

INFORMATION BULLETIN FOR PRODUCERS RE ONTARIO TAX CREDITS FOR NEW MEDIA PROJECTS (June/11)

Re: Corporate Relationships between Television and Interactive Producers

There has been some confusion about corporate organization and its impact on the eligibility for tax credits which we would like to clarify so that you can accurately calculate your potential tax credits.

Please note that while the Bell Broadcast and New Media Fund welcomes many different forms of arrangement between television and interactive producers (ie coproductions, service arrangements etc.), certain forms of arrangements may make it difficult to obtain an Ontario Interactive Digital Media Tax Credit (OIDMTC).

Eligibility for the OIDMTC requires that an Ontario resident company has developed all or substantially all (ie 90%) of the interactive product. To be considered a “non-specified” product under the tax credit legislation (and thus eligible to claim salary and wages of employees, remuneration paid to arm’s length parties and marketing and distribution expenditures), the interactive product should not be developed under a fee for service arrangement. Therefore, only interactive producers who have licensed the underlying rights from the television producers and will own the interactive product can obtain the tax credit.

Should a TV producer also be an interactive producer so that their in-house and freelance staff are creating the interactive product they will also be eligible for the tax credit. Please note, if a TV production company undertakes to produce an interactive digital media product and engages another corporation to do work to create the product, the TV production company must be able to prove that they and not the contractor developed 90% of the product.

Products developed under a fee for service arrangement are defined as “specified” products and may still access the OIDMTC at a lower tax credit rate, but again, 90% or more of the product must be developed by the applicant. A television producer could engage an interactive producer to produce the interactive product as a work for hire. In this case the interactive producer would be the applicant for the tax credit. The fee for service tax credit applies to salary and wages of employees and fees paid to arm’s length contractors, however, marketing and distribution expenditures are excluded.

Please note that there is also an issue of definitions. The OMDC is using the commonly used digital media definition of ‘development’ (as in “production”) and not the television definition of ‘development’ commonly referred to as the early stages of work prior to production. To clarify, the digital media definition of “developed” is the same as the television definition of “produced”. In other words, 90% or more of the interactive product must be *produced* by the applicant.

In summary:

Important things to remember when applying for an OIDMTC tax credit:

- ❖ The corporation that applies for the OIDMTC must be able to prove that they developed (did the work to create/produce) 90% of the interactive digital product.
- ❖ Simply owning copyright or IP in the product does not prove that your company developed 90% of the product.
- ❖ Co-development is problematic under the OIDMTC as there can be only one applicant which develops 90% of the product.
- ❖ You can contract part of the development work out to other corporations as long as they are not doing more than 10% of the development of the product.
- ❖ The percentage of the budget paid to contractors may not necessarily constitute the percentage of development work done on the project. (i.e. An applicant may have allocated 40% of their budgeted costs to contractors. In this case an applicant may still be able to demonstrate that they developed 90% or more of the product.)

If you intend to apply for an OIDMTC and have questions about your eligibility we recommend that you contact the OMDC prior to applying.

For greater certainty as to what arrangements will comply with OIDMTC eligibility rules please contact the OMDC– before it's too late!