

## **EFFECT OF THE RECENT LEGISLATIVE ENACTMENT CONCERNING TENNESSEE'S INCENTIVE FOR THE PRODUCTION OF MOVIES AND EPISODIC TELEVISION PROGRAMS IN TENNESSEE**

1. Under prior law, the incentive would have expired on July 1, 2012. The recent legislative enactment amended Tenn. Code Ann. § 67-4-2109(k)(1)(A) to remove the expiration date so that, under current law, the incentive has no expiration date.
2. Under prior law, the incentive amount approved could be refunded to the “qualified production company” or the “qualified investor,” as appropriate. However, as amended the current law requires the approved incentive amount to first be applied against the Tennessee franchise, excise tax liability of the “qualified production company” or the “qualified investor,” as the case may be. If the incentive amount approved exceeds the tax liability to which it is applied, the Tennessee Department of Revenue will refund the excess.

### Example 1:

Ultramite Productions (“Ultramite”), a calendar year taxpayer, began business in Tennessee on March 2, 2009. Ultramite produces a movie in Tennessee and on June 29, 2010 the Tennessee Department of Revenue (the “Department”) approves an incentive credit of \$160,000 as a result of the production.

The Department’s records show that Ultramite filed its franchise, excise tax return for the calendar year 2009 on April 15, 2010 and paid the taxes computed due thereon. Ultramite has no current franchise, excise tax liability.

Upon request, the Department will process a refund for Ultramite in the amount of \$160,000.

### Example 2:

Assume the same facts as in Example 1 above except that Ultramite has not filed its calendar year 2009 franchise, excise tax return due April 15, 2010.

Ultramite must file its franchise, excise tax return for the tax year 2009. If the taxes plus penalty and interest due with the return are paid and the Department’s records show that Ultramite has satisfied all current franchise, excise tax liabilities, upon request the Department will then process a refund for Ultramite in the amount of \$160,000.

If Ultramite files its 2009 franchise, excise tax return but does not pay the taxes, penalties and interest due thereon, the Department will first apply the \$160,000 credit to the liability and will then refund to Ultramite the amount, if any, by which the credit exceeds the liability. If the return shows a liability for \$3,329.69, the excess credit in the amount to \$156,670.31 will be refunded to Ultramite upon request, provided that the Department’s records show no other current franchise, excise tax liabilities.