

**Motion Picture Production Tax Incentive Program  
Frequently Asked Questions**

To facilitate the use of the FAQs, the questions and answers have been arranged in 4 general categories: **Calendar Year Cap Management, Use of Incentives, Eligibility Requirements and Definitions & Program Terms.**

**Calendar Year Cap Management**

1. **Can unused tax credit balances be allocated by Commerce in the next calendar year?**

**Yes. A.R.S. §41-1517(H) provides that for any year an unused tax credit balance occurs, it may be reallocated in the “following year.” Unused balances from the 5% set aside must be reallocated to commercial advertisements and music videos in the subsequent year. Similarly, unused balances from the remaining cap for motion picture productions must be reallocated only to productions that meet the eligibility requirements for that category. Unused balances in both parts of the cap will be reallocated before the newly available cap for the year. Commerce does not have the authority to reallocate tax credits in years after the immediate subsequent year.**

2. **If tax credits for a calendar year are fully allocated, can an applicant receive pre-approval and be added to a waiting list for tax credits?**

**Yes. Credits returned to the cap are re-allocated to pre-approved companies based on the priority placement number assigned at the time of pre-approval in accordance with A.R.S. §41-1517(D) and (H).**

3. **Can a commercial advertisement or music video production company apply for an allocation under the 5% cap set-aside on November 1<sup>st</sup> for the following year’s cap?**

**No. A.R.S. §41-1517(L) specifically excludes commercial advertisement and music video productions from that provision. However, if Commerce were accepting applications on November 1 for the next cap year, a commercial advertisement or music video production could apply under the regular cap. In that case, the production would be subject to the provisions for motion pictures in A.R.S. §41-1517(C) and would not be subject to the provisions spelled out in A.R.S. §41-1517(K) that apply to the 5% set aside and offer requirements tailored to meet the unique needs of commercial advertisements and music videos.**

4. **If the 5% cap set aside is not fully allocated by a certain point in the cap year, can Commerce allocate the remainder to other motion picture productions?**

**No. A.R.S. §41-1517(K) limits use to allocations for commercial advertisements and music videos.**

5. Can a production or infrastructure company with a pre-approval for tax credits sell that pre-approval to another production company?

No. The pre-approvals for tax incentives are not transferable. A production company may voluntarily relinquish its pre-approval or let the pre-approval lapse (A.R.S. §41-1517(G)), but cannot transfer a pre-approval directly to another entity.

6. Can a production company charge an applicant waiting in line for tax credits a fee for timely relinquishing its tax credits?

The statutes only address the voluntary relinquishment of tax credits; they do not address or prohibit a company from charging a fee for relinquishing them. (A.R.S. §41-1517(G)). These types of arrangements are private sector transactions and are not subject to approval by Commerce. However, a company cannot voluntarily relinquish tax credits and assign those tax credits to a specific applicant. Rather, relinquished tax credits are allocated by Commerce to the next company that applied in the same year that is waiting in line for tax credits according to its priority placement number.

#### Use of Incentives

7. When can a production company or an infrastructure company claim a credit on a tax return?

A motion picture production company must timely file for tax credits for motion picture production costs on an original tax return with the Arizona Department of Revenue (Revenue) due after the post-approval is received. The company cannot file for a year prior to the pre-approval year. A.R.S. §§41-1517(I), 43-1075, and 43-1163.

An infrastructure company may apply for a credit for motion picture infrastructure projects on the tax return for the taxable year in which the motion picture infrastructure project is completed. A.R.S. §§41-1517.01, 43-1075.01, and 43-1163.01.

8. When can a tax credit be sold or transferred?

Although a taxpayer may be able to enter into a purchase agreement for the credit even before the credit is actually earned, the credit could not be used by the purchaser to offset a tax liability until it is actually earned by the production company and approved by Commerce and the conditions of transfer in 43-1075(H) or 43-1163(H) are met.

9. When does the five-year carry forward period begin for a motion picture production company?

The five-year carry forward period begins the year subsequent to the pre-approval year (the cap year from which the allocation was made) regardless of when the tax credits are post-approved by Commerce or claimed by the company. The sale or transfer of tax credits does not extend the five-year carry forward period. A.R.S. §§41-1517(I), 43-1075, 43-1163 and 43-1163.01.

10. When can the purchaser (transferee) of a tax credit use the credit?

The purchaser or transferee can use the credits to offset tax liability for any tax year that is timely filed on an original tax return, but no earlier than the pre-approval year and no later than the five year carry forward period §§41-1517(I), 43-1075, 43-1163 and 43-1163.01.

11. Does the purchaser (transferee) have a separate five-year carry forward period in which to use the credits to offset tax liability?

No. The sale or transfer of credits does not extend the five-year carry forward period, which begins the year subsequent to the pre-approval year (the cap year from which the allocation was made) regardless of when the tax credits are claimed by the company (A.R.S §§41-1517(I), 43-1075, 43-1163 and 43-1163.01).

12. As pre-approvals are made can Commerce release the names of companies to whom the credits are allocated and the amount of credits in each allocation?

No. A.R.S. §41-1517(S) provides that the information gathered from applicants for program purposes shall be considered confidential taxpayer information except that Commerce shall publish in its *annual report* the name of each company, the amount of tax credits pre-approved for each production and infrastructure project, and the amount of credits post-approved with respect to each production. Commerce is not authorized to provide information more frequently than annually.

13. Can a qualified production company be certified for transaction privilege tax and use tax exemptions even though no tax credits are available at the time of pre-approval?

Yes. If pre-approved, the company can claim transaction privilege tax and use tax exemptions listed in A.R.S. §42-5009(H) whether the company chooses to 1) wait in line for an allocation if credits become available or 2) to voluntarily relinquish future rights to tax credits.

14. Can a company engaged only in an infrastructure project be certified for transaction privilege tax and use tax exemptions under this program?

No. A.R.S. §42-5009(H) does not provide tax exemptions for infrastructure projects. However, A.R.S. §41-1517.01(A)(1) provides that an infrastructure company may also be a motion picture production company. In that case, the company could also apply for certification for tax incentives for motion picture production and earn tax exemptions on expenditures related to the motion picture production, not the infrastructure project.

#### Eligibility Requirements

15. A pre-approved company must begin its project within 90 days of pre-approval. Can Commerce waive or extend this 90-day requirement in special circumstances? For example, if sufficient crew is not available to satisfy the residency requirements, can an extension be granted?

No. Statute stipulates production must begin within 90 days of pre-approval (A.R.S. §41-1517(F) and §41-1517.01(E)). Commerce is not granted authority to extend the deadline. However, a company may choose to provide a completion or surety bond to satisfy the requirement (A.R.S. §41-1517(F) and §41-1517.01(E)).

16. Under what circumstances is a completion or surety bond required?

For purposes of demonstrating that work on a production has begun, a completion bond can be submitted in lieu of documentation of actual expenditures. A.R.S. §41-1517(F)(2) provides that a completion bond, equal to the estimated total budget of a pre-approved motion picture production, may be submitted to Commerce. A.R.S. §41-1517.01(E)(1)(b) similarly provides that an infrastructure company may submit a surety bond equal to the estimated and pre-approved total base investment. Documentation of actual expenditures is still required for purposes of post-approval.

17. Is a commercial advertisement or a music video applicant required to demonstrate actual projects totaling \$250,000 in qualified investments at the time of application for pre-approval?

No. A.R.S. §41-1517(K)(8) provides that a company applying under the 5% set-aside is able to apply before it can estimate an investment for the 12-month period of at least \$250,000. A company may apply for pre-approval with a project that totals less than \$250,000 and may then submit additional applications for pre-approval during the 12-month certification period to reach the \$250,000 investment threshold.

18. How long does a pre-approved company have to complete a *commercial advertisement* or a *music video* before losing the pre-approved credits for the project?

Sixty days. A.R.S. §41-1517(K)(7) provides that 60 days from the date of application the company must notify Commerce and document expenditures of the total amount of eligible production costs associated with a specific production.

19. How long does a pre-approved company have to make qualified investments in a *motion picture*?

Twenty-four months. A.R.S. §41-1517(N) provides that a letter of qualification (pre-approval) from Commerce is effective for 24 consecutive months. Investments made before and after the 24-month certification period do not generate tax credits or transaction privilege and use tax exemptions.

20. Do all of the productions in an application for a television series have to begin within 90 days?

No. The application for a television series is treated as a single production (A.R.S. §41-1517(V)(6)); therefore, only one episode has to meet the requirements that demonstrate the production began within 90 days of pre-approval.

#### Definitions & Program Terms

21. Can expenses for out-of-state crew be eligible production costs if a local company creates a staffing agency through which hiring is conducted?

No. A.R.S. §41-1517(A)(2)(a) restricts qualified production costs to salaries and other compensation for talent, management and labor paid to residents of this state. Therefore, salaries and other compensation paid to out-of-state employees cannot be considered qualifying production costs.

22. **Is the cost of a motion picture script and scenario purchased prior to pre-approval or purchased from an out-of-state writer considered a qualified production cost for purposes of tax credits?**

A.R.S. §41-1517(A)(2)(j) provides that expenses incurred before the pre-approval do not qualify as production costs. A.R.S. §41-1517(A)(2)(b) does not specify that a script or scenario must be written or purchased in Arizona in order to be a qualifying production cost for purposes of tax credits. The current interpretation is that a script or scenario purchased during the 24-month certification period may be a qualified production cost no matter where the script or scenario originated.

23. **Are reality shows eligible for tax incentives under the definition of “television series”?**

Yes, if it meets the definitions of the program. A.R.S. §41-1517(V)(2) and (V)(6) provide the definitions of a “motion picture” and of a “television series.” Reality shows were not explicitly included in those definitions; however, this does not exclude a reality show from meeting the definition of a television series.

The current interpretation is that a reality show that offers a prize to the successful participant is a game show and, therefore, is not eligible for program incentives. If a reality show does not offer a prize, it could receive program incentives if otherwise eligible.