Legislative Regulation Review Committee

2008-052a

Commission on Culture & Tourism

DIGITAL ANIMATION PRODUCTION COMPANY TAX CREDIT PROGRAM

R-39 Rev. 9/2003

IMPORTANT: Read instructions on bottom of Certification Page before completing this form. Failure to comply with instructions may cause disapproval of proposed Regulations

State of Connecticut

REGULATION

of

NAME OF AGENCY

Connecticut Commission on Culture and Tourism

Concerning

SUBJECT MATTER OF REGULATION

Digital Animation Production Company Tax Credit Program

The regulations of Connecticut State Agencies are amended by adding Sections 12-217ll-1 to 12-217ll-12, inclusive, as follows:

(NEW) Sec. 12-217ll-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 digital animation production company tax credit program as established by section 3 of Public Act 07-236, as amended by section 71 of Public Act 07-04 (June special session) and section 15 of Public Act 07-05 (June Special Session). The digital animation production company tax program is administered by the Connecticut Commission on Culture and Tourism and is designed to encourage the development of strong digital animation production activity within the State so as to increase employment and foster a more productive state economy.

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

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

(1) "American Institute of Certified Public Accountants (AICPA)" shall mean the national organization which establishes financial, accounting and auditing procedures to which certified public accountants (CPAs) must adhere.

(2) "Applicant" or "the applicant" shall mean, as the context of these regulations shall require:
   - (A) A digital animation production company which applies to the Commission for certification as a state-certified digital animation production company; or,
   - (B) A state-certified digital animation production company which applies to the Commission for a digital animation tax credit voucher.

(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 expenses or costs report filed with the Commission by an applicant for a tax credit voucher as described in section 12-217ll-7 of the Regulations of Connecticut State Agencies.

(6) "Digital animation production activity" shall have the same meaning as provided in subsection (a) of section 12-217ll of the Connecticut General Statutes.

(7) "Digital animation production company" shall have the same meaning as provided in subsection (a) of section 12-217ll of the Connecticut General Statutes.

(8) "Financial Accounting Standards Board (FASB)" shall mean the board designated by the AICPA to have the authority to set and specify generally accepted accounting principals (GAAP).

(9) "Full-time employee" shall have the same meaning as provided in subsection (a) of section 12-217ll of the Connecticut General Statutes.

(10) "Income year" shall mean the period established by an applicant for federal income tax purposes.

(11) "Production expenses or costs" shall have the same meaning as provided in subsection (a) of section 12-217ll of the Connecticut General Statutes.
(12) "State" shall mean the State of Connecticut;
(13) "State-certified digital animation production company" shall have the same meaning as provided in subsection (a) of section 12-217ll of the Connecticut General Statutes; and,

(NEW) Sec. 12-217ll-3. Application for certification as state-certified digital animation production company

(a) An applicant shall file a written application for certification with the Commission under oath on such forms as the Commission may prescribe.

(b) An applicant seeking certification shall provide the Commission with information including, but not limited to, the following:
(1) Legal name, address and telephone number;
(2) Name, title and telephone number of primary contact person and other persons associated with the applicant whom the Commission may contact to discuss the application information;
(3) Type of business entity (i.e., proprietorship, partnership, corporation, etc.);
(4) Satisfactory evidence from the Secretary of the State and the Commissioner that the applicant is qualified to do business in the State and is registered as a taxpayer;
(5) Federal Employer Identification Number (FEIN) or Tax Identification Number (TIN);
(6) Detailed description of digital animation production activity engaged in by the applicant;
(7) Detailed description of digital animation production activity conducted by the applicant in this state;
(8) Detailed description of business activity other than digital animation production activity engaged in by the applicant;
(9) Detailed description of all locations where the applicant maintains facilities at which digital animation production activity is conducted and description of that activity;
(10) Listing of the total number of the applicant's full time employees and facility where employed;
(11) Actual or estimated total annual production expenses or costs incurred in the state;
(12) The applicant's certification that it will at all times maintain its books and records in accordance with generally accepted accounting principles (GAAP) consistently applied in connection with the conduct of its digital animation production activity in this state;
(13) The applicant's certification that it does not and will not engage in digital animation production activity which requires the maintenance of records pursuant to 18 U.S.C. §2257;
(14) Date that the applicant began, or will begin, conducting digital animation production activities at facilities in this state;
(15) The applicant's income year; and,
(16) Such additional pertinent application information concerning the applicant, its officers and directors or its digital animation production activity as the Commission may request.

(c) Upon the Commission's written request, the applicant shall provide any necessary written authorization for the release of information concerning the applicant or its digital animation production activity from any federal, state or local governmental agency including financial reports and records relating to the applicant or its activity.

(d) An applicant is responsible for the accuracy of all data, information and documentation included with the application. The applicant shall be responsible for updating application data, information and documentation as soon as practicable after material changes in said information. All applications, information and documentation shall become the property of the Commission upon submission.

(e) 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 after the applicant's receipt of the Commission's request. If the Commission determines that the application remains incomplete after such additional time period, no further processing of said application shall take place.

(NEW) Sec. 12-217ll-4. Disposition of application for certification

(a) The Commission shall review all complete applications submitted pursuant to section 12-217ll-3 of the Regulations of Connecticut State Agencies and determine whether the criteria for certification as a state-certified digital animation production company under sections 12-217ll-1 to 12-217ll-12, inclusive, of the Regulations of Connecticut State Agencies have been met.

(b) If the Commission finds that such criteria have been met it shall issue written notice of such certification to applicant and provide applicant with a unique identification number which shall be referenced on all future correspondence and notices filed with the Commission.

(c) The Commission's written notice that the applicant is a state-certified digital animation production company shall not grant or convey any state tax credits or benefits and signifies only that the Commission has determined that the criteria for such certification under sections 12-217ll-1 to 12-217ll-12, inclusive, of the Regulations of Connecticut State Agencies have been met at the time of the Commission's review of the application.

(NEW) Sec. 12-217ll-5. Fiscal and accounting requirements

(a) Each state-certified digital animation production company shall utilize an accounting system which conforms to generally accepted accounting principles (GAAP) in accounting for the production expenses or costs to be included in the detailed cost report which shall accompany an application for issuance of a digital animation production company tax credit voucher.

(b) The following accounting records and documentation, at a minimum, shall be made and maintained by a state-certified digital animation production company:

(1) Invoices, purchase orders, vouchers, paid bills, and production reports;

(2) Individual payroll and attendance records for all employees consistent with the requirements imposed upon employers generally under applicable federal and state law;

(3) Records relating to refunds, rebates, invoicing errors, purchase returns, sales of equipment or other tangible property or other production assets and insurance claims;

(4) Records relating to costs and expenses regarding the ownership or lease of any real property;

(5) Records relating to costs and expenses regarding the purchase of any tangible personal property;

(6) Records relating to any related party transaction sufficient to permit the independent auditor to provide the information required pursuant to subsection 12-217ll-9(c)(3) of the Regulations of Connecticut State Agencies; and,

(7) Records relating to production expenditures or costs for optioning or purchasing intellectual property as such costs are described and permitted under subsection (a) of section 12-217ll of the Connecticut General Statutes.

(NEW) Sec. 12-217ll-6. Application for issuance of a digital animation production company tax credit voucher; independent audit

(a) A state-certified digital animation production company may apply to the Commission for issuance of a tax credit voucher(s) not more than twice in any income year on such forms as the Commission may prescribe. Upon the Commission's determination that the applicant has satisfied all the criteria for issuance of a tax credit voucher(s), the Commission shall certify the total production expenses or costs incurred during the period encompassed by the cost report and the actual amount of the tax credit awarded to the applicant. The Commission shall not award digital animation production company tax credits which exceed in the aggregate the state fiscal year cap as provided in subsection (g) of section 12-217ll of the Connecticut General Statutes.

(b) With each application for a tax credit voucher the applicant shall file with the Commission the detailed cost report together with an audit report of such cost report.

(NEW) Sec. 12-217ll-7. Detailed cost report

(a) Each applicant for a tax credit voucher shall file with the Commission, under oath, a detailed cost report on such forms as the Commission may prescribe.

(b) The detailed cost report shall classify costs and expenditures actually incurred by the applicant under each of the categories specified below:
   (1) Talent costs;
   (2) Payroll;
   (3) Overhead;
   (4) Post production; or
   (5) Other.

(c) Within the foregoing general expense or cost categories, the Commission may prescribe such sub-categories as it deems necessary to facilitate applicant's reporting of its production expenses or costs and the Commission's review of such production expenses and costs.

(NEW) Sec. 12-217ll-8. Limitations on allowable production expenses or costs

(a) An applicant may include only actual, paid production expenses or costs in the detailed cost report. The cost report must provide sufficient information so that an independent auditor can verify the production expenses or costs and determine whether such costs are allowed pursuant to the act and these regulations.

(b) Refunds, rebates, insurance claim recoveries, discounts, invoicing errors, returns and other such credits must be credited against the expenses or costs itemized in the 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) Production 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 12-217kk of the Connecticut General Statutes or any other section of the Connecticut General Statutes shall not be allowable.

(e) Expenses or costs related to the transfer of any tax credit shall not be allowable.

(NEW) Sec. 12-217ll-9. Scope of and procedures for audit

(a) The purpose of the independent audit is to provide assurances to the Commission that the production expenses or costs set forth in the detailed cost report have in fact been expended and are otherwise accurate and reasonable.

(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 the 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 applicant's digital animation production activity.

(c) The auditor's report shall state that the audit was conducted in accordance with this section and shall include or comply with the following:

(1) A schedule disclosing the applicant's non-compliance with any applicable law, regulation, provision of contracts or other agreements which could have a material effect on the expenses or costs reported in the detailed cost report;

(2) A schedule disclosing all sources of funds used by the applicant to finance the digital animation production activity 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 the 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 have demonstrated knowledge and familiarity with the accounting practices generally recognized in the digital animation or other media production industry and 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. 12-217ll-10. Disposition of application for tax credit vouchers

(a) The Commission shall review the application and the independent audit and evaluate whether the applicant has met the criteria set forth under sections 12-217ll-1 to 12-217ll-12, inclusive, of the Regulations of Connecticut State Agencies for issuance of digital animation tax credit vouchers. If the Commission determines that the applicant has met such criteria, it shall thereupon issue written tax credit voucher(s) which shall certify the total production expenses or costs substantiated to the satisfaction of the Commission and the amount of the tax credit(s) awarded.

(b) If the Commission determines after its evaluation that the applicant has not met the established criteria for issuance of tax credit vouchers, it shall notify the applicant in writing of the deficiencies in the application or audit and the remedial action, if any, that is required of the applicant before the Commission can act on the application for issuance of tax credit voucher(s).

(c) The Commission shall provide a unique identification number on each tax credit voucher issued which shall include a reference to the Commission's identification number assigned at the time the Commission's notice of certification as a state-certified digital animation production company was issued pursuant to the provisions of section 12-217ll-4 of the Regulations of Connecticut State Agencies.

(NEW) Sec. 12-217ll-11. 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. 12-217ll-12. Transfers of tax credits

(a) Tax credit vouchers may be sold, assigned or otherwise transferred by the applicant to one or more taxpayers, 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 assigned a tax credit must claim such assigned credit in the same income year that the applicant was eligible to claim the tax credit.

(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 12-217ll(b)(2) 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 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 information as the Commission may require.

(d) Failure to comply with all transfer notification requirements contained in section 12-217ll-12 of the Regulations of Connecticut State Agencies and subsection (d) of section 12-217ll 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 transfer, if requested by the Commissioner.

(e) Failure to comply with the time limitation for notice to the Commission of such transfer in subsection (b) of section 12-217ll-12 of the Regulations of Connecticut State Agencies and subsection (d) of section 12-217ll 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 tax credit 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 voucher evidencing such tax credits in the manner provided for in this section 12-217ll-12 of the Regulations of Connecticut State Agencies, subject to the limitation that no tax credit voucher 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 digital animation production company tax credit program established pursuant to sections 12-217ll et. seq. of the Connecticut General Statutes

CERTIFICATION

Be it known that the foregoing: (check one) ☒ Regulations ☐ Emergency Regulations

Are: ☒ Adopted ☐ Amended as hereinabove stated ☐ Repealed

By the aforesaid agency pursuant to:

☒ Section 12-217ll(h) of the General Statutes. (2008 Supplment)

☐ Section _____ of the General Statutes, as amended by Public Act No. _____ of the _____ Public Acts (enter year)

☐ Public Act Number _____ of the _____ (enter year) Public Acts.

(If applicable) **After publication in the *Connecticut Law Journal* on** July 15, 2008 (enter publication date) **of the notice of proposal to:**

☒ Adopt ☐ Amend ☐ Repeal **such regulations**

(If applicable) **And the holding of an advertised public hearing on** August 7, 2008 (enter date).

WHEREFORE, the foregoing regulations are hereby:

☒ Adopted ☐ Amended as hereinabove stated ☐ Repealed

EFFECTIVE: (check one, and complete as applicable)

☒ When filed with the Secretary of the State

(OR)

☐ The _____ day of _____ 20_____.

In Witness Whereof:	DATE 1-5-09	SIGNED *(Head of Board, Agency or Commission)*	OFFICIAL TITLE, DULY AUTHORIZED Executive Director
Approved by the Attorney General as to legal sufficiency in accordance with Section 4-169, as amended, of C.G.S.		SIGNED 1/5/09	OFFICIAL TITLE, DULY AUTHORIZED Assoc. Attorney General

For Regulation Review Committee Use Only

☐ Approved

☐ Disapproved

☐ Disapproved in part, *(Indicate Section Numbers disapproved only)*

☐ Rejected without prejudice

By the Legislative Regulation Review Committee in accordance with Section 4-170, as amended, of the General Statutes.	DATE	SIGNED *(Administrator, Legislative Regulation Review Committee)*

Two certified copies received and filed, one such copy forwarded to the Commission on Official Legal Publications in accordance with Section 4-172, as amended, of the General Statutes.

DATE	SIGNED *(Secretary of the State)*	BY

INSRUCTIONS

1. One copy of all regulations for adoption, amendment or repeal, except emergency regulations, must be presented to the Attorney General for his/her determination of legal sufficiency. (Section 4-169 of the General Statutes.)
2. Original and eighteen copies of all regulations for adoption, amendment or repeal must be presented to the standing Legislative Regulation Review Committee for its action. (Section 4-170 of the General Statutes.)
3. Each regulation must be in the form intended for publication and must include the appropriate regulation section number and section heading. (Section 4-172 of the General Statutes.)
4. Indicate by "(NEW)" in heading if new regulation. Amended regulations must contain new language in capital letters and deleted language in brackets. (Section 4-170 of the General Statutes.)
5. Additional information regarding rules and procedures of the Legislative Regulation Review Committee can be found on the Committee's web site: http://www.cga.ct.gov/rr/