivered to the person who ordered them;

(3) Evidence that the person who ordered and received the tobacco products did not pay the manufacturing distributor or the wholesale dealer and jobber for the tobacco products and that the manufacturing distributor or the wholesale dealer and jobber used reasonable collection practices in attempting to collect the debt; and

(4) Evidence that the debt was written off for federal tax purposes.

SECTION 49. Tennessee Code Annotated, Section 67-4-1708(d), is amended by deleting the language “during the fiscal year” and substituting instead the language “during the three hundred sixty five (365) days prior to the due date of the tax set forth in § 67-4-1703(a)”.

SECTION 50. Tennessee Code Annotated, Section 67-4-2802(3)(A), is amended by inserting the following language between the word and punctuation “marijuana,” and the word “seven”:

one (1) or more marijuana plants,

SECTION 51. Tennessee Code Annotated, Section 67-4-2803(a), is amended by deleting subdivision (2) and substituting instead the following language as new subdivisions (2) and (3) and by renumbering the remaining subdivisions accordingly:

(2) Three dollars and fifty cents (\$3.50) for each gram, or fraction thereof, of marijuana, other than separated stems and stalks taxed under subdivision (a)(1) or plants with foliage taxed under (a)(3);

(3) Three hundred fifty dollars (\$350) per plant, whether growing or detached from the soil, on each marijuana plant with foliage;

SECTION 52. Tennessee Code Annotated, Section 67-4-2803, is amended by adding the following as a new, appropriately designated subsection:

() For purposes of this part, a person constructively possesses an unauthorized substance when he or she has knowledge of the substance and the ability and intention to exercise control over the substance.

SECTION 53. Tennessee Code Annotated, Section 67-4-2805(b), is amended by adding the following language as a new subdivision (2) and renumbering the remaining subdivisions accordingly:

(2) One (1) or more marijuana plants;

SECTION 54. Tennessee Code Annotated, Section 67-6-103, is amended by deleting subsection (i) in its entirety and by substituting instead the following:

(i) Notwithstanding the provisions of this section to the contrary, revenue derived from state taxes imposed by this chapter shall be earmarked and allocated in

accordance with the provisions of the courthouse square revitalization pilot project act of 2005, compiled in title 6, chapter 59; provided, however, that no portion of the revenue derived from the increase in the rate of sales and use tax allocated to educational purposes, pursuant to Acts 1992, ch. 529, § 9, and no portion of the revenue derived from the increase in the rate of sales and use tax from six percent (6%) to seven percent (7%), pursuant to Acts 2002, ch. 856, §4, shall be apportioned and distributed pursuant to this subsection (i). All such revenue shall continue to be allocated as provided in Acts 1992, ch. 529, and Acts 2002, ch. 856.

SECTION 55. Notwithstanding any provision of §§6-59-104(d) or 6-59-105 to the contrary, six (6) projects may be selected for the courthouse square revitalization pilot project; provided that no more than two (2) projects may be selected from each grand division.

SECTION 56. Notwithstanding any provision of §§6-59-103(b) or 6-59-104(a) to the contrary, the amount of revenue apportioned and distributed to a municipality under the courthouse square revitalization pilot project act shall equal the amount of state tax revenue derived under title 67, chapter 6, from sales or use of goods, products and services within the revitalization zone.

SECTION 57. Tennessee Code Annotated, Section 67-4-2014(a), is amended by deleting the language "of this part" and substituting instead the language "of this part or chapter 2 of this title".

SECTION 58. Tennessee Code Annotated, Section 67-3-206, is amended by designating the present language as subsection (a) and by adding the following language as subsection (b):

(b) The provisions of this section shall cease to be effective until July 1, 2008, at which time this section shall have full effect of law.

SECTION 59. Tennessee Code Annotated, Section 67-6-530, is amended by deleting the section in its entirety.

SECTION 60. Tennessee Code Annotated, Section 67-6-393, is amended by adding the following as a new, appropriately designated subsection:

() In addition to the exemption in subsection (a), the items of tangible personal property subject to the exemption provided in this section shall also be exempt from the tax imposed by this chapter if sold between 12:01 a.m. on April 27, 2007 and 11:59 p.m. on April 29, 2007. The exemption provided in this subsection shall be subject to all of the provisions in subsections (a)-(f).

SECTION 61. Tennessee Code Annotated, Section 67-5-702(a)(2), is amended by deleting in its entirety the first sentence and by substituting instead the following:

For tax year 2006, the taxpayer's annual income from all sources shall not exceed twenty thousand dollars (\$20,000), or such other amount as set forth in the general appropriations act.

SECTION 62. Tennessee Code Annotated, Section 67-5-702(a)(3), is amended by deleting the language "eighteen thousand dollars (\$18,000)," and by substituting instead the language "twenty-five thousand dollars (\$25,000),".

SECTION 63. Tennessee Code Annotated, Section 67-5-702(b), is amended by deleting the language "eighteen thousand dollars (\$18,000)," wherever it appears and by substituting instead the language "twenty-five thousand dollars (\$25,000),".

SECTION 64. Tennessee Code Annotated, Section 67-5-703(a)(2), is amended by deleting in its entirety the first sentence and by substituting instead the following:

For tax year 2006, the taxpayer's annual income from all sources shall not exceed twenty thousand dollars (\$20,000), or such other amount as set forth in the general appropriations act.

SECTION 65. Tennessee Code Annotated, Section 67-5-703(a)(3), is amended by deleting the language "eighteen thousand dollars (\$18,000)," and by substituting instead the language "twenty-five thousand dollars (\$25,000),".

SECTION 66. Tennessee Code Annotated, Section 67-5-703(b), is amended by deleting the language "eighteen thousand dollars (\$18,000)," and by substituting instead the language "twenty-five thousand dollars (\$25,000),".

SECTION 67. Tennessee Code Annotated, Section 67-5-704(a)(2), is amended by deleting the language "one hundred fifty thousand dollars (\$150,000) and by substituting instead the language "one hundred seventy-five thousand dollars (\$175,000),".

SECTION 68. Tennessee Code Annotated, Section 67-5-704(a)(3), is amended by deleting the language "one hundred fifty thousand dollars (\$150,000) and by substituting instead the language "one hundred seventy-five thousand dollars (\$175,000),".

SECTION 69. Tennessee Code Annotated, Section 67-5-704(a)(4), is amended by deleting the language "one hundred fifty thousand dollars (\$150,000) and by substituting instead the language "one hundred seventy-five thousand dollars (\$175,000),".

SECTION 70. Sections 1, 2, 3, 4, 6, 7, 8, 22, 23, 27 and 29 of this act shall take effect upon becoming a law, the public welfare requiring it, and shall apply to tax years beginning on or after January 1, 2006, the public welfare requiring it. Section 5 of this act shall take effect upon becoming a law, the public welfare requiring it, and shall apply to tax years ending on or after December 31, 2003, the public welfare requiring it. Sections 9 through 21 of this act shall take effect on July 1, 2006, the public welfare requiring it. Section 45 of this act shall take effect on July 2, 2006, the public welfare requiring it. Section 48 of this act shall take effect on July 1, 2006, the public welfare requiring it, and shall apply to bad debts arising from invoices dated on or after July 1, 2006, the public welfare requiring it. All other sections of this act shall take effect upon becoming a law, the public welfare requiring it.

PASSED: May 26, 2006


JIMMY NAIFEH, SPEAKER
HOUSE OF REPRESENTATIVES


JOHN S. WILDER
SPEAKER OF THE SENATE

APPROVED this 27th day of June 2006


PHIL BREDESEN, GOVERNOR