CHAPTER 27M-5
ENTERTAINMENT INDUSTRY FINANCIAL INCENTIVE PROGRAM

27M-5.001 Definitions and Forms
27M-5.002 Application Process
27M-5.003 Qualification Process
27M-5.004 Certification Decision Process
27M-5.005 Verification of Actual Qualified Expenditures
27M-5.006 Withdrawal of Tax Credit Eligibility
27M-5.007 Award of Tax Credit
27M-5.008 Election of Tax Credits
27M-5.009 Transfer of Tax Credits

27M-5.001 Definitions and Forms.
This section defines terms and phrases used throughout Chapter 27M-5, F.A.C. In this chapter, terms and phrases shall have the meanings defined in Section 288.1254, F.S., or in this section. Terms and phrases not defined by statute or rule shall be construed according to their plain meaning, and in all cases with the objective of advancing the purpose of the rule in which they appear. All referenced forms are available on the internet at http://www.filminflorida.com or may be obtained from OFE.

(1) “Act” means Section 28 of Chapter 2010-147, Laws of Florida, codified at Section 288.1254, F.S., (formerly known as the Don Davis Entertainment Industry Economic Development Act, Chapter 2007-125, Laws of Florida).

(2) “Agreement” means the standard “Assurance of Compliance Agreement” form OTTED 1254-1 (12/10).

(3) “Applicant” means a Production company that seeks qualification and certification under the Act for allocation and award of tax credits.

(4) “Application” means the standard “Florida Entertainment Industry Financial Incentive Application” form OTTED 1254-2 (12/10).

(5) “Award Letter” means the standard “Florida Entertainment Industry Financial Incentive Program Award Decision Letter” form OTTED 1254-3 (12/10), signed by OTTED and provided to the Certified Production.

(6) “Certification Letter” means the standard “Florida Entertainment Industry Financial Incentive Program Certification Decision Letter” form OTTED 1254-4 (12/10), signed by OTTED and provided to the Certified Production.

(7) “Commercial and Music Video Queue” means the queue of Certified Productions, other than those eligible for the General Production Queue or the Independent and Emerging Media Production Queue.

(8) “Declaration of Florida Residency Form” means the standard “Florida Entertainment Industry Financial Incentive Program Declaration of Florida Residency” form OTTED 1254-5 (12/10).

(9) “Florida Worker” means a person who is either:

(a) A legal resident of the State, as demonstrated by a valid Florida driver’s license or other State-issued identification accompanied by a completed and signed Declaration of Florida Residency Form; or

(b) A student enrolled full-time in a film-and-entertainment-related course of study at an institution of higher education in the State.

(10) “Florida Qualified Vendor” means a vendor or supplier in the State that is registered with the Department of State or the Department of Revenue, has a physical location in the State, and employs one or more Florida Workers (when provided services include personal services or labor, only personal services or labor provided by Florida Workers will qualify).

(11) “General Production Queue” means the queue of Certified Productions, other than those eligible for the Commercial and Music Video Queue or the Independent and Emerging Media Production Queue.

(12) “Independent and Emerging Media Queue” means the queue of Certified Productions, other than those eligible for the General Production Queue or the Commercial and Music Video Queue.

(13) “OFE” means the Office of Film and Entertainment, whose address is: The Capitol, 400 S. Monroe Street, Tallahassee, Florida 32399.

(14) “OTTED” means the Office of Tourism, Trade and Economic Development, whose address is: The Capitol, 400 S. Monroe Street, Tallahassee, Florida 32399.

(15) “Program” means the Entertainment Industry Financial Incentive Program established by the Act.

(16) “Qualification and Recommendation Memo” means the standard “Florida Entertainment Industry Financial Incentive Program Qualification and Recommendation” form OTTED 1254-6 (12/10), submitted to OTTED by the OFE Director (Film Commissioner).

(17) “Queue” means one or all, as the context makes clear, of the General Production Queue, the Commercial and Music Video Queue, or the Independent and Emerging Media Queue.

(18) “Reasonable Schedule” means that the Recipient maintains its production schedule as provided to OFE, which includes beginning principal photography or the production project in the State no more than forty-five (45) calendar days before or after the principal photography or project start date indicated in the Application.

(19) “Recipient” means an Applicant that, after a certification process, OTTED certifies to receive Program credits and that enters into an Agreement with OFE.

(20) “Request for Confidentiality Form” means the standard “Florida Entertainment Industry Financial Incentive Program Request for Confidentiality” form OTTED 1254-7 (12/10).

(21) “Summary Statement” means the standard “Florida Entertainment Industry Financial Incentive Program Summary Statement” form OTTED 1254-8 (12/10).

(22) “State” means the State of Florida, either as a political entity or in the sense of geographical boundaries, as made clear from the context.

(23) “Tax Credit Election Form” means the standard “Florida Entertainment Industry Financial Incentive Program Tax Credit Election” form OTTED 1254-9 (12/10).

(24) “Tax Credit Transfer Form” means the standard “Florida Entertainment Industry Financial Incentive Program Tax Credit Transfer” form OTTED 1254-10 (12/10).

Rulemaking Authority 288.1254(8) FS. Law Implemented 288.1254 FS. History–New 12-30-10.

27M-5.002 Application Process.

(1) No earlier than 180 days before the first day of principal photography or project start date, an Applicant shall electronically submit its Application (form OTTED 1254-2 (12/10), which is hereby incorporated by reference) to the address indicated on the Application; provided, however, that once a High-Impact Television Series has been certified, it may submit an Application for future seasons. The time of Application receipt by OFE shall be determined by reference to State computer server records.

(2) By 5:00 p.m. (Tallahassee time) on the next business day following the date of electronic Application submittal, OFE must receive from the Applicant all required supporting schedules and documents, as specified in the Application, along with the original, signed, Application, and, if desired, the Request for Confidentiality Form (form OTTED 1254-7 (12/10), which is hereby incorporated by reference). These items must be provided as both hard copy and electronic files on an optical disc or flash drive. Upon OFE’s timely receipt of these materials, the Application shall be deemed complete.

Rulemaking Authority 288.1254(8) FS. Law Implemented 288.1254(3) FS. History–New 12-30-10.

27M-5.003 Qualification Process.

(1) Once an Application is complete, OFE shall review it to determine whether it contains all required information and meets the Program criteria. The review will include an interview with the contact person listed on the Application.

(2) Based on its review, OFE shall either deny the Application or qualify the Applicant and recommend to OTTED that the Applicant be certified for a tax credit award, if available, based upon its approved Qualified Expenditures budget. OFE shall document its recommendation using the Qualification and Recommendation Memo (form OTTED 1254-6 (12/10), which is hereby incorporated by reference).

(3) OFE shall prioritize all Qualified Productions on a first-come, first-served basis within the appropriate Queue, based on the time the Application was electronically received; provided, however, that a High-Impact Television Series shall be allowed first position in the General Production Queue (priority between High-Impact Television Series shall be determined on a first-come, first-served basis).

Rulemaking Authority 288.1254(8) FS. Law Implemented 288.1254(3), 288.1254(4) FS. History–New 12-30-10.

27M-5.004 Certification Decision Process.

(1) OTTED shall consider OFE's recommendation and make a final determination of the actual maximum tax credits to certify, if available, to the Qualified Production. OTTED shall document its certification decision using the Certification Letter (form OTTED 1254-4 (12/10), which is hereby incorporated by reference), the original of which OFE shall send to each Certified Production, with a copy to the Department of Revenue.

(2) Certification of tax credits is conditioned upon their availability pursuant to the fiscal year allocation specified in Section 288.1254(7), F.S.

(a) Certification of tax credits shall be tied to the fiscal year(s) in which the Certified Production is scheduled for completion. For example, a Certification Letter issued in one fiscal year may certify credits from a future fiscal year credit allocation.

(b) If OTTED certifies a Production for credits during a fiscal year in which the amount of credits remaining for certification during that fiscal year is greater than the amount of credits certified to the Production, then the Certification Letter shall indicate certification of current year credits.

(c) If OTTED certifies a Production for credits during a fiscal year in which the amount of credits remaining for certification during that fiscal year is less than the amount of credits certified to the Production, then the Certification Letter shall distinguish between certification of current fiscal year credits and certification of future fiscal year credits.

(d) If OTTED certifies a Production for credits during a fiscal year in which all allocated credits have already been certified, but future fiscal year allocations remain available, then the Certification Letter shall indicate certification of future year credits. The Certification Letter shall specify the future fiscal year allocation to which it pertains.

(e) If no credits are available in the present or future fiscal years, then the Certification Letter shall indicate that certification is conditional and dependent upon credits becoming available in the future.

(f) If credits for a particular fiscal year become available in the future, either through non-award of previously certified credits or through legislative changes or otherwise, then OTTED shall distribute them on a first-come, first-served basis, based on the time the original Application was received, and in descending order of priority to Productions previously certified under paragraphs (c), (d), and (e). OFE shall document this later certification by a supplemental Certification Letter, the original of which OFE shall send to the Certified Production, with a copy to the Department of Revenue.

(3) As an absolute condition precedent to award of credits, every Certified Production shall execute the Agreement (form OTTED 1254-1 (12/10), which is hereby incorporated by reference) before the first day of principal photography or project start date.

(4) Certification decisions shall be subject to review under Chapter 120 of the Florida Statutes.

Rulemaking Authority 288.1254(8) FS. Law Implemented 288.1254(3) FS. History–New 12-30-10.

27M-5.005 Verification of Actual Qualified Expenditures.

(1) After all Qualified Expenditures have been made, the Certified Production shall hire an independent Florida-based and Florida-licensed Certified Public Accountant (CPA) of the Certified Production's choosing, at the Certified Production's expense, to verify the Qualified Expenditures.

(2) After the CPA verifies the actual Qualified Expenditures, the Certified Production company shall submit to OFE a final report, which shall include:

(a) The CPA's compliance audit.

(b) A letter from the CPA outlining its verification procedures.

(c) Proof the CPA has been fully paid. Such payment shall not be considered a Qualified Expenditure.

(d) A final report on the agreed upon procedures by the CPA determining the amount of Qualified Expenditures incurred by the Certified Production.

(e) Qualified Expenditures broken out by type: accounts payable to Florida Qualified Vendors, petty cash, and Florida Worker payroll (the latter being provided as separate files for the cast, crew, and extras and including Declaration of Florida Residency Forms, OTTED 1254-5 (12/10), which is hereby incorporated by reference)).

(f) A completed Summary Statement (form OTTED 1254-8 (12/10), which is hereby incorporated by reference) signed by an authorized officer of the Certified Production company.

(g) A copy of all data substantiating the Qualified Expenditures (receipts, invoices, cancelled checks, payroll records, etc.). Any substantiation which OFE considers not a Qualified Expenditure will be returned to the Certified Production company for written rebuttal. If no written rebuttal is received within 10 business days, the expenses will not be considered a Qualified Expenditure. If

written rebuttal is submitted within the required 10 business days, OFE will review the written rebuttal and, in the event OFE's decision remains the same, the rebuttal will be referred to OTTED for final determination.

Rulemaking Authority 288.1254(8) FS. Law Implemented 288.1254(3) FS. History–New 12-30-10.

27M-5.006 Withdrawal of Tax Credit Eligibility.

OTTED shall withdraw the tax credit eligibility of a Certified Production that does not continue on a Reasonable Schedule. Failure to provide information requested by OTTED to demonstrate progression on a Reasonable Schedule shall result in certification being withdrawn and the loss of tax credit eligibility.

Rulemaking Authority 288.1254(8) FS. Law Implemented 288.1254(4)(c) FS. History–New 12-30-10.

27M-5.007 Award of Tax Credit.

(1) OFE shall review the accountant's final report, submitted under subsection 27M-5.005(2), F.A.C., and then report to OTTED the final verified amount of actual Qualified Expenditures made by the Certified Production.

(2) OTTED shall determine and approve the final tax credit award amount to each Certified Production. OTTED shall document its award using the Award Letter (form OTTED 1254-3 (12/10), which is hereby incorporated by reference), the original of which OTTED shall send to each Qualified Applicant, with a copy to the Department of Revenue.

(3) The final tax credit award amount may not exceed the maximum tax credit award amount certified, neither per fiscal year nor in the aggregate. The Award Letter shall specify the fiscal year(s) in which the awarded credits may be applied against tax liability.

(4) Awarded tax credits may later be revoked or forfeited as provided in Section 288.1254(9), F.S.

(5) Award decisions shall be subject to review under Chapter 120 of the Florida Statutes.

Rulemaking Authority 288.1254(8) FS. Law Implemented 288.1254(3)(f), 288.1254(9) FS. History–New 12-30-10.

27M-5.008 Election of Tax Credits.

(1) Within fourteen (14) days after receipt of the Award Letter, the awardee shall file with OTTED a completed Tax Credit Election Form (form OTTED 1254-9 (12/10), which is hereby incorporated by reference), which shall constitute an irrevocable election to apply the tax credit against taxes due under Chapter 220, F.S., against taxes collected or accrued under Chapter 212, F.S., or against a stated combination of the two taxes.

(2) Within fourteen (14) days after OTTED receives a completed Tax Credit Election Form, OTTED shall provide a copy of the form to the Department of Revenue.

Rulemaking Authority 288.1254(8) FS. Law Implemented 288.1254(4)(d) FS. History–New 12-30-10.

27M-5.009 Transfer of Tax Credits.

(1) A Recipient electing to transfer credits shall apply for the transfer using the Tax Credit Transfer Form (form OTTED 1254-10 (12/10), which is hereby incorporated by reference).

(2) Within fourteen (14) days after the receipt of a completed Tax Credit Transfer Form, OTTED shall determine whether transfer is authorized under Section 288.1254(5), F.S., and, if it so authorized, provide a copy of the form to the Department of Revenue.

Rulemaking Authority 288.1254(8) FS. Law Implemented 288.1254(5) FS. History–New 12-30-10.