

# Manitoba Interactive Digital Media Tax Credit

## MIDMTC Legislation



*Excerpt from The Income Tax Act (Manitoba)*

Available at: <http://web2.gov.mb.ca/laws/statutes/ccsm/i010e.php#10.5>

### Interactive digital media tax credit

[10.5\(1\)](#) Subject to subsections (2) to (2.3), a corporation is deemed to have paid on its balance-due day for a taxation year, on account of its tax payable under this Act for that year, the total of all amounts each of which is an amount claimed by it under subsection (1.1) in relation to

- (a) expenses incurred by it in that year; or
- (b) expenses incurred by it in one of the immediately preceding two taxation years that were not included in determining an amount claimed by the corporation for any of those preceding taxation years.

### Claimable amount

[10.5\(1.1\)](#) For the purpose of subsection (1), a corporation that is an eligible corporation for a taxation year may claim, for each eligible project in relation to which it incurred expenses in that year, an amount not exceeding

- (a) if at least 25% of the salary and wages paid by it to its employees for that year was paid to its employees who are Manitoba residents for that year, 40% of its eligible project costs for that project for that year; or
- (b) if clause (a) does not apply to the corporation in that year, 35% of its eligible labour costs for that project for that year.

### Eligible project costs for the year

[10.5\(1.2\)](#) For the purpose of clause (1.1)(a), a corporation's eligible project costs in relation to an eligible project for a taxation year is the total of

- (a) the corporation's eligible labour costs in relation to the eligible project for the year; and
- (b) the lesser of
  - (i) the corporation's eligible marketing and distribution costs in relation to the eligible project for the year, and
  - (ii) the amount by which \$100,000 exceeds the total of all amounts each of which is the corporation's eligible marketing and distribution costs in relation to the eligible project for a previous taxation year in which an amount was claimed under this section.

### Eligible labour costs for the year

[10.5\(1.3\)](#) For the purpose of clause (1.1)(a) or (b), whichever applies, a corporation's eligible labour costs in relation to an eligible project for a taxation year is the amount, if any, by which

- (a) the total of the corporation's labour expenses in relation to the eligible project that were incurred
  - (i) while it was an eligible corporation to which that clause applied, and
  - (ii) in that year or in any of the two immediately preceding taxation years;

exceeds the aggregate of

- (b) all government assistance that is reasonably attributable to those expenses; and
- (c) the portion of those expenses that was included in determining an amount claimed by the corporation under this section for any of those preceding taxation years.

### Eligible marketing and distribution costs for the year

[10.5\(1.4\)](#) For the purpose of clause (1.2)(b), a corporation's eligible marketing and distribution costs in relation to an eligible project for a taxation year is the amount, if any, by which the aggregate of

- (a) 50% of the total of the corporation's marketing and distribution expenses for meals or entertainment in relation to the eligible project that were incurred
  - (i) while it was an eligible corporation to which clause (1.1)(a) applied, and
  - (ii) in that year or in any of the two immediately preceding taxation years; and
- (b) the total of all other marketing and distribution expenses of the corporation in relation to the eligible project that were incurred
  - (i) while it was an eligible corporation to which clause (1.1)(a) applied, and
  - (ii) in that year or in any of the two immediately preceding taxation years;

exceeds the aggregate of

- (c) all government assistance that is reasonably attributable to those expenses; and
- (d) the portion of those expenses that was included in determining an amount claimed by the corporation under this section for any of those preceding taxation years.

### **Claim for credit**

[10.5\(2\)](#) No amount may be claimed under this section in respect of an eligible project after the filing-due date for the taxation year following the taxation year that includes the project's completion date.

### **Proof of credit**

[10.5\(2.1\)](#) A corporation is not entitled to a credit under this section for a taxation year unless the corporation has been issued a tax credit certificate under subsection (8) for that credit and the certificate is

- (a) filed with the corporation's return for that year; or
- (b) if the return is filed electronically, held by the corporation and filed with the Minister of National Revenue upon request.

### **Limitation for projects for government**

[10.5\(2.2\)](#) Despite subsection (1.1), if an eligible project consists of an interactive digital media product being developed primarily for sale or licence to the government or an agency of the government, a Manitoba municipality or an agency of a Manitoba municipality, or a corporation controlled by the government or by such a municipality or agency,

- (a) any credit that may be claimed under this section in relation to that project may be claimed only after its completion date;
- (b) the amount of the credit cannot exceed the amount, if any, by which
  - (i) the taxpayer's total cost of the project, exceeds
  - (ii) the taxpayer's proceeds from the sale or licence of the product.

### **Credit may be reduced by government contribution**

[10.5\(2.3\)](#) Despite subsection (1.1), the total of a corporation's credits under this section in relation to an eligible project, including credits claimed in relation to the project for previous taxation years, must not exceed the amount by which

- (a) the total of
  - (i) the corporation's costs of product development in Manitoba in relation to the project, and
  - (ii) if the corporation is claiming or has claimed an amount for marketing and distribution expenses in relation to the project, its marketing and distribution expenses in relation to the project;exceeds
- (b) the total of all assistance that
  - (i) the corporation receives or is entitled to receive from a government, municipality or other public authority in respect of the eligible project, other than a tax credit under this section,
  - (ii) is not repaid by the corporation before the day that is three years after the project's completion date, and
  - (iii) can reasonably be attributed to the costs referred to in clause (a).

### **"Eligible corporation" defined**

[10.5\(3\)](#) For the purpose of this section, a corporation is an eligible corporation for a taxation year if

- (a) it is a taxable Canadian corporation with a permanent establishment in Manitoba throughout the year or that part of the year in which it incurred expenses that are included for that year in computing a credit under this section;
- (b) it satisfies the additional requirements prescribed by regulation, if any; and
- (c) either
  - (i) at least 25% of the salaries and wages paid by the corporation to its employees for that year was paid to employees who are Manitoba residents for that year, or
  - (ii) the total labour expenses that the corporation incurred in the year in relation to eligible projects is at least \$1,000,000 more than the corporation's government assistance in relation to those expenses.

### **Other definitions**

[10.5\(4\)](#) The following definitions apply in this section.

**"commencement date"**, in relation to an eligible project of a corporation, means the date on which the corporation first incurs an expense to be included in the corporation's labour expenses for the project. (« date de début »)

**"completion date"**, in relation to an eligible project of a corporation, means the day on which the corporation incurs the final expense to be included in the corporation's labour expenses for the project. (« achèvement » ou « date d'achèvement »)

**"eligible product"**, in relation to an eligible project, means the interactive digital media product to be developed in the course of the eligible project. (« produit admissible »)

**"eligible project"** means a project of a corporation, certified by the minister to be an eligible project of the corporation, to develop an interactive digital media product primarily for sale to

- (a) one or more purchasers who deal with the corporation at arm's length; or
- (b) a purchaser who does not deal with the corporation at arm's length for resale or licensing by the purchaser to one or more other persons, most of whom deal at arm's length with the purchaser and the corporation. (« projet admissible »)

**"government assistance"** means assistance that the corporation receives or is entitled to receive from a government, municipality or other public authority whether as a grant, subsidy, forgivable loan, deduction from tax, investment allowance or any other form of assistance, other than

- (a) assistance — including an amount paid or payable to the corporation by The Canada Media Fund — that is recoupable or repaid; and
- (b) the tax credit under this section, section 7.3 (research and development tax credit) or section 10.1 (paid work experience tax credit), received or receivable by the corporation. (« aide gouvernementale »)

**"interactive digital media product"** means a product that

- (a) consists of a combination of software and data files, in digital format, that are designed to be operated together, interactively by the user, to present information using sound, text and images, or any two of them;
- (b) is designed primarily to educate, inform or entertain the user;
- (c) in the case of a video game, is classified by the Entertainment Software Rating Board as anything other than "AO" (adults only); and
- (d) is not
  - (i) operating system software,
  - (ii) a product to be used primarily for interpersonal communication,
  - (iii) a product to be used primarily for marketing or promoting of an entity, a product or an idea,
  - (iv) a product that contains hate propaganda or child pornography as defined in the *Criminal Code* (Canada) or is deemed to be obscene under that Act, or any other material the publication, sale or possession of which is an offence under that Act, or
  - (v) a product that, in the opinion of the minister, it would be contrary to public policy to support with public funds. (« produit utilisant des médias numériques interactifs »)

**"labour expense"** of a corporation for a taxation year in relation to an eligible project means any of the following amounts to the extent that the amount is reasonable in the circumstances, directly attributable to the project, incurred within the taxation year and before 2023 and paid before the corporation applies for a tax credit in relation to that amount:

- (a) an amount on account of salaries and wages paid by the corporation to its employees who are Manitoba residents for that taxation year;
- (b) 65% of the fee paid by the corporation to
  - (i) an individual who is a Manitoba resident for that taxation year and is not an employee of the corporation for services performed by the individual or by one or more employees of the individual who are Manitoba residents for that taxation year,
  - (ii) a taxable Canadian corporation with a permanent establishment in Manitoba for services performed on its behalf by one or more employees who are Manitoba residents for that taxation year, or
  - (iii) a partnership carrying on business in Canada for services performed on its behalf by one or more individuals who are employees or members of the partnership and are Manitoba residents for that taxation year;
- (c) 20% of an amount that would be included under clause (a) or (b) in respect of services performed in Manitoba for the project by an individual who is not a Manitoba resident for that taxation year if
  - (i) the individual were a Manitoba resident for that taxation year, and
  - (ii) no amount were included in respect of the benefits or allowances that are included (or would be included if the individual were an employee resident in Canada) in the income of the individual under section 6 of the federal Act. (« frais de main-d'œuvre »)

**"Manitoba resident"**, in relation to a corporation's taxation year, means resident in Manitoba on December 31 of that taxation year. (« résident du Manitoba »)

**"marketing and distribution expense"** of a corporation in relation to an eligible project means an expense that

- (a) is reasonable in the circumstances and directly attributable to advertising or promoting the eligible product or distributing the eligible product to customers or potential customers;
- (b) is incurred and paid by the corporation
  - (i) before 2020, after the project's commencement date, and not later than 12 months after the project's completion date, and
  - (ii) in relation to an eligible project with a commencement date that is after December 31, 2012;
- (c) does not relate directly to processing an order by, or shipping an eligible product to, a consumer who purchased the eligible product directly from the corporation;
- (d) does not relate to an eligible product that is developed
  - (i) under the terms of an agreement between the corporation and a purchaser that deals at arm's length with the corporation, and
  - (ii) for the purpose of sale or license by the purchaser to one or more persons any of whom deals at arm's length with the purchaser;
- (e) is not an amount referred to in clause (5)(a) or subclause (5)(b)(ii) or (iii); and
- (f) is not included in computing
  - (i) the corporation's eligible labour costs in relation to the eligible project,
  - (ii) the corporation's eligible project costs in relation to any other project, or
  - (iii) the eligible labour costs or eligible project costs of any other corporation. (« frais de commercialisation et de distribution »)

"**minister**" means the minister appointed by the Lieutenant Governor in Council to administer this section. (« ministre »)

#### **Interpretation of "labour expense"**

[10.5\(5\)](#) For the purpose of the definition "labour expense" in subsection (4),

- (a) no amount may be included in respect of the following:
  - (i) salary, wages or fees determined by reference to profits or revenues,
  - (ii) stock options, signing bonuses, or other employment incentives,
  - (iii) ancillary employment benefits that are not required by law to be provided,
  - (iv) any benefits or remuneration prescribed by regulation,
  - (v) an amount that is included in computing the corporation's eligible labour costs in relation to any other project or the eligible labour costs of any other corporation,
  - (vi) an amount that is included in computing a tax credit claimed under any other section of this Act other than section 10.1 (paid work experience tax credit), or under any Act of another province or territory of Canada; and
- (b) an amount is not considered to be directly attributable to an eligible project if it is paid for
  - (i) services related to distribution, marketing or promotion,
  - (ii) administrative, payroll or management services, other than management services consisting of managing the project, or
  - (iii) any other service prescribed by regulation.

#### **Certificate of eligibility**

[10.5\(6\)](#) Upon application by a corporation proposing to develop an interactive digital media product, the minister may issue to the corporation a document that

- (a) identifies the project and certifies it to be an eligible project based on the information provided in, or in support of, the application;
- (b) sets out the corporation's proposed commencement date and estimated completion date for the project;
- (c) provides an estimate of the tax credit; and
- (d) includes any other information that the minister considers appropriate or necessary.

#### **Application for certificate of eligibility**

[10.5\(7\)](#) A corporation's application for a certificate of eligibility under subsection (6) must be made in a form approved by the minister and before the commencement date of the project, and must include the following:

- (a) the name, address and business number of the corporation;
- (b) a description of the interactive digital media product to be developed;

- (c) if the product is to be developed for sale to a purchaser for resale or licensing to others, the name and address of the purchaser and, if requested by the minister, a copy of the agreement between the corporation and the purchaser;
- (d) if clause (c) does not apply or the purchaser referred to in that clause has not been identified, a copy of the corporation's plan for marketing the product;
- (e) an estimate of the corporation's eligible labour costs and, if the corporation intends to claim a credit under subsection (1.1), eligible marketing and distribution costs for the project;
- (f) the proposed commencement date and an estimated completion date for the project;
- (g) any other information requested by the minister.

#### **Tax credit certificate**

[10.5\(8\)](#) The minister, upon application by a corporation in accordance with subsection (9), and upon being satisfied that the corporation qualifies for a tax credit under this section for an eligible project, must issue a tax credit certificate that sets out

- (a) the name, address and business number of the corporation and the identifier of the project;
- (b) the amount of the tax credit;
- (c) the taxation year to which the tax credit applies; and
- (d) any other information that the minister considers appropriate or necessary.

#### **Application for tax credit certificate**

[10.5\(9\)](#) A corporation's application for a tax credit certificate for an eligible project must be made in a form approved by the minister and must set out or include the following:

- (a) the name, address and business number of the corporation;
- (b) a copy of the certificate of eligibility for the project;
- (c) the project's commencement date and its completion date or estimated completion date;
- (d) a statement of
  - (i) the corporation's labour expenses, and
  - (ii) if the corporation wishes to claim an amount under subsection (1.1), its marketing and distribution expenses,
 for that taxation year and for each preceding taxation year for which the corporation wishes to claim a credit under this section;
- (e) information the minister requires in order to verify or be satisfied
  - (i) that the corporation is an eligible corporation for the taxation year and for each preceding taxation year for which the corporation wishes to claim an amount under subsection (1.1),
  - (ii) that the project has been completed and satisfies all the requirements for an eligible project,
  - (iii) that the amounts claimed as labour expenses qualify as labour expenses, and
  - (iv) that the amounts claimed as marketing and distribution expenses qualify as marketing and distribution expenses;
- (f) any other information relating to the project or the corporation that the minister considers appropriate or necessary for the administration of the tax credit.

#### **Revocation of certificate**

[10.5\(10\)](#) The minister may

- (a) revoke a certificate of eligibility or a tax credit certificate issued to a corporation for a project if any information provided by the corporation to obtain the certificate is false or misleading or fails to disclose a material fact; or
- (b) revoke a certificate of eligibility for a project if it is not carried out as proposed and ceases to be an eligible project.

#### **Effect of revocation**

[10.5\(11\)](#) If a certificate is revoked under clause (10)(a), it is deemed never to have been issued. If a certificate is revoked under clause (10)(b), it is no longer valid and the minister may redetermine any tax credit based on the certificate as if the certificate had never been issued or as if it had become invalid before the day it was revoked.

#### **Recovery of overpayment of tax credit**

[10.5\(12\)](#) If the Minister of Finance for Manitoba determines that all or any part of an amount paid or applied under subsection (1) did not qualify as a tax credit of the person to whom it was paid or for whose benefit it was applied, that amount or part of the amount is recoverable from the person and is a debt due by the person to Her Majesty in right of Manitoba.

## **Regulations**

[10.5\(13\)](#) The Lieutenant Governor in Council may make regulations

- (a) defining any term used in this section but not defined in this Act;
- (a.1) prescribing one or more requirements for the purpose of clause (3)(b);
- (b) prescribing benefits or remuneration expenses to be excluded from the definitions "labour expenses" and "marketing and distribution expense" in subsection (4);
- (c) prescribing services the costs of which are not to be considered directly attributable to an eligible project;
- (d) respecting information to be provided by a person claiming a tax credit under this section;
- (e) respecting the maintenance of books and records, and the provision of information or access to information, for the purpose of verifying the validity of a claim for a tax credit under this section;
- (f) respecting any other matter that the Lieutenant Governor in Council considers necessary to carry out effectively the intent and purpose of this section.

## **Delegation**

[10.5\(14\)](#) The minister may delegate any power, duty or function of the minister under this section to

- (a) an employee of the government; or
- (b) an officer of New Media Manitoba Inc.