

FINAL PRIVATE LETTER RULING

13-005

RESPONSE LETTER

MEMORANDUM

To: COMPANY 1

From: Office of the Commission, Utah State Tax Commission

Date: Wednesday, October 30, 2013

Re: Refundable Motion Picture Tax Credit

COMPANY 1 inquired of the Utah State Tax Commission whether the Refundable Motion Picture Tax Credit (“Credit”) can be properly payable to a motion picture company or whether it must be claimed by the motion picture company’s individual members.

The Tax Commission holds that when a motion picture company is a pass-through entity, the company must pass through the Credit to the company’s partners, members, or shareholders. The company cannot claim a refund for the Credit payable to the company.

Attached to this communication is a private letter ruling with a more in-depth explanation using the applicable law as of October 2013. Taxpayers may contact the Technical Research Unit of the Utah State Tax Commission at 801-297-7705 for information on how to report the Credit on their Utah income tax forms.

The conclusions found in this memorandum and the attached letter are based on applicable law as of October 2013. These conclusions could be changed by subsequent legislative action or judicial interpretation.

PRIVATE LETTER RULING 13-005

October 30, 2013

NAME 1
TITLE 1
COMPANY 1
ADDRESS 1

RE: Private Letter Ruling Request—Refundable Motion Picture Tax Credit

Dear NAME 1:

On behalf of the potential recipients of the Refundable Motion Picture Tax Credit (“Credit”) found in §§ 59-7-614.5 and 59-10-1108,ⁱ you have asked whether the Credit is properly payable to a motion picture company or whether it must be claimed by the motion picture company’s individual members.

In general, refundable income tax credits must first offset any income taxes owed before the remainder of the credits can be issued to taxpayers as refunds. Thus, credits are not automatically *payable* to taxpayers. You have asked how the Motion Picture Tax Credit is properly claimed when a motion picture company is a pass-through entity, such as a partnership, a limited liability company, or an S corporation, and the motion picture company is owned by pass-through entity taxpayers, such as partners, members, or shareholders. “Pass-through entity” and “pass-through entity taxpayer” are defined in Utah Code § 59-10-1402.ⁱⁱ

To claim the Credit, a motion picture company that is a pass-through entity must file its tax return, as required by §§ 59-10-1403(3) and 59-10-507, and pass through the Credit to its partners, members, or shareholders, as required by § 59-10-1403(2).ⁱⁱⁱ Thus, a motion picture company that is a pass-through entity cannot choose to have the Credit refunded directly to the company.

In conclusion, when a motion picture company is a pass-through entity, the company must pass through the Credit to the company’s partners, members, or shareholders. The company cannot claim a refund for the Credit payable to the company. Taxpayers may contact the Technical Research Unit of the Utah State Tax Commission at 801-297-7705 for more information on how to report the Credit on their Utah income tax forms. This ruling is based on current law and could be changed by subsequent legislative action or judicial interpretation. Also, our conclusions are based on the facts as described. Should the facts be different, a different conclusion may be warranted. If you feel we have misunderstood the facts as you have presented them, you have additional facts that may be relevant, or you have any other questions, you are welcome to contact the Commission.

For the Commission,

D'Arcy Dixon Pignanelli
Commissioner

DDP/aln
13-005

ⁱ The current version of the Utah Code is available through the Utah State Legislature website located at <http://le.utah.gov>. Sections 59-7-614.5 and 59-10-1108 are available online at http://le.utah.gov/code/TITLE59/htm/59_07_061405.htm and http://le.utah.gov/code/TITLE59/htm/59_10_110800.htm, respectively.

Section 59-7-614.5 states the following:

- (1) As used in this section:
 - (a) "Motion picture company" means a taxpayer that meets the definition of a motion picture company under Section 63M-1-1802.
 - (b) "Office" means the Governor's Office of Economic Development.
 - (c) "State-approved production" has the same meaning as defined in Section 63M-1-1802.
- (2) For taxable years beginning on or after January 1, 2009, a motion picture company may claim a refundable tax credit for a state-approved production.
- (3) The tax credit under this section is the amount listed as the tax credit amount on the tax credit certificate that the office issues to a motion picture company under Section 63M-1-1803 for the taxable year.
- (4)
 - (a) In accordance with any rules prescribed by the commission under Subsection (4)(b), the commission shall make a refund to a motion picture company that claims a tax credit under this section if the amount of the tax credit exceeds the motion picture company's tax liability for a taxable year.
 - (b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission may make rules providing procedures for making a refund to a motion picture company as required by Subsection (4)(a).
- (5)
 - (a) On or before October 1, 2014, and every five years after October 1, 2014, the Revenue and Taxation Interim Committee shall study the tax credit allowed by this section and make recommendations to the Legislative Management Committee concerning whether the tax credit should be continued, modified, or repealed.
 - (b) For purposes of the study required by this Subsection (5), the office shall provide the following information to the Revenue and Taxation Interim Committee:
 - (i) the amount of tax credit that the office grants to each motion picture company for each calendar year;
 - (ii) the criteria that the office uses in granting the tax credit;
 - (iii) the dollars left in the state, as defined in Section 63M-1-1802, by each motion picture company for each calendar year;
 - (iv) the information contained in the office's latest report to the Legislature under Section 63M-1-1805; and
 - (v) any other information requested by the Revenue and Taxation Interim Committee.
 - (c) The Revenue and Taxation Interim Committee shall ensure that its recommendations under Subsection (5)(a) include an evaluation of:
 - (i) the cost of the tax credit to the state;
 - (ii) the effectiveness of the tax credit; and
 - (iii) the extent to which the state benefits from the tax credit.

Section 59-10-1108 has similar language.

ⁱⁱ Section 59-10-1402 is available at http://le.utah.gov/code/TITLE59/htm/59_10_140200.htm and states in part:

As used in this part:

....

- (10) "Pass-through entity" means a business entity that is:
- (a) the following if classified as a partnership for federal income tax purposes:
 - (i) a general partnership;
 - (ii) a limited liability company;
 - (iii) a limited liability partnership; or
 - (iv) a limited partnership;
 - (b) an S corporation;
 - (c) an estate or trust with respect to which the estate's or trust's income, gain, loss, deduction, or credit is divided among and passed through to one or more pass-through entity taxpayers; or
 - (d) a business entity similar to Subsections (10)(a) through (c):
 - (i) with respect to which the business entity's income, gain, loss, deduction, or credit is divided among and passed through to one or more pass-through entity taxpayers; and
 - (ii) as defined by the commission by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.
- (11) "Pass-through entity taxpayer" means a resident or nonresident individual, a resident or nonresident business entity, or a resident or nonresident estate or trust:
- (a) that is:
 - (i) for a general partnership, a partner;
 - (ii) for a limited liability company, a member;
 - (iii) for a limited liability partnership, a partner;
 - (iv) for a limited partnership, a partner;
 - (v) for an S corporation, a shareholder;
 - (vi) for an estate or trust described in Subsection (10)(c), a beneficiary; or
 - (vii) for a business entity described in Subsection (10)(d), a member, partner, shareholder, or other title designated by the commission by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act; and
 - (b) to which the income, gain, loss, deduction, or credit of a pass-through entity is passed through.

ⁱⁱⁱ Section 59-10-1403 is available at http://le.utah.gov/code/TITLE59/htm/59_10_140300.htm and states the following:

- (1) Subject to Subsection (3), a pass-through entity is not subject to a tax imposed by this chapter.
- (2) The income, gain, loss, deduction, or credit of a pass-through entity shall be passed through to one or more pass-through entity taxpayers as provided in this part.
- (3) A pass-through entity is subject to the return filing requirements of Section 59-10-507.
- (4) A pass-through entity that transacts business in the state shall be classified for purposes of taxation under this title in the same manner as the pass-through entity is classified for federal income tax purposes.

Section 59-10-507 is available at http://le.utah.gov/code/TITLE59/htm/59_10_050700.htm and states the following:

- (1) As used in this section:
 - (a) "Pass-through entity" is as defined in Section 59-10-1402.
 - (b) "Taxable year" means a year or other time period that would be a taxable year of a pass-through entity if the pass-through entity were subject to taxation under this chapter.
- (2) A pass-through entity having any income derived from or connected with Utah sources shall make a return for the taxable year as prescribed by the commission.