

Sample Limited Managed Audit Agreement

Between

And

The Arizona Department of Revenue

This Limited Managed Audit Agreement (Agreement) is made this [DAY] day of [MONTH], [YEAR], between [TAXPAYER] (Taxpayer), and the Arizona Department of Revenue ("Department") to confirm the amount of any income tax credit for motion picture production costs pursuant to ARS §43-1075, §43-1163. This Agreement is effective for the motion picture production (NAME OF PRODUCTION, PRE/POST-APPROVAL NUMBER) ("Production") as pre-approved by the Arizona Department of Commerce on (PRE-APPROVAL DATE) and post-approved on (POST-APPROVAL DATE).

RECITALS

Whereas, Taxpayer's Federal Employer Identification Number ("FEIN") is [FEIN #]. An addendum to this agreement must contain all subsidiaries' names and FEINs.

Whereas, Taxpayer has received post certification from the Arizona Department of Commerce pursuant to ARS §41-1517(O) for a tax credit for motion picture production costs under ARS §43-1075, §43-1163 for the Production in the maximum amount of [AMOUNT] for tax year [YEAR] ("Tax Year").

Whereas, ARS §43-1075(E), §43-1163(E) authorize a motion picture production company to enter into a limited managed audit agreement, as defined in ARS §42-2301(1), that includes an audit of its production costs and other requirements prescribed by ARS §41-1517 and §43-1075, §43-1163 to confirm the amount of any tax credit under ARS §43-1163.

Whereas, ARS §42-2301 defines "managed audit" to mean a review and analysis by the taxpayer of the accounting records and other documents and information to determine a taxpayer's liability for tax under the Arizona Revised Statutes.

Whereas, Taxpayer has requested authorization to perform a limited managed audit as authorized by ARS §43-1075(E), §43-1163(E) and §42-2302, for the Production specified in this Agreement.

Whereas, the Director of the Department (“Director”), or appointed designee, may permit a taxpayer to conduct a limited managed audit under ARS §43-1075(E), §43-1163(E), §42-2302.

Whereas, Taxpayer shall furnish written findings to the Director pursuant to ARS §42-2303.

PROCEDURES AND GENERAL PROVISIONS

Department and Taxpayer hereby agree as follows:

1. Department and Taxpayer shall comply with all terms and conditions of this Agreement, including any exhibits, in the completion of the limited managed audit for the Production specified in this Agreement.
2. Authorized representatives of the Department and Taxpayer shall jointly develop a limited managed audit plan for the specified Production. A summary of that plan as jointly developed and approved by the Department and Taxpayer is referred to in this Agreement as “Audit Plan Summary.” Upon written approval by both the Department and Taxpayer, the Audit Plan Summary shall be attached to this Agreement as Exhibit A and shall be incorporated as part of this Agreement for all purposes. The Audit Plan Summary shall include the agreed-upon audit procedures.
3. The limited managed audit shall be conducted by Taxpayer’s authorized representative, as defined by ARS §42-2301, who shall be an independent certified public accountant licensed in Arizona and who does not regularly perform services for Taxpayer or its affiliates.
4. Taxpayer and Department shall each use their best efforts to complete the limited managed audit for the audit period specified in this Agreement in accordance with ARS §43-1075(E), §43-1163(E) and §42-2302 and other applicable law. Taxpayer shall instruct its authorized representative to submit the limited managed audit final report directly to the Department for review no later than [DATE].
5. If the limited managed audit cannot be completed by the date specified in this Limited Managed Audit Agreement, Taxpayer shall provide written notification to the Department a minimum of thirty (30) days prior to the date specified for completion in this Limited Managed Audit Agreement. The written notification shall include detailed reasons outlining why the limited managed audit cannot be completed by the specified completion date. The notification must suggest an alternative completion date. If applicable, a Statute of Limitations extension under ARS §42-1104 and/or Audit Performance Limitation extension under ARS §42-2075 shall accompany the notification. The Department reserves the right, in its sole discretion, to accept or reject an alternative completion date and the Statute of Limitations and/or Audit Performance

limitation extension. Upon execution, a copy of the Statute of Limitations extension and/or Audit Performance Limitation extension shall be attached to this Agreement as Exhibit B and shall be incorporated herein for all purposes. The Department reserves the right, in its sole discretion, to immediately terminate this Agreement if it determines that Taxpayer has not made a good faith effort to complete the limited managed audit by the specified completion date.

6. Taxpayer shall document in detail the results of the limited managed audit and provide that documentation to the Department in a format specified by the Department. The Department may, in its sole discretion, examine records and perform reviews that the Department determines are necessary, in order to verify the results of the limited audit or comply with other applicable law, before the limited managed audit is finalized.

7. If the Department accepts the findings of the limited managed audit and issues a notice of determination accepting a tax credit amount, and if Taxpayer timely files its income tax return for the Tax Year with the appropriate credit claim forms, the Department may not recapture, disallow, reduce or deny the credit amount accepted with respect to Taxpayer or any subsequent transferee of the credit, with the exception that the Department may recapture the credit from Taxpayer if Taxpayer fails to disclose material information during the limited managed audit or if Taxpayer falsifies its books or records or otherwise engages in an action that prevents an accurate audit.

8. The limited managed audit to be performed under this Agreement, and any determination issued as a result thereof, shall relate solely to Taxpayer's entitlement to a tax credit for motion picture production costs pursuant to ARS §43-1075, §43-1163 and shall not preclude subsequent deficiency assessments under ARS §42-1108.

9. Taxpayer represents and warrants that it has not given, offered to give, and does not intend to give at any time hereafter, any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor or service to any public servant or state employee in connection with this Agreement.

10. This Agreement may be amended only by written agreement between the Department and Taxpayer, but in no case shall this Agreement be amended or construed so that it conflicts with the laws of the State of Arizona or rules adopted by the Department under those laws.

11. This Agreement shall be governed by and construed in accordance with the laws of the State of Arizona. The venue of any suit brought for any breach of this Agreement is fixed in any court of competent jurisdiction.

12. Time is of the essence in the performance of this Agreement. Taxpayer shall strictly comply with all of the deadlines of this Agreement.

13. Any correspondence related to this Agreement directed to the Department should be addressed to the Corporate Audit Section, Managed Audit Program. Any

correspondence related to this Agreement intended for the Taxpayer should be directed to: [TAXPAYER / TAXPAYER ADDRESS].

14. The Department and the State of Arizona shall not be liable for any damages or any other amounts to Taxpayer or any other entity or person resulting from any termination or cancellation of this Agreement for any reason.

By signing, the undersigned Parties certify that they have read and agreed to the terms of this Limited Managed Audit Agreement. Additionally, the signatories certify that they have the authority to sign this Limited Managed Audit Agreement and thereby bind their respective party.

Date: _____

Taxpayer

By: _____

Its: _____

Date: _____

ARIZONA DEPARTMENT OF REVENUE

By: _____
Gale Garriott

Its: Director _____

EXHIBIT A

SAMPLE AUDIT PLAN SUMMARY

TAXPAYER NAME: _____

PRODUCTION: _____
Name, pre-/post-approval number

Taxpayer authorized representative, signature and date

PRODUCTION COSTS:

Prepare supporting schedules and analyze source and nature of item in accordance with the managed audit process as explained in Exhibit B. Provide documentation as appropriate for the following costs incurred after the date of notice of pre-approval:

- _____ Salaries and other compensation for talent, management and labor paid to Arizona residents for production work performed in Arizona;
- _____ Costs of story and scenario used for the Production;
- _____ Set construction and operations, wardrobe, props, accessories and related services in Arizona (construction expenses limited to contractors licensed in Arizona);
- _____ Photography, sound synchronization, lighting and related costs incurred in Arizona;
- _____ Editing and related services performed in Arizona;
- _____ Rental of facilities and equipment in Arizona;
- _____ Catered food, drink and condiment purchased in Arizona;
- _____ Other direct in-state costs of the Production.

_____ **Total qualifying costs** of the Production

_____ **Maximum tax credit amount** approved by the Arizona Department of Commerce

EMPLOYMENT IN THE PRODUCTION:

- _____ Number of hours worked in Arizona by full-time employed Arizona residents
- _____ Number of hours worked in Arizona by all full-time employees
- _____ **Percentage of hours worked by Arizona residents**