



Governor's Office of Motion Picture & Television Development

NEW YORK STATE FILM TAX CREDIT PROGRAM GUIDELINES

PROGRAM PURPOSE

The New York State Film Tax Credit Program is designed to increase the film production and post-production industry presence and overall positive impact on the State's economy.

PROGRAM OVERVIEW

The Film Tax Credit Program 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 film productions.

Amount of Credits Available

Program credits of \$420 million a year can be allocated and used to encourage companies to produce film projects in New York and help create and maintain film industry jobs. Up to \$7 million of the \$420 million may be dedicated to supporting and growing the post-production industry in the State, increasing to \$25 million for years 2015-2019 inclusive. There are no per project caps for credits, and there is rollover in the annual \$420 million allocation going forward until 2019.

Film production companies may be eligible to receive a fully refundable credit of **30 percent** of qualified production costs incurred in New York State (NYS) and **35 percent** of post-production costs if incurred in Upstate NY, outside the Metropolitan Commuter Transportation District (MCTD).¹

¹ The Metropolitan Commuter Transportation District is defined in Section 1262 of the Public Authorities Law and includes New York City, Dutchess, Nassau, Orange, Putnam, Rockland, Suffolk and Westchester counties.

For the period 2015-2019, productions with budgets over \$500,000 can receive an **additional 10 percent credit** on qualified labor expenses incurred in the following counties:

Allegany, Broome, Cattaraugus, Cayuga, Chautauqua, Chemung, Chenango, Clinton, Cortland, Delaware, Erie, Essex, Franklin, Fulton, Genesee, Hamilton, Herkimer, Jefferson, Lewis, Livingston, Madison, Monroe, Montgomery, Niagara, Oneida, Onondaga, Ontario, Orleans, Oswego, Otsego, Schoharie, Schuyler, Seneca, St. Lawrence, Steuben, Tioga, Tompkins, Wayne, Wyoming, or Yates.

There is a maximum of \$5 million per year that can be allocated for the **additional 10 percent credit** on qualified labor expenses,

ELIGIBILITY CRITERIA

The Film Production Tax Credit Program has two separate components: the Film Production Credit and the Post-Production Credit. In both components, the Program is limited to film production companies producing feature films, television series, relocated television series, television pilots and television movies.

Certain categories of productions are excluded from the Program, including, but not limited to, documentaries, news or current affairs programs, interview or talk shows, instructional videos, sport shows or events, daytime soap operas, reality programs, commercials and music videos.

- The production credit is available for companies that film a substantial portion of their project in NYS.
- The post-production credit is available where the project was filmed predominantly outside of the State and the film production company contracts their post-production work to any of the abundant supply of companies in NYS specializing in post-production work.

More specific eligibility requirements for the credits are outlined below. You may also wish to review Appendix A to these Program Guidelines for more complete definitions used in these Guidelines and for more detailed information about Program requirements.

Film Production Credit

Eligibility requirements vary based on the type of company and the budget.

If the film has a production budget over \$15 million or is being produced by a publicly traded entity:

- At least 75 percent of the total spend at production facilities, (excluding post-production costs), must be qualified costs incurred at a qualified production facility in NYS; AND
- At least 10 percent of the total principal photography shooting days must be at a qualified production facility in NYS.

Smaller productions with budgets of \$15 million or less produced by companies that are independently owned must meet the 75 percent facility but not the 10% requirement for principal photography.

***Pilots** are also exempted from the 10 percent principal photography day requirement. Pilots will still have to shoot one principal photography day at a QPF, and at least 75 percent of the total of all expenses related to work, (excluding post-production,) done at all facilities utilized by the Pilot must be related to work done at the QPF.*

If a production has met the 75 percent test for production facility expenditures, it may also qualify for the credit based upon qualified expenditures outside the qualified facility that are related to pre-production, location production and post-production if:

1. The production spends \$3 million or more at a qualified production facility, then all qualified expenditures related to pre-production, location production and post-production in NYS can be used for calculating the credit; or
2. The production spends less than \$3 million at a qualified production facility then at least 75 percent of the location shooting days must be spent in NYS. This threshold applies to a percent of the total location days only, not the total principal photography shoot days. Shooting days spent at facilities are not used in the calculation – that is, the test is the ratio of shooting days spent on locations anywhere in NYS to total shoot days on location both within and outside of NYS.

Further definition of certain terms such as film production facility, qualified production facility and armories are provided below.

Definitions

A “film production facility” generally means a building and/or complex of buildings and their improvements and associated back-lot facilities on which films are, or are intended to be, regularly produced and must contain at least one sound stage.

A Qualified Production Facility (“QPF”) must be within NYS and is further defined according to the type of film production company, (i.e. independent or publicly traded), the budget for the project and whether the facility is located within NYC.

For any production outside NYC, a QPF must contain at least one sound stage having a minimum of 7,000 ft² of contiguous production space.

If the production is in NYC and has a budget of more than \$15 million, or is being produced by a publicly traded entity, a QPF must, in addition to the 7,000 ft² sound stage requirement:

- be soundproof with a noise criteria (NC) rating of 30 or better;
- have sufficient heating and air conditioning for shooting without the need for supplemental units,
- incorporate a permanent grid and sufficient built-in electrical service for shooting without the need for generators, and
- be column-free with a clear height of 16' under the permanent grid.

Independent film production companies are not subject to the NYC specific stage requirements. An independent film production company must have a budget of \$15 million or less, control the film during production, and either not be a publicly traded entity, or have more than five percent of the beneficial ownership be owned directly or indirectly by a publicly traded entity.

Armories

There are special conditions established for armories owned by NYS or NYC.

- If an armory is being used by an independent film production company with a budget of \$15 million or less, it is considered a QPF, and can be used in the calculation for meeting the 75 percent facility threshold.
- If an armory is located within NYC, it may be considered a QPF if it is certified by the Governor's Office for Motion Picture and Television Development (MP/TV).²

Once the appropriate facility thresholds are met, all qualified costs related to work done at the facility become eligible for the credit.

² To be certified the production company must submit a petition to the MP/TV Office establishing that no qualified Level 2 film production facility in the City of New York has stage space available that is appropriate 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 for 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.

Post-Production Credit

A qualified post-production facility is any building or complex of buildings and their improvements in which films are intended to be post-produced that is located in NYS and engaged in finishing a qualified film.

A film production company can qualify for the post-production credit if it meets either one or both of the following thresholds:

- 1) **Visual Effects and Animation** - the qualified VFX/Animation costs incurred at a qualified post-production facility in NYS must EITHER meet or exceed:
 - 20 percent of the total VFX/Animation costs paid or incurred for VFX/Animation for the qualified film at any post-production facility anywhere; OR
 - \$3 million
- 2) **Post-Production** - the qualified post-production costs incurred at a qualified facility in NYS, (excluding cost for VFX/Animation), must meet or exceed 75 percent of the total post-production costs paid or incurred in the post-production of the film at any post-production facility.

***IT IS IMPORTANT TO REMEMBER: A FILM PRODUCTION COMPANY THAT IS FILMING A SUBSTANTIAL PORTION OF ITS PROJECT IN NYS CAN INCLUDE POST-PRODUCTION COSTS INCURRED IN NYS IN THE CALCULATION FOR THE FILM PRODUCTION CREDIT. THE POST-PRODUCTION CREDIT IS AVAILABLE TO FILM PRODUCTION COMPANIES THAT FILM A SUBSTANTIAL PORTION OF A PROJECT OUTSIDE NYS BUT ARE SEEKING TO CONTRACT SOME OR ALL OF THE POST-PRODUCTION WORK TO A FACILITY IN NYS. A FILM PRODUCTION COMPANY CANNOT CLAIM THE FILM PRODUCTION CREDIT AND THE POST-PRODUCTION CREDIT FOR THE SAME QUALIFIED POST PRODUCTION COSTS.**

QUALIFIED COSTS

Whether a film production company is applying for the film production credit or the post-production credit, only certain costs qualify. As with eligibility, there are separate requirements for the production and post-production credits.

Film Production Credit

Qualified production costs are for tangible property or services used or performed within NYS directly and predominantly in the production of a qualified film. Qualified costs generally include most below-the-line items associated with production such as labor costs incurred on set construction, crew, and camera equipment, film stock, developing and printing of a film etc., and generally exclude costs of stories and scripts, and wages for writers, directors, producers and performers (other than extras without spoken lines).

A SCHEDULE OF QUALIFIED EXPENDITURES provides detailed information on specific costs that are eligible for the credit. **Keep in mind that when a substantial portion of a project has been filmed in NYS as outlined earlier for the Film Production Credit, post-production costs such as film editing, sound design and effects and visual effects may be qualified production costs for the film production credit.*

Post-Production Credit

Post-production costs are costs associated with the 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, re-recording and mixing, visual effects, graphic design, original scoring, animation, and musical composition; but *shall not include the editing of previously produced content for a qualified film.*

Post-production costs qualify for the credit ONLY to the extent they are incurred for post-production and/or visual effects and animation work actually done in NYS; work done by or contracted out to vendors, employees, service providers or any parties located outside NYS is not qualified, and costs related to such work are not eligible for the tax credit. See the SCHEDULE OF QUALIFIED EXPENDITURES for detailed information on specific costs that are eligible for the post production credit.

Live Action

For live action films, certain activities defined as “production” in other contexts, can be defined as “post-production” and become qualified costs for the post-production credit.

For example, digital content created to be merged with content captured through the camera, (i.e. “real” images and/or performers), would be eligible for the post-production credit. Digital content not designed to be integrated with content captured by the camera would not be eligible (such as an entire digital landscape sequence).

“Production” related costs **not** eligible for the post-production credit include any activity which occurs on set with actors or physical models, captured by a camera or similar image capture device – such as filming live performers for motion capture purposes; filming or scanning miniatures or 3D models; performers or set models filmed in front of “green screen” etc. Pre-visualization work done for production purposes only, e.g., the design of sets, the plotting of camera moves, etc. is not eligible unless it is done in support of the addition of post-production content such as a creature/character, an effect, or set enhancements.

Fully Animated Production

“Post-production” on a fully animated production means those operations that are conducted after completion of animation, (e.g. key frame and/or stop motion animation, motion capture data acquisition and solving). Some examples include final scene integration, FX animation, lighting, compositing, rendering, color timing/correction, music recording and editing, etc.

Primary content is "produced" through whatever processes the animator employs to generate the images (paint on cells, CGI, stop motion photography, motion capture, etc.). Processes that help plan the animation, e.g., layout, design, pre-vis, modeling, storyboard, etc. are considered "pre-production" and not eligible for the post-production credit. Processes that precede, or produce the digital assets for animation - voice/actor recording, modeling, rigging, etc. are considered part of production and also are not eligible for the credit. As noted above, only those activities that occur either sequentially after animation, (or which, as in the case of music recording, occur separately and will be merged with the animation), are considered post-production and eligible costs for the post-production credit.

HOW TO APPLY

All applications for the Film Production and Post-Production Credit must be submitted online via the NYWorks website at <http://www.nyworks.ny.gov> by completing a Consolidated Funding Application (CFA).

A CFA 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 via the CFA with actual project information.

Film Production Credit - Applications must be submitted prior to the start of principal and ongoing photography.

Post-Production Credit - An application should be filed prior to the start of principal photography on the qualified film, but generally NO LATER than the last day of principal photography (or, in the case of a television series, no later than the last day of principal photography on the first episode of the series).

APPLICATION MATERIALS

The application materials consist of a consolidated funding application (CFA) and several required supplemental forms and documents as described below. The CFA is available online at <http://nyworks.ny.gov> Certain templates must be obtained and downloaded from the Film Tax Credit Program website at <http://esd.ny.gov/BusinessPrograms/filmCredit.html> When completed, these documents must be emailed to filmCredits@esd.ny.gov

CONSOLIDATED FUNDING APPLICATION (CFA)

This application is required to obtain general information about the applicant and the project, e.g. qualified costs, principal photography shoot days, number of hires, etc. The information from the CFA will be used to make an eligibility determination when an initial application is received and should be updated as necessary when the project is completed and the final application is submitted. The CFA process is the same whether an applicant is applying for the film production credit or the post-production credit. Please read the questions on the CFA carefully before completing.

SCHEDULE OF QUALIFIED EXPENDITURES

The schedule indicates, line by line, whether a particular budget line item is or is not considered a qualified cost eligible for the calculation of thresholds and for the tax credit. As such, there is a separate SCHEDULE for the film production credit and the post-production credit listing the specific qualified costs for each. Be sure to reference the correct SCHEDULE corresponding with the credit to which you are applying. The SCHEDULE OF QUALIFIED EXPENDITURES for both the film production credit and the post-production credit can be found at <http://esd.ny.gov/BusinessPrograms/filmCredit.html>

This schedule is for reference purposes only. It is not a Form that has to be completed by an applicant. The expenses listed on the SCHEDULE should be used as a reference when completing the BUDGET COST QUALIFIER. Please note the comments provided on this Form alongside certain line items, or call the Department for further clarification at (212) 803-2328.

BUDGET COST QUALIFIER

This form lists the qualified costs being considered for the project's tax credit. There are separate BUDGET COST QUALIFIERS specific to the film production credit and the post-production credit. There is a standard template (MS Excel) for the BUDGET COST QUALIFIER and it must be submitted in this format (*not as a pdf*). Be certain that the appropriate BUDGET COST QUALIFIER is being completed for your application. The BUDGET COST QUALIFIER can be found at <http://esd.ny.gov/BusinessPrograms/filmCredit.html>

EMPLOYMENT REPORT

This form is required to document all the hours worked and wages paid to qualified employees who worked on the film in New York and whose wages are being counted toward the qualified expenses. The EMPLOYMENT REPORT is the same whether an applicant is applying for the film production credit or the post-production credit. There is a standard template (MS Excel) for this report. The EMPLOYMENT REPORT can be found at <http://esd.ny.gov/BusinessPrograms/filmCredit.html>

END CREDIT REQUIREMENTS

This form states the End Credit requirements. This form must be signed by the applicant, to acknowledge and agree to the terms of the END CREDIT REQUIREMENTS. Failure to comply fully with the END CREDIT REQUIREMENTS will jeopardize receipt of the film tax credit. The forms for the END CREDIT REQUIREMENTS can be found at <http://esd.ny.gov/BusinessPrograms/filmCredit.html>

PRODUCTION BUDGET

The film PRODUCTION BUDGET shows how much money will be spent on the entire film project. It involves the identification and estimation of cost items for each phase of filmmaking (development, pre-production, production, post-production and distribution). The budget structure is normally split into "above-the-line" (creative) and "below-the-line" (technical) costs. The PRODUCTION BUDGET is only required of applicants for the film production credit. For

applicants for the post-production credit, only the top sheet of the production budget is required along with a post-production budget. The estimated budget is submitted as part of the initial application.

GENERAL LEDGER REPORTS

The GENERAL LEDGER REPORT represents the day to day accounting of production expenses and can be generated using a variety of software programs designed specifically for film production accounting. The GENERAL LEDGER REPORT in its entirety is required of applicants for the film production credit when the final application is submitted and consists of the complete general ledger and separate GL reports that correspond with the qualified cost columns indicated in the BUDGET COST QUALIFIER. There is no standard template for this report. For the Post-Production Credit, the GL Reports for the qualified and non-qualified costs must be submitted with the final application. GL reports should be submitted in their original format and emailed in pdf format, AND, as MS Excel files to the Film Tax Credit Program at filmcredits@esd.ny.gov

DAILY PRODUCTION REPORTS

A DAILY PRODUCTION REPORT is a form filled out each day of production for a project to summarize what occurred each day. The DAILY PRODUCTION REPORT is only required of applicants for the film production credit. There is no standard template for these reports but should be emailed to filmcredits@esd.ny.gov

PRODUCTION DAYS REPORT

This report shows detailed information about each shoot day (principal photography and second unit/other) completed for the film production project. The PRODUCTION DAYS REPORT is only required for applicants for the Film Production Credit. The report should be filled out immediately after principal photography is completed. There is a standard template for this report in MS Excel that all applicants must download, fill-out and email to the Film Tax Credit Program at filmcredits@esd.ny.gov The production days report can be found at <http://esd.ny.gov/BusinessPrograms/filmCredit.html>

CAST & CREW LIST

The Cast & Crew List is a final listing of all members of the cast and crew that were employed during the film production project. The Cast & Crew List is only required for applicants for the Film Production Credit. There is no standard template for this list but it must be emailed to filmcredits@esd.ny.gov

OTHER REQUIREMENTS

End Credits

For applicants for the film production credit, there are two ways a production can meet the end credit requirements, EITHER:

- 1) include in the end credits of each qualified film “Filmed With the Support of the New York State Governor’s Office for Motion Picture and Television Development” and the New York ♥ Film logo provided by the Film Office;
OR
- 2) 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 for Motion Picture and Television Development.

For applicants for the post-production credit, an applicant can comply with this requirement by:

- Including in the end credits of the qualified film “This production participated in the New York State Governor’s Office for Motion Picture & Television Development Film Tax Credit Program For Post-Production” **and in addition**, include the logo for the “NY ♥ FILM” program.

Prior to the issuance of a Certificate of Tax Credit, every production will be required to provide proof of compliance with the end credit requirements in the form of a still shot, frame grab, edited DVD, or other materials that the Department may request.

Record Retention

Each authorized and approved applicant must maintain records, in paper or electronic form, of any qualified production and/or post-production costs used to calculate its potential or actual benefit(s) under this program for a minimum of three years from the date of filing of the tax return on which the applicant claims the tax credit. The Department shall have the right to request such records upon reasonable notice.

FOIL Disclosure

The New York State Department of Economic Development is subject to the New York State Freedom of Information Law ("FOIL"), which governs public access to the records of government agencies (see Public Officers Law sections 84 through 90).

You should be aware that some information submitted to the Department as part of any application to the Program becomes subject to legislatively mandated reports which will be

made public, and that the Department will respond to requests for information. Please refer to Appendix A to the Program Guidelines for the specific information that must be disclosed.

Vendors and Sales Tax

Applicants to the Program must certify that they will “purchase taxable tangible property and services, defined as qualified production costs, only from companies registered to collect and remit” NYS and local sales tax.

Many film and television industry vendors and service companies located outside NYS are registered to collect and remit sales tax in NYS. To determine if a given individual or company is registered, their NYS Sales Tax Vendor ID Number must be obtained:

Go to: <https://www7b.nystax.gov/TIVL/tivlGateway>
Enter Vendor Tax I.D. number to determine registration

If the sales tax identification number provided by the vendor cannot be verified through the system:

- Contact the vendor to confirm that the correct number was provided; or
- Call the Sales Tax Information Center 518-485-2889 or 800-698-2909 and a representative can search by the vendor’s name.

NYS has declared many kinds of tangible property and services **exempt** from sales tax when they are used specifically for film and television production. The NYS Department of Taxation and Finance Publication 28 “A Guide to Sales Tax for the Film Industry” provides a list of items considered exempt from sales tax and therefore are not subject to this certification provision.

For more information on sales tax issues go to www.nylovesfilm.com/pdf/SalesTaxExemption.pdf or call the NYS Office for Motion Picture and Television (212) 803-2334.

SUMMARY

The NYS Film Tax Credit Program is designed to expand the film industry in NYS. The Film Production Tax Credit is available for all eligible productions filming a substantial portion of the project in New York State and post-production costs may qualify toward the credit.

The Post-Production Credit is available for those productions not filmed in the state, or not filming enough in NYS to meet the eligibility criteria for the film production credit, but contract post-production work with any of the companies located in NYS specializing in this work.

Review this guide and the appendix to the Film Tax Credit Program carefully. Program staff is available to answer questions, but ultimately it is your responsibility to comply with all program requirements in order to qualify for the credit.

Submit initial application materials before starting your film project for the film production credit and no later than the last day of principal photography and/or before incurring any costs with a qualified post-production vendor in NYS with respect to the post-production credit.

The initial application is an eligibility determination. The credit is not allocated at this point. The credit will be allocated based on receipt of a “complete” final application. Applications must be “complete” as outlined in these guidelines. If your application is incomplete, you will be notified. Final applications will not be considered for audit until it is deemed “complete.”

Good luck with your film project and we look forward to the investment and jobs it will bring to New York State.

THIS IS A NEW YORK STATE PROGRAM.

PLEASE DIRECT QUESTIONS TO:

**EMPIRE STATE DEVELOPMENT
FILM TAX CREDIT PROGRAM**

212-803-2328

<http://esd.ny.gov/BusinessPrograms/filmCredit.html>
filmcredits@esd.ny.gov