

# CANADIAN AUDIO-VISUAL CERTIFICATION OFFICE

CANADIAN FILM OR VIDEO PRODUCTION TAX CREDIT PROGRAM  
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## CAVCO POLICY BULLETIN

Guidelines - Amendment #4  
February 1, 1999

### CAVCO Policy Regarding Administrative Filing and Completion Deadlines

In accordance with draft subparagraph 1106(1)(a)(i) of the proposed *Income Tax Regulations* (“Regulations”), under the definition of “excluded production”, a production will not be eligible for a Canadian Film or Video Production Certificate (“Part A”) where “the Minister of Canadian Heritage has not issued a certificate of completion within 30 months after the end of the corporation’s taxation year in which the production’s principal photography began, certifying that the production was completed within two years after the end of the year”.

Effectively, this section of the Regulations sets out a two-fold time period which must be met by every production that applies for a Canadian Film or Video Production Tax Credit (the “film tax credit”). For example, a production which began principal photography on June 17, 1998 and whose corporate year end is December 31, must complete that production by December 31, 2000 and must obtain a certificate of completion (“Part B”) from the Minister of Canadian Heritage (through the offices of CAVCO) by June 30, 2001.

Due to a variety of circumstances, there are many production companies which have not been able to meet one or both of these time requirements. Unfortunately, there is no specific provision in the legislation or Regulations which allows the Minister of Canadian Heritage any discretion in waiving these requirements. However, CAVCO, on behalf of the Minister of Canadian Heritage, with input from Revenue Canada, has developed an administrative policy by which these deadlines can be extended in certain circumstances. The CAVCO administrative guidelines are outlined herein. Please refer to the requirements carefully since any production which does not obtain both Part A and Part B certification from CAVCO will be denied access to the film tax credit and, where a film tax credit has been obtained and no Part B certificate has been issued, that film tax credit must be repaid.

It is CAVCO’s administrative responsibility to issue both Part A and Part B certificates in all situations where productions meet the requirements of the program. However, to address Revenue Canada’s concerns about the reassessment of previously filed T2 *Corporation Income Tax Returns*, which include productions that do not meet the certification deadline requirements of Regulation 1106(1)(a)(i), Revenue Canada will require a waiver (Form T2029, *Waiver in Respect of the Normal Reassessment Period*) as discussed below.

In order to obtain a film tax credit for a particular taxation year, a production corporation must file with Revenue Canada a T2 Return including form T1131, *Claiming a Canadian Film or Video Production Tax Credit*, and a CAVCO Part A certificate (and a Part B certificate, when available) for each production, within 3 years from the end of that particular taxation year. No tax refund will be allowed for a T2 Return filed beyond this 3-year limit, notwithstanding that a Part A and/or a Part B certificate have been issued by CAVCO. This limitation is found in subsection 164(1) of the *Income Tax Act* and is of general application to all taxpayers requesting a refund of taxes. Please note, the policy contained herein does not apply to extend this time period.

Production corporations applying to Revenue Canada for the film tax credit must do so within the three year period notwithstanding any extensions granted by CAVCO.

**Policy 1: The 25-month requirement to file a Part B application with CAVCO.**

It has been CAVCO's administrative policy to require all production corporations to file their application for a Part B certificate (or where no Part A certificate has been obtained, a Part A/B application) within 24 months after the year end in which principal photography has begun. Since this deadline is often confused with the regulatory requirement to complete a production within two years from the year end in which principal photography began (they are essentially the same date), CAVCO has hereby changed this administrative deadline to 25 months after the year end in which principal photography began. Using our earlier example, a production which began principal photography on June 17, 1998 and whose corporate year end is December 31st, must complete that production by December 31, 2000 (two-year deadline), must file for a Part B certificate with CAVCO by January 31, 2001 (25-month deadline) and must obtain a Part B by June 30, 2001 (30-month deadline).

This new 25-month filing deadline gives CAVCO five (5) months in which to process the file and issue a Part B certificate. In most cases, it will not take CAVCO the full 5 months to issue the Part B, although, the time lag often depends upon the response time of the individual production corporation to any requests for additional information. Where a production corporation does not file by the required time, there is a risk that CAVCO will not be able to provide the Part B certificate by the 30-month deadline imposed by the Regulations. Production corporations which miss this 25-month administrative filing deadline must notify CAVCO in writing before the 25-month deadline expires and make their application as soon as possible. We will attempt to get the file processed in time, but there is no guarantee that this will be possible. However, when a complete application is filed within the 25-month deadline, the production corporation diligently responds to any requests for additional information, and where there is no problem regarding eligibility for the tax credit, CAVCO will guarantee a Part B certificate by the 30-month deadline.

In those cases where the 30-month Part B deadline has been missed, CAVCO has established two policies to deal with this circumstance. The first is a transitional policy which is in effect only until March 31, 1999. The second is an on-going policy which will continue until further notice.

**Policy 2: The 30-month requirement to receive a Part B certificate from CAVCO. The transitional policy.**

Relief under this policy is available only until March 31, 1999 for all production corporations which can provide the following:

- (a) a documented and reasonable claim for an extension of the time limit;
- (b) a complete application for a Part B by March 31, 1999; and
- (c) confirmation from Revenue Canada that a waiver has been obtained for each taxation year for which a film tax credit has been refunded for a particular production that exceeds the 30-month deadline.

To meet the first requirement, the production corporation should submit in writing the reason(s) why the 30-month deadline has been or will be missed (i.e. lack of awareness of the deadlines, administrative difficulties, etc.). Along with this letter, the production corporation should file a complete Part B (or Part A/B) application. In order to meet the last requirement, the production corporation must contact their local Taxation Services Office ("TSO"). The TSO will require that the production corporation provide a waiver of the time limitation regarding reassessment of a claim made under the *Income Tax Act*. The production corporation will need its Business Identification Number (BIN) or account number and will need to know the taxation year(s) for which

a film tax credit has been refunded for a particular production that exceeds the 30-month deadline. A waiver will be required for each year affected. Your local TSO will assist you in completing the waiver.

The production corporation must provide the first two items to CAVCO and contact the local TSO by March 31, 1999 in order to be considered for the extension. The confirmation by Revenue Canada regarding the waiver should be sent to CAVCO as soon as it becomes available since no Part B certificate will be issued until it is received.

An extension of the 30-month deadline is conditional upon the issuance of a Part B certificate within a reasonable time to be determined by CAVCO on a case-by-case basis. The production corporation will be notified in writing by CAVCO as to the extension date. Where a Part B certificate cannot be issued within a reasonable time the production will be an excluded production. As a result, no film tax credit would be allowable in the current year and any previously allowed film tax credits for that production would have to be reimbursed.

**Policy 3: The 30-month requirement to receive a Part B certificate from CAVCO. The on-going policy.**

After March 31, 1999, all applications will be subject to the 30-month requirement, set out in subparagraph 1106(1)(a)(i) of the Regulations, except official co-productions (often referred to as “treaty co-productions”) and those productions which benefit from an extension of the two-year completion deadline, as set-out below.

In order for a production corporation, which is producing an official co-production, to apply for a Part A certificate, the corporation must first obtain an Advance Ruling from Telefilm Canada (“Telefilm”) stating that the production appears to meet the requirements under the applicable treaty. Once the production is completed, the production corporation must request from Telefilm Final Approval of the production as an official co-production. The certificate indicating Telefilm’s recommendation respecting Final Approval is forwarded to CAVCO, when it is available, for the signature of the Minister of Canadian Heritage. This recommendation is required before CAVCO can issue a Part B certificate. Due to possible delays in this process, which are often beyond the control of the production corporation, a Part B certificate may not be issued within the 30-month deadline.

In the case of an official co-production or where an extension of the two-year completion deadline has been accepted (see policy below), an extension of the 30-month deadline will be granted where:

the production corporation notifies CAVCO in writing, before the 30-month deadline has passed, that it will not be able to meet the deadline. However, in the case of an official co-production where the only missing piece of information is the Final Approval recommendation from Telefilm, and the production corporation has filed an otherwise complete Part B application by the 25-month administrative filing deadline, then no notification is required.

In addition to the notification requirement, all production corporations which miss the 30-month deadline will be required to provide CAVCO with confirmation from Revenue Canada that a waiver has been obtained for each taxation year for which a film tax credit has been refunded for a particular production. Your local TSO will assist you in completing the waiver. Waivers are required even in those cases where the 30-month deadline is missed due to a delay on the part of Telefilm in issuing the Final Approval recommendation. CAVCO will notify the production corporation of the requirement to provide a waiver to Revenue Canada in this latter case.

An extension of the 30-month deadline is conditional upon the issuance of a Part B certificate within a reasonable time to be determined by CAVCO on a case-by-case basis. The production corporation will be

notified in writing by CAVCO as to the extension date. Where a Part B certificate cannot be issued within a reasonable time the production will be an excluded production. As a result, no film tax credit would be allowable in the current year and any previously allowed film tax credits for that production would have to be reimbursed.

**Policy 4: The requirement to complete a production within two years after the year end in which principal photography began.**

All productions must be completed within two years following the year end in which principal photography began. Generally, completion is understood to be the day on which the production can be exploited. It is not necessarily the same day as delivery. A production may be completed weeks before it is actually delivered to the intended user. Likewise, a production may be sent to a broadcaster for approval, but is returned to the producer for some adjustments before the final version is acceptable for broadcast and, consequently, complete.

Where a production corporation cannot complete the production within the 2-year period, an extension of that date will be granted where:

- (a) the production corporation notifies CAVCO in writing, no later than two years after the end of the corporation's taxation year in which principal photography began, that the production will not be completed within the prescribed time period (where a corporation has already missed this deadline, transitional relief will be granted, and a corporation can file notice with CAVCO, so long as this is done by March 31, 1999);
- (b) the production corporation must indicate in the notice the reason for the request of an extension and this request must be approved by CAVCO. Such accommodations will be allowed primarily for technical reasons, including but not limited to: (i) animation, documentary and special effects projects that may require more time to complete; (ii) bankruptcy of the production corporation; and (iii) delays beyond the production corporation's control, such as is the case in official co-productions where completion of the production may rest with the foreign co-producer.

An extension is conditional upon the production being completed within a reasonable time period as determined by CAVCO on a case-by-case basis. Where the production is not completed, the extension will be withdrawn and the production will be an excluded production. As a result, no film tax credit would be allowable in the current year and any previously allowed film tax credits would have to be reimbursed.

Where the extension is granted, it is likely that the production corporation will not be able to meet the 25-month administrative filing deadline for a Part B certificate, since this date so closely follows the 2-year completion date. Therefore, CAVCO will grant an extension of the 25-month administrative filing date at the same time it extends the completion date. In most cases, but not all, the production corporation may also miss the 30-month Part B deadline. Where this is likely to occur, the production corporation must follow the procedure under Policy 3 above. In particular, they must notify CAVCO and obtain the waiver from Revenue Canada.

**\*\*\* Failure to meet the preceding conditions (as set out under all policies) will result in \*\*\*  
\*\*\*the automatic revocation of the Part A certificate and the non-issuance of the \*\*\*  
\*\*\* Part B certificate, or the non-issuance of the Part A/B certificates. \*\*\***

If you have any questions concerning this policy, please contact CAVCO at 1-888-433-2200.