

R-39 Rev. 9/2003

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State of Connecticut

REGULATION

of

NAME OF AGENCY

Connecticut Commission on Culture and Tourism

Concerning

SUBJECT MATTER OF REGULATION

Film and Digital Media Infrastructure Tax Credit Program

The Regulations of Connecticut State Agencies are amended by adding sections 12-217kk-1 to 12-217kk-13, inclusive, as follows:

(NEW) Sec. 12-217kk-1. Statement of purpose

These rules and regulations, which were drafted in consultation with the Department of Revenue Services, have been adopted to implement and are intended to be applied so as to accomplish the purposes of the film industry infrastructure tax credit program as established by section 12-217kk of the General Statutes. The film industry infrastructure tax credit program is administered by the Connecticut Commission on Culture and Tourism. The film industry infrastructure tax credit program is designed to encourage the development of a strong infrastructure base for film and other entertainment media in order to foster the development of the industry in this State with state of the art facilities and equipment.

(NEW) Sec. 12-217kk-2. Definitions

As used in sections 12-217kk-1 to 12-217kk-13, inclusive, of the Regulations of Connecticut State Agencies:

- (1) “American Institute of Certified Public Accountants (AICPA)” shall mean the organization which establishes financial, accounting and auditing procedures to which certified public accounts (CPA’s) must adhere.
- (2) “Applicant” or “the applicant” shall mean, as the context of these regulations shall require:
 - (a) An entity undertaking an infrastructure project which applies to the Commission for eligibility certification with respect to that project; or,
 - (b) An entity which applies to the Commission for a tax credit voucher after eligibility certification for an infrastructure project.
- (3) “Commission” shall mean the Connecticut Commission on Culture and Tourism.
- (4) “Commissioner” shall mean the Commissioner of Revenue Services.
- (5) “Detailed cost report” or “cost report” shall mean the itemized listing of eligible expenditures filed with the Commission in connection with an application for a tax credit voucher.
- (6) “Eligible expenditures” means “Eligible expenditures” as defined in section 12-217kk of the Connecticut General Statutes.
- (7) “Eligibility certification as a state certified project” or “eligibility certification” shall mean the written notice issued by the Commission certifying that an applicant’s infrastructure project is a state-certified project.
- (8) “Estimated cost report” shall mean the itemized listing of projected eligible expenditures filed with the Commission in connection with an application for eligibility certification.
- (9) “Financial Accounting Standards Board (FASB)” shall mean the board designated by the AICPA to have the authority to set and specify generally accepted accounting principles (GAAP).
- (10) “Income year” shall mean the period established by an applicant for federal income tax purposes.
- (11) “Infrastructure project” or “project” means “Infrastructure project” as defined in section 12-217kk of the Connecticut General Statutes.
- (12) “Investment” shall mean the total eligible expenditures for an infrastructure project which an applicant establishes to the satisfaction of the Commission.

- (13) “State” shall mean the State of Connecticut.
- (14) “State-certified project” means “State-certified project” as defined in section 12-217kk of the Connecticut General Statutes.
- (15) “State-certified project tax credit voucher” or “voucher” shall mean the document issued by the Commission evidencing the tax credit authorized under the provisions of section 12-217kk of the Connecticut General Statutes and sections 12-217kk-1 through 12-217kk-13, inclusive, of the Regulations of Connecticut State Agencies.

(NEW) Sec. 12-217kk-3. Application for eligibility certification as state-certified project

- (a) An applicant with an infrastructure project seeking eligibility certification shall file a written application with the Commission under oath on such forms as the Commission may prescribe not later than ninety (90) calendar days after the applicant incurs the first eligible expenditure in connection with the infrastructure project which is the subject of the application.
- (b) An applicant may file only one application for each infrastructure project for which it seeks eligibility certification and there may be only one applicant for each infrastructure project.
- (c) An applicant shall be the entity which will own or lease the realty associated with the project and shall have access to all books and records documenting the project’s eligible expenditures as may be necessary to comply with the provisions of section 12-217kk of the Connecticut General Statutes and sections 12-217kk-1 through 12-217kk-13, inclusive, of the Regulations of Connecticut State Agencies.
- (d) The Commission shall identify any application not filed within the time limit set forth in subsection (a) of section 12-217kk-3 of the Regulations of Connecticut State Agencies as having been late filed and no further processing of said application shall be undertaken.
- (e) An applicant seeking State-certified project status for its project shall provide the Commission with information pertinent to it and the project which shall include, but not be limited to, the following:
 - (1) Legal name, address and telephone number;
 - (2) Name, title and telephone number of primary contact person and other contact persons whom the Commission may contact to discuss the application information;
 - (3) Type of business entity (i.e., sole proprietorship, partnership, corporation, etc.);
 - (4) Satisfactory evidence from the Secretary of the State and the Commissioner that applicant is authorized to do business in the state and registered as a taxpayer;
 - (5) Federal Employer Identification Number (FEIN) or Tax Identification Number (TIN);
 - (6) Detailed description of the project including specific address at which the project will be built, constructed, or installed;
 - (7) Estimated total project budget with itemized estimated cost report as described in section 12-217kk-4 of the Regulations of Connecticut State Agencies;
 - (8) Names, addresses, contact persons, and telephone numbers of all architectural, engineering and other professional and consulting firms providing services in connection with the project;
 - (9) Copies of all project related purchase, lease, option, construction and construction management agreements;
 - (10) Estimated project start date and completion date;
 - (11) Detailed listing of all municipal or regional agency approvals required for the project and copies of all such municipal or regional agency approvals, including building permits;
 - (12) Detailed description of applicant’s financing arrangements to underwrite the project, including lending sources, and copies of all loan agreement and commitment letters;
 - (13) The applicant’s certification that it will at all times maintain books and records relating to the project’s eligible expenditures in accordance with generally accepted accounting principles (GAAP) consistently applied;

- (14) The applicant's certification that neither it, nor any partner, officer, director, or shareholder owning more than ten percent (10%) of the shares outstanding, has ever defaulted on a State loan or loan guaranteed by the State or, individually or as a principal in a business entity, had a debt or obligation owing to a public agency discharged in bankruptcy;
- (15) The applicant's certification that the project facilities and equipment will not be used for purposes which require the maintenance of records pursuant to 18 U.S.C. §2257; and,
- (16) Such additional pertinent application information concerning the applicant or the infrastructure project as the Commission may request.
- (f) Information or material required pursuant to subsection 12-217kk-3(e) of the Regulations of Connecticut State Agencies which is not available to the Applicant at the time of application shall be submitted to the Commission by the applicant as soon as such information becomes available to the applicant.
- (g) Upon the Commission's written request, applicant shall provide any necessary written authorization for the release of information concerning applicant, or any investors or entities associated with applicant and its infrastructure project, from any federal, state or local governmental authority including, but not limited to, financial reports and records.
- (h) The applicant is responsible for the accuracy of all data, information and documentation submitted or included with the application. Applications and all documentation submitted therewith shall become the property of the Commission.
- (i) The applicant shall demonstrate to the satisfaction of the Commission that the project which is the subject of the eligibility certification application will be used solely for the functioning in this State of the digital media, motion picture or other entertainment industry as authorized under the provisions of section 12-217kk of the Connecticut General Statutes.
- (j) If the Commission determines after review that an application is incomplete, it may request in writing that the applicant submit additional pertinent application information which shall be submitted within fifteen (15) days from the date of the Commission's request. If the Commission determines that the application remains incomplete after such additional time period, then no further processing of the application shall take place.

(NEW) Sec. 12-217kk-4. Estimated cost report

- (a) Each applicant with a project seeking eligibility certification shall file with its application an estimated cost report on such forms as the Commission may prescribe.
- (b) The estimated cost report shall describe in detail the eligible expenditures to be incurred by the applicant with respect to the project which is the subject of the application and classify such expenditures under each of the categories specified below:
 - (1) Land acquisition;
 - (2) Building acquisition;
 - (3) Building construction;
 - (4) Building rehabilitation/renovation;
 - (5) Capital equipment;
 - (6) Other improvement; or,
 - (7) Project development including design, engineering and related professional fees.
- (c) Within the foregoing general eligible expenditures categories, the Commission may prescribe such sub-categories as it deems necessary to facilitate the applicant's reporting of its estimated eligible expenditures and the Commission's review of such estimated eligible expenditures.

(NEW) Sec. 12-217kk-5. Review and disposition of application for eligibility certification as a state-certified project; liability insurance

- (a) The Commission shall review all complete applications submitted pursuant to sections 12-217kk-3 and 12-217kk-4 of the Regulations of Connecticut State Agencies and determine whether the criteria for eligibility certification as a state-certified project under section 12-217kk of the Connecticut General

- Statutes and sections 12-217kk-1 through 12-217kk-13, inclusive, of the Regulations of Connecticut State Agencies have been met.
- (b) During review of the application, the Commission may request additional pertinent application information, conduct site or field visits, consult with independent professional consultants, or require the applicant, at its sole cost and expense, to submit an independent consultant's report of the estimated eligible expenditures to be performed by an independent consultant unrelated to applicant, licensed to do business in this State and having no direct or indirect financial interest in the applicant or the project. The purpose of such pre-certification audit or independent professional review is to provide the Commission with assurances that the estimated eligible expenditures and costs set forth by applicant are accurate, necessary and reasonable.
 - (c) If the Commission finds that all such criteria for eligibility certification are met it will issue to the applicant written notice of the project's certification as a State-certified project which shall specify the total estimated eligible expenditures and amount of potential tax credits available to applicant should the project be completed as described in the application.
 - (d) The Commission's notice of eligibility certification shall provide a unique identification number assigned by the Commission for the project which shall thereafter be referenced in all future correspondence and notices relative to the project. Eligibility certification for an infrastructure project shall be non-transferable.
 - (e) The notice of eligibility certification issued by the Commission shall not grant or convey any state tax credits or benefits and signifies only that the project is a state-certified project and that the Commission may issue voucher(s) pursuant to the provisions of section 12-217kk of the Connecticut General Statutes if the project's estimated eligible expenditures as determined by the Commission are in fact expended and the applicant for such tax credits is otherwise in conformity with the provisions of section 12-217kk of the Connecticut General Statutes and sections 12-217kk-1 through 12-217kk-13, inclusive, of the Regulations of Connecticut State Agencies.
 - (f) Before construction of any certified project commences, the Commission may require the applicant or its construction contractor to furnish a general liability insurance policy with such policy limits as the Commission may prescribe and issued by an insurance company licensed to do business in this state and in good standing and which shall be rated "A-" or better by the latest edition of A.M. Best's Rating Guide or, if such Guide is no longer available, any generally recognized replacement therefore. The Commission and the State shall be named as additional insureds under any such policy.

(NEW) Sec. 12-217kk-6. Project progress reports; document submission

An applicant whose project has been certified as a State-certified project shall submit to the Commission periodic progress reports on such forms and at such times as the Commission may prescribe. Such reports shall describe in detail the current status of the project together with any revisions to the estimated cost report, estimated project timetable or completion date together with a detailed explanation of the reasons for such revisions.

(NEW) Sec. 12-217kk-7. Lapse of eligibility certification; surety bond

- (a) Upon the Commission's written notice to the applicant, the project's certification as a State-certified project shall lapse not earlier than 180 days after the issuance of notice of eligibility certification upon the Commission's determination that an applicant has failed to provide satisfactory evidence that the project has substantially commenced and will be substantially completed as proposed.
- (b) At any time after certification of a project as a State-certified project, the Commission may direct the applicant to file a surety bond at the applicant's sole cost and expense and in such form and principal amount as the Commission may determine to assure completion of the project or construction of any project installation in accordance with the application documents submitted to the Commission. Such surety bond shall be issued by a bonding or insurance company authorized and licensed to do business in this State and in good standing and which shall be rated "A-" or better by the latest edition of A.M. Best's Ratings Guide or, if such Guide is no longer available,

any generally recognized replacement therefore. The Commission shall be named in any such bond as a dual obligee.

(NEW) Sec. 12-217kk-8. Application for issuance of state-certified project tax credit voucher

- (a) After the Commission has issued notice of eligibility certification with respect to a project, an applicant may apply to the Commission for the issuance of a State-certified project voucher. Such voucher may be issued:
 - (1) No sooner than at such time as the Commission determines in its sole discretion that such project is not less than sixty percent (60%) complete; or,
 - (2) Not later than ninety (90) days after the last project expenses or costs are incurred by the applicant and the project has been determined to be complete by the Commission.
- (b) An applicant shall apply to the Commission for issuance of a voucher on such forms as the Commission may prescribe.
- (c) With each application for issuance of a voucher, the applicant issued the notice of eligibility certification shall file with the Commission, on such forms as the Commission may prescribe, a detailed cost report of the project's eligible expenditures actually expended to the date of the application. The detailed cost report shall include the same categories and sub-categories of eligible expenditures as in the estimated cost report required under section 12-217kk-4 of the Regulations of Connecticut State Agencies. The eligible expenditures itemized in the detailed cost report shall not exceed the total eligible expenditures as itemized in the estimated cost report unless any and all such additional costs were previously approved by the Commission in writing. The Commission shall require the applicant to provide an independent audit report of such actual eligible expenditures as described in section 12-217kk-10 of the Regulations of Connecticut State Agencies.

(NEW) Sec. 12-217kk-9. Limitation on eligible expenditures

- (a) An applicant may include only actual paid eligible expenditures in the detailed cost report required to be submitted to the Commission pursuant to section 12-217kk-8 of the Regulations of Connecticut State Agencies. The cost report must provide sufficient information so that the independent auditor can verify whether the expenditures set forth by the applicant are allowed under the provisions of section 12-217kk of the Connecticut General Statutes and sections 12-217kk-1 through 12-217kk-13, inclusive, of the Regulations of Connecticut State Agencies.
- (b) Refunds, rebates, insurance claim recoveries, discounts, invoicing errors, returns and other such credits must be credited against the expenditures itemized in the detailed cost report.
- (c) When an applicant incurs related party transaction costs, the costs allowable shall be limited to the fair market value as determined by the Commission of the services, goods or other tangible property provided to applicant by the related party.
- (d) Expenses or costs which have been included in any prior application for a tax credit voucher or included in an application for a tax credit under sections 12-217jj or 21-217ll of the Connecticut General Statutes are not eligible expenditures.
- (e) Expenses or costs related to the transfer of any tax credit are not eligible expenditures.
- (f) Expenses or costs shall constitute eligible expenditures under sections 12-217kk-1 through 12-217kk-13, inclusive, of the Regulations of Connecticut State Agencies, only if incurred by an applicant in connection with a State-certified project which results in permanent improvement(s) or accretions(s) to real estate.
- (g) Costs and expenses to remediate asbestos or other hazardous substances shall constitute eligible expenditures only to the extent such costs are incurred by an applicant in connection with above ground building remediation and are otherwise allowable pursuant to the section 12-217kk of the Connecticut General Statutes and sections 12-217kk-1 through 12-217kk-13, inclusive, of the Regulations of Connecticut State Agencies.

- (h) Costs and expenses related to leasehold expenditures for grounds and buildings shall be allowable only to the extent that the associated lease constitutes a capital lease as defined and explained in FASB Statement No. 13, and then only to the extent that the present value of such lease expenditures are determined in accordance with a generally recognized and accepted formula selected by the Commission with prior notice to the applicant. Lease expenditures for tangible personal property shall be allowable only to the extent that such expenditures are incurred pursuant to a capital equipment lease as defined and explained in FASB Statement No. 13.

(NEW) Sec. 12-217kk-10. Scope of and procedures for state-certified project audit

- (a) The purpose of the independent audit required under subsection (c) of section 12-217kk-8 of the Regulations of Connecticut State Agencies is to provide the Commission with assurances that the eligible expenditures as set forth in the detailed cost report have in fact been expended and are otherwise accurate, necessary, and reasonable and are in accordance with the provisions of section 12-217kk of the Connecticut General Statutes and in accordance with sections 12-217kk-1 through 12-217kk-13, inclusive, of the Regulations of Connecticut State Agencies.
- (b) The audit shall be completed in accordance with generally accepted auditing standards as established by the AICPA and FASB and shall be at the sole cost and expense of applicant. The audit shall be performed by a certified public accountant licensed in this State, unrelated to the applicant and having no direct or indirect financial interest in the applicant or any business conducted by the applicant.
- (c) The auditor's report shall state that the audit was conducted in accordance with this section and shall include and be subject to the following requirements:
 - (1) A schedule disclosing the applicant's noncompliance with any applicable law, regulation, provision of contracts or other agreements which could have a material effect on the costs reported in the detailed cost report;
 - (2) A schedule disclosing all sources of funds used by the applicant to finance the state certified project including any non-cash or barter transactions included in the detailed cost report;
 - (3) A schedule disclosing all related party transactions as such are defined, specified and explained by Financial Accounting Standards Board (FASB) in Statement No. 57 and which are encompassed in the detailed cost report to include:
 - (A) The name of the related party;
 - (B) The nature of the relationship between the related party and the applicant; and,
 - (C) A description of the nature of the transaction and the amount.
 - (4) The auditor's opinion shall be dated as of the date that audit fieldwork was completed and shall be addressed to the applicant;
 - (5) The auditor shall cooperate fully with the Commission in responding to the Commission's post audit inquiries and in complying with such audit guidelines applicable to all such audits as the Commission may prescribe in writing; and,
 - (6) The audit work papers must be maintained by the auditor for a period of six (6) years from the date that the audit was submitted to the Commission and shall be made available to the Commission upon written request.

(NEW) Sec. 12-217kk-11. Disposition of application for tax credit voucher

- (a) The Commission shall review the application for a voucher and the independent audit and evaluate whether the applicant has met the criteria set forth under section 12-217kk of the Connecticut General Statutes and sections 12-217kk-1 through 12-217kk-13, inclusive, of the Regulations of Connecticut State Agencies for issuance of a tax credit voucher. If the Commission determines that the application and audit do meet such criteria it shall certify on the voucher the total eligible expenditures substantiated to the

satisfaction of the Commission to the date of the application and the amount of the tax credit awarded.

- (b) If the Commission determines that either the application or audit do not meet the established criteria for issuance of a voucher, it shall notify the applicant in writing of the deficiency in the application or audit and the remedial action, if any, that is required before the Commission can act on the voucher application.

(NEW) Sec. 12-217kk-12. Confidentiality of application information and documents

When an applicant or other entity submits information it considers to be of a proprietary or confidential nature in connection with its applications for eligibility certification and issuance of tax credit vouchers or notice of transfer of tax credits, such information shall be clearly marked or labeled "CONFIDENTIAL" in capital letters. The applicant or other entity shall also submit a statement briefly setting forth the grounds on which the information should be treated as confidential. Upon the Commission's determination that such information may be lawfully maintained by it as confidential, it shall maintain such portions of the application or notice of transfer of tax credits as confidential to the extent permitted by law.

(NEW) Sec. 12-217kk-13. Transfers of tax credits

- (a) Tax credit vouchers may be sold, assigned or otherwise transferred by the applicant or subsequent transferee, in whole or in part, up to a maximum of three (3) times and to the extent the tax credit has not previously been claimed. Any taxpayer that is assigned or transferred a tax credit must claim such assigned credit in the same income year that the applicant was eligible to claim the tax credit. Any assignee or transferee that does not fully utilize the tax credit in the income year in which it is claimed may carry such credit forward as permitted by section 12-217kk of the Connecticut General Statutes.
- (b) Each tax credit voucher transferor and transferee shall jointly provide written notice of such transfer to the Commission on such forms as may be prescribed by the Commission, not later than thirty (30) days after the transfer. For the purposes of subsections 12-217kk(b)(3) and (d) of the Connecticut General Statutes, a taxpayer to which a tax credit evidenced by a tax credit voucher may be sold, assigned or otherwise transferred, or that may sell, assign or otherwise transfer such tax credit, shall include a corporation, partnership, limited liability company, or other business entity; provided, however, that the tax credits evidenced by such tax credit voucher may only be claimed against the taxes imposed under chapters 207 and 208 of the Connecticut General Statutes.
- (c) The written notice to the Commission of transfer shall include, but may not be limited to, the following:
 - (1) The tax credit voucher number;
 - (2) The date of transfer;
 - (3) The total amount of credit transferred;
 - (4) The tax credit voucher balance before and after the transfer;
 - (5) The transferor's and transferee's federal tax identification numbers;
 - (6) Consideration paid by the transferee for the transfer; and,
 - (7) Such other pertinent information as the Commission may require.
- (d) Failure to comply with all transfer notification requirements contained in section 12-217kk-13 of the Regulations of Connecticut State Agencies and subsection (d) of section 12-217kk of the Connecticut General Statutes shall result in the disallowance of the tax credit transfer until such time as the Commission determines that the transferor and transferee are in full compliance. The Commission shall provide notice to the Commissioner of any such disallowance and subsequent allowance of the tax credit, if requested by the Commissioner.
- (e) Failure to comply with the time limitation for notice to the Commission of such transfer in Section 12-217kk-13(b) of the Regulations of Connecticut State Agencies and subsection (d) of section 12-217kk of the Connecticut General Statutes shall result in the disallowance of such tax credit transfer unless the Commission determines that such failure was for good cause shown.

- (f) In the event that a tax credit voucher is sold, assigned or otherwise transferred to a business entity that is treated as a pass-through entity for federal income tax purposes, the tax credits evidenced by such voucher shall not be deemed to be allocated or otherwise transferred to any partner, member, shareholder or other equity owner of such transferee (notwithstanding any provision of the governing documents of such entity), and such tax credits shall only be transferred to any such partner, member, shareholder or other equity owner by sale, assignment or other transfer of the tax credit evidenced by such voucher in the manner provided for in this section 12-217kk-13 of the Regulations of Connecticut State Agencies, subject to the limitation that no tax credit or any fractional part thereof may be assigned or otherwise transferred, in whole or in part, more than three times.

STATEMENT OF PURPOSE:

To establish administrative and procedural regulations governing the operation of the film and digital media infrastructure tax credit program established pursuant to sections 12-217kk(a) et. seq. of the Connecticut General Statutes.