

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the adoption of New) NOTICE OF PUBLIC HEARING ON
Rules I through XIV pertaining to the) PROPOSED ADOPTION
Montana Economic Development)
Industry Advancement Act (MEDIAA))

TO: All Concerned Persons

1. On April 8, 2020, at 1:30 p.m., the Department of Revenue will hold a public hearing in the Fourth Floor East Conference Room of the Sam W. Mitchell Building, located at 125 North Roberts, Helena, Montana, to consider the proposed adoption of the above-stated rules. The conference room is most readily accessed by entering through the east doors of the building. Visitors must check in at the customer service window on the third floor for access to the fourth floor.

2. The Department of Revenue will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, please advise the department of the nature of the accommodation needed, no later than 5 p.m. on March 20, 2020. Please contact Todd Olson, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-7905; fax (406) 444-3696; or todd.olson@mt.gov.

3. GENERAL STATEMENT OF REASONABLE NECESSITY The 66th Montana Legislature passed House Bill 293 (HB 293) which created the Montana Economic Development Industry Advancement Act (MEDIAA), which is codified as 15-31-1001, through 15-31-1012, MCA. The purpose of MEDIAA is to enhance Montana's economy by expanding film and related media production in the state, by increasing job opportunities for a broad array of workers, and by promoting the growth of small businesses. The objectives of MEDIAA stated in 15-31-1002(1), MCA, are achieved by offering tax incentives as provided in the Act.

The department proposes New Rules I through XIV to implement MEDIAA. The proposed new rules are necessary for the department to:

- (a) adopt definitions for new terminology established in, or as an extension of, MEDIAA;
- (b) provide procedural coordination and guidance with the Montana Department of Commerce (DOC) in its certification of a MEDIAA-compliant production;
- (c) provide department forms and uniform application processes through which production companies or postproduction companies may apply to the department to reserve the respective media production or postproduction tax credits;
- (d) determine qualified production expenditures allowed under 15-31-1007, MCA, and qualified postproduction wages allowed under 15-31-1009, MCA;
- (e) review taxpayer compliance with the provisions of 15-31-1004, MCA; and
- (f) administer the transfer of tax credits.

While this general statement of reasonable necessity covers the basis for the following proposed rule adoptions, it is supplemented below to explain rule-specific proposals.

4. The rules as proposed to be adopted provide as follows:

NEW RULE I DEFINITIONS The following definitions apply to terms used in this subchapter:

(1) "Credit base" means the qualified production expenditures base or compensation base used to calculate media production or postproduction tax credits.

(2) "Credit year" means the calendar year allocated to a tax credit.

(3) "Crew member" means a person hired by a production company or a hired production company, including production staff members, that is not an actor, director, producer, or writer, and who is directly participating in a state-certified production. An individual who receives compensation that is less than Montana minimum wage as described in 39-3-409, MCA, is not a crew member.

(4) "Employee" means the same as in 15-30-2501, MCA, and for purposes of these rules also includes an owner, partner, shareholder, or member of a loan-out company to the extent the individual performed personal services on behalf of a loan-out company.

(5) "Hired production company" means a company, including a loan-out company, hired to undertake production functions that are directly related to principal photography on behalf of a production company. A hired production company agrees to provide the production company with all necessary information and documentation for the calculation of media production or media postproduction tax credits. A hired production company does not include a travel agency, travel company, insurance agency, lodging service, or equipment rental service.

(6) "In-studio facility and equipment" means a permanent, enclosed building or structure that a production company rents for a "qualified production activity," as defined under 15-31-1003(16)(a) MCA. The facility must not be used exclusively for storage and the equipment must be provided by the party renting the facility.

(7) "Montana insurance agency" means an insurance company maintaining a permanent place of business in Montana that pays the Montana premium tax and meets the criteria as an authorized insurer, as provided in 33-2-705(4), MCA.

(8) "Montana office" means the principal place of business of the production company claiming the media production tax credit.

(9) "Montana travel agency" means an entity registered to do business in Montana as a travel agency and maintains a permanent place of business in the state.

(10) "Multi-year production" means a state-certified production that has principal photography occurring over two or more tax periods.

(11) "Permanent place of business in Montana" means a physical presence in Montana through which a business's activity is conducted. Non-exhaustive examples of permanent places of business in Montana are: an office, factory, store, workshop, warehouse, or similar commercial space. Further, a digital-only business

presence, such as the operation of a computer server, does not meet the necessary level of physical presence for these rules.

(12) "Personal service company" means a personal service corporation, as defined in IRC 269A(b), or any other entity meeting the principal activity and the ownership requirements of IRC 269A(b), and also includes a sole proprietorship or an individual being paid as an independent contractor.

(13) "Production company" means the same as provided in 15-31-1003, MCA, and for the purposes of these rules applies to an individual; a disregarded entity, a C corporation, or an S corporation, defined in ARM 42.2.304, including any affiliates required to submit a combined report under ARM 42.26.204, or in a consolidated return under 15-31-141, MCA; a partnership; an estate; or a trust. The production company must maintain a Montana office as provided in 15-30-1004(2)(b), MCA, for the duration of the production and must file a Montana income tax return, as required under Title 15, MCA, for the tax years it directly or indirectly incurs the expenses giving rise to the media production tax credit.

(14) "Series interim production period" means the period of time between two state-certified productions of the same production company.

(15) "Unique credit reference number (UCRN)" means the reference number generated by the department associated with a valid tax credit amount for a given credit year.

(16) "Wages" means the same as provided in 15-30-2501, MCA.

AUTH: 15-31-1012, MCA

IMP: 15-1-201, 15-31-1012, MCA

REASONABLE NECESSITY: In addition to the department's general statement of reasonable necessity, the department proposes New Rule I to provide necessary definitions for new terminology relating to the department's implementation of MEDIAA and to incorporate compliance terms related to the department's role in the administration of MEDIAA and Montana's revenue laws.

NEW RULE II MEDIA PRODUCTION TAX CREDITS - DETERMINATION OF CREDIT BASE (1) The media production tax credit is the sum of one or more of the production tax credits provided under 15-31-1007, MCA. The basis for each tax credit is determined separately.

(a) Production expenditures, as defined in 15-31-1003, MCA, include expenditures incurred by a production company or a hired production company, including preproduction expenses. Production expenditures paid to an entity which is also a loan-out company must be segregated from personal services as a separate item of expense. Production expenditures paid to another company, which is not a hired production company or a loan-out company, may be included regardless of whether the expenditures include compensation. The basis of an additional tax credit as provided in 15-31-1007(3)(b)(v) through (vii), MCA, may include the same expenditure used under 15-31-1007(3)(a)(i), MCA.

(b) Compensation, as described in 15-31-1003(3), MCA, can only be used in one of the credits provided in 15-31-1007(3)(b)(i) through (iv), MCA, and includes the portion of a payment to a loan-out company for personal services.

Compensation incurred in Montana within six months from the beginning of principal photography may be included.

(c) Payments to a loan-out company cannot be included in any credit base if the production company, its affiliate, or hired production company did not pay withholding on the compensation portion, as provided in 15-31-1003(3), MCA, and [NEW RULE III].

(2) If a production company or hired production company is organized as a corporation and files a combined report under ARM 42.26.204, or files a consolidated return under 15-31-141, MCA, the company may aggregate the production expenditures and compensation of its affiliates or subsidiaries in its credit base. A production company may not aggregate expenses incurred from entities in which they own an interest - including partnerships - unless the entity is disregarded for federal tax purposes under CFR 301.7701-1, 301.7701-3, and 301.7701-5, or the entity is a hired production company. A production company must disclose to the department the names and federal identification numbers of all disregarded entities, affiliates, and hired production companies for each category of expenses included in the credit base. No tax credits shall be allowed for expenses incurred by an undisclosed hired production company.

(3) To be included in the base investment and in the credit base, production expenditures and compensation must directly relate to a state-certified production's qualified expenditures.

(4) Production expenditures representing the cost of tangible personal property used in a state-certified production in Montana may be included under the following conditions. For these purposes, "used in a state-certified production" means a production physically located in Montana during principal photography, but not during any series interim production period.

(a) The cost of acquiring personal property with a useful life of less than a year through a vendor that has a permanent place of business in Montana may be included in qualified expenditures. Personal property acquired through a vendor that acts like a conduit to enable purchases that would otherwise not qualify as an expenditure incurred in Montana shall not qualify as a production expenditure. All other costs for the use of personal property with a useful life of less than one year shall not qualify as a production expenditure.

(b) If the personal property has a useful life of more than one year, production expenditures are allowed for the lesser of the depreciation cost taken on the production company's federal income tax return for the tax year or tax years when principal photography occurs, or the yearly depreciation calculated using the straight-line method multiplied by the number of days the personal property was used in the state-certified production divided by 365.

(5) When a production company owns or leases vehicles and uses the optional standard mileage rate to account for transportation costs in lieu of actual costs and depreciation on their income tax return, then the same method is used for the inclusion of such costs in production expenditures. Regardless of the method used, miles or distance traveled must be in Montana - even if the out-of-state destination is part of the same production - and is directly related to the state-certified production.

(6) Production expenditures for services not included in compensation may be included in production expenditures as follows.

(a) Equipment rentals, including the cost of placing the equipment in service, must be made through a vendor that has a permanent place of business in Montana. All other rental equipment or services do not qualify as production expenditures.

(b) Costs directly related to the manufacturing, assembly, or alteration of costumes, wardrobe, or accessories completed in Montana. Costs for out-of-state services provided shall not be included - even if the products are being shipped or transported to Montana.

(c) Shipping or transportation costs for equipment used in a state-certified production for transport between an original storage location and the Montana production location only; and only when the transportation service provider maintains a permanent place of business in Montana. All other shipping or transportation costs may not be included.

(d) Cost of airfare purchased through a Montana travel agency for employees to the extent that the purpose of the travel is directly related to the state-certified production. Airfare purchased to attend to business that is not related to the state-certified production, airfare that is not related to the state-certified production, airfare for personal reasons, and airfare not purchased through a Montana travel agency shall not be included - even if directly related to a state-certified production.

(e) Insurance purchased through a Montana insurance agency for any tangible personal property or real property in Montana, or for an activity directly related to the state-certified production. If the insurance pertains to a combination of state-certified production and nonstate-certified production purposes, costs that may be included are expenses incurred in the tax year multiplied by the number of days used in the state-certified production divided by the total number of days for the insurance coverage in the tax period.

(f) Per diem or actual cost for meals and lodging as set forth by the United States General Services Administration to the extent the per diem can be taken as a business deduction on the income tax return of the production company, its affiliate, or hired company.

(g) The cost of lodging or housing paid in Montana to accommodate crew members, employees, actors, directors, writers, and producers to the extent the lodging facility is subject to the Montana lodging tax, as provided under 15-65-111, MCA, or is rental housing. Rental housing must be substantiated with a copy of the signed lease or rental agreement identifying the name and address of the landlord, the address of the rental, the stated term of the rental, and the rental amount. The cost of lodging or housing in Montana to accommodate individuals involved directly or indirectly in the marketing function of the state-certified production shall not be included.

(h) Entertainment expenses shall not be included.

(7) Preproduction expenditures may be included:

(a) in the first tax year's expenditures if they are attributable to production expenditures and compensation incurred no more than six months prior to production certification by the Montana Department of Commerce and do not include any compensation of crew members, actors, directors, writers, or producers.

(b) in the production expenditures of the second state-certified production for series interim production period. Series interim production expenditures include only the cost of safe storage of sets and equipment and do not include the cost recovery of stored material.

(8) Compensation paid to crew members, actors, writers, producers, and directors who are employees of the production company, one of its affiliates, or a hired company for personal services rendered in a state-certified production must conform with the applicable individual income tax and estimated tax and withholding requirements provided in 15-30-2501, et. seq., MCA, and the department's administrative rules, to be eligible for inclusion in the base investment or the compensation credit base.

(9) The residency status of crew members on their first day of work in a state-certified production must be reported to the department on a department form. The residency status on the first day of work of an employee on a state-certified production determines whether the production company may include the compensation paid to the employee in the credit base for resident crew members or nonresident crew members.

(10) Fringe benefits paid directly by the production company, one of its affiliates, or a hired production company may be included in compensation if they are directly related to the personal services performed in a state-certified production. Fringe benefits corresponding to compensation provided by a loan-out company may be included in a compensation credit base only if the withholding in [NEW RULE III] was applied to the compensation. Fringe benefits may be included as compensation without being subject to the loan-out withholding requirement. Fringe benefits such as contributions to qualified plans or other expenses incurred under a qualified deferred compensation plan paid for the benefit of employees may be included based on the annual total contributions or deductible expenses, for tax purposes, multiplied by the number of days of personal services rendered in a state-certified production over a given year.

(11) Production expenditures and compensation included in a credit base, whether incurred by the production company, an affiliate, or a hired company, must be added as additional income to federal adjusted income in calculating the Montana net income of the production company that files a claim for the media production tax credit. This inclusion must be made in the tax year the production expenditures were incurred and compensation was paid.

(12) If production expenditures or compensation are excluded from the base investment or a credit base after the production company files its income tax return, the production company may amend its return or informational return to make an adjustment to the addition of income and claim a refund within one year of the final exclusion determination. If the production company makes an election as provided in [NEW RULE VI], this addition to federal adjusted income must be made on the return of the second tax year that is part of the election.

(13) The inclusion of production expenditures in Montana net income does not create any change in depreciation or amortization recovery schedules for future tax years.

AUTH: 15-31-1012, MCA

IMP: 15-1-201, 15-31-1012, MCA

REASONABLE NECESSITY: In addition to the department's general statement of reasonable necessity, the department proposes New Rule II to provide certain requirements in the department's determination of media production tax credits.

Section (1) is necessary to describe how expenses incurred by a production company may be allocated to the credit base used to claim the tax credit. Section (1) also states that hired companies' expenses are included in the process. Compensation paid to loan-out companies cannot be included in any base if the income tax under NEW RULE III is not withheld.

Section (2) is necessary to include affiliate expenses in the credit base, but to exclude pass-through entities' expenses when the production company owns an interest, unless a pass-through entity is a hired production company or is disregarded for federal income tax purposes. This necessary provision reduces potential abuse by limiting the scope of expenses to entities that are directly involved in the state-certified production. This section also requires that production companies disclose their affiliates, disregarded entities, and hired production companies to comply with 15-31-1003(10)(b), MCA. This section reasonably proposes to deny the tax credit for expenditures that are not clearly attributed to a hired production company.

Section (3) is necessary to state the general principle of inclusion of production expenditures in a credit base. This section emphasizes the direct relationship between the expenditures and the production activity. This section clarifies what "directly used for" means under 15-31-1003(11)(a), MCA, and the broad category of production expenditures under 15-31-1003(11)(a)(xii), MCA.

Section (4) pertains to the necessary method for the inclusion of tangible personal property costs. A distinction is made between personal property with a useful life of less than one year and that with more than one year under 15-31-1003(11)(a)(xii), MCA. Personal property with a useful life of less than a year must be purchased in Montana to comply with the statutory requirement of incurring the expense in the state. For personal property with a useful life of more than one year, costs must be construed as recovery costs even if the personal property was not acquired in Montana. The first principle is to make the inclusion of such property limited to the lesser of the cost recovery claimed on the tax year tax return or the straight-line depreciation method. The second limit reduces the inclusion to the number of days the personal property is directly used for the production during principal photography. This section also clarifies the necessity to limit the inclusion under 15-31-1003(11)(a)(xii), MCA, based on the application of (3). Specifically, expenditures for personal property acquired through other means, such as vendors acting as a conduit to circumvent the statute, are specifically excluded as production expenditures.

Section (5) provides the department's proposed approach to determine travel costs as qualified production expenditures. Since travel expenditures to Montana are likely, the department finds it necessary to propose methods that a production company must use to include travel costs as qualified expenditures and reiterate that travel must be directly related to the state-certified production.

Section (6) is necessary to explain how services that are not included in a compensation credit base may still be included in the production expenditures base if the expenditures economically benefit Montana businesses servicing a state-certified production. It is also necessary to provide the exclusion of expenses, when applicable, that are not directly related to a state-certified production.

Section (7) is proposed to include preproduction expenditures in the production expenditures base if incurred within six months of the production certification by the DOC. Section (7) also provides necessary guidance for production companies regarding permissible series interim production expenditures and the exclusion of compensation from preproduction expenditures for crew members, actors, directors, writer, or producers if similarly stated as production expenditures and compensation. Preproduction compensation does not result in the issuance of a call sheet.

Section (8) clarifies the necessity for a production company, one of its affiliates, or a hired company to comply with Montana's applicable individual income tax and estimated tax and withholding requirements for the compensation to be eligible for inclusion in a compensation base. The tax reporting and withholding compliance maintains a production company's good standing, as described in 15-31-1003(10)(b), MCA.

Section (9) requires a minimal, required process for a production company to provide its employees and the department with information regarding crew members' residency when a crew member changes their residency status during principal photography. Determination of residency is required in order to apply the compensation credit rates and thresholds under 15-30-1007(3)(b)(i) and (ii), MCA.

Section (10) is necessary to clarify that fringe benefits may be included in a compensation credit base only when the compensation paid to a loan-out company was subject to loan-out withholding. In addition, (10) limits contributions to retirement plans to the portion directly related to the personal services rendered in a state-certified production.

Sections (11) and (12) are necessary to clarify the scope of the inclusion of expenditures and compensation expenses in gross income. Section (11) clarifies when a production company acts through a hired production company and does not have nexus with Montana for income tax purposes, the hired production company must include the cost of expenditures and compensation in net income. Section (12) also provides a reference for the inclusion when an election under NEW RULE VI is made.

Section (13) is necessary to clarify that the inclusion of expenditures such as the recovery of capital assets costs does not create any change in the computation of recovery schedules.

NEW RULE III REQUIRED INCOME TAX WITHHOLDING ON COMPENSATION PAID TO A LOAN-OUT COMPANY (1) In accordance with 15-31-1003(3)(c), MCA, and to be considered for inclusion in a production company's compensation base for a state-certified production, all production company personal services payments to any loan-out company must withhold Montana income taxes at the rate of 6.9%. The production company or its agent, affiliate, or hired production company may perform the act of withholding. The

income tax withholding applies to payments made to a loan-out company that is related to personal services performed during a calendar year and must be paid by January 31 of the following year.

(2) The income tax withholding must be calculated for an employee of the loan-out company using the allocable amount of time the employee performed personal services in Montana.

(3) When the loan-out company payment involves more than one employee, the payment must be divided equally between all employees based on the total number of days of personal services rendered unless otherwise specified in the contract between the production company and the loan-out company.

(4) An allocation for the loan-out company payment attributable to the personal services rendered in Montana must be determined by making the following deductions, where applicable, from the total payment made to the loan-out company:

(a) personal services performed in another state;

(b) personal services performed in Montana for a production that is not a state-certified production;

(c) fringe benefits paid directly by the production company, its agent, its affiliate, or its hired production company; and

(d) payments not related to personal services such as but not limited to:

(i) rental of tangible personal property;

(ii) residuals or profit-sharing payments; or

(iii) royalty and image rights.

(5) A production company, hired production company, or their agent must electronically file the loan-out withholding report with the department using the department's online portal and according to department procedures. When a hired production company contracts with a loan-out company, all the withholding payments must be aggregated under the account of the production company.

(6) A loan-out company withholding report is due with payment of the withholding tax by January 31 of the calendar year following the year an employee of the loan-out company provided services to the hiring production company. If the withholding tax is not paid by January 31 of the calendar year following the year the hiring production company made a payment to the loan-out company which is included in a compensation base of a state-certified production, then the department shall apply penalties and interest, as provided in 15-1-216, MCA.

(7) Upon filing the loan-out company income tax withholding report and withholding tax payment with the department, the production company must issue a withholding certificate, for each employee to whom withholding tax is allocable on the report.

(a) Employees of a loan-out company must receive their withholding certificates no later than February 28 of the year following the calendar year the personal services were performed. The withholding certificate must include the name and address of the employee, the certification number of the production, the year for which the withholding applies, and the amount of withholding that may be claimed as a tax credit against Montana individual income tax.

(b) For audit purposes, an employee must keep the withholding certificate for a minimum of three years following the date of filing a Montana individual income tax return.

(8) An employee may claim the reported income tax withheld as a refundable tax credit by filing a Montana individual income tax return. The refund amount claimed cannot be more than the amount of withholding paid and attributed to the employee on the loan-out company withholding report, even if the certificate shows a greater amount. In the event of an error on an employee's withholding certificate, the employee and their employer must resolve the error and the employee must receive a corrected certificate.

(9) A loan-out company may reduce its wage withholding payment pursuant to 15-30-2502, MCA, and related rules, on wages paid to its employees that rendered services to a state-certified production by a maximum of the amount resulting from the calculations described in this rule. If the loan-out income tax withholding is not paid to the department, the reduction of wage withholding based on prospective qualified compensation does not relieve the loan-out company from its obligations under 15-30-2502, MCA, nor the employee from their obligation under 15-30-2512, MCA, and related penalties and interest.

AUTH: 15-31-1012, MCA

IMP: 15-1-201, 15-31-1012, MCA

REASONABLE NECESSITY: In addition to the department's general statement of reasonable necessity, the department proposes New Rule III to implement and provide guidance on the income tax withholding required on production company payments to loan-out companies to make such payments eligible for inclusion in a compensation base.

Section (1) is necessary to support the statutory requirement for production company payments to loan-out companies and to authorize agents of production companies, affiliates, or hired companies to apply the withholding on behalf of the production company. In addition, (1) provides the payment must be made by January 31 of the year following the year the payments to the loan-out company or the penalties under 15-1-216, MCA, will begin.

Sections (2) through (5) are necessary to clarify how the production company or its agent must withhold, and the sections describe income tax withholding reporting requirements which are consistent with other employers conducting business in Montana. The rule sections provide a core process for determining withholding by deducting any amount that is not directly associated with compensation in a state-certified production and provide that income tax withholding does not apply to fringe benefits paid directly by the production company, affiliates, or a hired company.

Section (6) is necessary to state that a withholding report is due, when it is due, and when penalties and interest begin to be assessed. The date of January 31 aligns the report with the required payment of income tax withholding.

Sections (7) and (8) are necessary to require an informational withholding certificate for employees, provide guidance of informational requirements for a withholding certificate, and provide recordkeeping standards in the event of a department audit. The withholding certificate information may also be used by an employee of a loan-out company to claim the income tax withheld as a refundable tax credit for the year specified on the certificate.

Section (9) is proposed as a necessary explanation of compliance with the statutory wage-based requirements of 15-31-1003(3)(c), MCA.

NEW RULE IV BASE INVESTMENT REQUIREMENT; ELECTION TO COMBINE NONQUALIFYING PRODUCTIONS (1) If a production company initiates more than one state-certified production in a single tax year and one or more of them do not meet the base investment requirement, as provided in 15-31-1005(1), MCA, the production company may elect to combine nonqualifying productions occurring in the same tax year to qualify all of the combined state-certified productions for the base investment requirement. This election is made on the media production tax credit application. When this election is made, all production expenditures must be combined into the base investment as if a single production had been certified; and the limitations to the media production tax credit apply only once on the total amount of base investment and credit base. If the production company claims the Montana screen credit under 15-31-1007(3)(b)(viii), MCA, on a base investment of combined state-certified productions, the screen tax credit provided under 15-31-1004(7), MCA, must appear on all of the media resulting from the combined productions. This production election is made prior to the election stated in [NEW RULE VI(2)].

(2) When a production company elects to combine nonqualifying productions under this rule, the production company will receive only one UCRN for the combined state-certified productions, per credit year.

AUTH: 15-31-1012, MCA

IMP: 15-31-1012, MCA

REASONABLE NECESSITY: In addition to the department's general statement of reasonable necessity, the department proposes New Rule IV to implement and provide a process for combining two or more state-certified productions to meet the base investment requirement for the combined productions in the event one of the productions does not meet the base investment estimated during the certification process. This rule proposes a solution to likely occurrences and seeks to prevent unnecessary repetition of the state certification process.

NEW RULE V TAX CREDIT FOR POSTPRODUCTION WAGES – CREDIT BASE (1) The credit base for the postproduction tax credit equals the sum of hourly wages directly incurred in Montana for state-certified postproduction activities during a tax year. Postproduction activities related to a state-certified production begin on the day following the last day of principal photography in Montana. Postproduction activities performed in Montana for photography performed outside Montana qualify regardless of the date of principal photography.

(2) When an employee is paid an hourly wage, the postproduction company must provide an hourly cost of the employee compensation based on a regular work week. No wages may be included in the postproduction credit base if the same wages are already included in a production credit base.

(3) The postproduction tax credit cannot exceed the total amount of compensation paid to postproduction company employees for personal services

performed in Montana. For the purpose of this rule, compensation paid includes compensation paid in the first month following the tax year in which the wages included in the postproduction credit base were incurred.

(4) To be included in the postproduction credit base, postproduction wages must be directly related to a state-certified production. A wage is directly related to a qualified postproduction activity when the personal services rendered by the employee are necessary for the completion of the postproduction activity, as defined under 15-31-1003(13), MCA. Administrative activities of the postproduction company such as secretarial, accounting, human resources, or marketing services are not directly related to qualified postproduction activities.

(5) The postproduction company must maintain current and ongoing paper or electronic employee timekeeping records of the hours spent by an employee on the state-certified postproduction activity. If no such records are kept, the employee wages shall be excluded from the postproduction credit base. Timekeeping records must contain the name of the employee, job title or work function, days and number of hours worked each day on a state-certified production, and the work location.

AUTH: 15-31-1012, MCA

IMP: 15-31-1012, MCA

REASONABLE NECESSITY: In addition to the department's general statement of reasonable necessity, the department proposes New Rule V to provide what expenses may be included in the base of the postproduction tax credit.

Section (1) provides the circumstances when postproduction expenditures qualify in a state-certified production.

Section (2) provides calculation guidelines for when employees are not paid on an hourly basis.

Section (3) proposes a solution to avoid timing issues of regular and normal payroll practices for compensation incurred in one tax year but paid in the first month of the next tax year, which could disqualify a postproduction company from applying for the postproduction tax credit.

Section (4) provides additional regulatory guidance for wages to be directly related to postproduction activities. Production companies that have activities extending beyond the postproduction of media will not be able to include wages paid for other purposes as a qualified expenditure.

Section (5) provides minimum record keeping requirements that the department contends are necessary, relatively simple, and are usually kept and maintained in the ordinary course of business.

NEW RULE VI CREDIT YEAR (1) The credit year of a media production or postproduction tax credit is the calendar year in which the tax year of the production company or the postproduction company applying for the tax credit according to [NEW RULE VII], or [NEW RULE VIII] begins, except when:

(a) The department receives the submission of costs, required under 15-31-1005, MCA, more than 60 calendar days after the end of principal photography or after the end of the tax year if the production is a multi-year production. In this case, the credit year is the calendar year following the calendar

year in which the tax year of the production company or the postproduction company incurring the expenses begins.

(b) A production company makes an election as described in (2), in which case the credit year may not be earlier than the calendar year in which the second tax year begins; or

(c) The tax credit limit provided in 15-31-1010, MCA, is reached and the tax credit is allocated to a subsequent credit year.

(2) Applications in [NEW RULE VII] and [NEW RULE VIII] must be made for the tax year when the qualifying expenditures were incurred and qualifying compensation was paid. When a production company undertakes a state-certified production overlapping two tax years, the production company may elect to apply the entire base investment and credit base from the first tax year to the second tax year. When the production company makes this election:

(a) the election in [NEW RULE IV] must be applied before any election under this section is made.

(b) the provision in (1)(a) applies based on the second tax year.

(c) a single media production tax credit application is required. This election must be made on a media production tax credit application.

(d) no UCRN will be issued for the first tax year.

(3) For the purpose of providing additional credit year guidance to production companies, the department provides the following example:

Example: A production company has two separate state-certified productions occurring in calendar year 2021, but with principal photography for the second production scheduled to end in calendar year 2022. If the base investment for the first production does not qualify for the media production tax credit, then the production company may elect not to file a media production tax credit application and, alternately, combine both productions into one multi-year state-certified production, as provided in [NEW RULE IV]. In this case, the production company combines its production expenditures incurred and compensation paid in 2021 and 2022, makes the election as provided in [NEW RULE VI], and submits one media production tax credit application to the department for both productions. The application is filed 61 days after the conclusion of the second production's principal photography. The result is that the entire tax credit may be reserved for tax year 2023, at the earliest, as long as the overall calendar year credit limitation in 15-31-1010, MCA, is not reached.

AUTH: 15-31-1012, MCA

IMP: 15-31-1012, MCA

REASONABLE NECESSITY: In addition to the department's general statement of reasonable necessity, the department proposes New Rule VI to connect production expenditures and compensation and applicable tax years to the tax credit limit in 15-31-1010, MCA, which is based on a calendar year. Section (1) also clarifies how the department will apply the 60-day submission deadline under 15-31-1005, MCA.

Section (2) provides an election allowing a production company to file one application for state-certified productions that overlap two calendar years. This is necessary to simplify the application process and reduce inefficiencies.

The department provides an example in (3) of the circumstances that this rule proposes to address, and to support the necessity of the rule.

NEW RULE VII MEDIA PRODUCTION TAX CREDIT APPLICATION (1) To reserve a media production tax credit, a production company must submit a media production tax credit application (application) on a form provided by the department, including all supporting documentation provided in this rule, with payment of the fee required under 15-31-1005, MCA. The department will not consider an application "filed" until:

(a) the production company, including its affiliates if the production company is a C corporation, in the state-certified production complies with 15-31-1003(10), MCA;

(b) the production company has paid the required fee; and

(c) the supporting documentation for the application is complete, legible, and is presented in an orderly manner.

(2) The fee required under 15-31-1005, MCA, is due, in full, with each new application. Any submission of an application associated with another state-certified production, even for the same tax year, constitutes a new application and is subject to another fee. Providing additional documentation after an application is submitted to complete a department request does not constitute a new application.

(3) The application must be filed by the date provided in 15-30-2604, MCA, following the end of the tax year the expenditures were incurred and compensation was paid, or the following tax year if an election pursuant to [NEW RULE VI(2)] is made. For the purpose of this section, production expenditures and compensation incurred between July 1, 2019 and the first day of the tax year beginning in 2020 are deemed to have occurred in tax year beginning in 2020.

(4) Production companies with a multi-year production must file the media production tax credit application and pay the required fee for each tax year any base investment expenses are incurred, except:

(a) for tax years beginning after June 30, 2019, but before January 1, 2020, which must be filed with the media production tax credit application pertaining to expenditures incurred and compensation paid in tax years beginning in 2020; or

(b) if an election pursuant to [NEW RULE VI](1) or (2) is made. If so, the production company must pay the required fee for each base investment reported on the application before any election is made.

(5) An application is considered "submitted" on the day the department receives all of the information, documents, and fee described in (1) from the applicant submitted via the department's online portal, and according to department procedures. A "complete" application includes:

(a) a submission of costs, as provided in 15-31-1005, MCA, which includes a list of all the affiliates or hired production companies that incurred the qualifying production expenditures and compensation paid included in the production credit base.

(b) a production verification report, as required by 15-31-1006, MCA.

(c) detailed information on production expenditures incurred in Montana and directly used for the qualified production activity, including:

(i) the total expenditures incurred for each category of production expenditures listed in 15-31-1003(11)(a), MCA;

(ii) all receipts for expenses, in order, using account identification numbers provided by the department in the submission of costs and presented by each account in decreasing amounts of expenditures. All the receipts must include the account to which they relate. Additionally, receipts related to payments made to a Montana college or university, expenses incurred towards an in-studio facility in Montana for 20 days or more, and expenses incurred in underserved areas, must be clearly identified with a notation of "college," "in studio," or "underserved" on the first page of the receipt.

(iii) copies of all the call sheets related to compensation of employees whether they are employees of the production company or a loan-out company.

(iv) detailed amounts of withholding applied to loan-out company employees as listed on the loan-out company withholding report.

(v) copies of contracts with any loan-out companies pertaining to any inclusion of compensation in the base investment and production credit base.

(vi) copies of any agreements with any loan-out company employees pertaining to their personal services performed on behalf of the loan-out company.

(vii) copies of department Form MEDIA-COMP referencing the state-certified production and the status of each employee of a production company, hired production company, and loan-out company.

(6) Any application or submission of costs information presented to the department in a disorganized or unsystematic manner, or where source documents, receipts, and other support documents are provided in an unprepared format, will be deemed "insufficient for review" by the department and will be returned to the production company. In this case, the statutory fee will not be refunded. However, a subsequent, acceptable submission of costs will not require a second payment of the fee.

(7) If the department accepts the application for review but determines that additional documentation is necessary to correct or complete the application, it will send one written request for additional information to the applicant, or its designated, authorized representative.

(a) The department's correspondence will list the deficiencies of the items required under (5) and provide the applicant or its authorized representative 30 days to cure all deficiencies.

(b) Failure by the applicant or its authorized representative to provide the requested items within the time prescribed in (7)(a) may result in the denial of the application and the return of all application materials to the applicant. In this case, the statutory fee will not be refunded by the department.

(8) At its discretion, but not earlier than the 30-day period described in (7)(a), the department may adjust the amount of media production tax credit or base investment, or both, if the applicant is unable to provide records substantiating the inclusion of the expense in the base investment or as a qualifying expense for the calculation of the media production tax credit. Any downward adjustment to a base investment by the department is not considered a denial or a return of the

application or submission of costs. In this case, the statutory fee will not be refunded by the department.

(9) The production company is responsible for keeping records or substantiating evidence of all production expenditures and compensation payments. Copies of the media production tax credit documentation organized in the same manner as described in (5) must be provided to the certified public accountant preparing the production verification report, required under 15-31-1006, MCA.

AUTH: 15-31-1012, MCA

IMP: 15-1-201, 15-31-1012, MCA

REASONABLE NECESSITY: In addition to the department's general statement of reasonable necessity, the department proposes New Rule VII to establish a media production tax credit application process, including processes to support data collection and tax credit reservation systems to apply the overall tax credit limitation based on a calendar year. Sections (1) through (5) are necessary to determine submission criteria for the application, the contents of the application, and the amount of necessary and relevant supporting documentation for the department to meet its statutory review of the submission of costs. An application will be considered filed on the day it is complete and received by the department. An incomplete submission of costs will not create a reservation of a tax credit.

Sections (6) through (9) are necessary to provide a concise process for the department to accept an application and process its review, establish clear timelines for the applicant and the department regarding fulfilling requests for additional information, and reflect department authority to adjust the amount of media production tax credit or base investment, or both, if it is believed the application or disclosures are erroneous or lack substantiation for the requested tax credits.

NEW RULE VIII POSTPRODUCTION TAX CREDIT APPLICATION (1) To reserve a postproduction tax credit, the postproduction company must submit a media postproduction tax credit application to the department, using the department's online portal and according to department procedures, each tax year the postproduction company is certified by the Montana Department of Commerce, including all supporting documentation provided in this rule, with payment of the statutory fee required under 15-31-1005, MCA. The media postproduction tax credit application will not be considered "filed" until:

(a) the postproduction company, including its affiliates if the postproduction company is a C corporation, taking part in the state-certified postproduction complies with 15-31-1003(8), MCA;

(b) the postproduction company has paid the required fee; and

(c) the application includes the documentation required in this rule presented in an orderly manner.

(2) The fee required under 15-31-1005, MCA, is due with each new submission of the postproduction tax credit application.

(3) The postproduction tax credit application must be filed by the 15th day of the fourth month following the end of the tax year the qualified wages were incurred. For the purpose of this section, qualified wages incurred from July 1, 2019 until the

first day of the tax year beginning in 2020 are deemed to have occurred in the tax year beginning in 2020.

(4) A postproduction tax credit application is considered "submitted" when the following documentation is received by the department:

- (a) the items described in (1) and (2);
- (b) the verification report conforming to the requirements under 15-31-1006, MCA;
- (c) a list of all the affiliates that incurred the qualifying wages paid included in the postproduction credit base; and
- (d) a detailed listing of employee names, individual tax identification numbers, Montana wages paid, and the nature of the personal services rendered by the employee.

(5) Any application or submission of costs information presented to the department in a disorganized or unsystematic manner, or where source documents, receipts, and other support documents are provided in an unprepared format, will be deemed "insufficient for review" by the department and will be returned to the applicant, or its designated, authorized representative. In this case, the statutory fee will not be refunded. However, a subsequent, acceptable submission of costs will not require a second payment of the fee.

(6) If the department accepts the application for review but determines that additional documentation is necessary to correct or complete the application, it will send one written request for additional information to the applicant, or its designated, authorized representative.

(a) The department's correspondence will list the deficiencies of the items required under (4) and provide the applicant or its authorized representative 30 days to cure all deficiencies.

(b) Failure by the applicant or its authorized representative to provide the requested items within the time prescribed in (6)(a) may result in the denial of the application and the return of all application materials to the applicant. In this case, the statutory fee will not be refunded by the department.

(7) The department may adjust the amount of tax credit reported on the application if the claimant is not able to provide records substantiating the inclusion of the wages in the credit base before the closure of the verification period, but not earlier than 30 days after a department's information request. Any downward adjustment to a base investment by the department is not considered a denial or a return of the submission costs. The statutory fee is not refundable.

(8) The postproduction company is responsible for keeping records of all substantiating evidence of payment of compensation. Copies of the tax credit documentation, organized in the same manner as described in (5), must be provided to the certified public accountant verifying the costs and the calculation of the tax credit.

AUTH: 15-31-1012, MCA
IMP: 15-1-201, 15-31-1012, MCA

REASONABLE NECESSITY: In addition to the department's general statement of reasonable necessity, the department proposes New Rule VIII to

establish a postproduction tax credit application process, including processes for and supporting data collection and tax credit reservation system to apply the overall tax credit limitation based on a calendar year. Sections (1) through (5) are necessary to determine submission criteria for the application, the contents of the application, and the amount of necessary and relevant supporting documentation for the department to meet its statutory duties in MEDIAA. An application will be considered filed on the day it is complete and received by the department. An incomplete submission will not create a tax credit reservation.

Sections (5) through (8) are necessary to provide a concise process for the department to accept an application and process its review, establish clear timelines for the applicant and the department regarding fulfilling requests for additional information, and reflect department authority to adjust the amount of postproduction tax credit or base investment, or both, if it is believed the application or disclosures are erroneous or lack substantiation for the requested tax credits.

NEW RULE IX CERTIFIED PUBLIC ACCOUNTANT VERIFICATION REPORT

(1) For the purpose of complying with 15-31-1006(3)(a), MCA, the verification report must include sufficient detail for the department to verify the accuracy of the expenditures and compensation used in the computation of any production or postproduction credit base or base investment, as described in this subchapter, and that the application is free from material misstatements.

(2) The verification report described in 15-31-1006, MCA, must be issued by a certified public accountant (CPA) authorized to practice in Montana who must be unrelated to the production or postproduction company filing the media credit application to which the verification report relates.

(a) The CPA certification that a person is unrelated, as required under 15-31-1006(2)(a), MCA, must also include the disclosure of any transactions for which the CPA has been retained as a consultant or an intermediary pertaining to any future transfers of the tax credit; including name and address of the parties.

(b) "Unrelated" means that the CPA is not:

(i) an employee of the production or postproduction company;

(ii) a holder of an interest directly or indirectly in the production or postproduction company. An indirect interest is an interest held by a spouse, lineal ascendant, lineal descendant, siblings, including step-brothers or step-sisters, step-children and step-grandchildren;

(iii) an employee of a firm, if one of the owners or associates of the firm holds direct or indirect interest in the production or postproduction company; or

(iv) a recipient of compensation for the verification of the costs that is not commensurate with industry standards.

(3) The verification report must be submitted to the department through its online portal and must meet the requirements under 15-31-1006, MCA.

AUTH: 15-31-1012, MCA

IMP: 15-1-201, 15-31-1012, MCA

REASONABLE NECESSITY: In addition to the department's general statement of reasonable necessity, the department proposes New Rule IX to

establish guidance and compliance requirements in the preparation of the CPA verification reports and to define "unrelated," which is necessary for the department to implement and administer 15-31-1012, MCA.

NEW RULE X OVERALL CALENDAR YEAR LIMITATION (1) The tax credit limit in 15-31-1010, MCA, applies to the aggregate amount of production and postproduction tax credits issued in Montana for a credit year.

(2) The aggregate amount of tax credit reserved is determined in the following order:

(a) A production or postproduction company reserves the tax credit for a credit year as determined in [NEW RULE VI].

(b) A credit is reserved on the date a complete media tax credit application is filed based on the amount requested on the application.

(c) Amounts reserved are aggregated on a "first-come, first-served" basis for each tax credit year until the tax credit limit amount in 15-31-1010, MCA, is reached. If two or more production companies file their media production tax credit application simultaneously, or if tax credit reservations are postponed on the same day to a credit year according to (d), priority will be given to the production company with the lesser base investment.

(d) Any amount reserved in excess of the overall limitation amount for a given credit year must be included in the aggregate credit amount of the earliest following credit year for which the total amount of credit reserved is less than the applicable overall limitation amount for that year. If, after review by the department, a reserved credit amount for a given credit year is not issued, the difference between the total credit amount reserved and the amount issued may only be used for credit amounts reserved but not yet issued on a first-come, first-served basis.

(e) Once a credit amount is verified and a final determination is reached, the amount of tax credit reserved becomes issued for the credit year allocated according to this rule.

(f) The credit year of a media production tax credit issued cannot be changed.

(g) The department will provide contemporaneous information to the Montana Department of Commerce to update the amount of tax credit reserved on its website.

(3) To conform with 15-31-1010(2)(b), MCA, when a credit year for a certain tax credit amount is postponed one year because the total reserved amount of tax credit exceeds the overall limitation amount for that calendar year, the carryover period provided in [NEW RULE XII] is reduced by one year. This reduction must be indicated in the UCRN associated with the tax credit as described in [NEW RULE XI]. Once the carryover period is reduced to zero because the reserved tax credit was in excess of the tax credit limitation amount for five consecutive years, any amount of reserved tax credit in excess of the total credit amount for the fifth year following the initial credit year of media tax credit application will be denied.

AUTH: 15-31-1012, MCA

IMP: 15-1-201, 15-31-1012, MCA

REASONABLE NECESSITY: In addition to the department's general statement of reasonable necessity, the department proposes New Rule X to provide terms as to how the overall calendar year limitation will be applied. Section (1) states the limitation applied to the total of production and postproduction tax credits for a credit year. Section (2) describes how the total tax credit amount is determined, and in which order. Section (3) clarifies the effect of reaching the tax credit limitation on the tax credit reserved.

NEW RULE XI VALIDATION OF TAX CREDIT - APPEAL RIGHTS (1) For each media production or postproduction tax credit application, the department must review and validate tax credit amounts that are allowed to be claimed against Montana income tax liability. Each tax credit amount validated for each state-certified production must be assigned a UCRN. If a tax credit amount is allocated to several credit years, a UCRN must be issued for each credit year. The tax credit is considered issued on the date the UCRN is issued to the applicant.

(2) If, upon the review of the production media tax credit application, the department adjusts the tax credit amount claimed and reserved, the department must provide the applicant with a written justification of the reasons for any adjustment. The applicant has 30 days from the date of the adjustment letter to accept or appeal the department's adjustment, as provided under 15-1-216, MCA. Once a final determination is made, the department will issue the appropriate tax credit as provided in (1).

(3) If the applicant does not appeal the department's adjustment, the adjustment becomes the department's final determination for the tax credit amount. The applicant may inform the department at any time that it accepts the department's determination.

(4) Once a final determination is reached, in addition to requirements in 15-31-1005(3), MCA, the department will provide the Montana Department of Commerce with a letter providing:

- (a) the amount of base investment verified by the department;
- (b) the credit base retained;
- (c) a UCRN per credit year;
- (d) a first credit year reference in which the tax credit can be claimed; and
- (e) the ending credit year, which is the last credit year the tax credit may be claimed on an income tax return.

(5) No transfer of a tax credit reserved is allowed until the claimant has received a UCRN related to an amount of a tax credit.

AUTH: 15-31-1012, MCA

IMP: 15-1-201, 15-31-1012, MCA

REASONABLE NECESSITY: In addition to the department's general statement of reasonable necessity, the department proposes New Rule XI to provide a process on how media production or postproduction tax credits are validated, and what the applicant may expect once a validation of tax credits is conclusive. Rule provisions are included to notify applicants of a statutory appeal right of the department action and the consequences of an appeal on the validation process.

NEW RULE XII CLAIM OF TAX CREDITS ON AN INCOME TAX RETURN

(1) A valid media production or postproduction tax credit can be claimed against Montana income tax liability at the earliest on an income tax return with a tax year beginning in the credit year indicated in the UCRN.

(2) A valid media production tax credit can be claimed against Montana income tax liability regardless of whether the taxpayer has directly or indirectly incurred the expenses relating to the tax credit.

(3) If a valid media production or postproduction tax credit is claimed by a grantor trust, the tax credit must flow entirely to the grantor. If it is claimed by a non-grantor trust or an estate, the tax credit must be allocated to the trust or estate in proportion of the Montana adjusted total income reduced by the Montana income distribution deduction over the Montana adjusted total income.

(4) If a valid tax credit is claimed by an S corporation, the tax credit must be distributed based on each shareholder's distributive share of income or loss.

(5) If a valid tax credit is claimed by a partnership, the tax credit must be distributed based on each partner's distributive share of income or loss, unless a special allocation applies. In order to comply with 15-31-1007(7)(c), MCA, and 15-31-1009(6)(c), MCA, special allocations of production or postproduction tax credit in a partnership agreement are not allowed unless the capital account of each partner receiving a Montana Schedule K-1 is adjusted in proportion of the amount of tax credit received.

AUTH: 15-31-1012, MCA

IMP: 15-1-201, 15-31-1012, MCA

REASONABLE NECESSITY: In addition to the department's general statement of reasonable necessity, the department proposes New Rule XII to provide and describe the process for a taxpayer to claim a media production or postproduction tax credit on their income tax return.

NEW RULE XIII CARRYOVER PERIOD (1) If a taxpayer has not claimed or transferred the media production tax credit or claimed the postproduction tax credit on or before the tax year beginning in the ending credit year indicated on the UCRN, the tax credit is no longer available to be used against income tax liabilities. Each year, a taxpayer must include on their income tax return:

(a) the amount of tax credit available for current and each preceding credit year;

(b) the amount of tax credit that was available for each tax year and transferred during the tax year; and

(c) the carryover amount per credit year.

(2) Tax credits are used on a "first-in, first-out" basis.

(3) Tax years of less than 12 months count as one tax year.

(4) The carryover amount of media production tax credit is any amount in excess of income tax liability after deduction of all other nonrefundable tax credits, including the media postproduction tax credit.

(5) Owners of a pass-through entity may claim the tax credit in the tax year they include their distributive share of income, loss, deduction, or tax credit reported on the Montana Schedule K-1.

AUTH: 15-31-1012, MCA

IMP: 15-31-1012, MCA

REASONABLE NECESSITY: In addition to the department's general statement of reasonable necessity, the department proposes New Rule XIII to provide how the carryover period must be determined based on the credit year.

NEW RULE XIV TRANSFER OF PRODUCTION TAX CREDIT (1) A taxpayer allowed to claim the production tax credit may elect to transfer any unused tax credit for a minimum of 85% of its value. The transferor must notify the department of the transfer and pay a transfer fee equal to two percent of the value of the tax credit no later than 30 days following the transfer of the tax credit. Time computation for deadlines falling on weekends or holidays shall conform to 1-1-307, MCA, which provides any acts required to be done may be performed upon the next business day with the same effect as if it had been performed upon the day appointed.

(2) The transfer notification must be made on a form provided by the department and include:

(a) All UCRNs associated with the tax credits transferred;

(b) The tax credit balances before and after the transfer for each tax credit associated with a UCRN;

(c) The tax identification numbers of the transferee and the transferor;

(d) The overall amount of tax credit transferred, and the price paid for each tax credit associated with a UCRN; and

(e) An acknowledgment by the transferee and the transferor that the transfer is valid, and that the transferee may claim the tax credit on a tax return only if the notification required in this rule is filed and the statutory fee is paid.

(3) If a transferor fails to notify the department and pay the fee within the period provided in (1), or before the transferee claims the tax credit on an income tax return, whichever comes first, the transaction does not constitute a valid transfer, and the transferee may not claim the tax credit.

(4) A production tax credit acquired by means of transfer may not be transferred by the transferee until the end of the tax year in which the tax credit was acquired.

(5) The tax credit cannot be sold if the carryover period under [NEW RULE XIII] has expired.

(6) A tax credit purchased in a tax year may be claimed by the transferee on a return pertaining to that tax year or the following years when permitted under [NEW RULE XIII]. It may not be carried back to a preceding tax year unless the tax credit is purchased before the due date of the transferee's income or information tax return under Title 15, MCA, in which case the tax credit can be applied against the tax liability of that preceding tax year. For example, an individual may purchase a

tax credit before April 15 of Year 2 and apply this tax credit against their individual income tax liability pertaining to Year 1.

(7) The carryover period under [NEW RULE XIII] cannot be reset or suspended due to a transfer or sale of the tax credit. The transferee must determine the number of carryover years left for the tax credit as if it had the ability to claim the tax credit in the tax year beginning in the credit year for which the tax credit was issued and using the same period in which the tax credit was bought. For example, on March 1, 2024, a corporation with a fiscal year beginning June 1, buys a tax credit. The credit year of the tax credit is 2020 with the carry-over ending in 2025. The first tax year the corporation is able to use the tax credit on a return based on its current tax period is the tax year beginning June 1, 2024. The last tax year the corporation can claim the tax credit is the tax year beginning June 1, 2025.

(8) A pass-through entity that is allowed a production tax credit for a tax year, either as a transferee or as a second-tier pass-through entity, must either claim and distribute part or all the tax credit as described in [NEW RULE XII], or elect to transfer part or all the tax credit on behalf of its owners.

(9) If an owner of a pass-through entity, who is a direct owner or an owner that is holding interest in the pass-through entity through the use of disregarded entities, sells their interest in the pass-through entity on or after the date the pass-through entity has legally received the right to claim a valid tax credit, the sale is deemed to include a transfer of the tax credit to the new owner of the pass-through interest. The transferor of the interest must notify the department and pay the two percent fee as provided in (1) and (2) within 30 days of the sale of the pass-through entity's interest or before the new owner of the pass-through interest claims the tax credit whichever comes first. If the department is not notified and the fee paid timely, the new owner of the pass-through entity's interest may not claim the tax credit. The requirement to sell the tax credit at a minimum of 85% of the tax credit sale value must be assessed using the capital account of the owner without regards to the effect of the tax credit being transferred.

(10) Any capital gain that must be recognized for federal tax purposes resulting from the direct or disguised sale of the tax credit, whether the transfer was validated or not, must be included in Montana net income, including any gain resulting from the transfer occurring through the sale of a pass-through entity interest as described in (9).

AUTH: 15-31-1012, MCA
IMP: 15-1-201, 15-31-1012, MCA

REASONABLE NECESSITY: In addition to the department's general statement of reasonable necessity, the department proposes NEW RULE XIV to provide guidance on how the production media tax credit can be transferred and when a transfer will not be considered valid. The rule also provides additional safeguards against disguised transfers.

5. Concerned persons may submit their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to: Todd Olson, Department of Revenue, Director's Office, P.O. Box

7701, Helena, Montana 59604-7701; telephone (406) 444-7905; fax (406) 444-3696; or e-mail todd.olson@mt.gov and must be received no later than April 30, 2020.

6. Todd Olson, Department of Revenue, Director's Office, has been designated to preside over and conduct the hearing.

7. The Department of Revenue maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request, which includes the name and e-mail or mailing address of the person to receive notices and specifies that the person wishes to receive notice regarding particular subject matter or matters. Notices will be sent by e-mail unless a mailing preference is noted in the request. A written request may be mailed or delivered to the person in number 5 above or faxed to the office at (406) 444-3696 or may be made by completing a request form at any rules hearing held by the Department of Revenue.

8. An electronic copy of this notice is available on the department's web site at www.mtrevenue.gov, or through the Secretary of State's web site at sosmt.gov/ARM/register.

9. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor was contacted by mail and email on February 3, 2020 and via email on March 2, 2020.

10. With regard to the requirements of 2-4-111, MCA, the department has determined that the adoption of the above-referenced rules will not significantly and directly impact small businesses.

/s/ Todd Olson
Todd Olson
Rule Reviewer

/s/ Gene Walborn
Gene Walborn
Director of Revenue

Certified to the Secretary of State March 3, 2020.