

**REVISED PROPOSED REGULATION OF THE
OFFICE OF ECONOMIC DEVELOPMENT**

LCB File No. R062-22

July 15, 2022

EXPLANATION – Matter in *italics* is new; matter in brackets ~~[omitted material]~~ is material to be omitted.

AUTHORITY: §§ 1, 2 and 4-9, NRS 360.759; §§ 3 and 10-12, NRS 360.759 and 360.7591.

A REGULATION relating to taxation; setting forth the requirements for calculating the costs of certain tangible personal property that constitute a qualified direct production expenditure; revising the requirements for applying and approving a certificate of eligibility for transferable film tax credits; making various other changes related to transferable film tax credits; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

Existing law establishes a program for the issuance of transferable tax credits by the Office of Economic Development to the production company of a motion picture or other qualified production, based upon qualified direct production expenditures made for the purchase of personal property or services from a Nevada business. (NRS 360.759-360.7594) Existing law requires the Office to adopt regulations governing the issuance of such transferable tax credits. (NRS 360.759)

Existing law provides that if any tangible personal property is acquired by the production company as an asset, the calculation of the costs of the tangible personal property that constitute a qualified direct production expenditure must be performed in the manner prescribed by the Office by regulation. (NRS 360.7591) **Section 3** of this regulation sets forth the manner for calculating such costs.

Existing law authorizes a production company that produces a qualified production in this State to apply to the Office for transferable tax credits for any qualified direct production expenditures and set forth various requirements for a production company to obtain such tax credits. (NRS 360.759) Existing regulations instead refer to a producer applying for and receiving such tax credits. (NAC 360.830-360.865) **Sections 5-12** of this regulation change the term “producer” to “production company” for consistency with the relevant provisions of the Nevada Revised Statutes.

Existing regulations set forth the requirements for obtaining a certificate of eligibility for transferable tax credits, which includes submitting an application to obtain such a certificate. (NAC 360.830) **Section 5** revises the application requirements for obtaining a certificate of eligibility.

Existing regulations set forth the requirements for the Office to evaluate an application for a certificate of eligibility for transferable tax credits, including that the Executive Director of

the Office, or his or her designee, conduct a hearing on the application. Certain notice is provided by the Office not later than 30 days before the hearing. (NAC 360.835) **Section 6** provides instead that certain notice be provided by the Office not later than 10 days before the hearing. **Section 6** also eliminates the requirement that the notice include a copy of the proposed order prepared by the staff of the Office. **Section 6** authorizes, rather than requires, the Office to approve an application if the application meets certain requirements.

Existing regulations require that an applicant for a certificate of eligibility submit an audit of the qualified production not later than 30 days after completion of the qualified production. (NAC 360.840) **Section 7** requires instead that a production company that produces a qualified production for which a certificate of eligibility has been issued submit the audit not later than 270 days after completion of the qualified production unless the Office agrees to extend this period by not more than 90 days. **Sections 5 and 7** move the requirements for such an audit from NAC 360.830 to NAC 360.840 and revise the requirements for such an audit.

Existing regulations require that an application for a certificate of eligibility include a job summary for the qualified production. (NAC 360.830) **Section 7** requires that a production company that produces a qualified production for which a certificate of eligibility has been issued submit to the Office a final job summary for the qualified production and sets forth the requirements for the final job summary.

Existing regulations provide that the Office will determine whether to certify the audit of the qualified production and make a final determination of whether to issue a certificate of transferable tax credits within 14 business days after receipt of the audit and certain other financial data, accountings or information. (NAC 360.845) **Section 8** provides instead that the Office will make these determinations within 60 business days after receipt of the audit and certain other financial data, accountings or information.

Section 10 revises the requirements for calculating the amount of qualified expenditures and production costs that may serve as a basis for transferable tax credits. (NAC 360.855)

Section 11 of this regulation revises the requirements for calculating the amount of qualified expenditures and production costs for wages and salaries that may serve as a basis for transferable tax credits. (NAC 360.860)

Existing regulations authorize the Office to withhold transferable tax credits, in whole or in part, until any pending legal action in this State against a producer or involving a qualified production is resolved. (NAC 360.865) **Section 12** authorizes the Office to also withhold transferable tax credits, in whole or in part, if a production company is found to have: (1) violated any state or local law; or (2) submitted any false statement, representation or certification in any document submitted for the purpose of obtaining transferable tax credits.

Section 2 of this regulation defines the term “certificate of transferable tax credits.”

Section 4 of this regulation makes a conforming change to indicate the placement of **sections 2 and 3** of this regulation in the Nevada Administrative Code.

Section 1. Chapter 360 of NAC is hereby amended by adding thereto the provisions set forth as sections 2 and 3 of this regulation.

Sec. 2. *“Certificate of transferable tax credits” means a certificate of transferable tax credits issued by the Office pursuant to NRS 360.759 and NAC 360.845.*

Sec. 3. 1. *If any tangible personal property is acquired by a production company as an asset, the provisions of this section apply to the calculation of the costs of the tangible personal property that constitute a qualified direct production expenditure.*

2. If the tangible personal property is destroyed as part of the qualified production, the cost of the tangible personal property that constitutes a qualified direct production expenditure is the purchase price of the tangible personal property. The production company must submit to the Office satisfactory proof of the purchase price and that the tangible personal property is destroyed as part of the qualified production.

3. If, after production of the qualified production, the production company donates the tangible personal property or otherwise gives away the tangible personal property, the cost of the tangible personal property that constitutes a qualified direct production expenditure is:

(a) If the purchase price of the tangible personal property is \$10,000 or more, fifty percent of the purchase price.

(b) If the purchase price of the tangible personal property is less than \$10,000, the purchase price.

↪ The production company must submit to the Office satisfactory proof of the purchase price and that the production company donates or otherwise gives away the tangible personal property.

4. If, after production of the qualified production, the production company sells the tangible personal property, the cost of the tangible personal property that constitutes a qualified direct production expenditure is:

(a) If the purchase price of the tangible personal property is \$10,000 or more, the lesser of fifty percent of the purchase price or the purchase price less the amount for which the production company sold the tangible personal property.

(b) If the purchase price of the tangible personal property is less than \$10,000, the purchase price less the amount for which the production company sold the tangible personal property.

↪ The production company must submit to the Office satisfactory proof of the purchase price and the amount for which the production company sold the tangible personal property.

5. If, after production of the qualified production, the production company keeps the tangible personal property, the cost of the tangible personal property that constitutes a qualified direct production expenditure is:

(a) If the purchase price of the tangible personal property is \$10,000 or more, fifty percent of the purchase price.

(b) If the purchase price of the tangible personal property is less than \$10,000, the purchase price.

↪ The production company must submit to the Office satisfactory proof of the purchase price.

Sec. 4. NAC 360.800 is hereby amended to read as follows:

360.800 As used in NAC 360.800 to 360.865, inclusive, *and sections 2 and 3 of this regulation*, unless the context otherwise requires, the words and terms defined in NRS 360.7581 to 360.7586, inclusive, and NAC 360.805 to 360.820, inclusive, *and section 2 of this regulation* have the meanings ascribed to them in those sections.

Sec. 5. NAC 360.830 is hereby amended to read as follows:

360.830 1. Transferable tax credits may not be applied to any of the fees and taxes specified in NRS 360.759 unless the Office has issued a certificate of eligibility.

2. To obtain a certificate of eligibility, a ~~producer~~ *production company* must:

(a) Submit to the Office, *before the start of principal photography or principal development of the qualified production, whichever is applicable*, an application for a certificate of eligibility. The application must be on a form prescribed by the Office and, in addition to the information required by NRS 360.759, contain the following information:

- (1) The name of the qualified production;
- (2) A description of the qualified production;

(3) ~~The planned rating for the qualified production from a nationally recognized rating association or board, including, without limitation, a rating from the Motion Picture Association of America, or its successor organization, or the Entertainment Software Rating Board, or its successor organization, if applicable;~~

~~(4) A detailed~~ *A summary* budget for the entire qualified production, including, without limitation, separate in-state and out-of-state subtotals for:

- (I) Wages and salaries, including fringe benefits, for above-the-line personnel;
- (II) Wages and salaries, including fringe benefits, for below-the-line personnel;
- (III) Qualified expenditures and costs, as determined in accordance with NRS 360.7591

and NAC 360.855 and 360.860 ~~;~~ *and section 3 of this regulation*; and

(IV) Unless otherwise included in the information provided pursuant to sub-subparagraphs (I), (II) and (III), the maximum compensation payable to any employee or independent contractor paid a wage, salary or fee as compensation for providing labor or services on the production of the qualified production and included as a basis for calculating the amount

of transferable tax credit pursuant to NRS 360.7591 to 360.7594, inclusive, and NAC 360.855 and 360.860;

~~[(5)]~~ (4) A job summary for the qualified production, including, without limitation:

(I) An estimate of the number of jobs that will be created in this State by the qualified production;

(II) The *total* anticipated ~~[term]~~ *terms* of employment ~~[of each such job;]~~ *for the estimated number of jobs that will be created in this State by the qualified production;*

(III) The *total* anticipated ~~[wage]~~ *wages* to be paid for ~~[each such job;]~~ *the estimated number of jobs that will be created in this State by the qualified production;* and

(IV) The *total anticipated* fringe benefits *to be* provided ~~[to employees for each such job;]~~ *for the estimated number of jobs that will be created in this State by the qualified production;*

~~[(6)]~~ (5) The capital investment in this State proposed to be made in connection with the qualified production ~~[:]~~, *if applicable;*

~~[(7)]~~ (6) The anticipated location of real property and equipment and other tangible personal property in this State ~~[:]~~, *if applicable;*

~~[(8)]~~ (7) An acknowledgment of audit procedures on a form prescribed by the Office;

(8) An acknowledgment of the requirements of paragraph (g) of subsection 3 of NRS 360.759; and

(9) Any other information required by the application form prescribed by the Office.

(b) Provide with the application for a certificate of eligibility proof satisfactory to the Office that:

(1) The qualified production is in the economic interest of this State, as determined pursuant to subsection 5 of NAC 360.835;

(2) ~~[(Fifty)]~~ *Seventy* percent or more of the funding for the qualified production has been ~~[placed in an escrow account or trust account for the benefit of the qualified production,]~~ *obtained in a manner approved by the Office*, or that the ~~[producer]~~ *production company* has a corporate credit rating of “lower medium grade” or higher from a credit rating agency found suitable by the Office; and

(3) At least 60 percent of the total qualified expenditures and production costs for the production, including ~~[preproduction and]~~ :

(I) Preproduction;

(II) Production; and

(III) If any direct production expenditures for postproduction will be incurred in this State, postproduction,

↳ will be incurred in this State.

~~[(e) Not later than 30 days after the completion of the qualified production, provide the Office with:~~

~~——(1) A declaration of residency on a form prescribed by the Office for any above-the-line personnel and below-the-line personnel whom the producer of the qualified production claims to be Nevada residents; and~~

~~——(2) An audit of the qualified production, in a form approved by the Office, which includes an itemized report of qualified expenditures and production costs and which:~~

~~——(I) Shows that the qualified production incurred qualified expenditures and production costs in this State of \$500,000 or more; and~~

~~————(H) Is certified by an independent certified public accountant in this State who is approved by the Office.]~~

3. In considering applications for certificates of eligibility, the Office will give priority to qualified productions that will:

(a) Be in the economic interest of this State, as determined pursuant to subsection 5 of NAC 360.835.

(b) Promote tourism in this State.

4. The Office will deny an application for a certificate of eligibility if:

(a) ~~[The application is received by the Office on or after January 1, 2018.~~

~~—(b)]~~ The applicant does not commence principal photography or principal development of the qualified production, whichever is applicable, within 90 days after submitting the application to the Office ~~[~~

~~—(c)]~~ , *which period may not be extended by more than 90 days.*

(b) Approval of the application would cause the total amount of transferable tax credits to exceed:

(1) The amount of transferable tax credits available for approval during the current fiscal year, as determined pursuant to NRS 360.7594.

(2) The portion of the amount of transferable tax credits available for approval during the current fiscal year that has been apportioned by the Office to the current period of that fiscal year pursuant to NAC 360.850.

~~[(d) Production of the qualified production is not completed within 1 year after the date of the commencement of principal photography or principal development of the qualified production, whichever is applicable.~~

~~—(e)]~~ (c) The qualified production is not eligible for transferable tax credits pursuant to this section and NRS 360.759.

(d) The production contains material determined by the Office to be obscene, sexually explicit or gratuitously violent.

5. As used in this section:

(a) “Principal development” means the phase of a production that constitutes a qualified production pursuant to NAC 360.825 in which sound, video, images, text or animation is integrated into a digital product.

(b) “Principal photography” means the phase of a film, television, video or other qualified production in which the production is filmed, videotaped or otherwise recorded using production equipment with actors on set or location.

Sec. 6. NAC 360.835 is hereby amended to read as follows:

360.835 1. Upon receipt of a completed application for a certificate of eligibility submitted pursuant to paragraph (a) of subsection 2 of NAC 360.830 and the information required by paragraph (b) of subsection 2 of NAC 360.830, the staff of the Office shall:

(a) Evaluate the application and supporting information; and

(b) Prepare a proposed order containing a recommendation of whether to grant or deny approval of the application and an estimate of the amount of transferable tax credits available to the applicant if a certificate of eligibility is issued.

2. A hearing on an application for a certificate of eligibility must be conducted by the Executive Director or his or her designee not later than 60 days after the Office receives the application. Not later than ~~[30]~~ 10 days before the date of the hearing, the Office will provide

notice of the date, time and location of the hearing ~~[and a copy of the proposed order prepared pursuant to subsection 1]~~ to:

- (a) The applicant;
- (b) The Department; and
- (c) The Nevada Gaming Control Board.

3. Not later than 30 days after the conclusion of the hearing on the application for a certificate of eligibility, the Executive Director or his or her designee will determine whether to approve the application for a certificate of eligibility. If, after the conclusion of the hearing, the Executive Director or his or her designee finds that ~~⌋~~:

~~—(a) The qualified production is in the economic interest of this State, as determined pursuant to subsection 5;~~

~~—(b) Fifty percent or more of the funding for the qualified production has been placed in an escrow account or trust account for the benefit of the qualified production, or that the producer has a corporate credit rating of “lower medium grade” or higher from a credit rating agency found suitable by the Office; and~~

~~—(c) At least 60 percent of the total qualified expenditures and production costs for the qualified production, including preproduction and postproduction, will be incurred in this State;~~

~~→] *the applicant meets the qualifications set forth in paragraph (b) of subsection 2 of NAC 360.830*~~, the Office ~~[will]~~ *may* issue a final order approving the application for a certificate of eligibility and determining an estimate of the amount of transferable tax credits available if a certificate of eligibility is issued. The Office will provide notice of its determination and, if the application is approved, a copy of the final order to the applicant, the Department and the Nevada Gaming Control Board.

4. If the Office approves an application for a certificate of eligibility, the Office will execute a memorandum of understanding with the ~~producer of~~ *production company producing* the qualified production on a form prescribed by the Office and include a copy of the memorandum of understanding with the copy of the final order approving the application which is provided to the applicant, the Department and the Nevada Gaming Control Board pursuant to subsection 3.

5. For the purpose of determining whether a qualified production is in the economic interest of this State, the Executive Director shall consider:

(a) The economic factors set forth in subsection 2 of NRS 231.053;

(b) The number of high-quality jobs created for residents of this State, and the duration of those jobs, as a result of the qualified production;

(c) The quality of the capital investment in this State as a result of the qualified production;
and

(d) Any other factors deemed relevant by the Executive Director.

Sec. 7. NAC 360.840 is hereby amended to read as follows:

360.840 1. The Executive Director may request that ~~an applicant for~~ *a production company that produces a qualified production for which* a certificate of eligibility *has been issued* furnish him or her with copies of any records necessary to verify that the ~~applicant meets the requirements~~ *production company is eligible* for a certificate of ~~eligibility which are set forth in NRS 360.759 and NAC 360.830,~~ *transferable tax credits*, including, without limitation, information concerning the progress of the qualified production. The Office may deny ~~an application for~~ *the issuance of* a certificate of ~~eligibility~~ *transferable tax credits* if the ~~applicant~~ *production company* fails to provide any records in compliance with this subsection.

2. Not later than ~~[30]~~ 270 days after completion of a qualified production, ~~[an applicant]~~ *unless the Office agrees to extend this period by not more than 90 days, a production company that produces a qualified production for which a certificate of eligibility has been issued* shall submit to the Office ~~[the audit required by paragraph (c) of subsection 2 of NAC 360.830]~~ :

(a) An audit of the qualified production, in a form approved by the Office, which:

(1) Includes, without limitation, an itemized report of qualified expenditures and production costs;

(2) Shows that the qualified production incurred qualified expenditures and production costs in this State of \$500,000 or more;

(3) Includes a declaration of residency on a form prescribed by the Office for any above-the-line personnel and below-the-line personnel whom the production company claims to be a Nevada resident; and

(4) Is certified by an independent certified public accountant in this State who is approved by the Office; and ~~[any]~~

(b) Any financial data, accountings and other information required by the Office or the Department for the purpose of determining whether the applicant satisfies the requirements for a certificate of ~~[eligibility]~~ transferable tax credits which are set forth in NRS 360.759 and NAC 360.830 ~~[,]~~, including, without limitation, a final job summary for the qualified production that sets forth, without limitation:

(1) The total number of jobs created in this State by the qualified production;

(2) The total wages paid for the number of jobs created in this State by the qualified production;

(3) The total fringe benefits provided for the jobs created in this State by the qualified production; and

(4) The total hours of work performed in this State by:

(I) Above-the-line personnel who are Nevada residents;

(II) Below-the-line personnel who are Nevada residents;

(III) Extras who are Nevada residents;

(IV) Above-the-line personnel who are not Nevada residents;

(V) Below-the-line personnel who are not Nevada resident; and

(VI) Extras who are Nevada residents.

3. If the Office determines that any information submitted pursuant to this ~~subsection~~ *section* is incomplete, the Office will notify the ~~applicant~~ *production company* of its determination and, not later than 30 days after receiving the notice, the ~~applicant~~ *production company* must provide to the Office any additional information required by the Office. The Office may deny certification of the audit if ~~the applicant~~ :

(a) The production company fails to provide any financial data, accountings or other information in compliance with this subsection ~~(a)~~ ; *or*

(b) Production of the qualified production is not completed within 18 months after the date of the commencement of principal photography or principal development of the qualified production, whichever is applicable.

Sec. 8. NAC 360.845 is hereby amended to read as follows:

360.845 1. Within ~~(14)~~ *60* business days after receipt of the audit of the qualified production required by paragraph ~~(e)~~ *(a)* of subsection 2 of NAC ~~[360.830]~~ *360.840* and any other financial data, accountings or other information required by the Office ~~(a)~~ *pursuant to*

paragraph (b) of subsection 2 of NAC 360.840, the Office will determine whether to certify the audit and will make a final determination of whether to issue a certificate of transferable tax credits. If the Office determines that it will certify the audit, the Office will notify the ~~producer of~~ *production company that produced* the qualified production of the certification of the audit and the Office's intent to issue transferable tax credits.

2. Not later than 30 days after receipt of notice of the Office's intent to issue transferable tax credits, the ~~producer of~~ *production company that produced* the qualified production must submit to the Office an irrevocable declaration of the amount of transferable tax credits that will be applied to each tax or fee set forth in subsection 1 of NRS 360.759.

3. Upon receipt of the declaration required by subsection 2, the Office will issue a certificate of transferable tax credits in the amount approved by the Office for the fees and taxes set forth in the declaration. The Office will notify the Department and the Nevada Gaming Control Board of all transferable tax credits issued by the Office, as set forth in subsection 6 of NRS 360.759.

4. Before transferring tax credits for which a certificate of transferable tax credits has been issued, the ~~producer,~~ *production company that produced the qualified production*, or any subsequent purchaser of the transferable tax credits, must provide to the Office written notice of the proposed transfer on a form prescribed by the Office. The notice must include, without limitation:

(a) Contact information for the current holder of the transferable tax credits represented by the certificate of ~~eligibility~~ *transferable tax credits* and the person to whom the transferable tax credits will be transferred;

(b) The current state of residence of the current holder of the transferable tax credits represented by the certificate of ~~eligibility~~ *transferable tax credits* and the person to whom the transferable tax credits will be transferred;

(c) Whether the transfer is occurring through a broker and, if so, the name of the broker and any fees paid in connection with the transfer;

(d) The dollar amount of the transferable tax credits to be transferred;

(e) The amount of compensation received by the seller of the transferable tax credits from the purchaser of the transferable tax credits; and

(f) The proposed date of the transfer.

Sec. 9. NAC 360.847 is hereby amended to read as follows:

360.847 1. If the Office certifies the audit provided by a ~~producer~~ *production company* pursuant to paragraph ~~(e)~~ *(a)* of subsection ~~[3 of NRS 360.759]~~ *2 of NAC 360.840* and determines that all other requirements for transferable tax credits have been met, at the same time that the Office notifies the ~~producer~~ *production company* that transferable tax credits will be issued, the Office shall notify the Department that the transferable tax credits will be issued. The notice must provide the name of the ~~producer~~ *production company* and the amount of transferable tax credits that will be issued.

2. Upon receipt of the irrevocable declaration filed by a ~~producer~~ *production company* pursuant to subsection 6 of NRS 360.759 to declare the amount of transferable tax credits that will be applied to each tax or fee set forth in subsection 1 of NRS 360.759, the Office shall forward to the Department a copy of the certificate of ~~eligibility~~ *transferable tax credits* which:

(a) Identifies the amount of transferable tax credits to be applied to the taxes imposed by chapters 363A, 363B and 680B of NRS, segregated by the amount of credit to be applied to each of those taxes; and

(b) Accounts for all of the credits which will be applied to those taxes.

3. Within 5 calendar days after receiving notice from a ~~producer~~ *production company* of the transfer of transferable tax credits pursuant to subsection 6 of NRS 360.759, the Office shall notify the Department of all transferable tax credits transferred, segregated by each credit applied to the taxes imposed by chapter 363A, 363B or 680B of NRS. The notification must include, without limitation:

(a) Contact information for the current holder of the transferable tax credits and each person to whom the transferable tax credits will be transferred;

(b) The current state of residence of the current holder of the transferable tax credits and each person to whom the transferable tax credits will be transferred;

(c) The dollar amount of the transfer; and

(d) The proposed date of the transfer.

4. A holder of the transferable tax credits, other than ~~a producer~~ *the production company*, who intends to transfer any credit applied to the taxes imposed by chapter 363A, 363B or 680B of NRS must notify the Department of all such credits to be transferred, segregated by each credit applicable to the taxes set forth in chapters 363A, 363B and 680B of NRS. The notification must include, without limitation:

(a) Contact information for the current holder of the transferable tax credits and each person to whom the transferable tax credits will be transferred;

(b) The current state of residence of the current holder of the transferable tax credits and each person to whom the transferable tax credits will be transferred;

(c) The dollar amount of the transfer; and

(d) The proposed date of the transfer.

5. A holder of transferable tax credits who is applying such a credit to an amount of taxes due pursuant to chapter 363A, 363B or 680B of NRS shall include with the applicable return a form provided by the Department that indicates the amount of credit applied to the taxes due for that return.

6. A return in which any transferable tax credits are applied to a tax due pursuant to chapter 363A, 363B or 680B of NRS must be mailed to the Department at the following address:

Film Tax Credit Return Processing

Nevada Department of Taxation

1550 College Parkway, Suite 115

Carson City, NV 89706

7. The amount of credit claimed in a single tax return may not exceed the amount of tax due for that return.

Sec. 10. NAC 360.855 is hereby amended to read as follows:

360.855 1. For the purpose of calculating the amount of transferable tax credits available to an eligible ~~producer~~ *production company* pursuant to NRS 360.7591 to 360.7594, inclusive, except as otherwise provided in subsection 3, qualified expenditures and production costs that may serve as a basis for transferable tax credits must:

(a) Be expenditures made ~~on or after the date on which the eligible producer submits an application for a certificate of eligibility pursuant to paragraph (a) of subsection 2 of NAC 360.830;~~ *during the qualified production period;*

(b) Be customary and reasonable;

(c) Relate to a category of qualified expenditures and costs listed in subsection 2; and

(d) Be:

(1) Purchases *or rentals* of tangible personal property or services from a Nevada business.

(2) The payroll for Nevada residents or other personnel who provided services in this State, as calculated pursuant to NAC 360.860 and included in the calculation of the amount of transferable tax credits in accordance with NRS 360.7591 to 360.7594, inclusive.

(3) Fees paid to a producer, as included in the calculation of the amount of transferable tax credits in accordance with subsection 3 of NRS 360.7594.

2. Except as otherwise provided in this section and NRS 360.7591, expenditures or costs may serve as a basis for calculating the amount of transferable tax credits issued pursuant to NRS 360.759 only if the expenditure or cost relates to:

(a) Set construction and operation.

(b) Wardrobe and makeup.

(c) Photography, sound and lighting.

(d) Filming, film processing and film editing.

(e) The rental or leasing of facilities, equipment and vehicles.

(f) Food and lodging ~~+~~ *expenses that are incurred in this State, including, without limitation, per diems for food, lodging and incidental expenses.*

(g) Editing, sound mixing, special effects, visual effects and other postproduction services.

(h) The design, construction, improvement or repair of property, infrastructure, equipment or a production or postproduction facility.

(i) State and local government taxes to the extent not included as part of another cost or expenditure included in the calculation of the amount of transferable tax credits pursuant to this section and NRS 360.7591 to 360.7594, inclusive.

(j) Commercial airfare if *the airfare is for travel to or from the State*, purchased through a Nevada travel agency or *Nevada* travel ~~[company for travel that is]~~ *agent and* directly attributable to the qualified production.

(k) Insurance coverage , ~~[and bonding]~~ if purchased through a Nevada insurance agency ~~[]~~ *or* broker . ~~[or bonding agent.]~~

(l) The design and development of art assets for interactive entertainment, including, without limitation, concept art, background art, character models and sprites.

(m) The programming of software related to interactive entertainment, including, without limitation, codebases, netcode, development and modification of source code, development and adaptation of game engine software and game development tools.

(n) Quality assurance for interactive entertainment, including, without limitation, testing and tracking software bugs.

(o) Motion capture for interactive entertainment, including, without limitation, costs for motion capture software, performers and participants and motion capture facilities and costs related to incorporating motion capture data into an interactive entertainment product.

(p) Any other direct costs of producing a qualified production, including preproduction and postproduction, in accordance with generally accepted industry practice.

3. Expenditures and costs *are not qualified direct production expenditures and* must not be included in the calculation of the amount of transferable tax credits pursuant to this section and NRS 360.7591 to 360.7594, inclusive, if ~~[, pursuant]~~ :

(a) *Pursuant* to NRS 360.7591 to 360.7594, inclusive, and NAC 360.800 to 360.865, inclusive, *and sections 2 and 3 of this regulation*, the expenditure or cost is not eligible to serve as a basis for transferable tax credits issued pursuant to NRS 360.759 ~~[,]~~ ;

(b) Pursuant to paragraph ~~[(e)]~~ (d) of subsection 2 of NRS 360.7591, ~~[an expenditure or cost is ineligible to serve as a basis for transferable tax credits if]~~ the Office determines that the expenditure or cost provides a pass-through benefit to a person who is not a Nevada resident ~~[,]~~ ;

(c) *The expenditure is made or the cost is incurred more than 90 days before the date that the application for a certificate of eligibility was submitted to the Office; or*

(d) *The expenditure or cost is for any of the following:*

(1) *Airline fees, including, without limitation, baggage fees, change fees or any other airline fee determined by the Office to not be a qualified direct production expenditure;*

(2) *Box or kit rental fees paid to a person who is not Nevada resident;*

(3) *Any penalty associated with an infraction of the law, including, without limitation, parking tickets, speeding tickets or legal fees;*

(4) *Publicity; or*

(5) *Bank fees and expenses.*

4. *As used in this section:*

(a) *“Box or kit rental fee” means a payment made by a production company to a person employed to work on a qualified production for the approved and authorized use of reusable equipment that is owned by the person.*

(b) “Nevada travel agency” means a Nevada business whose primary business function is to offer the service of booking travel.

(b) “Nevada travel agent” means a person who is a Nevada resident who is primarily in the business of offering the service of booking travel.

(c) “Qualified production period” means the period during which the preproduction, production and postproduction occurs on a qualified production, as set forth on the application for a certificate of eligibility.

Sec. 11. NAC 360.860 is hereby amended to read as follows:

360.860 1. For the purpose of calculating the amount of transferable tax credits available to an eligible ~~producer~~ *production company* pursuant to NRS 360.7591 to 360.7594, inclusive, expenditures for wages and salaries, including fringe benefits, paid to Nevada residents or other personnel who provided services in this State may be included in the calculation:

(a) Only if the expenditures are qualified expenditures and production costs that may serve as a basis for transferable tax credits in accordance with NRS 360.7591 to 360.7594, inclusive, and NAC 360.855 ~~and~~ *and section 3 of this regulation.*

(b) ~~In the case of an employee who is a Nevada resident, in the amount stated as wages, tips and other compensation on the Form W-2 received by the employee, plus the amount paid by the employer for the fringe benefits of the employee, except that the amount included in the calculation for compensation payable to an employee for providing labor services on the production of the qualified production must~~ *If the amount, including wages and salaries, fringe benefits, per diems and other fees, does* not exceed \$750,000.

~~(c) In the case of an employee who is not a Nevada resident, in the amount determined in accordance with NRS 360.7593 and subsection 3 of NRS 360.7594.]~~

2. *For the purpose of calculating the allowable compensation payable to producers pursuant to subsection 3 of NRS 360.7594, a producer includes, without limitation, an executive producer, associate producer or any other person who is determined by the Office to be a producer of the qualified production.*

3. As used in this section, “fringe benefits” has the meaning ascribed to it in NRS 360.7593 and includes, without limitation, payments by an employer for unemployment insurance, FICA, pension and welfare benefits ~~[,] and~~ health insurance premiums . ~~[and meal and hotel per diems incurred in this State.]~~ *The term does not include any payroll handling fee charged by a payroll company unless the payroll company is a Nevada business.*

Sec. 12. NAC 360.865 is hereby amended to read as follows:

360.865 1. In calculating the amount of transferable tax credits available to an eligible ~~[producer]~~ *production company* pursuant to NRS 360.7591 to 360.7594, inclusive, the Office may:

(a) Reduce the cumulative amount of transferable tax credits that are calculated pursuant to NRS 360.7591 to 360.7594, inclusive, and NAC 360.855 and 360.860 *and section 3 of this regulation* by an amount equal to any damages incurred by the State or any political subdivision of this State as a result of a qualified production that is produced in this State.

(b) Withhold transferable tax credits, in whole or in part ~~[, until]~~ :

(1) *Until* any pending legal action in this State against a ~~[producer]~~ *production company* or involving a qualified production is resolved.

(2) *If a production company is found to have violated any state or local law.*

(3) If a production company is found to have submitted any false statement, representation or certification in any document submitted for the purpose of obtaining transferable tax credits.

2. If the Office finds that a ~~{producer}~~ *production company* is ineligible for transferable tax credits because the ~~{producer}~~ *production company* has submitted any false statement, representation or certification in any document submitted for the purpose of obtaining transferable tax credits or if the Office finds that a ~~{producer}~~ *production company* has otherwise become ineligible for transferable tax credits after receiving a certificate of eligibility, the Office will require the ~~{producer}~~ *production company* to repay to the Department or the Nevada Gaming Control Board, as applicable, any portion of the transferable tax credits to which the ~~{producer}~~ *production company* is not entitled.

3. The Office will not require a person who purchases transferable tax credits in good faith to forfeit the transferable tax credits unless the person submitted fraudulent information in connection with the purchase.