PART 230 OF THE REGULATIONS OF THE COMMISSIONER OF THE DEPARTMENT OF ECONOMIC DEVELOPMENT ARE ADDED TO READ AS FOLLOWS:

EMPIRE STATE POST PRODUCTION TAX CREDIT PROGRAM

§ 230.1 Purpose and general description.

a. The purpose of these regulations is to set forth the application process for the Empire State Post Production Tax Credit Program established by Chapter 57 of the Laws of 2010 and amended by Chapter 59 of the Laws of 2013. These regulations establish procedures for the allocation of such credits, including, but not limited to, the application process, standards for evaluation of applications, and other provisions deemed necessary and appropriate. The Department of Economic Development shall administer the program, including the issuance of tax credit certificates.

b. A taxpayer which is a qualified film production company, and which is subject to tax under article nine-A or twenty-two of the Tax Law, unless eligible for the film production credit under section twenty-four of the Tax Law with respect to the qualified film, shall be allowed a credit against such tax, pursuant to the provisions referenced in subdivision (c) of section thirty-one of the Tax Law.

§ 230.2 Definitions. As used in this regulation, the following terms shall have the following meanings:

a. “Authorized applicant” means a qualified film production company that is scheduled to begin post production on a qualified film no more than one hundred eighty (180) days after submitting an initial application to the Department.

b. “Certificate of conditional eligibility” means a certificate issued by the Department which states that the authorized applicant has met the criteria set forth in section 230.6(a) of this Part and is being considered for the Empire State Post Production Tax Credit, pending successful completion and approval of the final application. Such certificate shall include, but not be limited to, the following information: name and address of the authorized applicant, effective date, taxpayer identification number, a statement that the initial application meets the criteria for conditional eligibility under section 230.6(a)(1)–(9) of this Part and a disclaimer stating that actual receipt of the tax credit is subject to completion and approval of the final application.

c. “Certificate of tax credit” means a certificate issued by the Department which states the amount of the Empire State Post Production Tax Credit that an approved applicant has qualified for based on the Department’s analysis under section thirty-one of the Tax Law and the provisions of this Part. Such certificate shall include, but not be limited to, the following information: name and address of the approved applicant, name of the qualified film to which the credit applies, 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 a 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.

d. “Commissioner” means the Commissioner of the New York State Department of Economic Development.

e. “Completeness of the application” means that all questions on the application itself are fully addressed by the applicant and that any additional substantiating documents that are requested by the Department are provided.

f. “Completion of a qualified film” means that the process of post production of a qualified film has been finished and a cut negative, video master or other final locked form of the qualified film is ready for the striking of prints or electronic copies, and/or ready for broadcast or delivery to a distributor. All activities and expenses related to marketing and distribution, including, but not limited to, the making of release prints, video dupes or other forms of copies, promotional images, and poster art are considered to occur after the production of a qualified film is completed.

g. “Department” means the New York State Department of Economic Development.

h. “End credit requirements” means that a qualified film production company that has applied for credit under the provisions of this Part agrees. as a condition for the granting of the credit, either to include in the end credits of each qualified film the phrase “This Production Participated in the New York State Governor’s Office for Motion Picture & Television Development’s Post Production Credit Program” 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.

i. “Feature-length film” means a production intended for commercial distribution to a motion picture theater or directly to the consumer viewing market that has a running time of at least seventy-five (75) minutes in length.

j. “Final application” means a document created by the Department and submitted by an applicant after it has completed post production of a qualified film which contains information concerning actual post production expenditures regarding a qualified film that could make it eligible for the Empire State Post Production Tax Credit under section thirty-one of the Tax Law and the provisions of this Part. Such application shall include, but not be limited to: actual data with regard to the qualified film’s total post production budget, the total post production costs at post production facilities in and outside of New York and any other information the Department determines is necessary.

k. “Initial application” means a document created by the Department and submitted by an authorized applicant which contains information concerning projected post production expenditures regarding a qualified film that could make it eligible for the Empire State Post Production Tax Credit under section thirty-one of the Tax Law and the provisions of this Part. Such application shall include, but is not limited to, the following information: the estimated total post production budget for the qualified film, estimates of post production expenditures at qualifying post production facilities, estimates of post production expenditures in New York

State and outside of New York State and any other information the Department determines is necessary.

l. “Principally engaged in the production and post production of a qualified film and controls the qualified film during production and post 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, post production facility operators and all vendors.

m. "Post production costs" means costs for 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, 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 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).

n. "Post production facility" means a building and/or complex of buildings and their improvements on which films are intended to be post produced.

o. “Premature application” means an initial application in which the Department reasonably determines that the applicant cannot commence post production within one hundred eighty (180) days of the date the initial application was submitted. Such determination shall be based on, among other things, vagueness of the applicant’s answers on the initial application and during the initial interview and lack of documentation supporting an applicant’s initial application.

p. “Program” means the Empire State Post Production Tax Credit Program.

q. “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, news or current affairs program, interview or talk program (unless such talk program is a relocated television production pursuant to paragraph (8) of subdivision (b) of section twenty-four of the Tax Law), 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; (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); or (3) a compilation of short films or webisodes aggregated to meet either the definition of television film or television series under these regulations. 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

r. “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.

s. “Qualified post production costs” means post production costs only to the extent such costs are attributable to the use of tangible property or the performance of services within New York State directly and predominantly in the post production of a qualified film. For the purpose of this definition, “attributable to the use of tangible property or the performance of services within New York State” shall only include costs and their pro rata portions which are incurred directly in New York State.

t. "Qualified post production facility" means a post production facility located in New York State, engaged in finishing a qualified film.

u. “Television pilot” means the initial episode produced for a proposed television series. This category will include shorter formats which are 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.

v. “Television series” means a regularly occurring production intended to run in its initial broadcast, regardless of the medium or mode of its distribution, in a series of narrative and/or thematically related episodes that have a running time of at least thirty (30) minutes in length each (inclusive of commercial advertisement and interstitial programming if any).

w. “Third party inspection” means an inspection conducted by a qualified certified public accountant of an applicant’s final application using agreed upon procedures as prescribed by the Department to verify that all criteria pursuant to section 230.6(b) of this Part have been met. Such agreed upon procedures shall be posted online.

§ 230.3 Eligibility. For the purposes of this Part, only an authorized applicant shall be eligible to apply for the Empire State Post Production Tax Credit.

§230.4 Application Process.

a. Initial application.

(1) An authorized applicant shall submit an initial application to the Department prior to the completion of principal photography. In the case of a TV series an authorized applicant shall submit such application prior to completion of principal photography of the first episode of the series. The Department, in its sole discretion, may waive the above rule upon an authorized applicant’s showing of exigent circumstances so long as that authorized applicant has not yet incurred qualified post production costs in New York State.

(2) After submission of the initial application, the Department may, in its sole discretion, require the authorized applicant to have an interview with the Department to discuss the details of the initial application. A post production supervisor and post production accountant or their designee, approved by the Department, shall attend such interview if requested by the Department.

(3) The Department shall approve or disapprove the initial application based upon criteria set forth in section 230.6(a) of this Part.

(4) After review of the initial application, the Department shall notify the authorized applicant of its eligibility and may issue a certificate of conditional eligibility to the authorized applicant.

b. Final application.

(1) An applicant may submit a final application to the Department after the completion of a qualified film.

(2) Upon receipt of the final application, the Department may request additional documentation, including copies of receipts of qualified post production costs, to determine if the qualified film qualifies for the Empire State Post Production Tax Credit. The Department shall approve or disapprove the final application based upon criteria set forth in section 230.6(b)(1)–(5) of this Part. If the final application is approved, the Department shall issue a certificate of tax credit to the approved applicant. The Department shall provide a copy of such certificate of tax credit to the Department of Taxation and Finance. If the final application is disapproved, the Department shall provide the applicant with a notice of disapproval which shall state the reasons therefor. Such disapproval shall be a rejection of the applicant's final application. A disapproved applicant may appeal such decision pursuant to section 230.9 of this Part, or reapply pursuant to the provisions of this section.

§ 230.5 Allocation of Empire State post production tax credit

a. The Department shall allocate the amount of the credits given for each calendar year in order of priority based upon the date of the approval of an applicant's final application. In the event that an approved applicant's Empire State Post Production Tax Credit would exceed the maximum amount of credits allowed for that given year, the approved applicant's credit will be allocated on a priority basis in the immediately succeeding calendar year. A maximum of $7 million of credits may be allocated in calendar years 2013 and 2014 and $25 million may be allocated in calendar years 2015 through 2019.

§ 230.6 Criteria for evaluation of applications.

a. Initial application.

An initial application shall be reviewed by the Department to determine, in its discretion, that all of the following criteria are met:

(1) the application is complete;

(2) the application is not premature;

(3) the application has been submitted prior to the end of principal photography;

(4) the authorized applicant is a qualified film production company;

(5) the authorized applicant is planning to complete a qualified film;

(6) the authorized applicant's projected qualified post production costs, excluding costs for visual effects and animation, paid or incurred which are attributable to the use of tangible property or the performance of services at a qualified post production facility in the production of a qualified film is projected to equal or exceed seventy-five (75) percent of the projected total post production costs, excluding costs for visual effects and animation, paid or incurred in the post production of a qualified film at any post production facility; or the authorized applicant's projected qualified post production costs for visual effects or animation at a qualified post production facility meet or exceed $3 million or twenty (20) percent of the total post production costs for visual effects or animation paid or incurred in the post production of a qualified film at any post production facility, whichever is less;

(7) the authorized applicant did not knowingly submit false or misleading information to the Department;

(8) the authorized applicant certifies that it will purchase taxable tangible property and services, defined as qualified post production costs, only from companies registered to collect and remit New York state and local sales and use taxes;

(9) the authorized applicant intends to comply with the end credit requirements set forth in section 230.2(h) of this Part.

b. Final application.

A final application shall not be approved by the Department unless the Department determines, in its discretion, that the following criteria are met:

(1) the application is complete;

(2) a qualified film was produced and completed;

(3) the applicant's qualified post production costs, excluding costs for visual effects and animation, paid or incurred which are attributable to the use of tangible property or the performance of services at a qualified post production facility in the production of a qualified film equaled or exceeded seventy-five (75) percent of the total post production costs, excluding costs for visual effects and animation, paid or incurred in the post production of a qualified film at any post production facility; or the authorized applicant's qualified post production costs for visual effects or animation at a qualified post production facility met or exceeded $3 million or twenty (20) percent of the total post production costs for visual effects or animation paid or incurred in the post production of a qualified film at any post production facility, whichever was less;

(4) the applicant did not knowingly submit false or misleading information to the Department;

(5) the applicant supplied documentation (e.g. still shot, frame grab, finished DVD or such other documentation such as the Department may require) that the end credit requirements set forth in section 230.2(h) of this Part have been met.

§230.7 Third party inspection.

The Department may accept from an applicant a third party inspection as part of an applicant's final application. Submission of a third party inspection shall be voluntary and shall be subject to review and approval by the Department pursuant to section 230.6(b) of this Part. The voluntary submission of a third party inspection by an approved applicant as part of its final application shall in no way or manner affect the review and approval by the Department of a final application submitted by an approved applicant that elects not to submit a third party inspection. Such final application shall be subject to review and approval by the Department pursuant to section 230.6(b) of this Part.

§ 230.8 Record retention.

a. All authorized and approved applicants must maintain records, in paper or electronic form, of any qualified post production costs used to calculate their potential or actual benefit(s) under this program for a minimum of three (3) years from the date the applicant claims the tax credit. The Department shall have access to the records during normal business hours at an office of the applicant within the State or, if no such office is available, at a mutually agreeable and reasonable venue within the State, for the term specified above for the purposes of inspection, auditing and copying.

§ 230.9 Appeal process.

a. If an applicant's final application is disapproved by the Department, or if an applicant disagrees with the amount of the tax credit granted by the Department, the applicant shall have a right to appeal. In the case of an appeal from a disapproval of a final application, such appeal

shall be made by sending a letter to the New York State Department of Economic Development, Attn: Counsel's Office, 625 Broadway, 8th floor, Albany NY 12245, within thirty (30) days from the date of the denial letter issued by the Department. In the case of an appeal from a disagreement of the amount of the tax credit issued, such appeal shall be made by sending a letter to the same address as listed above within thirty (30) days from the date of issuance of the certificate of tax credit. Failure to request an appeal within thirty (30) days shall be deemed a waiver of an applicant's right to appeal.

b. Upon receipt of a timely letter of appeal, an independent hearing officer will be appointed by the Commissioner to handle the appeal. The independent hearing officer shall render a recommended order on the appeal to the Commissioner. The Commissioner or his designee shall issue a final order within sixty (60) days of the report. A copy of the final order will be issued to the appellant within ten (10) days after the date the Commissioner or his designee renders the final order.

§ 230.10 Exchange of information with Department of Taxation and Finance.

Notwithstanding any provision of this chapter, employees and officers of the Department and the Department of Taxation and Finance shall be allowed and are directed to share and exchange information regarding the credits applied for, allowed, or claimed pursuant to this section and taxpayers who are applying for credits or who are claiming credits, including information contained in or derived from credit claim forms submitted to the Department and application for credit submitted to the Department

§230.11 Quarterly Report

a. The Department shall file a report on a quarterly basis with the director of the Division of the Budget and the chairmen of the Assembly Ways and Means Committee and Senate Finance Committee. The report shall be filed within fifteen (15) days after the close of the calendar quarter. The report must contain the following information for the calendar quarter:

(1) the total dollar amount of certificates of tax credits issued during each month of the calendar quarter, broken down by month;

(2) the number of film projects which have been issued certificates of tax credits of less than $1 million per project and the total dollar amount of credits issued to those projects;

(3) the number of film projects which have been issued certificates of tax credits of $1 million or more but less than $5 million per project and the total dollar amount of credits issued to those projects;

(4) the number of film projects which have been issued certificates of tax credits of $5 million or more per project and the total dollar amount of credits issued to those projects;

(5) a list of each film project which has been issued a certificate of tax credit and for each of those projects (a) the number of employees associated with the post production project, (b) the qualified costs for the post production project, (c) the total expenditures on goods and services in New York State for the post production on the project, (d) the credit-eligible man hours for post production on each project; and (e) the total wages for such credit-eligible man hours for post production on each project;

(6) (a) the 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; 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 earning any of those tax credits must be included in the report instead of information about the taxpayer claiming the tax credit, (b) 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 amount of tax credit earned by each entity must be included in the report instead of information about the taxpayer claiming the tax credit, and (c) information identifying the project associated with each taxpayer for which a tax credit was claimed under section 24 or section 31, as added by chapter 57 of the laws of 2010, of the tax law, including the name of the film and county in which the project is located.

§230.12 Biennial Report

The Department shall file a report on a biennial basis with the director of the Division of the Budget and the chairmen of the Assembly Ways and Means Committee and Senate Finance Committee. The report shall be filed within fifteen (15) days after the close of the calendar year. The first report shall cover a two (2) year period that begins on January first, two thousand thirteen. The report must be prepared by an independent third party auditor and include: (1) information regarding the empire state film production credit and post production credit programs including the efficiency of operations, reliability of financial reporting, compliance with laws and regulations and distribution of assets and funds; (2) an economic impact study

prepared by an independent third party of the film credit programs; and (3) any other information and/or other statistical information that the Commissioner deems to be useful in analyzing the effects of the program.