

THE NEWFOUNDLAND AND LABRADOR GAZETTE

EXTRAORDINARY

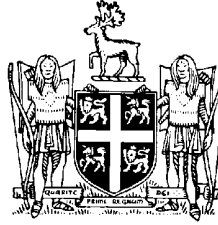
Part II

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**NEWFOUNDLAND AND LABRADOR
REGULATIONS**

**NLR 84/15
NLR 85/15**



**NEWFOUNDLAND AND LABRADOR
REGULATION 84/15**

Interactive Digital Media Tax Credit Regulations
under the
Income Tax Act, 2000
(O.C. 2015-206)

(Filed October 13, 2015)

Under the authority of section 46.3 of the *Income Tax Act, 2000*, the Lieutenant-Governor in Council makes the following regulations.

Dated at St. John's, October 13, 2015.

Julia Mullaley
Clerk of the Executive Council

REGULATIONS

Analysis

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Short title

- 1.** These regulations may be cited as the *Interactive Digital Media Tax Credit Regulations*.

Definitions

2. In these regulations

- (a) "Act" means the *Income Tax Act, 2000*;
- (b) "associated corporation" has the same meaning as in subsection 256(1) of the federal Act;
- (c) "certificate of registration" means a certificate of registration issued under section 8;
- (d) "eligible employee" means an employee of an eligible corporation who
 - (i) was resident in the province on the last day of the calendar year immediately before the year in which his or her salary was earned, and
 - (ii) normally reports to his or her employer's permanent establishment in the province;
- (e) "eligible remuneration" means remuneration that satisfies all the requirements in section 7 and which in the opinion of the minister is directly attributable to the development of the eligible product but does not include remuneration paid in respect of
 - (i) marketing,
 - (ii) human resources,
 - (iii) administrative support,
 - (iv) management services, or
 - (v) activities attributable to the development of an animated or live action scene or series of scenes relating to an interactive digital media product over which the user has no control;
- (f) "eligible salaries" means salaries of eligible employees which in the opinion of the minister are directly attributable to the development of the eligible product but does not include salaries paid in respect of

- (i) marketing,
 - (ii) human resources,
 - (iii) administrative support,
 - (iv) management services, or
 - (v) activities attributable to the development of an animated or live action scene or series of scenes relating to an interactive digital media product over which the user has no control;
- (g) "government assistance" means assistance that the corporation receives or is entitled to receive from a government, municipality or other public authority whether as a grant, subsidy, forgivable loan, deduction from tax, investment allowance or any other form of assistance, other than
- (i) assistance, including an amount paid or payable to the corporation by The Canada Media Fund, that is recoupable or repaid, and
 - (ii) a tax credit issued under these regulations;
- (h) "interactive digital media product" means a combination of one or more application files and one or more data files, all in a digital format, that are integrated and are intended to be operated together with all of the following characteristics when it is being operated:
- (i) the primary purpose is to educate, inform or entertain the user,
 - (ii) it achieves its primary purpose by presenting information in at least 2 of the following:
 - (A) text,
 - (B) sound,
 - (C) images, and

- (iii) is, in the opinion of the minister, designed to be used interactively by individuals;
- (i) "salaries" means fixed compensation, including wages, paid regularly by an employer to an employee for work or services but does not include
 - (i) compensation or fees determined by reference to profits or revenue,
 - (ii) stock options, signing bonuses or other employment incentives,
 - (iii) ancillary employment benefits that are not required by law to be provided,
 - (iv) an amount that is included in computing the corporation's eligible expenditure in relation to any other project or eligible expenditure of any other corporation, or
 - (v) any portion of compensation that is subsidized by a government;
- (j) "tax credit" means the interactive digital media tax credit granted under these regulations; and
- (k) "tax credit certificate" means a tax credit certificate issued by the minister under section 9.

Eligible corporation

3. In order to meet the definition of an eligible corporation in the Act, a corporation shall satisfy all of the following conditions:

- (a) it shall have a permanent establishment in the province;
- (b) it shall be incorporated under the *Corporations Act* or an Act of the Parliament of Canada or of the legislature of a province;
- (c) it shall primarily carry on the business of interactive digital media development; and

- (d) all or part of its income is not exempt from taxation under Part I of the federal Act.

Eligible product

4. In order to meet the definition of eligible product in the Act, a product shall satisfy all of the following conditions:

- (a) the product shall meet the requirements in paragraph 46.3(1)(b) of the Act;
- (b) the product shall not be used
 - (i) to market or promote an entity, product or idea, or
 - (ii) primarily for interpersonal communication;
- (c) the product shall not distribute exclusively linear content without any other interactive feature;
- (d) the product shall not contain hate propaganda, child pornography or be considered to be obscene under the *Criminal Code of Canada*;
- (e) the product shall not enable gambling activities with real currency;
- (f) the product shall not re-release video material without the benefit of value-added interactive functionality;
- (g) the product shall not be rated or be likely to be rated AO by the Entertainment Software Rating Board;
- (h) the product shall not be a content aggregator;
- (i) the product shall not be a search engine;
- (j) the product shall not be a product which primarily provides any content that is news, public affairs, opinion, commentary, advice, blogs or current affairs including weather or financial market reporting; and
- (k) the product shall not be a website unless the website primarily contains or hosts digital games, virtual or augmented reality experiences or educational products.

Eligible project **5.** In order to meet the definition of eligible project in the Act, a project shall not create operating system software or an engine code which is not intrinsic to the interactive digital media product.

Qualifying expenditure **6.** (1) A qualifying expenditure of an eligible project is the amount determined by adding together

- (a) eligible salaries; and
- (b) 65% of eligible remuneration paid.

(2) Notwithstanding subsection (1), where an eligible employee's salary is more than \$100,000 per year his or her eligible salary shall be considered to be \$100,000.

Eligible remuneration **7.** Remuneration paid by an eligible corporation shall meet all of the following requirements to be eligible remuneration:

- (a) the remuneration is included in the cost of an eligible product and is directly attributable to the development of the eligible product;
- (b) the remuneration is paid by the eligible corporation in the taxation year or no later than 60 days after the end of the taxation year;
- (c) the remuneration is not an amount for which the eligible corporation or another eligible corporation may claim a tax credit under sections 42 or 45 of the Act;
- (d) the remuneration is not an amount for which another eligible corporation may claim a tax credit under these regulations; and
- (e) the remuneration is paid to any of the following arm's length persons or entities in the circumstances described:
 - (i) an individual who is not an employee of the eligible corporation, for services rendered personally by the individual at a permanent establishment in the province,

- (ii) the employees of an individual described in subparagraph (i), for services rendered personally at a permanent establishment in the province,
- (iii) a corporation with a permanent establishment in the province, for services rendered personally by an individual at a permanent establishment in the province, if all the issued and outstanding shares of the capital stock of the corporation are owned by the individual and the activities of the corporation consist principally of providing the individual's services,
- (iv) a corporation with a permanent establishment in the province, for services rendered personally by employees of the corporation at a permanent establishment in the province, or
- (v) a partnership that has a permanent establishment in the province, for services rendered personally by any of the following at a permanent establishment in the province:
 - (A) a member of the partnership, or
 - (B) employees of the partnership.

Application for
registration

8. The minister may issue a certificate of registration to an eligible corporation in respect of an eligible project where the eligible corporation

- (a) applies in the form and manner that the minister requires; and
- (b) provides the following information:
 - (i) a description of the product,
 - (ii) the financial statements from the preceding taxation year,
 - (iii) the estimated eligible salaries,
 - (iv) the estimated eligible remuneration,

- (v) the estimated value of the tax credit,
- (vi) a timeline for the development of the product,
- (vii) expected revenue from the sale of the product, and
- (viii) other information the minister may require.

Tax credit
certificate

9. (1) The minister may issue a tax credit certificate for a taxation year in the amount of 40% of qualifying expenditures incurred in the taxation year to an eligible corporation where the eligible corporation

- (a) applies in the form and manner that the minister requires within 6 months of the end of the taxation year;
- (b) provides a statement in a form satisfactory to the minister and signed by an authorized officer of the corporation that the information contained in the application is true and correct;
- (c) is validly registered as an eligible corporation; and
- (d) provides the following information:
 - (i) its financial statements for the taxation year for which the credit is being claimed,
 - (ii) a statement detailing, by employee, the actual salary costs for the eligible project for the taxation year,
 - (iii) a list of eligible employees, including employees names, social insurance numbers, eligible salaries, occupations and addresses,
 - (iv) details concerning salaries for which a government subsidy has been provided,
 - (v) details concerning government assistance received in respect of the eligible project or eligible product; and
 - (vi) other information that the minister may require.

(2) A tax credit certificate may only be issued with respect to eligible salaries and eligible remuneration incurred by an eligible corporation

(a) after December 31, 2014; and

(b) before January 1, 2020.

(3) Notwithstanding paragraph (1)(a), where an eligible corporation is applying for a tax credit certificate with respect to an eligible project referred to in subsection 10(2) the eligible corporation shall apply for a tax credit certificate within 6 months of the end of the taxation year during which the eligible product is completed.

Tax credit

10. (1) An eligible corporation that undertakes an eligible project in the province and has received a tax credit certificate may deduct from the tax otherwise payable under the Act an amount for the taxation year equal to the amount set out in the tax credit certificate issued under section 9.

(2) Notwithstanding subsection (1), where the eligible project consists of an eligible product being developed primarily for sale or licence to a government or an agency of a government, a municipality or an agency of a municipality or a corporation controlled by a government or a municipality

(a) the amount of the credit under subsection (1) cannot exceed the amount, if any, by which the eligible corporation's total cost of the eligible project exceeds the eligible corporation's proceeds from the sale or licence of the eligible product to a government or an agency of a government, a municipality or an agency of a municipality or a corporation controlled by a government or a municipality; and

(b) the tax credit may be claimed only after the eligible product is completed.

(3) Notwithstanding subsection (1), the total of the eligible corporation's tax credits in relation to an eligible project, including tax credits in relation to the eligible project for previous taxation years, shall not exceed the amount by which the eligible corporation's total cost of the project exceeds the total of all government assistance which

the eligible corporation receives or is entitled to receive in respect of the eligible project.

(4) Notwithstanding subsection (1), the maximum tax credit that an eligible corporation or a group of associated corporations may receive in respect of all taxation years ending within any calendar year is \$2,000,000.

Allocation of
eligible salaries

11. (1) Where eligible salaries can be considered to be a qualifying expenditure with respect to section 45 and 46.3 of the Act, the eligible corporation shall, for the purpose of the calculation of the tax credit for each eligible project, allocate the eligible salaries based on the percentage of hours the eligible employee spends on each eligible project.

(2) An allocation of eligible salaries under subsection (1) may be reviewed by the minister and where, based on the information provided by the eligible corporation, the minister is of the opinion that the allocation is not correct, the minister may substitute his or her allocation for the allocation provided by the eligible corporation under subsection (1).

Deduction

12. For the purpose of section 10, the amount by which the tax credit exceeds the eligible corporation's tax payable for the taxation year may be applied by the minister to pay

- (a) any tax, interest or penalty owing by the eligible corporation for that or a prior taxation year under the Act, the corporation income tax act of an agreeing province or the federal Act;
- (b) any contribution, interest or penalty owing by the eligible corporation for that or a prior taxation year as a result of payments required from the eligible corporation under the Canada Pension Plan;
- (c) any premium, interest or penalty owing by the eligible corporation for that or a prior taxation year under the *Employment Insurance Act* (Canada); and
- (d) any tax, interest or penalty owing by the eligible corporation for that or a prior taxation year under the *Revenue Administration Act*,

and the amount not so applied shall be considered to be an overpayment under subsection 164(7) of the federal Act.

Suspension or
revocation

13. (1) The minister may suspend or revoke a certificate of registration or a tax credit certificate issued to an eligible corporation if one or more of the following applies:

- (a) in the opinion of the minister the eligible corporation has not complied with a provision of the Act or these regulations;
- (b) the eligible corporation has not completed an eligible product 36 months after beginning development of the eligible product;
- (c) in the opinion of the minister there has been a change in circumstances relating to the eligible product or eligible project that affects its continued eligibility; or
- (d) in the opinion of the minister the certificate has been obtained or maintained through misrepresentation or fraud.

(2) Where an eligible corporation has more than one certificate of registration and one or more, but not all, certificates of registration are revoked or suspended under subsection (1) the minister may amend the eligible corporation's tax credit certificate to reduce the amount of the tax credit.

(3) Where the minister suspends or revokes a certificate of registration or a tax credit certificate under paragraph (1)(d), the minister may suspend or revoke all certificates of registration and tax credit certificates held by the eligible corporation.

(4) Where a tax credit certificate is revoked under this section the eligible corporation is not entitled to a tax credit for the taxation year in respect of which the tax credit certificate was issued.

(5) Where an eligible corporation has received a tax credit in respect of a year for which a tax credit certificate was revoked, the eligible corporation shall pay to the minister the amount of the tax credit it received.

Commencement

14. These regulations are considered to have come into force on January 1, 2015.

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NEWFOUNDLAND AND LABRADOR REGULATION 85/15

Revenue Administration Regulations (Amendment)
under the
Revenue Administration Act
(O.C. 2015-202)

(Filed October 13, 2015)

Under the authority of sections 107 and 113 of the *Revenue Administration Act*, the Lieutenant-Governor in Council makes the following regulations.

Dated at St. John's, October 13, 2015.

Julia Mullaley
Clerk of the Executive Council

REGULATIONS

Analysis

- | | |
|--|-----------------|
| 1. S.2 Amdt.
Interpretation | 3. Transitional |
| 2. Part V.1 Rep.
RESIDENTIAL ENERGY
REBATE | 4. Commencement |

NLR 73/11
as amended

1. Paragraphs 2(1)(j.1), (m.1), (m.2), (m.3), (m.4), (aa.1), (nn.1), (pp.1) and (rr.1) of the *Revenue Administration Regulations* are repealed.

2. Part V.1 of the regulations is repealed.

Transitional

3. (1) Where an application or a return respecting a rebate for an eligible product was submitted before the coming into force of these regulations, the application or return shall be administered as though these regulations were not in force.

(2) Where a person is eligible to make an application or file a return respecting a rebate for an eligible product immediately before the coming into force of these regulations, he or she may make the application or file the return as though these regulations were not in force.

(3) An application or return under subsection (2) which is made or filed after the coming into force of these regulations shall be administered as though these regulations were not in force.

(4) Where a person makes an application or files a return under subsection (2), a rebate shall only be paid or credited on

(a) an eligible product other than electricity where the invoice for the eligible product costs indicates a purchase date of June 30, 2015 or earlier; and

(b) electricity where the invoice for the eligible product costs indicates a meter reading of June 30, 2015 or earlier.

(5) In this section, "administer" includes procedures relating to overpayments and the inspection, examination and auditing of books and records.

Commencement

4. These regulations are considered to have come into force on July 1, 2015.

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Extraordinary Gazette Index

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