

ALASKA STATE LEGISLATURE

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REPRESENTATIVE CRAIG JOHNSON RULES COMMITTEE CHAIRMAN

April 10, 2011

Ms. Susan Bell, Commissioner
Department of Commerce, Community,
& Economic Development
P.O. Box 110800
Juneau, AK 99811-0800

Dear Commissioner Bell:

For use during the House Labor and Commerce Committee's consideration of SB 23, the Film Tax Credit Legislation, I respectfully request that you provide my office with an itemization of how your Department and the Department of Revenue have prorated credits for equipment purchases or upgrades, real property purchases, modifications and facility improvements, or land acquisition for the fourteen film productions that have been awarded tax credits to date in compliance with AS 44.33.236. If that information is confidential, please provide the itemization without identifiers so that the committee can gain better insights into how the program works and how expenditures for real and tangible property are determined qualified and prorated.

From reading AS 44.33, it's my understanding that in-state producers would qualify for the tax credits as long as they are working on an approved film and thus could upgrade, expand or improve their existing facilities and equipment while working on the film. Such capital improvements would qualify for tax credits. Without making a judgment on whether that was intended or desirable policy, it appears that in the case of in-state producers, the program could be fairly characterized as providing subsidization with state tax dollars of the in-state film industry, rather than a tool for attracting new direct economic benefit to the state in the form of outside film industry dollars. Capital improvements purchased with state tax dollars, whether in or out-of-state, need to be carefully scrutinized to ensure compliance with the spirit and letter of AS 44.33.

There have also been media reports that the producer of "Everybody Loves Whales" believes ninety percent of the film's approximately \$35 million dollar cost will qualify for the Alaska tax credit, resulting in an approximately \$10 million dollar transferrable tax credit. If that media report is accurate, I question how all but ten percent of a major motion pictures' production cost could meet the AS 44.33.235 requirement that to qualify for the credit, "expenditures must be directly related to

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the production and be incurred in the state" (emphasis added). That question is particularly poignant given that the most often repeated justification for the program is that Alaska currently does not have the necessary film industry infrastructure to allow major productions to be made in the state. Yet, if ninety percent of "Everybody Loves Whales" qualifies for the credit, we apparently already do. Either that, or the latitude allowed for categorizing expenditure as "in-state" is overly broad.

Finally in researching the background of the 14 companies that have been awarded tax credits to date, it appears from state occupational licensing records that only three of those companies have an Alaska business license. Under AS 43.70.020(a) "For the privilege of engaging in a business in the state, a person shall first apply, upon forms prescribed by the commissioner, and obtain a license, and pay the license fee." Failure to do so results in a nominal fine, but it seems inconceivable that companies producing major multi-million dollar films and undertaking significant business activities in this state, which qualify for potentially millions in tax credits, would not be required to obtain a business license first. There is likely a good explanation for the fact that only three of the 14 companies have an Alaskan business license; because if not, that fact alone raises serious doubts about the program's accountability and the Department of Commerce's oversight to ensure compliance with requirements of an existing \$100 million dollar program – not to mention accountability implications given the desire to significantly extend and expand the program as reflected in SB 23.

With the limited time remaining in this legislative session and hearings scheduled on SB 23, your earliest consideration of this request would be greatly appreciated.

Sincerely,



Representative Craig Johnson
Chairman, House Rules Committee

cc Governor Sean Parnell
Kelly Mazzei, Income Tax Auditor, Department of Revenue
Senator Johnny Ellis, Sponsor SB 23
Representative Olson, Chair House Labor and Commerce Committee
Representative Chenault, Member
Representative Saddler, Member
Representative Thompson, Member
Representative Holmes, Member
Representative Miller, Member
Crystal Koeneman, DCCED Legislative Liaison