

NEW YORK STATE FILM TAX CREDIT PROGRAM

APPENDIX A TO PROGRAM GUIDELINES

Glossary of Key Terms and Definitions

The Film Tax Credit Program contains many key terms and definitions that are used in the Guidelines, the statute, the regulations and the documents that comprise the application. These terms and definitions are organized alphabetically for reference purposes below.

Above the Line refers generally to expenditures such as rights to secure the material on which the script is based, production rights to the screenplay, compensation for the screenwriter, producer, director, principal actors and other cost-related line items such as assistants for the producers, director or actors. Above-the-line employees on a film project generally refers to the list of individuals who guide, influence and add to the creative direction, process and voice of a given narrative in a film and their related expenditures. These roles include but are not limited to the screenwriter, producer, director and actors. Above the line employees and costs are generally not qualified for the NYS Film Tax Credit. See the **SCHEDULE OF EXPENDITURES** for a detailed listing of costs that are qualified and non-qualified.

Above the Line – Qualified NY Employees refers to the number of Above the Line NY Production Employees, whether resident or not, whose wages or salaries qualify for the credit.

Additional Photography, or Reshoot, refers to camera roll days, or other similar days that occur either before or after the main contiguous schedule of principal and ongoing photography. This additional photography or reshoot could be considered part of Principal Photography and Ongoing Photography if certain conditions are met and in such instances would be included in calculations affecting the Location Days threshold.

Additional Principal Photography / Second Unit Start Date means the first date after the initial phase of Principal and Ongoing Photography End Date on which either Second (2nd) Unit or other additional photography that does not include the main actors begins, or, when the lead actors are reconvened for Principal Photography for 'reshoots' of additional scenes that were not a part of the initial phase of principal and ongoing photography.

Allocation Year means the pool of funds by tax year from which the tax credits are allocated pursuant to subdivision e of section 24 of the tax law and is determined based upon receipt of a complete final application.

Applicant is the corporation, partnership, limited partnership, or other entity or individual that is principally engaged in the production of the film or television program and that controls the film or television program during pre-production, production and post-production. The applicant is the entity that, upon final approval, will receive the tax credit certificate. The

applicant must be the entity that incurs and pays direct expenditures related to the physical production process and is signatory to contracts with a payroll company, facility operators, vendors, etc. during the production.

Application refers to the group of documents which all applicants for the Film Production Credit and Post-Production Credit must complete. When completed, the applicable documents and forms must be emailed to filmcredits@esd.ny.gov with the project title in the subject line of the email. Forms can be found at the Film Tax Credit Program website <http://esd.ny.gov/BusinessPrograms/filmCredit.html>. Please see the NYS Film Tax Credit Program Guidelines for more detailed information about the application materials.

Armory refers to facilities formerly used to house and store weapons that are owned by NYS or NYC. If located in NYC, an armory is considered a Level 1 qualified production facility (QPF) and may be used by any **Qualified Independent Film Production Company** to meet the Facility Threshold requirements. Outside of NYC, an armory is considered a QPF and any **Qualified Film Production Company** may use an armory to meet the Facility Threshold requirements. Within NYC, an armory is not considered a QPF suitable for meeting the Facility Threshold requirements unless certified by the **Governor's Office for Motion Picture and Television Development (MP/TV)**. An applicant must petition the MP/TV Office requesting an armory be authorized as a QPF and demonstrate that no QPF in NYC has stage space available that is appropriate for shooting the applicant's film. Such petition shall be submitted no later than ninety days prior to the start of principal photography for the qualified film and the MP/TV Office shall have ten days to certify or reject the petition. A stage will be deemed unavailable if consideration has been paid for its use, or, such stage is currently under an agreement with an option for use and, such period of use includes the applicant's estimated start date of principal photography.

Background actors refer to extras used in the production of the film.

Below the Line refers generally to expenditures for employees who provide craft and technical services for a film or TV production, (such as camera operators, make-up artists, and boom operators), and differentiates these employees from the above-the-line people who are charged with the creation of the production (such as directors, producers, and writers). Costs associated with such things as equipment rental, film stock, and paint for sets would be below-the-line costs. Those related to the creation of the movie, such as rights acquisition costs would be above-the-line costs. Below the line employees and costs are generally qualified for the NYS Film Tax Credit if incurred in NYS. See the SCHEDULE OF EXPENDITURES for a detailed listing of costs that are qualified and non-qualified.

Below the Line -- Qualified NYS Employees refers to the number of Below the Line NYS Production Employees, (excluding post-production Qualified NYS Employees), engaged in the pre-production and production (shooting) process who are qualified, whether resident or not. If an employee is significantly employed in both production and post-production processes,

include as a Below the Line – Qualified NYS Employee, not as a post-production Qualified NYS Employee. Doing so would result in a double count of Below the Line employees.

Budget Cost Qualifier is a standard MS Excel Template designed by the Department to assist applicants in determining costs that are qualified and eligible to be applied to the appropriate eligibility thresholds. There are separate BUDGET COST QUALIFIER templates specific to the film production credit and the post production credit. THE BUDGET COST QUALIFIER is part of the application and must be completed using the MS Excel template provided by the **Program**, downloaded, filled-out and emailed to filmcredits@esd.ny.gov

Certificate of Conditional Eligibility (CCE) means a form issued by the Department which states that a project is eligible to receive a tax credit if the applicant meets all of the program requirements and files a complete final application.

Certificate of Tax Credit means a form issued by the Department that indicates the amount of the film tax credit for which an applicant has qualified. Such certificate may include, but not be limited to, the following information: name and address of the approved applicant, name of the qualified film the credit applies to, the amount of the tax credit to be received by the approved applicant, allocation year of the tax credit earned, a disclaimer stating that the tax credit shall not be claimed before the later of either the taxable year the production of the qualified film is complete or the taxable year immediately following the allocation year for which the film has been allocated credit and a disclaimer stating that actual receipt of the tax credit is subject to the statutory maximum amount of credits that are allocated for the program.

Complete application means that all required information is provided in the form and manner prescribed by the Department. The Department will not determine that an applicant is eligible to participate in the **Program**, assign an allocation year, nor determine that a final application is ready for audit unless it is first deemed to be a complete application.

Designated Contact is the person, such as the preparer of the application, who the primary contact has authorized to provide information to the Department about the application on his/her behalf. If the designated contact is a consultant, accountant, or other third party representative of the applicant, then the primary contact must provide a letter authorizing the representative to release information to the Department. A completed power of attorney form may be attached in lieu of a letter. **A completed power of attorney (POA) must be included with the application if the third party representative is completing the application on behalf of the applicant.**

Detail Page is a worksheet within the **BUDGET COST QUALIFIER** that is designed as an industry standard two page budget summary or ‘top sheet’ adapted to help applicants identify the costs within their production budgets that qualify under the Film Tax Credit Program. The Detail page breaks costs into three general types of costs (Qualified in NYS, Non-Qualified Costs, and

Outside NYS costs). These three general cost categories are then further divided into sub-categories.

Because it is a summary or ‘top sheet’ of a more extensive production budget, the Detail Page will collapse or combine a number of lines from the more detailed Schedule of Qualified Expenditures, and/or your own production budget, into larger departmental totals. Both qualified and non-qualified costs will be subsumed within departments. For example, in the Above the Line (ATL) department of Director & Staff, while the salary and some costs associated with the Director are not qualified, the salaries and expenses related to the Director’s assistant, office needs, etc. are qualified and become eligible for the credit when incurred in NYS. When filling out the **BUDGET COST QUALIFIER**, place the appropriate totals for each budget category in the appropriate columns, e.g. costs for a Unit Production Manager might be divided between Qualified Facility Costs in NYC, Qualified Location Costs in NYC, Qualified Location Costs NYS (outside NYC) and Qualified Location Costs (Outside NYS). Use Column B (Project Acct #) to indicate the account numbers/codes as they appear in your budget. This method will allow for easy correlation between the production budget accounts and the account codes utilized in the **SCHEDULE OF QUALIFIED EXPENDITURES**. It is not uncommon for each cell in Column B to include multiple project account numbers or codes.

Development Process (“ in development”) refers to costs or activities related to acquiring the rights to a script, creating a story, selecting the actors or director, or negotiating the basic terms of an agreement for financing a project.

End Credit Requirements mean that a qualified film production company that has applied for credit agrees as a condition for the granting of the credit either to include in the end credits of each qualified film the phrase “filmed with the support of the **New York State Governor’s Office of Motion Picture and Television Development**” and a logo provided by the Governor’s Office of Motion Picture and Television Development or to include in each qualified film distributed by DVD, or other media for the secondary market, a New York promotional video approved by the Governor’s Office of Motion Picture and Television Development.

Compliance with the End Credit requirements is mandatory per NYS law governing the film production credit. Credits will not be approved and issued by the Department until the applicant provides documentation, (e.g. still shot, frame grab, finished DVD or other documentation such as the Department may require), that the End Credit requirement has been met.

Facility Costs refers to costs incurred at a film production facility that are used in the calculation to determine if the facility threshold requirement is met. The Facility Cost information must be included in the appropriate columns of the **BUDGET COST QUALIFIER** (i.e. NYC QPF, NYS (outside NYC) QPF, Outside NYS Facility). Expenditures at the facility(s) could include:

- *Facility lease/licensing cost* refers to the cost of the License or Operating agreement with the qualified production facility (QPF). If the agreement includes bundled costs

directly related to use of the stage itself, (as opposed to set operations), such as power, HVAC, waste removal, etc, such costs should be included.

- *Construction and Wrap*: refers to days spent in the processes of construction and wrap of sets at any facility. This would include all costs incurred for activity at the facility, including the cost of materials for set construction, salaries of crew working at the facility, meals at the facility, transportation related to the facility activity, services at the facility, etc.
- *Camera Roll Days*: refers to the days when filming at a facility and includes all costs related to production activity at the facility, including set operations, crew salaries, meals, camera and equipment rentals, transportation, etc.
- *Other Facility Expenditures*: refers to all costs that are incurred at any facilities that do not relate specifically to days prepping, shooting or wrapping on a stage, including, for example, production office rental if at the facility, (including office equipment and staff salaries), telephone charges, etc

Facility Threshold refers to the minimum requirements that must be met regarding use of a **Qualified Production Facility (QPF)** in order to participate in the Program. The requirements for meeting this threshold differ for **Level One** and **Level Two** productions. There is also a **Pilot Exemption**.

An applicant must secure a signed license or operating agreement with a QPF in order to qualify for the Program. For a complete list of all **Qualified Production Facilities** in NYS, go to nylovesfilm.com or call the **MP/TV** Office at (212) 803-2330.

Final Application means information concerning actual expenditures regarding a qualified film that could make it eligible for the film tax credit provided in a form and manner as prescribed by the Department and submitted by an approved applicant after it has completed production and post-production of a qualified film. Such application may include, but not be limited to: actual data with regard to the qualified film's total budget, the total production costs at film production facilities in and outside of New York, the total number of shooting days in and outside of New York and any other information the Department determines is necessary. **See Application** referenced earlier for details about how to submit a final application.

Film Production Facility means a building and/or complex of buildings and their improvements and associated back-lot facilities in which films are or are intended to be regularly produced and which contain at least one sound stage; provided, however, that an armory owned by the State or City of New York located in the City of New York shall not be considered to be a "film production facility" unless such facility meets the criteria for a **Qualified Film Production Facility** in NYC, or is used by a **Qualified Independent Film Production Company**.

Feature-Length Film means a production intended for commercial distribution to a motion picture theater or directly to the home video or DVD market that has a running time of at least seventy-five (75) minutes in length.

Freedom of Information Law ("FOIL") refers to the law governing public access to the records of government agencies (see Public Officers Law sections 84 through 90). Applicants should be aware that some information submitted to the Department as part of any application to the Program becomes subject to legislatively mandated reports that will be made public. Additionally, the Department will respond to requests for information about the Program including but not limited to the:

- i. name of the project which has been issued a certificate of tax credit;
- ii. counties in NYS where the project was filmed;
- iii. qualified costs for the project;
- iv. total expenditures on goods and services in NYS for the project
- v. number of employees associated with the project;
- vi. credit-eligible man hours for the project;
- vii. total wages for such credit-eligible man hours for the project;
- viii. name of each taxpayer* issued a certificate of tax credit for each project and the county of residence or incorporation of such taxpayer or, if the taxpayer does not reside or is not incorporated in New York, then the state of residence or incorporation; and
- ix. the amount of tax credit issued to each taxpayer*; **provided however, if the taxpayer claims a tax credit because the taxpayer is a member of a limited liability company, a partner in a partnership or a shareholder in a subchapter S corporation, the name of each limited liability company, partnership or subchapter S corporation earning any of those tax credits instead of information about the taxpayer claiming the tax credit*

Applicants may request that certain information be excepted from public disclosure, pursuant to section 87(2)(a-d) on the grounds that the information constitutes trade secrets, proprietary information or that the information, if disclosed, would cause substantial injury to the competitive position of the Applicant. Such a request must be in made in writing to the Department, specify the information to be withheld and state the reasons for the requested exception. The Department reserves the right to determine whether the information submitted by the Applicant will be withheld from disclosure. The Department will notify the Applicant of any requests for disclosure of Applicants' information and notify the Applicant as to whether the information will be disclosed. Applicants may submit their request for non-disclosure of information with the application submitted to the Department.

The Department reserves the right to determine whether the information submitted by the Applicant will be withheld from disclosure. The Department will notify the Applicant of any requests for disclosure of Applicants' information and notify the Applicant as to whether the information will be disclosed. Applicants may submit their request for non-disclosure of information with the application submitted to the Department.

General Travel & Living Costs are costs related to travel into or out of NYS, such as airfare, hotels, travel related per diem, extra meals, etc. paid to individuals who are brought into NYS to work on the qualified film. General Travel costs are not qualified costs. For example, if the production brings a technician from out of state to work on the qualified film, costs associated with that individual's plane tickets to/from NYS, hotel/housing while in NYS, travel related per diems, etc. are not qualified. However, all normal costs associated with the individual's work on the qualified film while in NYS as part of the NYS based crew/production, including his/her salary, transportation to and from the set, regular production sponsored meals, etc., are eligible as long as they are incurred on **distant location** in NYS.

Initial Application means information concerning projected expenditures regarding a qualified film that could make it eligible for the film tax credit in a form and manner as prescribed by the Department and submitted by an authorized applicant. Such application may include, but is not limited to, the following information: the estimated total budget for the qualified film, estimates of expenditures at a qualifying production facility, estimates of shooting days and expenditures in New York State and outside of New York State and any other information the Department determines is necessary. **See Application** referenced earlier for details about how to submit a final application online via the Consolidated Funding Application (CFA) at <http://www.nyworks.ny.gov>

Level One Production is a qualified production that:

- (a) Has a production budget of no more than \$15 million, AND
- (b) Is being produced by a company in which no more than five percent of the beneficial ownership is owned, directly or indirectly, by a publicly traded entity.

If there is any change of budget or ownership structure of the applicant at any time after the filing of the Initial Application that would affect the designation of the production as a Level One Production, the Applicant must notify the Department. The determination of whether an applicant has met the appropriate **Level One** Production or **Level Two** Production requirements will be based on the budget and ownership structure of the Applicant upon submission of the Final Application.

Level Two Production is a qualified production that:

- (a) has a production budget over \$15 million, OR
- (b) is being produced by a company in which more than five percent of the beneficial ownership is owned, directly or indirectly, by a publicly traded entity.

Location Threshold refers to the requirement relating to the eligibility for on-location filming, pre or post-production, or any other costs for work done in NYS outside the **Qualified Production Facility (QPF)**. There are two possible ways to meet the Location/Other Threshold:

- 1) If less than \$3,000,000 is spent on facility-related work, then at least 75% of the location principal photography shoot days must be in NYS, OR
- 2) If \$3,000,000 or more is spent on facility-related work, then there is no required percentage of location days that must be in NYS.

It is possible to meet the Facility Threshold but not the Location Threshold. For example, a film may use a **QPF** within NYS, but only shoot 50% of its location days in NYS; the other 50% is shot outside the State. If less than \$3 million is spent at the **QPF**, all qualified costs related to the work at the facility would be eligible for the credit. However, the location costs, post production costs, or other non-facility costs, would not be eligible, because the location threshold was not met.

If more than \$3 million is spent at the **QPF**, the Location Threshold is not applicable, and any location days or other qualified non-stage costs, including post production costs, in the State would be eligible for credit.

Location/Other NYC – is a category of qualified costs in the **BUDGET COST QUALIFIER** that refers to all qualified costs incurred anywhere within NYC other than at a **Film Production Facility**.

Location/Other NYS – is a category of qualified costs in the **BUDGET COST QUALIFIER** that refers to all qualified location and other costs incurred in NYS but OUTSIDE NYC. Do not include the Location/Other NYC costs in the Location/Other NYS column.

Major Motion Picture Studio means a production and distribution company that releases a substantial number of films annually and consistently commands a significant share of box-office revenues in a given market such as: Walt Disney Studios; Paramount Pictures Corporation; Sony Pictures Entertainment; Twentieth Century Fox; Universal City Studios LLC; and Warner Bros. Entertainment.

MP/TV Office refers to the Governor's Office For Motion Picture and Television Development. For further information about the MP/TV Office visit the website at <http://www.nylovesfilm.com> or call (212) 803-2330

NY Production Employees are ALL employees assigned to work on the film in New York City or New York State (regardless of their personal residence or point of origin).

NY Wages are ALL wages and compensation paid to all **NY Production Employees** (regardless of their personal residence or point of origin) for work performed in NYS or NYC.

NYS Distant Location Travel & Living refers to travel costs incurred for intrastate travel --i.e., travel between two points within NYS--to a location in NYS that is contractually considered outside the various unions' 'report to zone' for either location or facility shooting on the qualified film. Costs for NYS Distant Location Travel & Living, including transportation to the

distant location from a point of origin within NYS, hotels, meals and travel-related per diems, are qualified for all qualified individuals working on the film. However, the maximum dollar amount allowed to be considered qualified for each type of travel-related expense, (e.g. transportation, hotel, meals, per diem, etc.), for any individual member of the production may not exceed the amount contractually set for the IATSE NY local union crew members. For example, if an actor or technician is flown from NYC for two weeks of location shooting in Buffalo, the amount of the costs of that actor's airfare, hotel room, meals, etc., that can be claimed as a qualified expense may not exceed the cost allotted by contract for an individual IATSE Local 52 grip.

NON QUALIFIED NY Employees – refers to the number of **NY Production Employees** whose wages or salaries are NOT Qualified (e.g., Director, Producers, Actors with speaking parts, etc.), whether resident or not.

NON-Qualified in NYS refers to costs that are NOT eligible to qualify (*indicated as "NO" on the SCHEDULE OF QUALIFIED EXPENDITURES*) even though the costs are incurred within NYC or NYS, such as **General Travel & Living Costs**, costs for a story, script or scenario, wages or salaries for writers, directors, producers, actors and performers other than background actors, etc.

NON Qualified Outside NYS refers to costs that are NOT eligible to qualify (*indicated as "NO" on SCHEDULE OF QUALIFIED EXPENDITURES*) and that are incurred outside NYS, such as General Travel, directors fees, actors' salaries, etc.

NON-Qualified Production Facility means a facility, whether within or outside NYS, that does not meet the criteria for a **Qualified Film Production Facility**.

Ongoing means that once the process of principal photography begins it continues with no significant breaks or delays in an industry standard work schedule for the majority of the total days scheduled for principal photography.

It is generally understood that under certain industry practices episodic television production seasons can include planned, reasonable interruptions of "ongoing" production. If the project being applied for is a production season of an episodic television program series, and such an interruption is anticipated, notify the Department at (212) 803-2328.

Other Days refers to photography that could include model shots, matte shots, effects shots etc. which do not involve actors; these could generally be considered **Second Unit/Other Days** and would not be included in threshold calculations. Makeup and costume tests, camera tests, or other similar days that are not intended for inclusion in the finished film would also be considered Other Days and would not be included in any threshold calculation.

Pilot Exemption refers to the fact that Pilots are exempted from the Facility Threshold criteria regarding 10% of principal photography days at the **Qualified Production Facility (QPF)**.

However, at least 75% of the total of all expenses related to work, (excluding post-production), done at all facilities anywhere utilized by the Pilot must be related to work done at the **QPF**.

Post-Production Costs means production of original content for a qualified film employing traditional, emerging and new workflow techniques used in post-production for picture, sound and music editorial, rerecording and mixing, visual effects, graphic design, musical composition, original scoring, and animation; but shall not include the editing of previously produced content for a qualified film. Post production costs shall not include (i) costs for a story, script or scenario to be used for a qualified film; (ii) licensing or rights associated with the production of a qualified film; and (iii) wages or salaries or other compensation for writers, directors, including music directors, producers and performers (other than background actors with no scripted lines). Post production costs on a fully animated production shall mean the process and operations in the animation workflow which are conducted after completion of animation (key frame and/or stop motion animation, motion capture data acquisition and solving), including but not limited to final scene integration, fx animation, lighting, compositing, rendering, color timing/correction, music recording and editing.

Post-Production Facility means any company located in NYS and engaged in providing post-production services to film and television.

Post-production, Qualified NYS Employees refers to the number of NYS Production Employees engaged only in the post-production process who are qualified, whether resident or not.

Post-Production End Date means the date post production on the qualified film has been finished and the project is ready for delivery to a distributor. Post production can continue beyond a festival screening. Post production does NOT include activities related to marketing, promotion or distribution. In the case of a film with a planned theatrical release or a television project with a broadcast or cable release, post production does NOT include any activity specifically related to DVD or home video distribution. In the case of a Television Series, the production season will be considered complete when post production on the final episode of the season is completed and the entire season is ready for delivery.

Pre-production means the process of preparation for actual physical production and is considered to begin with the establishment of a dedicated production office, the hiring of key crew members such as a Line Producer and/or Unit Production Manager, and includes, but is not limited to, activities such as location scouting, hiring of crew, construction of sets, etc. Pre-production does NOT include the development process.

Primary Contact refers to the responsible officer of the applicant and should be a person of authority such as a corporate officer, general partner, managing member, or sole proprietor and will ultimately be responsible for supervising the preparation of the application and all future communication or correspondence with the Department. A Primary contact can designate another person to be the **Designated Contact**.

Principal and Ongoing Photography means the filming of major and significant portions of a qualified film that involves the principal actors and director. Additional criteria for determining if a camera roll day is a major and significant portion of the film include the presence of members of the first unit production team, (e.g., cinematographer, first assistant director, etc.); or scenes in which lines of dialogue are spoken.

For questions regarding whether or not a given shoot day can be considered a part of Principal and Ongoing Photography and counted towards the facility and location thresholds, call the Film Tax Credit Program office at (212) 803-2328.

Principally engaged in the production of a qualified film and controls the qualified film during production” means that the legal entity is responsible for payment of the direct production expenses, (including pre- and post-production), and is a signatory to the qualified film’s contracts with its payroll company and facility operators.

Principal Photography End Date means the date Principal and Ongoing Photography is concluded.

Principal Photography Start Date means the first date of Principal and Ongoing Photography filming of major and significant portions of a qualified film that involves the main actors.

Privacy Act Notification refers to the fact that individuals must provide their social security numbers pursuant to Tax Law § 658(b) or New York City Administrative Code § 11-102.1 and 42 USCS § 405(c)(2)(C)(i). Social security numbers will be used in administering the NYS Film Production Tax Credit Programs as well as to establish and maintain a uniform system for identifying taxpayers entitled to claim the credits on their State tax returns, and for any other lawful purpose.

Production Costs means any costs for tangible property used and services performed directly and predominantly, (including pre-production and post-production), in the production of a qualified film. Production costs shall not include (1) costs for a story, script or scenario to be used for a qualified film; (2) licensing or rights associated with the production of a qualified film; or (3) wages or salaries or other compensation for writers, directors, including music directors, producers, including, but not limited to, line producers and performers (other than background actors with no scripted lines). Production costs generally include technical and crew production costs, such as expenditures for film production facilities, or any part thereof, props, makeup, wardrobe, camera, film processing, sound recording, set construction, lighting, shooting and meals.

Program refers to the NYS Film Tax Credit Program. More information about the Program can be found in the Program Guidelines and by visiting the website at <http://esd.ny.gov/BusinessPrograms/filmCredit.html>

Projected Release/Air Date. Refers to the date the production will be ready for release or broadcast if there is no distribution agreement in place, and no tentative projected release or air date.

Qualified Facility NYC - means qualified costs related to all activity/days at a NYC **Qualified Production Facility (QPF)**.

Qualified Facility NYS - means qualified costs related to all activity/days at a **Qualified Production Facility (QPF)** in NYS but OUTSIDE NYC. Do not include NYC costs in the Qualified Facility NYS column of the Budget Cost Qualifier because doing so would result in double counting of the facility costs.

Qualified Film means a feature-length film, television film, relocated television production, television pilot and/or each episode of a television series, regardless of the medium by means of which the film, pilot or episode is created or conveyed. Qualified film shall not include:

(1) a documentary film, (including the filming of a live theatrical performance), news or current affairs program interview or talk program (unless such talk program meets the requirements of paragraph (ah) of this section, "how-to" (i.e., instructional) film or program, film or program consisting primarily of stock footage, sporting event or sporting program, game show, award ceremony, film or program intended primarily for industrial, corporate or institutional end-users, fund-raising film or program, daytime drama (i.e., daytime soap opera), commercials, music videos or "reality" program; or

(2) a production for which records are required under section 2257 of title 18, United States Code, to be maintained with respect to any performer in such production (reporting of books, films, etc. with respect to sexually explicit conduct). Title 18, United States Code, is available for public inspection and copying at the following address: New York State Department of Economic Development, 625 Broadway, 8th floor, Albany, NY 12245; or

(3) A compilation of short films or webisodes aggregated to meet either the definition of television film or television series under these regulations.

Qualified Film Production Company means a corporation, partnership, limited partnership, or other entity or individual which or who is principally engaged in the production of a qualified film and controls the qualified film during production.

Qualified Independent Film Production Company means a corporation, partnership, limited partnership, or other entity or individual, that or who (1) is principally engaged in the production of a qualified film with a maximum budget of fifteen million, and (2) controls the qualified film during production, and (3) either is not a publicly traded entity, or no more than five percent of the beneficial ownership of which is owned, directly or indirectly, by a publicly traded entity.

Qualified Post-Production Facility means a post- production facility located in the state, engaged in finishing a qualified film.

Qualified Film Production Facility means a film production facility in NYS, which contains at least one sound stage having a minimum of 7,000 square feet of contiguous production space, provided, however, that except with respect to a qualified film production facility being used by a **qualified independent film production company**: (i) a film production facility in NYC must contain at least one sound stage having a minimum of seven thousand square feet of contiguous production space that is sound proof with a Noise Criteria ("NC") of 30 or better, has sufficient heating and air conditioning for shooting without the need for supplemental units, incorporates a permanent grid and sufficient built-in electric service for shooting without the need for generators, and is column-free with a clear height of at least sixteen feet under the permanent grid; and (ii) an **armory** owned by NYC or NYC the state or city of New York located in NYC that does not satisfy the criteria of subparagraph (i) of this paragraph shall be treated as a qualified film production facility upon certification by the governor's office of motion picture and television development of a petition submitted to that office by a qualified film production company establishing that no qualified film production facility is available in the city of New York that has stage space available for shooting such company's film. Such petition shall be submitted no later than ninety days prior to the start of principal photography for the qualified film and the governor's office of motion picture and television development shall have ten days to certify or reject the petition. A stage will be deemed unavailable if consideration has been paid for its use or such stage is currently under an agreement with an option for use and, in either circumstance, such period of use includes the petitioner's estimated start date of principal photography.

Qualified Production Costs means production costs only to the extent such costs are attributable to the use of tangible personal property or the performance of services within NYS directly and predominantly in the production, (including pre-production and post-production) of a qualified film. Generally Qualified Production Costs includes most 'below the line' expenditures, such as costs for technical and crew production, use of film production facilities, props, makeup, wardrobe, non speaking background extras, film processing, camera, sound recording, set construction, lighting, shooting, editing and meals. Certain types of costs are specifically excluded, e.g. Qualified Production Costs shall NOT include:

- (i) costs for a story, script or scenario to be used for a qualified film and
- (ii) wages or salaries or other compensation for writers, directors, including music directors, producers, actors and performers (other than background actors with no scripted lines). Certain other commonly encountered production costs may require a further qualifying step to determine if or when such costs can be considered Qualified Production Costs.

Please note the comments provided on the Schedule of Qualified Expenditures alongside certain line items, or call the Department at (212) 803-2328 for further clarification.

Qualified Production Facility (QPF) means a **Qualified Film Production Facility** certified by the MP/TV Office.

Relocated Television Production means a television production that is a talk or variety program that filmed at least five seasons outside the state prior to its first relocated season in New York, the episodes are filmed before a studio audience of two hundred or more, and the production incurs at least:

- (i) 30 million dollars in annual production costs in NYS, or
- (ii) 10 million dollars in capital expenditures at a QPF in NYS.

Schedule of Qualified Expenditures is an industry standard detailed budget form that indicates, line by line, whether a particular budget line item is or is not considered a qualified production cost that can be used in the calculation of the facility and location thresholds and eligibility for the tax credit. Applicants must refer to the Schedule to determine if a particular cost can be considered a qualified production cost when filling out the Budget Cost Qualifier.

Second (2nd) Unit Photography generally includes day's cameras roll for footage intended for inclusion in the finished film but that does not include the lead actors/actress, does not usually include spoken dialogue, and is sometimes filmed by a smaller crew overseen by someone other than the film's main director. Second Unit segments would typically include inserts, crowd scenes, aerial shots, certain effects shots, etc. Second Unit Days would not be included in threshold calculations referencing Principal Photography. Major effects or stunt sequences that do not include the lead actors would generally be considered Second Unit days, but again could be subject to the tests above and be considered Principal Photography.

Sound Stage means a large interior room or space which provides a controlled environment in which filming takes place on sets built or assembled specifically for the production.

Summary Page refers to a worksheet within the Budget Cost Qualifier that is automatically generated from the Detail Page. When applying for the film production credit, both the Detail Page and Summary page must be submitted with the initial application and updated for the final application as Excel documents.

Television Film, also known as "made for television movie," or "mini-series," means a production intended for broadcast on television, whether free or via a subscription-based service, that has a running time of at least ninety (90) minutes in length (inclusive of commercial advertisement and interstitial programming).

Television Pilot means the initial episode produced for a proposed television series. This category can include shorter formats, also known as “television presentation,” a production of at least fifteen (15) minutes in length, produced for the purposes of selling a proposed television series, but not intended for broadcast.

Television Series, also referred to as “episodic television series,” means a regularly occurring production intended in its initial run for weekly broadcast on television, whether free or via subscription- based service, that has a running time of at least thirty (30) minutes in length (inclusive of commercial advertisement and interstitial programming).

NOTE: Television Series/episodic programs should apply per production season, i.e., one application should be filled out for the total of all episodes being produced for that show’s broadcast season. The production season will be considered complete when post production on the final episode of the season is completed and the entire season is ready for delivery. Indicate the number of episodes included in the application.