OCPP OREGON CENTER for PUBLIC POLICY
Because facts matter.

June 18, 2009

Honorable Kate Brown
Secretary of State
136 State Capitol Building
Salem, OR 97301

Sent by email to kate.brown@state.or.us

Dear Secretary of State Brown:

We respectfully write to request an audit and investigation of the Oregon Film and Video Office's conduct with regard to the tax credit for contributions to the Oregon Production Investment Fund (OPIF).[1] We believe that the Film and Video Office is administering the tax credit program in a manner that fails to use resources economically and efficiently and misuses state resources.

Specifically, we believe that, in violation of state law, the Office is granting unnecessarily generous tax credits for contributions to the OPIF. That has the effect of reducing income and excise tax revenues for the State of Oregon, while unjustifiably enriching some of Oregon's most wealthy households at state expense.

ORS 315.514 establishes a tax credit for contributions to OPIF. Pursuant to ORS 314.514(2)(a), a "contribution [to OPIF] must equal at least 90 percent of the tax credit." The Oregon Film and Video Office is required to "adopt rules for determining the amount of tax credit to be certified by the office." In other words, the Office has authority to set the required contribution level greater than 90 percent.[2]

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[1] While state statutes at ORS 284.300 to 284.375 refer to the Oregon Film and Video Office, the agency often refers to itself as the Office of Film and Television. See http://www.oregonfilm.org/about/.

[2] The percentage matters in terms of how costly the credit is to state coffers. If the required contribution level is 90 percent and the taxpayer contributes $2,000, the tax credit would be $2,222 ($2,000 divided by 0.90), a guaranteed 11 percent profit or return on investment. If the required contribution level is set at 99 percent, for example, the tax credit would be $2,020 ($2,000 divided by 0.99), a 1 percent profit. If the required contribution percentage is increased above the 90 percent level the OPIF receives more money for the allowed $5 million per year in tax credits. The tax credit paid to the contributor is a reduction in state General Fund revenues available to all General Fund funded public services, while the contribution is earmarked to a special fund (OPIF) for subsidies to film productions.

The statutes set forth three criteria for the Office to use in adopting rules and setting the required contribution level. ORS 315.514(2)(b) requires that no more than $5 million in credits be certified for each fiscal year, that the rules "maximize income and excise tax revenues that are retained by the State of Oregon for state operations" and that the rules "provide the necessary financial incentives for taxpayers to make contributions, taking into consideration the impact of granting a credit upon a taxpayer's federal income tax liability."

While the Office has kept to the required $5 million limit, it has failed to maximize state revenues retained for state operations. Throughout the program's existence, the Office has maintained the contribution level at 90 percent of the tax credit. Thus, for every $90 that a taxpayer contributes to OPIF, he or she gets a $100 tax credit. Stated differently, every $90 contributed to OPIF represents a net loss of $10 to the state and an 11.11 percent profit for the contributor. The current tax credit is so advantageous to the purchasers that the "Tax Credits for 2008 through 2011 are sold out."[3]

Despite overwhelming demand, the Office has continued (and continues today) to sell them for future years through a reservation process using the 90 percent standard. If the Office increases the required contribution level above 90 percent, the OPIF would receive more funds. To the best of our knowledge, the agency has never sought to modify the standard (i.e., increase it) to maximize revenues retained by the state, as required by law.

To understand just how generous that standard is, one need only look at the list of contributions to the fund certified from 2005 through 2008. It shows, for example, that Mark and Greg Goodman each contributed more than $427,000 to OPIF in 2008, resulting in tax credits of over $475,000 each.[4] In other words, without doing a moment's work for the State, the Goodmans each earned about $47,000 from Oregon taxpayers. The profits each of the Goodmans realized from their one transaction with the state that one year were more than the annual income earned by about half of all Oregon households that same year.[5]

Data from the Oregon Department of Revenue show that this profitable scheme stemming from the Office's generous rules is primarily enjoyed by Oregon's wealthiest households. The top 1 percent of households represented about 22

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[3] http://www.oregonfilm.org/incentives/taxcredits/

[4] We note that the Goodmans did nothing wrong. They simply accepted the overly generous deal offered by the State.

[5] The median household income in Oregon in 2007 was $47,730, according to U.S. Census Bureau data. Half of all households earned that amount or less that year. The 2008 median household income will not be available until August or September of this year.

percent of OPIF tax credit claimants and reaped approximately 74 percent of the credit's value in 2007. The top 5 percent of households, representing about 62 percent of claimants, reaped about 94 percent of the credit's value. A majority of Oregon households, low- and middle-income households that comprise the bottom 60 percent of households, represented just 8 percent of claimants and reaped only 0.5 percent (one-half of 1 percent) of the credit's value.[6]

By maintaining overly generous rules, the Office is failing to meet the requirement that it maximize state revenues. The level set for the tax credit unnecessarily benefits some of Oregon's wealthiest households, squandering state resources that could fund schools, public safety and health care and other human services.

Even if the Office set the contribution level at 100 percent of the credit, OCPP would contend that the tax credit scheme for funding the OPIF is nothing more than robbing Peter to pay Paul. It diverts funding from education, public safety and health care and other human services to the Hollywood film industry. The OPIF ought to instead compete in the regular budget process for prioritizing state spending. Maybe supporting Hollywood filmmakers would win out over school days, health care and public safety, maybe not. But until the Legislative Assembly terminates the rob-Peter-to-pay-Paul scheme, at a minimum the tax credit should not be so generous that it unnecessarily enriches the wealthiest Oregonians at the expense of public services, in violation of state law.

In sum, the Oregon Film and Video Office is not administering the tax credit program in an economical and efficient manner and is misusing state resources by maintaining the 90 percent standard, thereby warranting an audit and investigation by the Secretary of State.

Please let us know if we can provide you with additional information on the matter.

Sincerely,

Chuck

Chuck Sheketoff
Executive Director

cc: Vince Porter, Executive Director, Oregon Film and Video Office
Barry Pack, Deputy Secretary of State

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[6] Calculated from preliminary 2007 data the Department of Revenue released to OCPP.