

# LEGISLATIVE AUDIT DIVISION

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## MEMORANDUM

**TO:** Legislative Audit Committee Members  
**FROM:** Kendrick McCormick, Performance Auditor  
**CC:** Dore Schwinden, Director, Department of Commerce  
Jeri Duran, Administrator, Montana Promotion Division  
Dan Bucks, Director, Department of Revenue  
Gene Walborn, Administrator, Business and Income Taxes Division  
**DATE:** December 2012  
**RE:** Performance Audit Follow-up (13SP-02): Big Sky on the Big Screen Act -  
Montana's Film Incentive Program (orig. 11P-08)  
**ATTACHMENTS:** Original Performance Audit Summary

### Introduction

The *Big Sky on the Big Screen Act – Montana's Film Incentive Program* (11P-08) report was issued to the Committee in September 2011 and contains four recommendations to Department of Commerce and three recommendations to Department of Revenue (DOR). In December 2012, we conducted follow-up work to assess implementation of the report recommendations. This memorandum summarizes the results of our work.

### **Overview**

Initial audit work determined that controls over the Big Sky on the Big Screen Act (Act) could be strengthened to ensure ineligible production companies do not receive tax credits. We made four recommendations to Department of Commerce that related to aligning the film credit application and the approval process to statute and ensuring that production companies meet statutory requirements to receive tax credits. Our review determined all four of the recommendations have been implemented. We made three recommendations to DOR that related to the production companies meeting application time limits, paying application fees before a tax credit is issued and certification that all Montana vendors are paid in full. Our review determined two of the recommendations have been implemented and one is being implemented.

### Background

The Big Sky on the Big Screen Act (Act) was passed by the Legislature in 2005. The Act was established to revitalize the motion picture and television industries in Montana by offering incentives to production companies for filming in Montana. Incentives are offered in the form of refundable tax credits for employing Montana residents and purchasing Montana goods and services. The Montana Promotion Division within the Department of Commerce and the Business and Income Taxes Division within DOR administer the Act.

To qualify for the incentives offered in the Act, a production company must meet statutory eligibility requirements. The Department of Commerce is responsible for approving eligibility through its certification process. DOR is responsible for verifying and approving the production company's expenditures and ensuring the accuracy of the tax credit amount claimed.

### **Follow-up Audit Results**

The following sections summarize the implementation status of each recommendation. During our follow-up we reviewed all application packets submitted to Department of Commerce between July and December 2011 and all of the applications submitted to DOR that received a tax credit for that same time period. Our review focused on determining if the application, processes, and procedures had changed to meet the audit recommendations.

### **RECOMMENDATION #1**

**We recommend the Department of Commerce comply with §15-31-904(2)(g), MCA, by requiring a start date of principal photography on its application.**

#### **Implementation Status – Implemented**

As reflected in the original audit response, the Act application was amended on July 21, 2011, and subsequently amended on July 12, 2012, by the Department of Commerce to clearly reflect the start date of Montana pre-production, start date of principal photography and completion of principal photography. Our review determined that all applications submitted after July 2011 were using the new application form and were filled out correctly.

### **RECOMMENDATION #2**

**We recommend the Department of Commerce strengthen controls to ensure the production company, for each production, meets statutory requirements and is eligible to receive the tax credit as outlined in §15-31-904, MCA.**

#### **Implementation Status – Implemented**

As reflected in the original audit response, the Department of Commerce formally adopted a policy and procedure for certification of Act applications. This procedure was formally adopted July 20, 2011, and subsequently amended on September 13, 2011. Our review confirmed the Department of Commerce developed and was using a procedure that ensures a complete application by the production company. We also observed a small number of applications that were returned to the production company for corrections prior to being resubmitted and eventually approved.

### **RECOMMENDATION #3**

**We recommend the Department of Commerce revise its application to align with §15-31-903(3)(b), MCA.**

#### **Implementation Status – Implemented**

As reflected in the original audit response, the Act application was amended on July 21, 2011, and subsequently amended on July 12, 2012, to align with statute by addressing the bankruptcy certification. We reviewed all applications that were submitted after July 2011 and confirmed the new application was being used for new certifications.

### **RECOMMENDATION #4**

**We recommend the Department of Commerce comply with §15-31-904(6), MCA, by developing rules for the certification process.**

### **Implementation Status - Implemented**

As reflected in the original audit response, the Department of Commerce has formally adopted a policy and procedure for certification of Act applications. This procedure was formally adopted July 20, 2011, and subsequently amended on September 13, 2011. The procedure clearly states what information must be completed and additionally requires two reviews to ensure the application is complete. Our review determined the new policy met the intent of the audit recommendation, was aligned with statute and was being followed in the certification process.

### **RECOMMENDATION #5**

**We recommend the Department of Revenue reevaluate §15-31-905, MCA, and determine whether statute is needed and if so, require production companies meet the 60-day requirement before issuing a tax credit.**

### **Implementation Status – Being Implemented**

The DOR amended its policy to include the 60-day requirement for submittal of receipts and Montana payroll and they have developed a formal “Welcome” letter to send to applicants that outlines the procedures and timelines for application of the tax credit. Additionally, the DOR has proposed an amendment to ARM 42.4.3303 that will clarify the 60-day requirement. It will be open for public comment on December 17, 2012. Based on our review of the proposed ARM language we determined it addressed the audit recommendations. As well, we found all applications to be in accordance with existing policy and all were submitted within the 60-day window. Once the ARM is amended, this recommendation will be fully implemented.

### **RECOMMENDATION #6**

**We recommend the Department of Revenue establish controls to ensure compliance with §15-31-906, MCA, and require the application fee be paid prior to issuing a tax credit.**

### **Implementation Status – Implemented**

The DOR included the requirement that the application fee be paid prior to issuance of the tax credit in its written procedures. Our review determined that all applicants who received a tax credit had paid the \$500 fee at the time of application.

### **RECOMMENDATION #7**

**We recommend Department of Revenue establish controls to ensure compliance with §15-31-908(2)(b), MCA, and not issue a tax credit unless the taxpayer has certified it paid all Montana vendors in full.**

### **Implementation Status – Implemented**

The DOR moved the certification statement from page three to page one of the Film Production Credit form. They also updated their procedure to require the tax auditor to verify all Montana vendors have been paid prior to issuing the tax credit. Our review determined that this verification is being conducted.