

Public Act No. 06-186

Act Making Adjustments to State Expenditures and Revenues for The Biennium  
Ending June 30, 2007

Sec. 83. (*Effective July 1, 2006, and applicable to income years commencing on or after January 1, 2006*):

(a) As used in this section:

(1) "Commissioner" means the Commissioner of Revenue Services.

(2) "Commission" means the Connecticut Commission on Culture and Tourism.

(3) "Qualified production" means the process of producing any type of entertainment content which shall include motion pictures; documentaries; long-form, specials, mini-series, series, music videos and interstitials television programming; interactive television; interactive games; videogames; commercials; infomercials; any format of digital media created primarily for distribution or exhibition to the general public; and any trailer, pilot, video teaser or demo created primarily to stimulate the sale, marketing, promotion or exploitation of future investment in either a product or a qualified production via any means and media in any digital media format, film or videotape, provided such program meets all the underlying criteria of a qualified production. "Qualified production" shall not include (A) any ongoing program created primarily as news, weather or financial market reports, or (B) any production containing any material or performance that is obscene, as defined in section 53a-193.

(4) "Eligible production company" means a corporation, partnership, limited liability company, or other business entity engaged in the business of producing qualified productions on a one-time or ongoing basis, and qualified by the Secretary of the State to engage in business in the state.

(5) "Production expenses or costs" means all expenditures clearly and demonstrably incurred in the state in the development, preproduction, production or postproduction costs of a qualified production, including:

(A) Expenditures for optioning or purchase of any intellectual property including, but not limited to, books, scripts, music or trademarks relating to the development or purchase of a script, screenplay or format, provided (i) the intellectual property was produced primarily in the state, (ii) seventy-five per cent of the qualified production based on such intellectual property is produced in the state, and (iii) the production expenses or costs for such optioning or

purchase are less than thirty-five per cent of the production expenses or costs incurred in the state. Such expenses or costs shall include all expenditures generally associated with the optioning or purchase of intellectual property, including option money, agent fees and attorney fees relating to the transaction, but shall not include any and all deferrals, deferments, royalties, profit participation or recourse or nonrecourse loans which the eligible production company may negotiate in order to obtain the rights to the intellectual property;

(B) Expenditures incurred in the state in the form of either compensation or purchases including production work, production equipment, production software, postproduction work, postproduction equipment, postproduction software, set design, set construction, props, lighting, wardrobe, makeup, makeup accessories, special effects, visual effects, audio effects, film processing, music, sound mixing, editing, location fees, soundstages and any and all other costs or services directly incurred in the state in connection with a state-certified qualified production;

(C) Expenditures for distribution, including preproduction, production or postproduction costs relating to the creation of trailers, marketing videos, commercials, point-of-purchase videos and any and all content created on film or digital media, including the duplication of films, videos, CDs, DVDs and any and all digital files now in existence and those yet to be created for mass consumer consumption; the purchase, by a company in the state, of any and all equipment relating to the duplication or mass market distribution of any content created or produced in the state by any digital media format which is now in use and those formats yet to be created for mass consumer consumption; and

(D) "Production expenses or costs" does not include the following: (i) Talent fees for extras, principal day players and atmosphere, as defined by the Screen Actors Guild, to the extent the individual performer costs exceed the rates of the Screen Actors Guild for double scale wages under the current collective bargaining agreements; (ii) media buys, promotional events or gifts or public relations associated with the promotion or marketing of any qualified production; (iii) deferred, leveraged or profit participation costs relating to any and all personnel associated with any and all aspects of the production, including, but not limited to, producer fees, director fees, talent fees and writer fees; (iv) costs relating to the transfer of the production tax credits; and (v) any amounts paid to persons or businesses as a result of their participation in profits from the exploitation of the qualified production.

(6) "State-certified qualified production" means a qualified production produced by an eligible production company that (A) is in compliance with regulations adopted pursuant to subsection (f) of this section, (B) is authorized to conduct

business in this state, and (C) has been approved by the commission as qualifying for a production tax credit under this section.

(b) The Connecticut Commission on Culture and Tourism shall administer a system of tax credit vouchers within the resources, requirements and purposes of this section for eligible production companies producing a state-certified qualified production in the state. For income years commencing on or after January 1, 2006, any eligible production company incurring production expenses or costs in excess of fifty thousand dollars shall be eligible for a credit against the tax imposed under chapter 208 equal to thirty per cent of such production expenses or costs. Any credit allowed pursuant to this subsection may be sold, assigned or otherwise transferred, in whole or in part, to one or more taxpayers, provided such taxpayers may claim such credit only for an income year in which the eligible production company would have been eligible to claim such credit. Any such credit allowed under this subsection shall be claimed against the tax imposed under chapter 208 for the income year in which final certification for the state-certified qualified production is made by the commission pursuant to this section, and may be carried forward for the three immediately succeeding income years. Any production tax credit allowed under this subsection shall be nonrefundable.

(c) (1) An eligible production company shall apply to the commission for an eligibility certificate not later than ninety days after the first production expenses or costs are incurred in the production of a qualified production, and shall provide with such application such information as the commission may require to determine such company's eligibility to claim a credit under this section.

(2) Not later than ninety days after the last production expenses or costs are incurred in the production of a qualified production, an eligible production company shall apply to the commission for a production tax credit certificate, and shall provide with such application such information as the commission may require pertaining to the amount of the company's production expenses or costs. If the commission determines that the company is eligible to be issued a production tax credit certificate, the commission shall enter on the certificate the amount of production expenses or costs that has been established to the satisfaction of the commission, and the amount of the company's credit under this section. The commission shall provide a copy of such certificate to the commissioner, upon request.

(d) If an eligible production company sells, assigns or otherwise transfers a credit under this section to another taxpayer, the transferor and transferee shall jointly submit written notification of such transfer to the commission not later than thirty days after such transfer. The notification shall include the credit certificate number, the date of transfer, the amount of such credit transferred, the tax credit

balance before and after the transfer, the tax identification numbers for both the transferor and the transferee, and any other information required by the commission. Failure to comply with this subsection will result in a disallowance of the tax credit until there is full compliance on both the part of the transferor and the transferee. The commission shall provide a copy of the notification of assignment to the commissioner upon request.

(e) The commission, in consultation with the commissioner, shall adopt regulations, in accordance with the provisions of chapter 54 of the general statutes, as may be necessary for the administration of this section.

## **Definition of Obscene Material**

Sec. 53a-193 Definitions. The following definitions are applicable to this section and sections 53a-194 to 53a-210, inclusive:

(1) Any material or performance is "obscene" if, (A) taken as a whole, it predominantly appeals to the prurient interest, (B) it depicts or describes in a patently offensive way a prohibited sexual act, and (C) taken as a whole, it lacks serious literary, artistic, educational, political or scientific value. Predominant appeal shall be judged with reference to ordinary adults unless it appears from the character of the material or performance or the circumstances of its dissemination to be designed for some other specially susceptible audience. Whether a material or performance is obscene shall be judged by ordinary adults applying contemporary community standards. In applying contemporary community standards, the state of Connecticut is deemed to be the community.

(2) Material or a performance is "obscene as to minors" if it depicts a prohibited sexual act and, taken as a whole, it is harmful to minors. For purposes of this subdivision: (A) "Minor" means any person less than seventeen years old as used in section 53a-196 and less than sixteen years old as used in sections 53a-196a and 53a-196b, and (B) "harmful to minors" means that quality of any description or representation, in whatever form, of a prohibited sexual act, when (i) it predominantly appeals to the prurient, shameful or morbid interest of minors, (ii) it is patently offensive to prevailing standards in the adult community as a whole with respect to what is suitable material for minors, and (iii) taken as a whole, it lacks serious literary, artistic, educational, political or scientific value for minors.

(3) "Prohibited sexual act" means erotic fondling, nude performance, sexual excitement, sado-masochistic abuse, masturbation or sexual intercourse.

(4) "Nude performance" means the showing of the human male or female genitals, pubic area or buttocks with less than a fully opaque covering, or the showing of the female breast with less than a fully opaque covering of any portion thereof below the top of the nipple, or the depiction of covered male genitals in a discernibly turgid state in any play, motion picture, dance or other exhibition performed before an audience.

(5) "Erotic fondling" means touching a person's clothed or unclothed genitals, pubic area, buttocks, or if such person is a female, breast.

(6) "Sexual excitement" means the condition of human male or female genitals when in a state of sexual stimulation or arousal.

(7) "Sado-masochistic abuse" means flagellation or torture by or upon a person clad in undergarments, a mask or bizarre costume, or the condition of being fettered, bound or otherwise physically restrained on the part of one so clothed.

(8) "Masturbation" means the real or simulated touching, rubbing or otherwise stimulating a person's own clothed or unclothed genitals, pubic area, buttocks, or, if the person is female, breast, either by manual manipulation or with an artificial instrument.

(9) "Sexual intercourse" means intercourse, real or simulated, whether genital-genital, oral-genital, anal-genital or oral-anal, whether between persons of the same or opposite sex or between a human and an animal, or with an artificial genital.

(10) "Material" means anything tangible which is capable of being used or adapted to arouse prurient, shameful or morbid interest, whether through the medium of reading, observation, sound or in any other manner. Undeveloped photographs, molds, printing plates, and the like, may be deemed obscene notwithstanding that processing or other acts may be required to make the obscenity patent or to disseminate it.

(11) "Performance" means any play, motion picture, dance or other exhibition performed before an audience.

(12) "Promote" means to manufacture, issue, sell, give, provide, lend, mail, deliver, transfer, transmit, publish, distribute, circulate, disseminate, present, exhibit, advertise, produce, direct or participate in.

(13) "Child pornography" means any visual depiction including any photograph, film, videotape, picture or computer-generated image or picture, whether made or produced by electronic, mechanical or other means, of sexually explicit conduct, where the production of such visual depiction involves the use of a person under sixteen years of age engaging in sexually explicit conduct, provided whether the subject of a visual depiction was a person under sixteen years of age at the time the visual depiction was created is a question to be decided by the trier of fact.

(14) "Sexually explicit conduct" means actual or simulated (A) sexual intercourse, including genital-genital, oral-genital, anal-genital or oral-anal physical contact, whether between persons of the same or opposite sex, or with an artificial genital, (B) bestiality, (C) masturbation, (D) sadistic or masochistic abuse, or (E) lascivious exhibition of the genitals or pubic area of any person.

(15) "Visual depiction" includes undeveloped film and videotape and data, as defined in subdivision (8) of section 53a-250, that is capable of conversion into a visual image and includes encrypted data.