



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.

The Film Tax Credit Program is divided into two distinct programs, the Film Production Credit and the Post-Production Credit. Each Program is outlined in detail below.

Amount of Credits Available

Program credits of \$420 million per 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 \$25 million of the \$420 million may be dedicated to supporting and growing the post-production industry in the State. There are no per project caps for credits, and there is rollover in the annual \$420 million allocation going forward until 2019.

Film Production Credit and Post-Production Credit applicants may be eligible to receive a fully refundable base line credit of **30 percent** of qualified production costs incurred in New York State (NYS).

There is a 5 percent increase in credit to **35 percent** applicable to the Post-Production Credit only for post-production costs incurred in Upstate NY, outside the Metropolitan Commuter Transportation District (MCTD).¹

For the period 2015-2019, any production with a budget over \$500,000 which submitted an initial application on or after 3/28/13 can receive an **additional 10 percent credit** on qualified labor expenses incurred in the following counties:

Albany, 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, Schenectady, Schoharie, Schuyler, Seneca, St. Lawrence, Steuben, Tioga, Tompkins, Wayne, Wyoming, or Yates.

This additional 10 percent credit is applicable to both the Film Production Credit and the Post-Production Credit. 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 Tax Credit 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.

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.

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 and/or is being produced by a publicly traded entity; at least 10 percent of the total principal photography shooting days must be at a qualified production facility (QPF) in NYS.

Independent productions with budgets of \$15 million or less produced by companies that are independently owned must shoot at least one full day of principal photography at a QPF on a set built expressly for the production.

Pilots are 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 non-qualified production facility (in NYS or Out of State) is used by the Production Company, at least 75 percent of the total of all expenses related to work (excluding post-production) done at all facilities anywhere 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 credit based upon qualified expenditures outside the qualified production 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. All QPF’s are listed on our website at <http://www.nylovesfilm.com/sound-stages.php>

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.

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

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

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

*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 facilities 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

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.

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 background extras).

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 or the salary of music composers.*

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

Primary content is generated 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 eligible for the post-production credit. Processes that precede, or produce the digital assets for animation - recording, modeling, rigging, etc. are also eligible for the credit.

Qualified costs attributable to the animation process are eligible for the credit. Those operations on a fully animated production that are conducted after completion of animation are eligible for the credit (e.g., final scene integration, FX animation, lighting, compositing, rendering, color timing/correction, music recording, editing, etc.).

For fully animated production, there are 2 thresholds:

1. For Qualified Costs in the Producer/Director and Final Deliverable Elements categories, the threshold on total qualified expenditures is 75%.
2. For Qualified Costs in the Categories for Animation Production/Post-Production, which are Talent, Editing, Music, Sound, Film/Lab, VFX/Animation, Titles & Optical, the threshold of total qualified expenditures is 20%.

HOW TO APPLY

All application materials can be downloaded from <http://www.nylovesfilm.com/tax-incentives.php>.

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

Post-Production Credit - An application should be filed 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). Contact the Film Tax Credit Program if interested in applying after principal photography has wrapped.

APPLICATION MATERIALS

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 (either Live Action or Animation) 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 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 (either Live Action or Animation). 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 credit eligible hours worked and credit eligible wages paid to qualified employees who worked on the project in New York State and whose wages are included in qualified expenses. This form also documents all hours worked and all wages paid to all employees (qualified and non-qualified) who worked on the project in New York State. 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. There are separate forms for the Film Production End Credit and the Post-Production End Credit. This form must be signed by the applicant, to acknowledge and agree to the terms of the END CREDIT REQUIREMENTS. A Frame Grab of the End Credits must be submitted with the form. Failure to comply fully with the END CREDIT REQUIREMENTS will jeopardize receipt of the film tax credit.

PRODUCTION BUDGET

The film PRODUCTION BUDGET represents 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 required of applicants for the film production credit. For applicants for the post-production credit, the top sheet of the production budget and the post-production budget are required. For the post-production credit, for fully animated projects, a complete production/post-production budget is required. The estimated budget (or locked budget, if available) is submitted as part of the initial application.

GENERAL LEDGER AND SEPARATE LEDGER REPORTS

GENERAL LEDGER (GL) 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. For the production program, the final application must include the complete general ledger and separate GL reports that correspond to the qualified cost columns indicated in the BUDGET COST QUALIFIER. For the post-production program, the final application must include the complete general ledger and separate GL reports that correspond to EACH column of the BUDGET COST QUALIFIER, both qualified and non-qualified. The GL and separate reports should be submitted in their original format and emailed in pdf format AND as MS Excel files.

DAILY PRODUCTION REPORTS

A **DAILY PRODUCTION REPORT** is a form completed each day of production for a project to summarize what occurred on that day. The DAILY PRODUCTION REPORT, BOTH FRONT AND BACK, is required of applicants for the film production credit.

SHOOT DAYS SUMMARY

This report shows detailed information about each shoot day (principal photography and second unit/other) completed for the film production project. There is a standard template for this report in MS Excel that all applicants must download, complete and submit as a required component of the final application. THE SHOOT DAYS SUMMARY 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).

SCHEDULE OF RETAINED ASSETS

This schedule is a list of assets that were not destroyed in the film production process and that is being held for future productions or other purposes and has a purchase price over **\$5,000**. This report is required of applicants to the Film Production Credit who applied after January 1, 2015. It is submitted with the final application and can be found at <http://esd.ny.gov/BusinessPrograms/filmCredit.html>.

RELATED PARTY TRANSACTION REPORT

This report is 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. This report is required of applicants to the Film Production Credit who applied after January 1, 2015. It is submitted with the final application and can be found at <http://esd.ny.gov/BusinessPrograms/filmCredit.html>.

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 the qualified film “Filmed With the Support of the New York State Governor’s Office for Motion Picture and Television Development” **and include** the logo provided by the Film Office:



OR

- 2) Include in the 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:

- Include in the end credits of the qualified film “This production participated in the New York State Governor’s Office for Motion Picture and Television Development Post Production Credit Program” **and include** the logo:



Note: The acknowledgement language AND the logo must be included in the end credits in order to satisfy the requirement; one item does not suffice. A frame grab must accompany the End Credit Requirement form as part of the final application. (If the frame grab does not establish proof of compliance, the Department may request other materials before issuance of Certificate of Tax Credit.

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 and use tax.

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

It is recommended that the Applicant download a copy of the Vendor Verification and retain documentation with all company documents until audit has been completed and Certificate of Tax Credit issued.

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.

[Publication 28: A Guide to Sales Tax for the Film Industry](#) issued by the NYS Department of Taxation and Finance, provides a list of items considered exempt from sales tax and therefore not subject to verification.

For more information on sales tax issues go to www.nylovesfilm.com/pdf/SalesTaxExemption.pdf or call the NYS Film Tax Credit Program (212) 803-2328.

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. It is also available for fully animated productions completing all or part of production and post-production in NYS.

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