

IN THE IOWA DISTRICT COURT FOR POLK COUNTY

IOWA EYE ENTERTAINMENT, LLC,

Petitioner,

v.

IOWA DEPARTMENT OF ECONOMIC
DEVELOPMENT,

Respondent.

CASE NO. CV7943

ORIGINAL NOTICE

TO THE ABOVE-NAMED RESPONDENT:

You are notified that a Petition has been filed in the office of the Clerk of this Court, naming you as the defendant in this action. A copy of the Petition (and any documents filed with it) is attached to this notice. The attorneys for the petitioner are Stanley J. Thompson and Samuel P. Langholz, whose address is The Davis Brown Tower, 215 10th Street, Suite 1300, Des Moines, Iowa 50309. The phone number is (515) 288-2500; facsimile number is (515) 243-0654 and email addresses are: stanthompson@davisbrownlaw.com and samlangholz@davisbrownlaw.com

You must serve a motion or answer within 20 days after service of this Original Notice upon you and within a reasonable time thereafter, file your motion or answer with the Clerk of Court for Polk County, at the county courthouse in Des Moines, Iowa. If you do not, judgment by default may be rendered against you for the relief demanded in the Petition.

If assistance of auxiliary aids or services is required to participate in court due to a disability such as hearing impaired, call the Americans with Disabilities coordinator at (515) 286-3843. If you are in need of dual party telephone relay services, call Relay Iowa TTY at 1-800-735-2942.



Clerk of Court
Polk County Courthouse
Des Moines, Iowa 50309

**IMPORTANT: YOU ARE ADVISED TO SEEK LEGAL ADVICE
AT ONCE TO PROTECT YOUR INTERESTS.**

IN THE IOWA DISTRICT COURT FOR POLK COUNTY

IOWA EYE ENTERTAINMENT, LLC,

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v.

IOWA DEPARTMENT OF ECONOMIC
DEVELOPMENT,

Respondent.

CASE NO. CV 7943

**PETITION FOR JUDICIAL
REVIEW OF AGENCY ACTION**

FILED
POLK COUNTY IA
09 OCT 28 PM 3:53
JANERK DISTRICT COURT

COMES NOW the Petitioner, Iowa Eye Entertainment, LLC, and in support of the
Petition for Judicial Review of Agency Action brought pursuant to Ch. 17A, Code of Iowa, states
to the Court as follows:

PARTIES

1. Iowa Eye Entertainment, LLC ("Iowa Eye") is an Iowa limited liability company based in Des Moines that is in the business of film production.
2. The Iowa Department of Economic Development ("IDED") is an agency of the State of Iowa that administers the Iowa Film, Television, and Video Project Promotion Program ("Program"), authorized under Iowa Code § 15.393 and implemented by Iowa Administrative Code §§ 261-36.1 to -36.9.

FACTS

3. Iowa Eye sought to produce a film in Iowa titled "Clean Out," which had a cast that included, among others, Timothy Dalton, Elliott Gould and Harvey Keitel. (See Exhibit A attached hereto and by this reference made a part hereof).

4. Throughout the Program, IDED made various representations to the public about the benefits of the Program, including touting the Program as “50% off! 1/2 Price Filmmaking!” (See Exhibits B and C attached hereto and by this reference made a part hereof).

5. On or about July 29, 2009, Iowa Eye submitted its application to IDED requesting that “Clean Out” be registered by IDED so as to entitle it to receive certain film tax credits, including the qualified expenditure tax credit and the qualified investment tax credit. This application reflected, among other things, that:

- The total film production budget was \$18,724,413 and \$13,423,583 would be spent in Iowa;
- “Clean Out” had funding commitments for 50% of the film as required; and
- Iowa activity on the film project would start August 3, 2009.

6. From August 3 to August 5, 2009, Iowa Eye and IDED engaged in negotiations over the amount of the approximate tax credits to be awarded.

7. The funding commitments for “Clean Out” required that a film bonding company issue a film completion guarantee (which is also referred to as a “completion bond”), to provide security that once the film project was undertaken, the film would be completed.

8. The company retained to provide the completion guarantee is named Film Finances Canada Ltd (“Film Finances”).

9. IDED knew, based on an August 3, 2009 e-mail from Iowa Eye to IDED that “Film Finances, who is providing a completion bond on the movie, won’t allow us to set up the production office and start pre-production until we get our award in writing from you,” that failing to secure the tax credits would “inhibit us the [sic] ability to close a completion bond which we must have on the movie to go forward” and that “[n]o parties are prepared to move

forward to long form agreements until we can show full financing.” (See Exhibit D attached hereto and by this reference made a part hereof).

10. On August 5, 2009, IDED notified Iowa Eye that “the award amount for Clean Out has been approved” at the amount of \$6,500,000. (See Exhibit E attached hereto and by this reference made a part hereof).

11. On August 19, 2009, Iowa Eye informed IDED that it needed to provide a funding commitment with an official notification from IDED regarding the award.

12. On August 21, 2009, IDED sent Iowa Eye a letter regarding a “[c]onfirmed tax benefit” and approval of the application for “Clean Out” and eligibility to contract with IDED for tax credits. (See Exhibit F attached hereto and by this reference made a part hereof).

13. IDED described this letter as “a letter confirming your credit award amount.” (See Exhibit G attached hereto and by this reference made a part hereof).

14. In the letter, IDED indicated that “Clean Out” was assigned Project Number (10-FILM-009), became a Registered Project, and was awarded an approximate tax credit of \$6,500,000.

15. On August 24, 2009, Iowa Eye signed and agreed to the conditions and terms of the confirmation letter (“Confirmation Agreement”) as instructed, which included:

- The approximate amount of the tax credit award;
- Review of spending by a third party such as a CPA; and
- Qualified spending caps for certain labor and personnel.

(See Exhibit F).

16. Upon receipt and execution of the Confirmation Agreement, rights in the tax credit vested in Iowa Eye.

17. IDED's regulations address a required contract ("Required Contract"), which IDED shall prepare and send to successful applicants after notice of approval.

18. The Required Contract, which Iowa Eye was eligible to execute, is a "shell" form used by IDED on other film projects with boilerplate, non-negotiable terms.

19. The preparation of such a Required Contract is a ministerial duty of IDED.

20. Based on Iowa Eye's Confirmation Agreement with IDED and the governing regulations, IDED was required to prepare and send such a contract to Iowa Eye for execution.

21. On September 1, 2009, Iowa Eye obtained a letter of intent from Film Finances for a completion guarantee for "Clean Out."

22. The letter of intent made the completion guarantee subject to "successful closing of all necessary financing" for "Clean Out." (See Exhibit H attached hereto and by this reference made a part hereof).

23. The Required Contract was the final document Iowa Eye needed to obtain all necessary financing which would, in turn, result in Film Finances issuing the completion guarantee.

24. Based on the Confirmation Agreement and in reliance on the communication Iowa Eye had with IDED that it had been awarded the tax credit and the Required Contract would be forthcoming, Iowa Eye and other production companies began pre-production of "Clean Out" and spent in excess of \$3,000,000 on salaries, set construction, set decorations, props, casting, location fees, wardrobe, equipment rentals, used vehicle purchase (for crash scene in the film), insurance, financing costs, legal fees, travel and living expenses, and other rentals.

25. On September 18, 2009, Iowa Governor Chester J. Culver, unexpectedly and without warning to Iowa Eye, wrote to the Chair of the IDED Board, asking "that no further

schedules of qualified expenditures be approved nor any further tax credit certificates be issued” under the Program. (See Exhibit I attached hereto and by this reference made a part hereof).

26. That statement did not address film production for projects that had executed a Confirmation Agreement and did not prevent IDED from issuing a Required Contract to Iowa Eye.

27. As of October 27, 2009, IDED had failed to prepare and execute a Required Contract for “Clean Out.”

28. The failure by IDED to prepare and execute a Required Contract for “Clean Out” and provide the same to Iowa Eye was significant because Iowa Eye’s funding commitments were conditioned upon the issuance of a completion guarantee by Film Finances.

29. Based on Governor Culver’s September 18, 2009 letter, and without execution of a Required Contract providing that tax credit certificates would be issued upon completion of “Clean Out” by Iowa Eye subject to submittal and review of qualified expenditures by IDED, Film Finances could not verify the successful closing of all necessary financing and refused to issue the completion guarantee, and Iowa Eye has been unable to obtain access to the funding necessary to continue production.

30. IDED knew of Iowa Eye’s funding commitments -- in particular that such tax credits represented 34.49% of amount budgeted for “Clean Out” -- and knew that the tax credits were essential to Iowa Eye’s ability to complete production of “Clean Out” based on documents provided to IDED by Iowa Eye, including its application, and the IDED regulations that require film projects to receive commitments for at least fifty percent of the funding before receiving approval for registration by IDED.

31. IDED's wrongful failure to prepare and execute a Required Contract to Iowa Eye prevented Iowa Eye from obtaining the funding that was necessary to continue with production of "Clean Out."

32. At this time, Iowa Eye has taken steps to postpone production of "Clean Out."

33. Without the Required Contract being prepared, executed and provided to Iowa Eye by IDED, "Clean Out" cannot be completed.

34. Had IDED prepared, executed and provided to Iowa Eye a Required Contract, Iowa Eye would have executed the same and obtained the funding necessary to complete production of "Clean Out."

AGENCY ACTION CONTRARY TO IOWA LAW

35. The particular agency action from which Iowa Eye appeals is IDED's failure to prepare, execute and provide to Iowa Eye a Required Contract after executing the Confirmation Agreement with Iowa Eye.

36. Iowa Eye has exhausted all adequate administrative remedies and review of the final agency action would not provide an adequate remedy because Iowa Eye will be forced to permanently cease production if IDED does not prepare, execute and provide to Iowa Eye the Required Contract.

37. Venue is proper in Polk County, Iowa, under Iowa Code §17A.19(2).

38. IDED's failure to prepare and execute a Required Contract after entering into the Confirmation Agreement has prejudiced the substantial rights of Iowa Eye because IDED's action is:

- a. Beyond the authority delegated to the agency in Iowa Code § 15.393 and in violation of that section;
- b. Inconsistent with a rule of the agency, namely Iowa Admin. Code §261-36.5(2);

- c. Not required by law and its negative impact on the private rights affected is so grossly disproportionate to the benefits accruing to the public interest that IDEDED's action must necessarily be deemed to lack any foundation in rational agency policy; and
- d. Unreasonable, arbitrary, capricious, and an abuse of discretion.

WHEREFORE, the Petitioner, Iowa Eye Entertainment, LLC, requests that the Court order the Respondent, Iowa Department of Economic Development, to promptly prepare, execute, and provide to Iowa Eye a written contract that requires that upon completion of the Registered Project and submittal and approval by IDEDED of Iowa Eye's qualified expenditures, IDEDED will issue tax credit certificates for the qualified expenditure and qualified investment tax credits, up to \$6,500,000; and for any and all other relief the Court deems just, equitable and appropriate under the circumstances..

REQUEST FOR EXPEDITED TEMPORARY RELIEF

39. Iowa Eye repleads the allegations contained in paragraphs 1 through 38 as if set forth fully herein.

40. Application to the agency for a stay or other temporary remedies is an inadequate remedy because IDEDED has not responded to Petitioner's request for assurance on the status of its project and has wrongfully failed to provide the Required Contract to Petitioner.

41. Iowa Eye is likely to prevail when the court finally disposes of the matter because Petitioner is entitled to the Required Contract under Iowa Code and IDEDED Regulations.

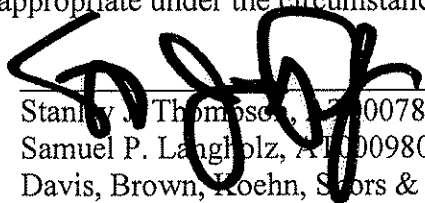
42. Iowa Eye will suffer irreparable injury if temporary relief is not granted because production of "Clean Out" cannot continue without the executed Required Contract, and if the Petitioner is forced to permanently cease production before receiving the Required Contract, the requested relief will not repair the injury because the project would not complete and could not receive the benefits to which it is eligible under Iowa Code and IDEDED Regulations.

43. Granting of relief to the Petitioner will not substantially harm any other party to the proceeding.

44. The public interest is insufficient to justify the agency's action in the circumstances; in fact, the public interest in the State honoring its legal obligations and allowing the production to move forward in Iowa, so as to provide jobs, support the local economy, and restore confidence in Iowa's tax credit programs, supports granting the requested relief.

45. A petition for this same relief, or part thereof, has not been previously presented to or refused by any court or justice, however, a petition requesting the same relief based upon the contract and estoppel rights of Iowa Eye and other co-plaintiffs is simultaneously being filed in Polk County District Court.

WHEREFORE, the Petitioner, Iowa Eye Entertainment, LLC, requests that the Court grant the temporary remedy of ordering the Respondent, Iowa Department of Economic Development, to promptly prepare, execute and provide to Iowa Eye a written contract that requires that upon completion of the Registered Project and submittal and approval by IDDED of Iowa Eye's qualified expenditures, IDDED will issue tax credit certificates for the qualified expenditure and qualified investment tax credits, up to \$6,500,000; and for any and all other relief the Court deems just, equitable and appropriate under the circumstances.



Stanley J. Thompson, AL0007811
Samuel P. Langholz, AL0009805
Davis, Brown, Roehn, Stors & Roberts, P.C.
215 10th Street, Suite 1300
Des Moines, Iowa 50309
Telephone: (515) 288-2500
Facsimile: (515) 243-0654
E-mail: StanThompson@davisbrownlaw.com
SamLangholz@davisbrownlaw.com

ATTORNEYS FOR PETITIONER

EXHIBIT

A

PETER CHRISTIAN FUETER AND MICHAEL STEIGER PRESENT

MADS MIKKELSEN

HARVEY KEITEL

ELLIOTT GOULD

TIMOTHY DALTON

NOOMI RAPACE

BARTHELEMY GROSSMANN

MYLÈNE JAMPANOÏ

NO LIMITS
THE MONEY
IS OURS

SHOOTING 19 OF OCTOBER

CLEAN OUT

GROSSMANN

JK AMALOU
GERALD MORIN

OUT - PIERRE REY

KEVIN DEWALT
DAEDALUS FILMS ZURICH

THOMAS HARDMEIER

JAMIE BROWN

JANINE STENER

C FILMS FRANCE - MINDS EYE ENTERTAINMENT - MINDS EYE INTERNATIONAL

RETO TROESCH

PERRINE TEZE

FRANTIC FILMS

PTZ International

Iowa Film, Television and Video Project Promotion Program

50% off! ½ Price Filmmaking!

EXHIBIT

tabbles

B

1. Investors earn 25% of qualified spending as transferable Iowa income tax credits.

PLUS

2. Producers earn 25% of qualified spending as transferable Iowa income tax credits.

- For example, if a project has \$1,000,000 of qualified spending, then the investor pool earns \$250,000 in transferable Iowa income tax credit certificates plus the producer or production company earns \$250,000 in transferable Iowa income tax credit certificates. That's a total of \$500,000 worth of Iowa income tax certificates!

PLUS

3. 100% income exclusion for vendors – tax-free income. Vendors must be Iowa-based or incorporated in Iowa. The Iowa Department of Revenue calls this status "domestic."

4. Registration requirements:

At least \$100,000 of spending in Iowa;
Distribution beyond the Midwest region;
Application and contract required.

5. Pass-through eligible on labor, goods and services. Producer must hire Iowa-based vendors for cast (other than principal), crew, labor, goods, and services. Any Iowa-based vendor can outsource labor, goods or services for the producer.

6. Other benefits:

No caps per project or on program;
Ongoing spending consultation;
Rapid credit certificate turnaround;
No state permits, no state fees;
State property free for locations;
Lodging tax waived on 32nd day.

7. Exclusions:

Director, Producer and Principal Cast do not qualify (even if they are Iowans);
Producer outsourcing. Only Iowa-based vendor can outsource or pass-through;
Obscenity as per Iowa code.

8. Recent features:

2006, "The Final Season," Cedar Rapids
2006, "The Hideout," Davenport
2007, "Sugar," Davenport
2007, "Duck Farm No. 13," McGregor
2008, "South Dakota," Earlham
2008, "Peacock," Greenfield

For more information, contact:

Tom Wheeler
Manager, Iowa Film Office
P: 515.242.4726
M: 515.783.7466
film@iowalifechanging.com
www.travelliowa.com/film

Iowa Film, Television and Video Project Promotion Program

In May of 2007, Iowa began offering filmmakers financial incentives to produce their projects in Iowa. From the outset, Iowa has given transferable income tax credits valued up to 50% of the total qualified spending in Iowa. In addition, Iowa has provided a benefit to vendors by allowing them to adjust their gross annual income by excluding their income from registered projects.

As of July 1, 2009, a number of changes became effective. Some of these changes were made to benefits that continue in the program. Other changes are new to the program.

PROGRAM DEADLINES

	APPLICATION SUBMISSION DEADLINE	APPLICATION APPROVAL
For August, 2009	27-Jul	20-Aug
For September , 2009	24-Aug	17-Sep
For October, 2009	21-Sep	15-Oct
For November, 2009	26-Oct	19-Nov
For December, 2009	23-Nov	17-Dec

New application and processing deadlines have been implemented to better accommodate the added consultation prior to submitting an application.

All application data must be provided by the application deadline. The applicant must notify the Film Office immediately if completion of the application cannot happen by the submission deadline (such as when data is delayed by a third party that is providing it).

Cap:

As of July 1, 2009, Iowa's film incentive program has a cap of \$50M of credits. This cap is authorized by Senate File 483 of the 2009 legislative session.

To date, Iowa has awarded \$19,375,000.00 which leaves \$30,625,000.00 remaining for the rest of our fiscal year that runs from July 1 to June 30.

Overview:

Eligible spending:

Under the original program terms, no pay to the director, principal producer or principal talent was eligible toward the total qualified spending in Iowa – even if those people were themselves Iowans. Now, portions of pay to director, principal producer or principal talent are eligible if the project's total qualified spending exceeds \$10M and an even greater portion of that pay is eligible when qualified spending exceeds \$20M. A chart below shows how it works.

The director, principal producer or principal talent must be or become qualified Iowa vendors for their compensation to qualify. A qualified vendor is an Iowa resident or has domestic taxpayer status. Compensation for the director, principal producer or principal talent cannot be paid through a pass-through.

Income exclusion:

Also under the original program terms, qualified vendors were able to exclude 100% of earnings from registered projects from their income tax bill in the year that they were earned. In an effort to encourage newly formed companies to stay in operation in Iowa longer, vendors will now be able to exclude 25% of qualified earnings per year for four consecutive years. A vendor may take the reduction each year that it has qualified earnings.

Funding minimum:

A new requirement to the program is for the project to demonstrate that it has at least 50% of its funding committed prior to submitting the formal application. Letters substantiating the commitments to fund the project or bank statements showing current balances will be required.

Administrative fee:

Another new requirement is for the production to pay an administrative fee. The total amount of the fee will be 1/8 of 1% of the value of the credit earned by the project. The fee will be paid in two parts. The first part will equal 1/16 of 1% of the estimated value of the credit to be paid at the time of application approval. The second part of the fee will also equal 1/16 of 1% of the value of the credit when the qualified spending amount is met or exceeded. When actual qualified spending is less than estimated, the remaining fee will be reduced proportionately.

Contract expiration:

Contracts will now expire after four months from the date of counter signature. A single two month extension will be available.

Third party spending review:

Spending will now be required to be reviewed by a third party. The process is to be a review and not an audit. This should be completed by a CPA. The cost for this review is an eligible expenditure.

Benefits:

Registered and contracted projects can earn tax credits valued up to 50% of total qualified spending in Iowa.

1. **Investors earn up to 25%** of qualified spending as transferable Iowa income tax credit.

AND

2. **Producer earns up to 25%** of qualified spending as transferable Iowa income tax credit.

For example, if a project has \$1,000,000 of qualified spending, then the investor pool can earn \$250,000 in transferable Iowa income tax credit certificates plus the producer or production company can earn \$250,000 in transferable Iowa income tax credit certificates. That's a total of \$500,000 worth of Iowa income tax certificates!

AND

3. **25% income exclusion for vendors** – tax-free income. Vendors are allowed to adjust their gross income by excluding or subtracting 25% of qualified income per year over four years. Vendors must be Iowa-based or incorporated in Iowa. The Iowa Department of Revenue calls this status “domestic.”

Chart of Qualified Spending on Labor and Personnel:

Minimum qualified spending	Maximum pay to be reported for Producer, Director, Principal Talent	Maximum pay to be reported for all other labor and personnel
\$100,000	\$0 per line item	\$150,000 per line item
\$10 million	\$250,000 per line item	\$200,000 per line item
\$20 million	\$1 million per line item	\$300,000 per line item

Registration requirements:

- 50% of project funding committed
 - Documentation required
 - Formal commitments acceptable
- Fee equal to 1/8 of 1% of credit value
 - Half of fee paid during application stage
 - Remainder paid with expenditure report
- Minimum \$100,000 qualified spending in Iowa
 - All spending must be with Iowa vendors
- Distribution beyond the Midwest region
 - Intention to distribute is sufficient

- Region includes state that border Iowa
- Application and contract
 - Must meet statutory minimums
 - Must supply sufficient minimum to contract
- Begin production within four months of contract
 - Must notify at third month if extension needed
 - Only one chance for a two month extension
 - Must reapply if contract expires

Other requirements:

- All spending must be with Iowa residents or Iowa-based companies
 - Vendors must have domestic taxpayer status
- Third party spending verification
 - Should be performed by a CPA
 - A review and not an audit

Pass-through:

- Producer must hire Iowa-based vendors for cast, crew, labor, goods, and services. Any Iowa-based vendor can outsource labor, goods or services for the producer.

Other benefits:

- Periodic spending consultation
 - The Iowa Film Office will informally review spending to insure expectations will be met at time of reporting final spending
- Rapid credit certificate turnaround
 - Delivery of credit certificates is now expedited by accepting 3rd party review
- No state permits, no state fees
 - Iowa does not require permits to undertake filming nor do we charge any fees other than the program administration fee
- State property free for locations
 - No fee is charged for the use of state property. Costs for utilities, personnel or security must be paid by the production.
- Lodging tax waived on 32nd day
 - The hotel or lodging tax is waived for each room that is continuously occupied for 31 days or more. This is an adjustment to the bill to be made by the hotel.

Exclusions:

- Spending on Director, Producer and Principal Cast
 - Spending on Director, Producer and Principal Cast does not qualify (even if they are Iowans) when overall qualified spending does not exceed \$10M
- Producer pass-through.

- Only Iowa-based vendor can provide pass-through service. Payments made by the producer directly to non-domestic taxpayers cannot be included in the final qualified spending amount.
- Obscenity as per Iowa code chapter 728
 - The following definition is taken from Iowa Code chapter 728: "*Obscene material*" is any material depicting or describing the genitals, sex acts, masturbation, excretory functions or sadomasochistic abuse which the average person, taking the material as a whole and applying contemporary community standards with respect to what is suitable material for minors, would find appeals to the prurient interest and is patently offensive; and the material, taken as a whole, lacks serious literary, scientific, political or artistic value.

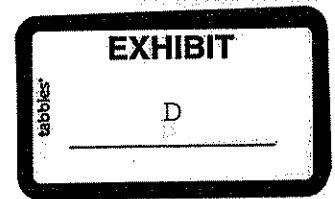
Recent features:

Locations:

2006, "The Final Season"	Norway, Cedar Rapids, Solon
2006, "The Hideout"	Davenport
2007, "Sugar"	Davenport, Burlington
2007, "Duck Farm No. 13"	McGregor
2008, "Children of the Corn"	Lost Nation, Davenport
2008, "South Dakota"	Earlham, central Iowa
2008, "Peacock"	Odebolt, Greenfield, Lorimor
2009, "Ticket Out"	Des Moines, central Iowa
2009, "The Crazies"	Lenox, south western Iowa
2009, "The Offering"	Washington, eastern Iowa
2009, "Splatter"	Burlington, south eastern Iowa
2009, "Twelve Thirty"	Cedar Rapids, Iowa City
2009, "Sam Steele and the Junior Detective Agency"	Des Moines
2009, "The Scientist"	Council Bluffs
2009, "Megafault"	Davenport
2009, "Ash"	Des Moines

For more information, contact:

Tom Wheeler
 Manager, Iowa Film Office
 P: 515.725.3144
 M: 515.783.7466
film@iowalifechanging.com
www.iowalifechanging.com/film



From: "Wheeler, Tom [IDED]" <Tom.Wheeler@iowalifechanging.com>
Date: August 3, 2009 12:39:36 PM GMT-06:00
To: "Kevin Dewalt" <kdewalt@mindseyepictures.com>
Subject: RE: Clean Out award amount

Thanks very much for this clear response, Kevin. I will forward it to my superiors for reconsideration.

Tom.

From: Kevin Dewalt [mailto:kdewalt@mindseyepictures.com]
Sent: Monday, August 03, 2009 12:54 PM
To: Wheeler, Tom [IDED]
Subject: Re: Clean Out award amount

Hi Tom

I really appreciate your quick response to our application. Film Finances, who is providing a completion bond on the movie, won't allow us to set up the production office and start pre-production until we get our award in writing from you. My worry is having to push the shoot date much more into Oct as I am told the weather can be an issue late Oct and into Nov.

Based on the financing structure submitted I assumed an award of of \$6,7M which is 50% of the Iowa spend. I can make it work at \$6,500,000 and the producers will put in the shortfall of \$200k+. Unfortunately anything less than 6.5M will create a shortfall and inhibit us the ability to close a completion bond which we must have on the movie to go forward. No parties are prepared to move forward to long form agreements until we can show full financing. We have been raising money for this film for over two years. It will be impossible this late in the game to raise another 1 million if you award 5.5M at this point.

I am available on my cell phone if you would like to talk this through.

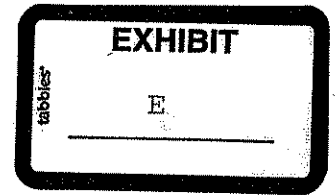
Thanks.

Kevin DeWalt

CEO/Producer
Minds Eye Entertainment
480 Henderson Drive
Regina, Saskatchewan
Canada, S4N 6E3

PH 1-306-359-1573
Cel 1-306-536-7388
Fax 1-306-359-3466

www.mindseyepictures.com



From: "Wheeler, Tom [IDED]" <Tom.Wheeler@iowalifechanging.com>
Date: August 5, 2009 8:08:51 AM GMT-06:00
To: "Kevin Dewalt" <kdewalt@mindseyepictures.com>
Subject: Clean Out award amount

Kevin,

I'm happy to report that the award amount for Clean Out has been approved at \$6.5.M. If this is acceptable to you, then I will prepare a letter stating the award formally.

Regards,
Tom Wheeler
Manager, Iowa Film Office
200 E. Grand Ave.
Des Moines, IA 50309
p: 515.725.3144 NEW
c: 515.783.7466
f: 515.725.3010 NEW
www.iowalifechanging.com/film
IOWA *life* | changing

EXHIBIT

F

August 21, 2009

Kevin Dewalt
Iowa Eye Entertainment
215 10th St.
Des Moines, IA 50309

Re: Confirmed tax benefit in Iowa Film, Television and Video Project Promotion Program
Project # 10-FILM-009, "Clean Out".

Dear Kevin:

Congratulations, the Iowa Film, Television and Video Project Promotion Program has approved your **Clean Out** application and eligibility to contract with the Iowa Department of Economic Development. The number assigned to your project is **10-FILM-009**. This number is required in all correspondence to our office regarding this project. Please share this contract number with your vendors. (Your vendors will need the contract number when submitting tax forms.)

The contract will provide an approximate tax credit of **\$6,500,000.00** based on a budget amount of **\$13,423,583** which you submitted in your budget document "**CO_Iowa_Budget_e_July2.PDF**". The production will have to provide a final cost report showing the dollar amount actually spent while adhering to the rules and regulations of the qualified Iowa expenditures.

Program Changes and Specifications:

As of July 1, 2009:

- collection of an administrative fee. The total administrative fee amount is calculated at 1/8 of one percent of the value of the credits earned by the project; 1/16 of one percent is collected at the application approval stage and the remainder is collected with the final expense report once the total spending is determined. In this case, your initial payment will be **\$4,062.50**. The final payment will also be **\$4,062.50**, unless the actual spending is less than expected. If so, then the remaining fee balance will be proportionately reduced.
- spending will now be required to be reviewed by a third party, such as a CPA. This is to be a review and not an audit. The review report is intended to expedite issuing the credits. Expenditures on this review is eligible to earn credit.
- expiration date on contract. You will have four months from the time of the counter signed contract to begin pre-production with a single two month extension possible.
- "all other labor and personnel" (those who are not the director, principal producer or the principal talent) will have qualified spending caps of \$150,000, \$200,000 or \$300,000 for each budget line

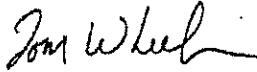
item (depending on the total amount of qualified spending). The same person is allowed to fall under multiple line items in the budget but spending above those capped line item amounts will not earn credits.

- loan-outs and how they become qualified. Like other vendors, they must be or become domestic taxpayers. Residency after 30 days of primary residence is one option. The other option is for the loan-out to become a member of a domestic company such as an LLC. The loan-out person simply needs to be designated a member of the domestic company.

Should you have any questions regarding procedures and or guidelines, please contact me at my office telephone number of 515.725.3144 or my e-mail address of tom.wheeler@iowalifechanging.com

Thank you for your cooperation and we look forward to working with you through the Iowa Film, Television and Video Project Promotion Program.

Sincerely,

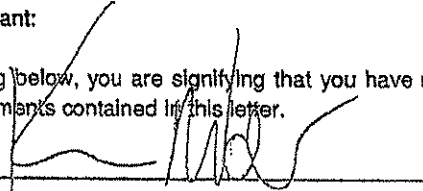


Tom Wheeler
Manager, Iowa Film Office

For applicant:

By signing below, you are signifying that you have read the above information and agree to the content and statements contained in this letter.

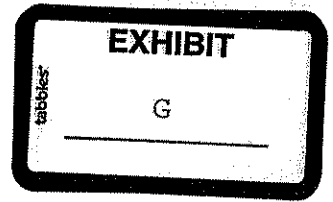
Signature



Date: August 24, 2009

Typed or written name

Kevin Dewalt

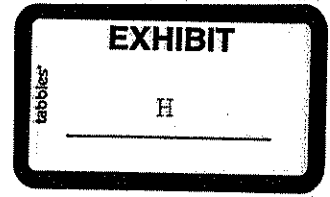


On 21-Aug-09, at 12:55 PM, Wheeler, Tom [IDED] wrote:

Kevin,

Attached is a letter confirming your credit award amount. Please let me know right away if any changes are needed.

Tom.



September 1, 2009

Minds Eye Entertainment
480 Henderson Drive
Regina, Saskatchewan
S4N 6E3, Canada
Attn : Kevin Dewalt

Daedalus Film AG
Hallenstrasse 10
8008 Zurich
Switzerland
Attn : Peter Christian Fueter

RE: Letter of Intent Concerning the Production entitled "Clean Out"

Dear Kevin and Peter Christian,

This is to confirm that Film Finances Canada Ltd. is satisfied with the progress of our due diligence with respect to the production elements of "Clean Out" and can confirm that subject to the full budget financing being made available to the producer(s) or us, the payment of our fee and on the basis that principal photography will commence no later than October 21, 2009, Film Finances Canada will regard itself as "on risk" as Completion Guarantor of "Clean Out".

The foregoing is subject to: a) your successful closing of all necessary financing for the Production; b) your completion and/or provision of our usual documentation; and, c) FFC's confirmation and/or approval of the following:

1. Financing and distribution agreements (including all delivery items);
2. Key talent, producer(s) and director(s) (including all contracts entered into for such services);
3. Approval of any deferral or holdback agreements
4. Full insurance coverage, including Entertainment Package, Comprehensive General Liability and Errors & Omissions coverage, with FFC named on each policy as Additional Insured and/or Loss Payee (as appropriate), such coverage to be in force prior to closing of the first Completion Guarantee; and
5. Post-Production schedules, personnel and laboratories.

We look forward to completing the formal paperwork with you over the coming weeks.

Yours truly,

A handwritten signature in black ink, appearing to read "Jim Sternberg".

Jim Sternberg
President

Friday, September 18, 2009

Governor Culver Accepts Resignation of Mike Tramontina as Director of Iowa Department of Economic Development

DES MOINES – The Director of the Iowa Department of Economic Development, Mike Tramontina, has tendered his resignation, effective immediately, to Governor Chet Culver.

The Governor has accepted Tramontina's resignation.

The Department of Economic Development will report to Richard Oshlo, the interim director of the Department of Management, while new leadership at IDEED is being considered.

###

NOTE: The following letter was sent from Governor Culver to Robert Boeken, chair of the Iowa Economic Development Board, this afternoon:

September 18, 2009

Mr. Robert Boeken
2904 15th Ave NE
Fort Dodge, IA 50501

Re: Film, Television and Video Promotion Program

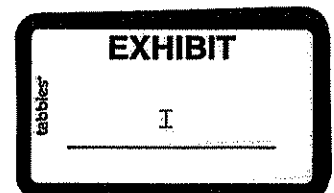
Dear Mr. Boeken:

While there have been many reported benefits resulting from the Iowa Department of Economic Development's implementation of the film, television and video project promotion program established under Iowa Code section 15.393, I am also very troubled by information very recently received by our office that there have been insufficient procedures in place to assure a full and accurate accounting of expenditures made to enable persons to qualify for tax credits under the program.

Therefore, until all reasonable questions about the administration of this program are answered, I ask that no further schedules of qualified expenditures be approved nor any further tax credit certificates be issued.

I am confident that our office, in working with your Board and others asked by us to review these matters, can resolve pending issues efficiently and effectively, allowing us to move forward with this important program in a manner that is both consistent with the intent of this legislation and that protects the interests of Iowa taxpayers.

Sincerely,
Chester J. Culver
Governor of Iowa



IN THE IOWA DISTRICT COURT FOR POLK COUNTY

IOWA EYE ENTERTAINMENT, LLC,)
)
 Petitioner,)
)
 v.)
)
 IOWA DEPARTMENT OF ECONOMIC)
 DEVELOPMENT,)
)
 Respondent.)

CASE NO. CV7943

AFFIDAVIT OF KEVIN DEWALT

FILED
POLK COUNTY IA
09 OCT 28 PM 3:54
CLERK DISTRICT COURT

COUNTRY OF CANADA :
 : ss.
 PROVINCE OF SASKATCHEWAN :

I, Kevin DeWalt, being first duly on oath, depose and state:

1. I am over the age of eighteen and resident in Regina, Saskatchewan, Canada.
2. I am the manager of Iowa Eye Entertainment, LLC ("Iowa Eye"), an Iowa limited liability company based in Des Moines that is in the business of film production.
3. Iowa Eye sought to produce a film in Iowa titled "Clean Out" which had a cast that included, among others, Timothy Dalton, Elliott Gould and Harvey Keitel. (See Exhibit A attached hereto and by this reference made a part hereof).
4. On or about July 29, 2009, Iowa Eye submitted its application to the Iowa Department of Economic Development ("IDED"), an agency of the State of Iowa that administers the Iowa Film, Television, and Video Project Promotion Program ("Program"), requesting that "Clean Out" be registered by IDED so as to entitle it to receive certain film tax credits. This application reflected, among other things, that:
 - The total film production budget was \$18,724,413 and \$13,423,583 would be spent in Iowa;

- “Clean Out” had funding commitments for 50% of the film as required; and
- Iowa activity on the film project would start August 3, 2009.

5. From August 3 to August 5, 2009, Iowa Eye and IDED engaged in negotiations over the amount of the approximate tax credits to be awarded.

6. The funding commitments for “Clean Out” required that a film bonding company issue a film completion guarantee (which is also referred to as a “completion bond”), to provide security that once the film project was undertaken, the film would be completed.

7. The company retained to provide the completion guarantee is named Film Finances Canada Ltd (“Film Finances”).

8. IDED knew, based on an August 3, 2009 e-mail from Iowa Eye to IDED that “Film Finances, who is providing a completion bond on the movie, won’t allow us to set up the production office and start pre-production until we get our award in writing from you,” that failing to secure the tax credits would “inhibit us the [sic] ability to close a completion bond which we must have on the movie to go forward” and that “[n]o parties are prepared to move forward to long form agreements until we can show full financing.” (See Exhibit D attached hereto and by this reference made a part hereof).

9. On August 5, 2009, IDED notified Iowa Eye that “the award amount for Clean Out has been approved” at the amount of \$6,500,000. (See Exhibit E attached hereto and by this reference made a part hereof).

10. On August 19, 2009, Iowa Eye informed IDED that it needed to provide a funding commitment with an official notification from IDED regarding the award.

11. On August 21, 2009, IDED sent Iowa Eye a letter regarding a “[c]onfirmed tax benefit” and approval of the application for “Clean Out” and eligibility to contract with IDED for tax credits. (See Exhibit F attached hereto and by this reference made a part hereof).

12. IDED described this letter as “a letter confirming your credit award amount.” (See Exhibit G attached hereto and by this reference made a part hereof).

13. In the letter, IDED indicated that “Clean Out” was assigned Project Number (10-FILM-009), became a Registered Project, and was awarded an approximate tax credit of \$6,500,000.

14. On August 24, 2009, Iowa Eye signed and agreed to the conditions and terms of the confirmation letter (“Confirmation Agreement”) as instructed, which included:

- The approximate amount of the tax credit award,
- Review of spending by a third party such as a CPA, and
- Qualified spending caps for certain labor and personnel. (See Exhibit F).

15. On September 1, 2009, Iowa Eye obtained a letter of intent from Film Finances for a completion guarantee for “Clean Out.”

16. The letter of intent made the completion guarantee subject to “successful closing of all necessary financing” for “Clean Out”. (See Exhibit H attached hereto and by this reference made a part hereof).

17. IDED’s regulations address a required contract (“Required Contract”), which IDED shall prepare and send to successful applicants after notice of approval.

18. The Required Contract was the final document Iowa Eye needed to obtain all necessary financing which would, in turn, result in Film Finances issuing the completion guarantee.

19. Based on the Confirmation Agreement and in reliance on the communication Iowa Eye had with IDED that it had been awarded the tax credit and the Required Contract would be forthcoming, Iowa Eye and other production companies began pre-production of "Clean Out" and spent in excess of \$3,000,000 on salaries, set construction, set decorations, props, casting, location fees, wardrobe, equipment rentals, used vehicle purchase (for crash scene in the film), insurance, financing costs, legal fees, travel and living expenses, and other rentals.

20. On September 18, 2009, Iowa Governor Chester J. Culver, unexpectedly and without warning to Iowa Eye, wrote to the Chair of the IDED Board, asking "that no further schedules of qualified expenditures be approved nor any further tax credit certificates be issued" under the Program. (See Exhibit I attached hereto and by this reference made a part hereof).

21. That statement did not address film production for projects that had executed a Confirmation Agreement and did not prevent IDED from issuing a Required Contract to Iowa Eye.

22. As of October 22, 2009, IDED had failed to prepare and execute a Required Contract for "Clean Out."

23. The failure by IDED to prepare and execute a Required Contract for "Clean Out" and provide the same to Iowa Eye was significant because Iowa Eye's funding commitments were conditioned upon the issuance of a completion guarantee by Film Finances.

24. Based on Governor Culver's September 18, 2009 letter, and without execution of a Required Contract providing that tax credit certificates would be issued upon completion of "Clean Out" by Iowa Eye subject to submittal and review of qualified expenditures by IDED, Film Finances could not verify the successful closing of all necessary financing and refused to

issue the completion guarantee, and Iowa Eye has been unable to obtain access to the funding necessary to continue production.

25. IDED knew of Iowa Eye's funding commitments -- in particular that such tax credits represented 34.49% of amount budgeted for "Clean Out" -- and knew that the tax credits were essential to Iowa Eye's ability to complete production of "Clean Out" based on documents provided to IDED by Iowa Eye, including its application, and the IDED regulations that require film projects to receive commitments for at least fifty percent of the funding before receiving approval for registration by IDED.

26. IDED's failure to prepare and execute a Required Contract to Iowa Eye prevented Iowa Eye from obtaining the funding that was necessary to continue with production of "Clean Out."

27. IDED has not responded to Iowa Eye's request for assurance on the status of its project.

28. At this time, Iowa Eye has taken steps to postpone production of "Clean Out."

29. Without the Required Contract being prepared, executed, and provided to Iowa Eye by IDED, "Clean Out" cannot be completed, and if the Petitioner is forced to permanently cease production before receiving the Required Contract, the requested relief will not repair the injury because the project would not complete and could not receive the benefits to which it is eligible under Iowa Code and IDED Regulations.

30. Had IDED prepared, executed, and provided to Iowa Eye a Required Contract, Iowa Eye would have executed the same and obtained the funding necessary to complete production of "Clean Out."

THE AFFIANT FURTHER SAYETH NOT.

PETER CHRISTIAN FUETER AND MICHAEL STEIGER PRESENT

EXHIBIT

A

MADS MIKKELSEN

HARVEY KEITEL

ELLIOTT GOULD

TIMOTHY DALTON

NOOMI RAPACE

BARTHELEMY GROSSMANN

MYLÈNE JAMPANOÏ

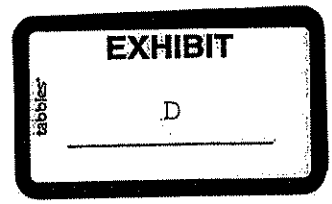
NO LIMITS
THE MONEY
IS OURS

SHOOTING 19 OF OCTOBER

CLEAN OUT

GROSSMANN

JK AMALOU OUT: PIERRE REY THOMAS HARDMEIER RETO TROESCH
GERALD MORIN - KEVIN DEWALT JAMIE BROWN - JANINE STEINER PERRINE TEZE
DAEDALUS FILMS ZURICH - C FILMS FRANCE - MINDS EYE ENTERTAINMENT - FRANTIC FILMS
MINDS EYE INTERNATIONAL PTZ International



From: "Wheeler, Tom [IDED]" <Tom.Wheeler@iowalifechanging.com>
Date: August 3, 2009 12:39:36 PM GMT-06:00
To: "Kevin Dewalt" <kdewalt@mindseyepictures.com>
Subject: RE: Clean Out award amount

Thanks very much for this clear response, Kevin. I will forward it to my superiors for reconsideration.

Tom.

From: Kevin Dewalt [mailto:kdewalt@mindseyepictures.com]
Sent: Monday, August 03, 2009 12:54 PM
To: Wheeler, Tom [IDED]
Subject: Re: Clean Out award amount

Hi Tom

I really appreciate your quick response to our application. Film Finances, who is providing a completion bond on the movie, won't allow us to set up the production office and start pre-production until we get our award in writing from you. My worry is having to push the shoot date much more into Oct as I am told the weather can be an issue late Oct and into Nov.

Based on the financing structure submitted I assumed an award of of \$6,7M which is 50% of the Iowa spend. I can make it work at \$6,500,000 and the producers will put in the shortfall of \$200k+. Unfortunately anything less than 6.5M will create a shortfall and inhibit us the ability to close a completion bond which we must have on the movie to go forward. No parties are prepared to move forward to long form agreements until we can show full financing. We have been raising money for this film for over two years. It will be impossible this late in the game to raise another 1 million if you award 5.5M at this point.

I am available on my cell phone if you would like to talk this through.

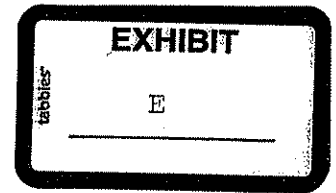
Thanks.

Kevin DeWalt

CEO/Producer
Minds Eye Entertainment
480 Henderson Drive
Regina, Saskatchewan
Canada, S4N 6E3

PH 1-306-359-1573
Cel 1-306-536-7388
Fax 1-306-359-3466

www.mindseyepictures.com



From: "Wheeler, Tom [IDED]" <Tom.Wheeler@iowalifechanging.com>
Date: August 5, 2009 8:08:51 AM GMT-06:00
To: "Kevin Dewalt" <kdewalt@mindseyepictures.com>
Subject: Clean Out award amount

Kevin,

I'm happy to report that the award amount for Clean Out has been approved at \$6.5.M. If this is acceptable to you, then I will prepare a letter stating the award formally.

Regards,
Tom Wheeler
Manager, Iowa Film Office
200 E. Grand Ave.
Des Moines, IA 50309
p: 515.725.3144 NEW
c: 515.783.7466
f: 515.725.3010 NEW
www.iowalifechanging.com/film
IOWA life | changing

EXHIBIT

F.

August 21, 2009

Kevin Dewalt
Iowa Eye Entertainment
215 10th St.
Des Moines, IA 50309

Re: Confirmed tax benefit in Iowa Film, Television and Video Project Promotion Program
Project # 10-FILM-009, "Clean Out".

Dear Kevin:

Congratulations, the Iowa Film, Television and Video Project Promotion Program has approved your **Clean Out** application and eligibility to contract with the Iowa Department of Economic Development. The number assigned to your project is **10-FILM-009**. This number is required in all correspondence to our office regarding this project. Please share this contract number with your vendors. (Your vendors will need the contract number when submitting tax forms.)

The contract will provide an approximate tax credit of **\$6,500,000.00** based on a budget amount of **\$13,423,583** which you submitted in your budget document "CO_Iowa_Budget_e_July2.PDF". The production will have to provide a final cost report showing the dollar amount actually spent while adhering to the rules and regulations of the qualified Iowa expenditures.

Program Changes and Specifications:

As of July 1, 2009:

- collection of an administrative fee. The total administrative fee amount is calculated at 1/8 of one percent of the value of the credits earned by the project; 1/16 of one percent is collected at the application approval stage and the remainder is collected with the final expense report once the total spending is determined. In this case, your initial payment will be **\$4,062.50**. The final payment will also be **\$4,062.50**, unless the actual spending is less than expected. If so, then the remaining fee balance will be proportionately reduced.
- spending will now be required to be reviewed by a third party, such as a CPA. This is to be a review and not an audit. The review report is intended to expedite issuing the credits. Expenditures on this review is eligible to earn credit.
- expiration date on contract. You will have four months from the time of the counter signed contract to begin pre-production with a single two month extension possible.
- "all other labor and personnel" (those who are not the director, principal producer or the principal talent) will have qualified spending caps of \$150,000, \$200,000 or \$300,000 for each budget line

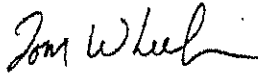
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Should you have any questions regarding procedures and or guidelines, please contact me at my office telephone number of 515.725.3144 or my e-mail address of tom.wheeler@iowalifechanging.com

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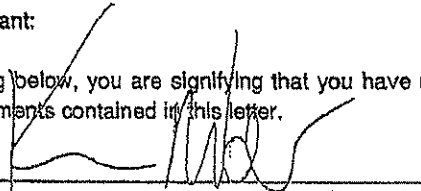


Tom Wheeler
Manager, Iowa Film Office

For applicant:

By signing below, you are signifying that you have read the above information and agree to the content and statements contained in this letter.

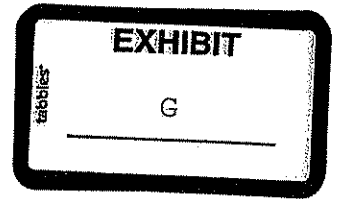
Signature



Date: August 24, 2009

Typed or written name

Kevin DeWalt



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Attached is a letter confirming your credit award amount. Please let me know right away if any changes are needed.

Tom.

EXHIBIT

tabbles

H



September 1, 2009

Minds Eye Entertainment
480 Henderson Drive
Regina, Saskatchewan
S4N 6E3, Canada
Attn : Kevin Dewalt

Daedalus Film AG
Hallenstrasse 10
8008 Zurich
Switzerland
Attn : Peter Christian Fueter

RE: Letter of Intent Concerning the Production entitled "*Clean Out*"

Dear Kevin and Peter Christian,

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2. Key talent, producer(s) and director(s) (including all contracts entered into for such services);
3. Approval of any deferral or holdback agreements
4. Full insurance coverage, including Entertainment Package, Comprehensive General Liability and Errors & Omissions coverage, with FFC named on each policy as Additional Insured and/or Loss Payee (as appropriate), such coverage to be in force prior to closing of the first Completion Guarantee; and
5. Post-Production schedules, personnel and laboratories.

We look forward to completing the formal paperwork with you over the coming weeks.

Yours truly,

A handwritten signature in black ink, appearing to read "Jim Sternberg".

Jim Sternberg
President

Friday, September 18, 2009

Governor Culver Accepts Resignation of Mike Tramontina as Director of Iowa Department of Economic Development

DES MOINES – The Director of the Iowa Department of Economic Development, Mike Tramontina, has tendered his resignation, effective immediately, to Governor Chet Culver.

The Governor has accepted Tramontina's resignation.

The Department of Economic Development will report to Richard Oshlo, the interim director of the Department of Management, while new leadership at IDED is being considered.

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NOTE: The following letter was sent from Governor Culver to Robert Boeken, chair of the Iowa Economic Development Board, this afternoon:

September 18, 2009

Mr. Robert Boeken
2904 15th Ave NE
Fort Dodge, IA 50501

Re: Film, Television and Video Promotion Program

Dear Mr. Boeken:

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Therefore, until all reasonable questions about the administration of this program are answered, I ask that no further schedules of qualified expenditures be approved nor any further tax credit certificates be issued.

I am confident that our office, in working with your Board and others asked by us to review these matters, can resolve pending issues efficiently and effectively, allowing us to move forward with this important program in a manner that is both consistent with the intent of this legislation and that protects the interests of Iowa taxpayers.

Sincerely,
Chester J. Culver
Governor of Iowa

