



EMPIRE STATE DEVELOPMENT **FILM TAX CREDIT PROGRAM**

AGREED UPON PROCEDURES **JANUARY 2015**

The purpose of this document is to set forth the Agreed Upon Procedures (AUP) a qualified CPA firm must follow for inspecting a final application for the New York State Film Tax Credit Program on behalf of a production company.

Background

The New York State Film Tax Credit Program is administered by Empire State Development (ESD) and provides incentives to qualified production companies that produce feature films, television series, relocated television series, television pilots and television movies, and/or incur post-production costs associated with the original creation of these productions. Program credits of \$420 million a year can be allocated and used to encourage companies to produce projects in New York and help create and maintain industry jobs.

An application is first submitted as an initial application prior to the start of the project and includes estimated project costs. When an applicant completes the project, a final application must be submitted with actual project information. An applicant may include an Agreed Upon Procedures (AUPs) inspection by a third-party along with the final application. The AUPs must be completed by a Certified Public Accountant (CPA) on the ESD vendor list of CPA firms determined to be pre-qualified to conduct a CPA inspection. In addition, the CPA firm must conduct the CPA Inspection according to the AUP indicated in this document.

Qualified production companies must submit a **complete** final application in order to be allocated tax credits. When complete, the application documents and forms must be emailed to filmcredits@esd.ny.gov with the project title in the subject line of the email. Further information about the NYS Film Production Tax Credit Program can be found at <http://esd.ny.gov/BusinessPrograms/filmCredit.html>.

Regulatory References

See Title 5 of the New York Codes, Rules and Regulations (NYCRR), Part 170 for regulations governing third-party verification [§§ 170.2 (w), 170.2 (ah), 170.7].



The Agreed Upon Procedures

The purpose of the AUP is to ensure and confirm that the production company has met the eligibility requirements of the Program and has submitted as qualified expenditures only those costs that are outlined in Program Materials as eligible for the NYS Film Production Tax Credit. The AUP Report must include the following information:

1. The CPA's name, address, and telephone number
2. The name of the production
3. The date that the agreed upon procedures were completed

The production company's cost information must be presented in U.S. dollars.

The CPA shall perform the following procedures. Any exceptions are to be listed as a finding in the AUP Report using the sampling method outlined in this AUP.

Eligibility

1. Obtain from the production company a **complete** final application that consists of the following documents:
 - a. Project Summary – Final
 - b. Budget Cost Qualifier – Final
 - c. End Credit Requirements
 - d. Frame Grab of End Credits
 - e. Employment Report
 - f. Daily Production Reports
 - g. Shoot Days Summary
 - h. Production Budget (locked)
 - i. General Ledger (GL) in its Entirety
 - j. Separate Reports from the GL for each Category of Costs (indicated on the Budget Cost Qualifier) that are eligible for the tax credit
 - k. Cast & Crew List

For further information about these documents, see the Film Tax Credit Program Guidelines at <http://esd.ny.gov/BusinessPrograms/Data/Film/2014/FilmCreditGuidelines052314.pdf>

In addition, obtain the following:

- a. New York State Registered Sales Tax Vendor Certifications
- b. Schedule of Related Party Transactions
- c. Schedule of Retained Assets



2. Obtain and inspect post-production documents (e.g. facility invoices) evidencing the date the final elements (e.g., final composite answer print, air master, or digital cinema files) were created.
3. Inquire of a responsible official at the production company (Applicant) to determine that only costs paid or incurred as of the post-production completion date (as documented by item 2, above) are included in qualified expenditures.
4. Obtain the production company (Applicant) documentation to support the basis of eligibility, based on one of the three criteria below:
 - a. For a production with a total budget(all costs through the completion of post-production) of less than \$15 million and no more than 5% affiliated with a publicly traded entity, one day of principal photography on a set at a Qualified Production Facility (QPF) is required. If principal photography also occurred at a Non-Qualified Production Facility, 75% of all qualified costs related to principal photography at all production facilities must be incurred in relation to principal photography at a QPF.
 - b. For a production with a total budget(all costs through the completion of post-production) of more than \$15 million or more than 5% affiliated with a publicly traded entity, 10% of principal photography days on a set or sets at a QPF is required. If principal photography also occurred at a Non-Qualified Production Facility, determine that 75% of all qualified costs related to principal photography at all production facilities were incurred in relation to principal photography at a QPF.
 - c. A pilot has the same eligibility requirements as outlined in paragraph (a) above.

If the production has not met eligibility standards as noted (item 4, above), there is no need to continue with the CPA Inspection using the AUP. The CPA should notify the production company management to inform ESD that they are ineligible for the credit. If the production submitted an initial application with a total budget of less than \$15 million and a final application with a total budget of more than \$15 million, the CPA should notify the production company management to contact ESD for further instructions and the CPA should temporarily discontinue the inspection using the AUP until they receive additional information from the production company (Applicant).



5. Obtain the production company's documentation (the final application and all relevant and material documents and information, e.g., invoices, receipts, contracts, etc.) to support, if applicable, qualified production costs incurred outside the qualified production facility based on the criteria listed below:
 - a. If less than \$3 million dollars of QPF stage related costs were incurred, 75% of total principal photography location days are required to be within NY in order for NY location days to qualify for the credit.
 - b. If more than \$3 million dollars were incurred of QPF stage related costs, then any NYS location days are eligible for the credit.
6. Obtain the production company's reconciliation of the following: information in the Project Summary, Budget Cost Qualifier and Employment Report reconciles with information in the GL and separate GL reports. The production company should be notified of any discrepancies and asked for an explanation and for revisions where necessary.



Expenditures (Excluding Payroll)

Compare the expense categories of qualified expenditures listed in the GL reports to the qualified expenditures in the Budget Cost Qualifier – Film Production Credit to determine that the classification of a category as a qualified expenditure is consistent with the classifications provided in the New York State Film Tax Credit Program Schedule of Qualified Expenditures for Film Production Credit and the Supplement to the Schedule of Qualified Expenditures. Items listed on the supplement to the Schedule of Qualified Expenditures are listed below:

Above the Line Story rights and clearance fees; WGA fees; airfare outside New York State; ground transport to/from NY airports in excess of one round trip per production personnel; airport welcome expenses; hotels and/or per diems in NYC and within the studio zone other than safety hotels; entertainment other than show tickets for casting and working meals above allowed amounts for each meal (Breakfast \$15; Lunch \$25; Dinner \$50 - production personnel identified); gifts, flowers, candles, luxury items, personal assistants; work permits; security services other than to/from/on production set, at rehearsals and fittings.

Below the Line License fees or rights fees for artwork, photography, stock footage; legal fees; finance charges; shipping and delivery charges to and from out of state other than for documents or post production elements; out of state modifications or repairs to any production related item; out of state labor to create any production related item (invoice with unspecified labor and materials breakdown must be allocated 60% non-qualified/40% qualified); tolls to/from out of state; hotels and per diems as stated above.

POST PRODUCTION: All costs related to versions beyond primary venue, e.g., TV versions of films intended for theatrical distribution, international versions of films with US primary venue, in-flight versions, trailers, promotions; music rights and license fees, music composer rights and fees, hotels and per diems as stated above.

Any non-qualified cost items identified should be disallowed and deducted from the Qualified Costs Summary.

1. For each expenditure specified below, the Applicant will provide a New York State Registered Sales Tax Vendor certification downloaded from the [New York State Sales Tax](#) website. Prepare a schedule listing those expenditures which do not have accompanying certification. These expenditures should be disallowed and adjustments made to the Qualified Costs Summary.



The expenditures are: Office equipment; Grip trucks, equipment transport vehicles, motor homes, dressing rooms, cast and crew transport vehicles, trucks, catering, security services, hotels on distant location

2. For productions that submitted initial applications to the NYS Film Tax Credit Program on or after January 1, 2015, obtain from the production company a listing of related party transactions (including parties with a 5% or greater ownership directly or indirectly, in or affiliation with the production company applicant) that the production company is including as qualified expenditures using the Schedule of Related Party Transactions. A copy of the listing should be attached to the AUP Report.
3. Inquire of a responsible official at the production company (Applicant) that any qualified expenditures included in insurance claims have been credited both in the GL and in the Budget Cost Qualifier – Final.
4. Select a sample of expenditures (excluding payroll) from each of the GL separate reports of qualified costs (NYC Qualified Production Facility; NYS Qualified Production Facility: NYC Qualified Location/Other; NYS Qualified Location Other) according to the sampling methodology noted in the Sampling Chart.
5. For each expenditure item(invoices, cancelled check, or equivalent documentation) selected in the sample, perform the following procedures:
 - a. Inspect the expenditure in order to establish the accuracy of the entry, i.e., the expenditure was paid or incurred for services rendered or goods used in NYS.
 - b. Determine if the expenditure is an allowable cost (refer to the Schedule of Qualified Expenditures and Supplement). If unsure, contact the ESD Film Tax Credit Program staff.
 - c. Determine that the expenditure was recorded net of any refunds, discounts, rebates, proceeds of any sale, invoicing errors, and purchase returns, as recorded in the GL reports.
6. Obtain a list from the production company of assets that were not destroyed in the film production process and that are being held for future productions or other purposes and have a purchase price over **\$5,000**. Submit the Schedule of Retained Assets based on the list provided by the production company, of assets that were not destroyed in the film production process as an attachment to the AUP Report.
7. Provide a list, obtained from the production company (Applicant), of visual effects and/or digital effects companies who were contracted by the production company (Applicant). Inquire of an authorized representative of the Applicant whether all listed parties have provided the production company with a signed letter indicating the total dollar amount of work performed within NYS. Note: Only work performed within NYS by the vfx/digital fx company may be included in qualified expenditures.



8. For non-qualified costs noted in the expenditure test for the sample identified in Category 1 of the Sampling Chart, adjust the Qualified Costs Summary to reflect the results of your testing. Any deductions for non NYS Visual Effects and Animation work should be included in the adjustment to qualified costs in the Qualified Costs Summary.
9. Prepare a list of invoices for a sample population from Category 2 and Category 3 in accordance with the number of invoices required on the Sampling Chart. For non-qualified costs noted in the expenditures test for the samples identified in the Category 2 and Category 3 of Sampling Chart, divide the dollar amount of the misstated items by the dollar amount of all sample items selected [Rate of misstatement]. Multiply the total expenditure population from which the Category 2 and Category 3 samples were selected by this rate of misstatement for each category.
10. Perform the following procedures based upon the results of the calculation of the projected misstatement:
 - a. If the projected misstatement does not exceed 1% of qualified expenditures for Category 2 and/or Category 3 document the projected misstatement in the AUP Report. Do not make adjustments to the Qualified Costs Summary for the projected misstatement.
 - b. If the projected misstatement for Category 2 and/or Category 3 exceeds 1% of qualified expenditures (excluding payroll), select a second sample set.
 - c. According to the sampling methodology noted above for Category 2 and 3, recalculate the projected misstatement for the second sample set. Do not include the previously selected invoices in the second sample. If the number of invoices available for the sample does not meet the minimum number according to the Sampling Chart, include 100% of the invoices not previously included in the samples.
 - d. If the projected misstatement for the second sample does not exceed 1%, document the projected misstatement in the AUP Report and do not make adjustments to the qualified expenditures. If the projected misstatement from the second sample selection exceeds 1% of qualified expenditures, adjust the Qualified Costs Summary using the average of the two projected misstatements.



Expenditures (Payroll)

1. Compare the qualified payroll expenditures listed in the GL reports to the payroll expenditures on the Employment Report in order to determine that the qualified payroll expenditures are consistent with the New York State Film Tax Credit Program Schedule of Qualified Expenditures for Film Production Credit and its supplement, which do not include as qualified expenditures the salaries, wages and fees for above-the-line personnel (e.g., producers, directors, actors, composers). Disqualify all salaries, wages and fees for ineligible personnel on the Qualified Costs Summary.
2. Select a sample of employees according to the methodology described in the Sampling Chart. For each employee in the sample perform the following procedures:
 - a. Compare the amount of qualified wages in the separate GL reports of qualified expenditures with the amount on the Employment Report.
 - b. Compare the amount of expenditure for a loan-out company (for services of employee name) in the separate GL reports of qualified costs with the amount on the Employment Report.
 - c. Determine that all wages paid or incurred do not precede the pre-production period identified in the Project Summary nor occur after the post production completion date indicated on the Project Summary. For any exceptions, the production company must provide a written explanation.
3. For non-qualified costs noted in the expenditure test in item 2 above, for the sample identified in Category 4 of the Sampling Chart, adjust the Qualified Costs Summary to reflect the results of your testing.
4. For non-qualified costs noted in the expenditures test in item 2 above, for the sample identified in Category 5 of Sampling Chart: divide the dollar amount of misstated entries by the sample population total amount to obtain the rate of misstatement. Apply this rate of misstatement to the total expenditure population from which the Category 5 sample was selected.
5. Perform the following procedures based upon the results of the calculation of the projected misstatement:
 - a. If the projected misstatement does not exceed 1% of qualified expenditures (payroll) on the Budget Cost Qualifier, document the projected misstatement in the Report. Do not make adjustments to the Qualified Costs Summary for the projected misstatement.
 - b. If the projected misstatement exceeds 1% of qualified expenditures, select a second additional sample according to the sampling methodology noted above for Category 5. Recalculate the projected misstatement for the second sample set.



- c. If the projected misstatement for the second sample set does not exceed 1%, document the projected misstatement in the AUP Report and do not make adjustments to the qualified expenditures (payroll).
- d. If the projected misstatement from the second sample selection exceeds 1% of qualified expenditures (payroll), adjust the Qualified Costs Summary using the average of the two projected misstatements.



Agreed Upon Procedures Report:

To the standard Agreed Upon Procedures Report designated by the AICPA, attach the following:

1. Provide a cover letter noting the inclusion of all revised (as necessary) and completed documentation required by the NYS Film Tax Credit Program (noted under Eligibility item 1 of this document). Also note all required documentation listed above. Include information in regard to any nonstandard procedures followed by the production company in their preparation of the application for CPA Inspection.
2. Attach the Qualified Costs Summary with adjustments for non-qualified costs, revised total qualified costs.
3. Attach sampling documentation, including the calculation of misstatement percentages, for both payroll and non-payroll expenditures per the Sampling Chart. Attach a list of any non-qualified costs noted in the expenditure test (both general and payroll). The list should include GL report coding, amount, vendor/person/entity and nature of discrepancy from the Schedule of Qualified Expenditures.
4. Attach a list of any non-qualified costs noted in the expenditure test (both general and payroll). The list should include GL report coding, amount, vendor/person/entity and nature of discrepancy from the Schedule of Qualified Expenditures.
5. Attach the Schedule of Retained Assets for productions that submitted initial applications on or after January 1, 2015.
6. Attach the Schedule of Related Party transactions for productions that submitted initial applications on or after January 1, 2015.



**EMPIRE STATE DEVELOPMENT
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 AGREED UPON PROCEDURES FOR CPA INSPECTION OF FINAL APPLICATION
 SAMPLING CHART**

Samples must be chosen from each column of qualified costs on The Budget Cost Qualifier in proportion to their percentage of the total qualified costs for the project.

	CATEGORY 1	CATEGORY 2	CATEGORY 3
	Items \$10,000 and over	Items under \$10,000 and over \$1,000	Items \$1,000 and less
QUALIFIED EXPENDITURES			
0 - \$500,000	All items	25	25
\$500,001 - \$1,000,000	All items	25	25
\$1,000,001 - \$5,000,000	All items	50	30
	\$20,000 and over	Under \$20,000 and over \$2,500	Items \$2,500 and less
\$5,000,001 - \$10,000,000	All items	75	30
\$10,000,001 - \$25,000,000	All items	100	30
\$25,000,001 - \$50,000,000	All items	125	30
\$50,000,001 +	All items	125	30

¹For productions with post production costs included in qualified costs, sampling should include post production costs in proportion to its percentage of total costs for production.

²For TV series, sampling should include each episode of series, as well as amortization costs if the series and amortization budget reports from the general ledger are 2 separate reports.

³Attach as separate listings any non-qualified costs noted in the expenditure test (above) and payroll test (below). Each exception should include the GL report code, amount, vendor/person/entity, and nature of discrepancy.



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 SAMPLING CHART**

PAYROLL EXPENDITURES

CATEGORY 4

CATEGORY 5

**Employees with
 top 5 Total
 Qualified Wages**

**Employees with
 Total Qualified
 Wages under top
 5**

QUALIFIED EXPENDITURES

0 - \$500,000	All items
\$500,001 - \$1,000,000	All items
\$1,000,001 - \$5,000,000	All items

5
10
20

**Top 15 Total
 Qualified Wages**

**Under Top 15
 Total Qualified
 Wages**

\$5,000,001 - \$10,000,000	All items
\$10,000,001 - \$25,000,000	All items
\$25,000,001 - \$50,000,000	All items
\$50,000,001 +	All items

25
25
35
35