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## Letter Ruling 06-1: Film Incentive

Please Note: Letter Ruling 06-01 was issued under the prior film credit Act. The discussion of law section of these public written statements is modified, in part, by the new law as outlined in Technical Information Release [07-15](#).

February 1, 2006

You have requested a letter ruling on behalf of \*\*\*\*\* (the "Taxpayer"), that if in connection with the production of \*\*\*\*\* (the "Film") the Taxpayer pays an employee a salary that is equal to or greater than \$1,000,000 said salary may be included as a Massachusetts production expense for purposes of determining the tax credit under M.G.L. c. 63, § 38T(c). It is understood that the salary in question must be an expense clearly and demonstrably incurred in the Commonwealth of Massachusetts in connection with the production of the Film and further that the other requirements of M.G.L. c. 63, § 38T must be satisfied.

### I. Facts

The following is the statement of facts you present and on which we base this ruling. The Taxpayer intends, on or after January 1, 2006, to begin production of the Film which will be produced for eventual distribution by \*\*\*\*\* (the "Company"); however, the Taxpayer will not be owned or controlled by the Company. It is intended that the Taxpayer will be subject to taxation under M.G.L. c. 63 and that the Film will qualify as a "motion picture" under M.G.L. c. 63, § 38T(a), as amended by St. 2005, chapter 167. It is also intended that at least 50% of the total principal photography days to complete production of the Film will take place in the Commonwealth of Massachusetts and that the total production costs the Company will incur in Massachusetts during 2006 in connection with the Film will exceed \$250,000.

### II. Discussion

The Massachusetts Legislature recently enacted personal income tax and corporate excise credits and sales tax exemptions that provide incentives to the motion picture industry (hereinafter the "Act"). See St. 2005, c. 158; amended by St. 2005, c. 167. For taxable years beginning on or after January 1, 2006 and before January 1, 2013, the Act provides two tax credits that can be taken by taxpayers against either their personal income tax or corporate excise liabilities. M.G.L. c. 62, § 6(l) and c. 63, § 38T. Each credit has its own qualification requirements and taxpayers are allowed to qualify for and claim both credits. For purposes of this letter ruling we will cite to the c. 63, § 38T corporate excise provisions.

A taxpayer engaged in the making of a motion picture is allowed a credit (hereinafter "the Payroll credit") equal to 20 per cent of the total aggregate payroll of the motion picture production company

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that constitutes Massachusetts source income.<sup>1</sup> M.G.L. c. 63, § 38T(b). The Payroll credit provision specifically excludes from total aggregate payroll "...the salary of any employee whose salary is equal to or greater than \$1,000,000." *Id.*

However, a taxpayer is allowed an additional credit (hereinafter "the Production expense credit") equal to 25 per cent of all Massachusetts production expenses, not including the payroll expenses used to claim the Payroll credit, where the motion picture is also eligible for the Payroll credit and either Massachusetts production expenses exceed 50 per cent of the total production expenses for a motion picture or at least 50 per cent of the total principal photography days of the film take place in the commonwealth. M.G.L. c. 63, § 38T(c).<sup>2</sup> A Massachusetts production expense is defined as "... a production expense for the motion picture clearly and demonstrably incurred in the commonwealth." M.G.L. c. § 38T(a). The definition of a production expense includes "...wages and salaries paid to individuals employed in the production of the motion picture." *Id.*

### III. Ruling

Taxpayer may include salary paid to an employee that is equal to or greater than \$1,000,000 as a Massachusetts production expense for purposes of the Production expense credit, subject to the following provisos. First, the salary paid must be Massachusetts source income to the recipient in order to qualify as a Massachusetts production expense. Second and accordingly, the Taxpayer must register for withholding of Massachusetts personal income tax and must withhold from the employee payments in order for the payments to qualify as Massachusetts production expense. The Department will require withholding whether or not the amounts paid constitute "wages" as defined in M.G.L. c. 62B, § 1. Finally, all other statutory prerequisites for the credit must be satisfied.

Subject to the other requirements of M.G.L. c. 63, § 38T, the entire salary paid to an employee that is equal to or greater than \$1,000,000 may qualify for the Production expense credit. This includes the portion of such salary that is less than \$1,000,000, (provided that such entire salary is excluded from the Payroll credit, for which it does not qualify).

Very truly yours,

/s/Alan LeBovidge

Alan LeBovidge  
Commissioner of Revenue

AL:JXD:jmw

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[1] See M.G.L. c. 63, § 38T(a) for the definition of "motion picture."

[2] See M.G.L. c. 63, § 38T(a) for the definition "principal photography."