

EMPIRE STATE DEVELOPMENT **FILM TAX CREDIT PROGRAM**

AGREED UPON PROCEDURES **Revised October 2019**

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, television movies, and/or incur post-production costs associated with the original creation of these productions. Program credits of \$420 million per year can be allocated and used to encourage companies to produce projects in New York to 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 Agreed Upon Procedures indicated in this document.

Qualified production companies must submit a **complete** final application in order to be allocated tax credits. The Project Summary Form is to be submitted online and the remainder of application is to be uploaded through the secure file transfer site. Please refer the applicant to our webpage <http://esd.ny.gov/BusinessPrograms/filmCredit.html> for the link and instructions to the online application.

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 and contact information for the CPA responsible for the review and final sign off of this Report
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.

Eligibility

1. Obtain from the production company a **complete** final application that consists of the following documents. A complete final application means that all required information is provided in the form and manner prescribed by The Film Tax Credit Program. (e.g., The Budget Cost Qualifier must reconcile to the General Ledgers. The Employment Report must reconcile to the employment section in the Project Summary-Final Form. The Shoot Days Summary Form must reconcile to the daily production reports.)
 - a. Project Summary – Final
 - b. Budget Cost Qualifier – Final
 - c. End Credit Requirements
 - d. Frame Grab of End Credits
 - e. Employment Report (includes PR, loan-outs paid via AP, extras)
 - 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 Lists
 - l. Schedule of Related Party Transactions
 - m. Schedule of Retained Assets
 - n. Vendor List

For further information about these documents, see the Film Tax Credit Program Guidelines at <http://esd.ny.gov/BusinessPrograms/Data/Film/2016/FilmCreditGuidelines.pdf>

2. Verify with a responsible official at the production company (Applicant) to
 - a. Determine that the Applicant entity is the authorized applicant per program regulations
 - b. determine that only costs paid or incurred as of the post-production completion date (as documented by item 3, below) are included in qualified expenditures.
 - c. Determine if any non-reimbursable New York State governmental economic assistance (e.g. grant funds) was provided to the production. If yes, determine the use of funds and contact the Film Tax Credit Program to discuss the potential impact on qualified expenses.

3. Obtain and inspect post-production documents for film (e.g. vendor invoices) evidencing the date the final elements (e.g., final composite answer print, air master, or digital cinema files) were created. For television, the qualification period ends at the time the last expenditure directly related to the applying production is paid or incurred. Determine and document the qualification period of the production. The qualification period commences at pre-production and culminates with post-production. These dates must reconcile to section 1-3 in the Project Summary-Final application form.

4. Obtain the production company's (Applicant) documentation to support the basis of eligibility, based on one of the three criteria below:
 - a. For a production with total project expenditures (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 total project expenditures (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.

Expenditures (Excluding Payroll)

1. **Inspect the GL reports for non-qualified expenses.** Deduct any errors from the QCS and **remove** them from the population to be sampled. Consult 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. Attach a list of any non-qualified costs found. The list is to include GL report coding, amount, vendor/person/entity and nature of discrepancy from the Schedule of Qualified Expenditures.
 - a. Include out of state custom made items in inspection and verify that the 60/40 split of 60% non-qualified Out of State (for labor costs) and 40% qualified (for materials) has been accounted for in the GL reports.
2. For each expenditure specified below, the Applicant is to 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 are to be disallowed. The Qualified Costs Summary is to be adjusted accordingly. **Do not** include the vendor certification downloads with the Report. The applicant should retain all documentation in the event the Film Tax Credit Program staff requests that it be provided.

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

3. 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 completed Related Party Transaction Report Form which is located in the Final Application Template Book. Related party transactions are transactions with parties that have a 5% or greater ownership (directly or indirectly) with the applicant entity and are included as qualified expenditures. Attach schedule to the AUP Report.
4. Verify with 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. If the production company filed an insurance claim and received funds, the CPA is to inspect the supporting documentation of the claim to ensure the expenditures were properly credited to the correct accounts in the General Ledger and Budget Cost Qualifier.
5. 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.
6. For each expenditure item selected in the sample, perform the following procedures:

- a. 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.
 - b. Inspect invoices; proof of payment (i.e. canceled checks, check images, check copies, bank statements, credit card statements, etc.). 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.
 - c. Determine that the expenditure was paid by the applicant entity and recorded net of any refunds, discounts, rebates, sale proceeds, invoicing errors, and purchase returns, as recorded in the GL reports.
 - d. Verify that the expenditure was not for in-kind services.
7. 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 completed Retained Assets Report which is located in the Final Application Template Book. The Form must list assets that were not destroyed in the film production process and which are being held for future productions or other purposes and have a purchase price over **\$5,000**. Attach schedule to the AUP Report.
 8. 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 on letterhead indicating the total dollar amount of work performed within NYS. Verify that only work performed within NYS by the vfx/digital fx company is included in qualified expenditures. Adjust the QCS for any non-qualified spend. Attach letters with Report.
 9. 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.
 10. Prepare a list of transactions from Category 2 and Category 3 in accordance with the number of invoices required on the Sampling Chart. Any non-qualified expenditures found during procedure 1 listed above is to be excluded from the sample population. Category 2 and Category 3 are to be evaluated independently from each other and not aggregated. Adjust the QCS for known errors noted during your expenditure tests for Category 2 and Category 3. Calculate the rate of misstatement from the expenditure test for each category, 2 and 3 by dividing the dollar amount of the misstated items in each category by the dollar amount of the sample population in each category. This is your rate of misstatement.
 11. Perform the following procedures based upon the results of the calculation of the rate of misstatement:

- a. If the rate of misstatement does not exceed 1% of qualified expenditures in the sampled population for Category 2 and/or Category 3, no further action is required.
- b. If the rate of misstatement for Category 2 and/or Category 3 exceeds 1% of qualified expenditures (excluding payroll) in the sampled population, select a second sample set.
- c. According to the sampling methodology noted above for Category 2 and Category 3, test a second sample set and recalculate the rate of misstatement for this 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 rate of misstatement for the second sample does not exceed 1%, adjust the QCS for any known errors in the second sample and no further action is required. If the rate of misstatement from the second sample selection exceeds 1% of qualified expenditures, adjust the QCS for known errors found in the second test AND adjust the remainder of the applicable categories untested expenses by the projected misstatement. The projected misstatement is obtained by multiplying the remaining untested population by the average of the two rates of misstatement. In summary, when the expenditure tests for Category 2 and/or Category 3 exceed 1% for both tests, the deduction for that category will include the known errors found in each of the sample tests plus the projected misstatement on the remainder of the untested population in the applicable category.

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 (not including box rentals, car allowances, per diems, fringes, etc.) in the separate GL reports of qualified expenditures with the amount on the Employment Report.
 - b. Compare the amount of expenditures 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.
 - d. Review time cards, call sheets, production reports, or other equivalent documentation to determine that work was performed in New York. Verify that all wages do not include compensation for any work incurred out of the state.
 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.
 5. Perform the following procedures based upon the results of the calculation of the rate of misstatement:
 - a. If the rate of misstatement does not exceed 1% of qualified expenditures (payroll), adjust the QCS for known errors discovered in the sample population. No further action is required.
 - b. If the rate of misstatement exceeds 1% of qualified expenditures, select a second additional sample according to the sampling methodology noted above for Category 5. Recalculate the rate of misstatement for the second sample set.
 - c. If the rate of misstatement for the second sample set does not exceed 1%, document the rate of misstatement in the AUP Report and adjust the QCS for known errors discovered in the second sample population. No further action is required.
 - d. If the rate of misstatement from the second sample selection exceeds 1% of qualified expenditures (payroll), adjust the QCS for known errors found in the second test AND adjust the remainder of the untested Category 5 expenses by the projected misstatement. The projected misstatement is obtained by multiplying the remaining untested population by the average of the two rates of misstatement.

Include the following with Agreed Upon Procedures Report:

1. Table of Contents
2. Qualified Costs Summary with adjustments for non-qualified costs and revised total qualified costs. Include in Report and send to applicant as an Excel file.
3. Sampling documentation, including the calculation of misstatement percentages, for both non-payroll (Category 2 and Category 3) and payroll (Category 5) expenditures per the Sampling Chart. Attach a list of any non-qualified costs noted in the expenditure test (both general and payroll). The list is to include GL report coding, amount, vendor/person/entity and nature of discrepancy from the Schedule of Qualified Expenditures.
4. Related Party Transactions (if applicable)
5. List of Retained Assets (if applicable)
6. Attach all verification letters (e.g. vfx letters)
7. Attach final element verification

**EMPIRE STATE DEVELOPMENT
FILM TAX CREDIT PROGRAM
AGREED UPON PROCEDURES FOR CPA INSPECTION OF FINAL APPLICATION
SAMPLING CHART
EXPENDITURES (EXCLUDING PAYROLL)**

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 - \$1,000,000	All items	25	25
\$1,000,001 - \$5,000,000	All items	50	25
	\$20,000 and over	Under \$20,000 and over \$2,500	Items \$2,500 and less
\$5,000,001 - \$10,000,000	All items	60	25
\$10,000,001 - \$25,000,000	All items	75	25
\$25,000,001 +	All items	100	25

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.

**FILM TAX CREDIT PROGRAM
AGREED UPON PROCEDURES FOR CPA INSPECTION OF FINAL APPLICATION
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	5
\$500,001 - \$1,000,000	All items	10
\$1,000,001 - \$5,000,000	All items	20

**Top 15 Total
Qualified Wages**

**Under Top 15
Total Qualified
Wages**

\$5,000,001 +	All items	25
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