

Revenue Canada pulls back

TORONTO — Revenue Canada has released a revised set of policies governing the taxation of non-resident actors and film technicians in an effort to clear up lingering confusion and anger over the issue.

The revised policies, released Nov. 5, outline details for collecting out-of-pocket expenses and income from non-residents working in Canada.

Revenue Canada developed the guidelines after a series of meetings with industry representatives and after a storm of protest arose because of earlier strict interpretations of the Canada-U.S. tax treaty, most of which came into force Jan. 1, 1986.

Provincial ministers, mayors, tax service companies and film officials wrote the federal government to protest the policies that were said likely to drive American production firms and performers out of Canada.

Concern was raised that the strict interpretation of the treaty was taking too much of a bite out of non-resident performers' and technicians' pockets as well as creating confusion. Several also said American production companies viewed the earlier tax policies as an unfriendly sign in Canada.

Revenue Canada audited some production companies and a major west coast produc-

tion by an American company pulled out of Canada.

Mark Prior, president of Bulloc Disc Inc., a Toronto company that performs payroll services for the film industry, said although there are still some rumblings about the revised guidelines, he is personally pleased.

"The reaction so far from Los Angeles is positive," Prior said.

Prior said he thought Revenue Canada had moved about as far as it could on the issue and that it would take legislative changes to accomplish more.

A group of eight persons including entertainment lawyers, accountants, union and film industry representatives met with Revenue Canada officials in Ottawa on Oct. 24 to review the tax issue.

The guidelines developed now allow production companies to pay for reasonable accommodation and airfare for a non-resident without paying a 15 percent withholding tax. A production company can also reimburse the non-resident for hotel and airfare expenses provided receipts are produced.

Revenue Canada is also allowing a \$40 per day tax-free meal allowance.

Previously Revenue Canada taxed per diem expenses as part of a non-resident performer's income.

American residents, who work for a production company in a technical role, for example cameramen or make-up artists, are exempt from Canadian tax if they earn less than \$10,000 in Canada. For those earning more than \$10,000 in Canada, a set of conditions must be met before an exemption is given, the guidelines show.

Revenue Canada will also start an up-front waiver process for non-actors to determine whether an individual will be taxed or not.

Non-residents who normally freelance work outside of Canada and are here for less than 60 days will get automatic approval of their waiver, Prior advises. Those in Canada more than 60 days will not get an automatic waiver with each case subject to review to determine whether tax will be applied.

Non-resident actors will pay a 10 percent withholding tax on the first \$5,000 earned in Canada and 15 percent on any amount beyond that. Use of a "loan out" company by an actor could trigger a withholding tax based on higher graduated rates and Prior advises considering such a move carefully.

Tax entertainment lawyer Neil Harris, who works for the Toronto firm of Goodman &

Cont. on p. 38

Broadcast Fund to open to pay-TV licensed programs

VANCOUVER — In an effort to boost Canadian content television the federal government has announced it intends to widen access to the \$60 million Broadcast Development Fund allowing pay-TV services to tap directly into the money for the first time.

Communications minister Flora MacDonald made the announcement at the Canadian Association of Broadcasters annual convention.

Changes in the three-year old Telefilm Canada Broadcast Program Development Fund would give access to pay-TV services such as First Choice/Superchannel, The Sports Network, MuchMusic and the Life Channel. Previously the money was only given to independent drama, variety and documentaries licensed by television networks and independent stations, though pay stations could participate financially.

"Such measures would enable each component of the broadcasting system to contribute to the goal of high-quality Canadian programming as effectively as possible," MacDonald said.

Initial reactions from the Canadian cable television industry are positive.

Fred Klinkhammer, president of First Choice, said he is delighted with the announced proposals. He said the pay-TV industry fought long and hard to have the fund opened up. He termed the move an indication of the coming of age of the pay-TV industry.

Klinkhammer said he is waiting to see what rules will be set up to govern access to the fund for pay-TV services. He said from a business point of view First Choice needs vibrant, fresh Canadian productions to match its foreign productions adding such a combination is the only way to satisfy subscribers.

With the Telefilm support added to the \$10 million annually allotted by First Choice for Canadian drama, a greater number of Canadian programs will be produced with better production values, Klinkhammer said.

Klinkhammer said the pay-TV industry has always been opposed to Telefilm's awarding its money to stations or networks that impose restrictions on which delivery service productions can be shown.

Cont. on p. 35

Supreme Court overrules censors

TORONTO — The Supreme Court of Ontario has overturned a decision of the Ontario censor board and ruled that the Canadian film *Amerika* be given approval for public distribution.

But the court, in a written decision by Mr. Justice Edward Saunders, said it would not rule on constitutional issues of whether the Ontario Film Review Board has the power to cut or ban movies.

The Ontario Film and Video Appreciation Society (OFAVAS) appealed earlier decisions of the censor board to ban the film unless cuts were made. The board would not approve the film because it had found that *Amerika* contained graphic depictions of fellatio, penetration and masturbation.

OFAVAS, an anti-censorship group, also asked the court to decide whether the province of Ontario had the constitutional power to ban films and also whether banning and cutting films was counter to provisions of freedom of expression under the Charter of

Rights.

Saunders said while there are scenes of explicit sexual activity, as defined under provincial regulations, when taken together they last less than a minute and "were not inconsistent with the part of the film in which they occurred."

The judge said he thought the author of the film would consider the cutting of those scenes as impairing the integrity and character of the movie.

"More importantly, I do not consider that the viewing of the film could have the possibility of affecting local standards of sexual morality or increasing the likelihood of crime."

The film in question, by Al Razutis, is about the sexual manipulation of Canadian women by the media. It is a separate work from the ABC-TV production of the same name that was filmed in Toronto during the summer. The ABC production is a fictional story about the United States

10 years after a Soviet takeover.

In his ruling Saunders said the board did not take into account the general character and integrity of the film as outlined under regulations set up by the province. Saunders said therefore the film is approved and is to be classified as restricted.

Despite arguments by OFAVAS that the censor board does not have the power to cut or ban films before they are distributed or exhibited, the court declined to rule on that issue. The court also did not rule on whether the Charter of Rights is violated by the board.

"The extent of the power of a province to impose prior restraint on the exhibition of films is an important issue of general interest," Saunders said however.

OFAVAS argues that the Ontario Film Review Board, which is made up of 25 members and is empowered through provincial legislation, should only have the power to classify films.

No union agreement in QC

MONTREAL — A general assembly of the Syndicat des techniciens et des techniciennes du cinéma du Québec (STCQ) has given its executive committee a mandate to take whatever action is necessary to win a favorable collective agreement with the Association des Producteurs de Film et de Vidéo du Québec (APFVQ).

François Leclerc, interim president of the 700-member union which has been without a renewed collective agreement since 1981, told *Cinema Canada*, that the union "would not hesitate" to invoke information sessions or work stoppages on film and commercial sets in Quebec if the producers do not sign the agreement soon. At presstime both sides had agreed to return to the negotiating table on Nov. 19.

Leclerc would not say how many union members attended the general assembly on Nov. 10. "There were enough people to make a strong decision," he said.

Standing in the way of a signed collective agreement is disagreement over salaries for 17 of 56 job classifications.

Says Leclerc, "We have already agreed on the higher paying positions that have stronger negotiating power but as you go lower on the scale the difference between what we are asking and what they are offering gets bigger."

Rock Demers, president of the APFVQ, argues that wage demands by the union appear to be competitive only when isolated from pensions and insurance allocations already agreed upon in the collective agreement.

"If you take salaries as such, it's true they are lower but the agreement provides more, and is more complex than just salaries," says Demers.

The decision to continue to negotiate and try and overcome differences on the question of salaries follows the rejection of the producer's latest offer by the general assembly.

In late October, work stoppages on three feature film sets occurred after the producers refused to recognize a letter of agreement or interim contract with the STCQ. The letters were eventually signed and shooting continued.