



NEW YORK STATE MUSICAL AND THEATRICAL TAX CREDIT PROGRAM
APPENDIX A TO PROGRAM GUIDELINES
Glossary of Key Terms and Definitions

Allocation Year means the pool of funds by tax year from which the tax credits are allocated pursuant to subdivision e of section 24-A of the tax law and is determined based upon receipt of a complete final application.

Applicant is the corporation, partnership, limited partnership, or other entity or individual that is principally engaged in the production of the musical or theatrical tour during prep, rehearsal, tech rehearsal and for the duration of the qualified tour. The applicant is the entity that, upon final approval, will receive the tax credit certificate. The applicant must be the entity that incurs and pays direct expenditures related to the physical production process and is signatory to contracts with a payroll company, facility operators, vendors, etc. during the production.

Application refers to the group of documents which all applicants for the Musical and Theatrical Tax Credit must complete. When completed, the applicable documents and forms must be emailed to filmcredits@esd.ny.gov with the project title in the subject line of the email. Forms can be found at the Musical and Theatrical Tax Credit website:

<http://esd.ny.gov/BusinessPrograms/MusicTheaterCredit.html>

Budget Cost Qualifier is a standard MS Excel Template designed by the Department to assist applicants in determining costs that are qualified and eligible to be applied to the appropriate eligibility thresholds. There are separate BUDGET COST QUALIFIER templates specific to the musical and theatrical tax credit. THE BUDGET COST QUALIFIER is part of the application and must be completed using the MS Excel template provided by the Program, downloaded, filled-out and emailed to filmcredits@esd.ny.gov

Certificate of Conditional Eligibility (CCE) means a form issued by the Department which states that a project is eligible to receive a tax credit if the applicant meets all of the program requirements and files a complete final application.

Certificate of Tax Credit means a form issued by the Department that indicates the amount of the musical and theatrical tax credit for which an applicant has qualified. Such certificate may include, but not be limited to, the following information: name and address of the approved applicant, name of the qualified musical and theatrical production the credit applies to, 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 musical and theatrical production is complete or the taxable year immediately following the allocation year for which the musical and theatrical production has been allocated 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.



Complete application means that all required information is provided in the form and manner prescribed by the Department. The Department will not determine that an applicant is eligible to participate in the Program, assign an allocation year, nor determine that a final application is ready for audit unless it is first deemed to be a complete application.

Designated Contact is the person, such as the preparer of the application, who the primary contact has authorized to provide information to the Department about the application on his/her behalf. If the designated contact is a consultant, accountant, or other third party representative of the applicant, then the primary contact must provide a letter authorizing the representative to release information to the Department. A completed power of attorney form may be attached in lieu of a letter. A completed power of attorney (POA) must be included with the application if the third party representative is completing the application on behalf of the applicant.

Detail Page is a worksheet within the BUDGET COST QUALIFIER that is designed as an industry standard two page budget summary or 'top sheet' adapted to help applicants identify the costs within their production budgets that qualify under the Musical and Theatrical Tax Credit Program. The Detail page breaks costs into two general types of costs – New York Costs and Outside New York Costs. These two general cost categories are then further divided into sub-categories. (NY - Qualified FACILITY, NY - Qualified LABOR, and NY - Qualified TRANSPORTATION, and NY – Non-Qualified).

Because it is a summary or 'top sheet' of a more extensive production budget, the Detail Page will collapse or combine a number of lines from the more detailed Schedule of Qualified Expenditures, and/or your own production budget, into larger departmental totals. Both qualified and non-qualified costs will be subsumed within departments. For example, while the salary and some costs associated with the Producer is not qualified, the salaries and expenses related to the Director's assistant, office needs, etc. are qualified and become eligible for the credit when incurred in NYS. When filling out the BUDGET COST QUALIFIER, place the appropriate totals for each budget category in the appropriate columns, e.g. costs for a Director might be divided between NY - Qualified FACILITY, NY - Qualified LABOR, NY - Qualified TRANSPORTATION, NY – Non-Qualified and Outside New York- Non-Qualified. Use Column B (Project Acct #) to indicate the account numbers/codes as they appear in your budget. This method will allow for easy correlation between the production budget accounts and the account codes utilized in the SCHEDULE OF QUALIFIED EXPENDITURES. It is not uncommon for each cell in Column B to include multiple project account numbers or codes.

Development Process ("in development") refers to costs or activities related to acquiring the rights to a script, creating a story, selecting the actors or director, or negotiating the basic terms of an agreement for financing a project.

End Date means the date a qualified touring production has completed eight or more shows in three or more locations. Expenses incurred after this date will be disqualified costs.



Facility Costs refers to costs incurred at a musical or theatrical stage facility. The Facility Cost information must be included in the appropriate columns of the BUDGET COST QUALIFIER (i.e. NY - Qualified FACILITY, NY – Non-Qualified and Outside New York- Non-Qualified). Expenditures at the facility(s) could include:

- Facility lease/licensing cost refers to the cost of the License or Operating agreement with the qualified production facility (QPF). If the agreement includes bundled costs directly related to use of the stage itself, (as opposed to set operations), such as power, HVAC, waste removal, etc, such costs should be included.
- Construction and Wrap: refers to days spent in the processes of construction and wrap of sets at the qualified production facility. This would include all costs incurred for activity at the facility, including the cost of materials for set construction, salaries of crew working at the facility, meals at the facility, transportation related to the facility activity, services at the facility, etc.
- Other Facility Expenditures: refers to all costs that are incurred the qualified production facility that do not relate specifically to days rehearsing and the technical period including, for example, office rental only if at the facility, (including office equipment and staff salaries), telephone charges, etc.

An applicant must secure a signed license or operating agreement with a QPF in order to qualify for the Program. For a complete list of all Qualified Production Facilities in NYS, go to <http://esd.ny.gov/BusinessPrograms/MusicTheaterCredit.html> or call 212-803-2328

Final Application means information concerning actual expenditures regarding a qualified touring production that could make it eligible for the musical and theatrical tax credit provided in a form and manner as prescribed by the Department and submitted by an approved applicant after it has completed eight or more shows in three or more locations of a qualified touring production. Such application may include, but not be limited to: actual data with regard to the qualified touring production budget, the total production costs at a qualified production facility, the weekly payroll expense schedule and final employment report, and any other information the Department determines is necessary. See Application referenced earlier for details about how to submit a final application.

Freedom of Information Law ("FOIL") refers to the law governing public access to the records of government agencies (see Public Officers Law sections 84 through 90). Applicants should be aware that some information submitted to the Department as part of any application to the Program becomes subject to legislatively mandated reports that will be made public. Additionally, the Department will respond to requests for information about the Program including but not limited to the:

- i. name of the project which has been issued a certificate of tax credit;
- ii. counties in NYS where the project was rehearsed/ teched or performed;
- iii. qualified costs for the project;
- iv. total expenditures on goods and services in NYS for the project
- v. number of employees associated with the project;
- vi. credit-eligible man hours for the project;



- vii. total wages for such credit-eligible man hours for the project;
- viii. 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; and
- ix. 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 name of each limited liability company, partnership or subchapter S corporation earning any of those tax credits instead of information about the taxpayer claiming the tax credit*

Applicants may request that certain information be excepted from public disclosure, pursuant to section 87(2)(a-d) on the grounds that the information constitutes trade secrets, proprietary information or that the information, if disclosed, would cause substantial injury to the competitive position of the Applicant. Such a request must be in made in writing to the Department, specify the information to be withheld and state the reasons for the requested exception. The Department reserves the right to determine whether the information submitted by the Applicant will be withheld from disclosure. The Department will notify the Applicant of any requests for disclosure of Applicants' information and notify the Applicant as to whether the information will be disclosed. Applicants may submit their request for non-disclosure of information with the application submitted to the Department.

General Travel & Living Costs are costs related to travel into or out of NYS, such as airfare, hotels, travel related per diem, extra meals, etc. paid to individuals who are brought into NYS to work on the qualified touring production. General Travel costs are not qualified costs. For example, if the production brings a designer from out of state to work on the qualified touring production, costs associated with that individual's plane tickets to/from NYS, travel related per diems, etc. are not qualified. However, all normal costs associated with the individual's work on the qualified touring production while in NYS as part of the NYS based crew, including his/her salary, transportation to and from the set, regular production sponsored meals, etc., are eligible as long as they are incurred in NYS.

Initial Application means information concerning projected expenditures regarding a qualified touring production that could make it eligible for the musical and theatrical tax credit in a form and manner as prescribed by the Department and submitted by an authorized applicant. Such application may include, but is not limited to, the following information: the estimated total budget for the qualified touring production, estimates of expenditures at a qualifying production facility, estimates of labor costs and expenditures in New York State and outside of New York State and any other information the Department determines is necessary.

NY Production Employees are ALL employees assigned to work on the qualified touring production in New York City or New York State (regardless of their personal residence or point of origin).

NY Wages are ALL wages and compensation paid to all NY Production Employees (regardless of their personal residence or point of origin) for work performed in NYS or NYC. Only wages earned within NYS or NYC are credit eligible wages, recorded on the employment report.



NON QUALIFIED NY Employees – refers to the NY Production Employees whose wages or salaries are NOT Qualified (e.g., Writers, Advertising, Marketing and Booking Staff, etc.), whether resident or not.

NON-Qualified in NYS refers to costs that are NOT eligible to qualify (indicated as "NO" on the SCHEDULE OF QUALIFIED EXPENDITURES) even though the costs are incurred within NYC or NYS, such as legal fees, banking fees, non-production related meals or expenses, opening night parties, etc.

NON Qualified Outside NYS refers to costs that are NOT eligible to qualify (indicated as "NO" on SCHEDULE OF QUALIFIED EXPENDITURES) and that are incurred outside NYS, such as General Travel, directors fees, actors' salaries, etc.

NON-Qualified Production Facility means a facility, whether within or outside NYS, that does not meet the criteria for a Qualified Production Facility.

Primary Contact refers to the responsible officer of the applicant and should be a person of authority such as a corporate officer, general partner, managing member, or sole proprietor and will ultimately be responsible for supervising the preparation of the application and all future communication or correspondence with the Department. A Primary contact can designate another person to be the **Designated Contact**.

Privacy Act Notification refers to the fact that individuals must provide their social security numbers pursuant to Tax Law § 658(b) or New York City Administrative Code § 11-102.1 and 42 USCS § 405(c)(2)(C)(i). Social security numbers will be used in administering the NYS Musical and Theatrical Production Tax Credit Programs as well as to establish and maintain a uniform system for identifying taxpayers entitled to claim the credits on their State tax returns, and for any other lawful purpose.

Program refers to the Musical and Theatrical Tax Credit Program. More information about the Program can be found in the Program Guidelines and by visiting the website at <http://esd.ny.gov/BusinessPrograms/MusicTheaterCredit.html>

Qualified Production Costs means any costs for tangible property used and services performed directly and predominantly in the production of a qualified musical and theatrical production **within the state** including: (i) expenditures for design, construction and operation, including sets, special and visual effects, costumes, wardrobes, make-up, accessories and costs associated with sound, lighting, and staging, (ii) all salaries, wages, fees, per diems, payroll tax expenditures, fees for workers' compensation insurance, and other compensation including related benefits for services performed of which the total allowable expense shall not exceed two hundred thousand dollars per week, and (iii) technical and crew production costs, such as expenditures for qualified production facilities, or any part thereof, props, make-up, wardrobe, costumes, equipment used for special and visual effects, sound recording, set construction, and lighting. Production expenditures for certain assets not destroyed during the production of a qualified musical and theatrical production are to be discounted when applied towards a tax credit under this Part in accordance with guidance to be provided by the Department.



Expenditures associated with the performance of a show before a paying audience shall be deemed to be directly and predominantly in the production of a qualified musical and theatrical production only when the show is performed in a qualified production facility and the show has not been performed in any facility, other than a qualified production facility, subsequent to the completion of the technical period in a qualified production facility.

Expenditures not directly and predominantly in the production of a qualified musical and theatrical production include, but are not limited to, expenditures for advertising, marketing, and publicity, and any expenditures for the technical period of the musical and theatrical production incurred at a location other than a qualified production facility (i.e. office space rented at another location would not be qualified).

Qualified Facility – is a category of qualified costs in the BUDGET COST QUALIFIER that refers to all qualified costs incurred within NYS at a qualified Musical and Theatrical Production Facility.

Qualified Labor – is a category of qualified costs in the BUDGET COST QUALIFIER that refers to all qualified labor cost (salary, taxes, PHW) incurred in NYS.

Qualified Transportation – is a category of qualified costs in the BUDGET COST QUALIFIER that refers to all qualified transportation costs incurred in NYS.

Schedule of Qualified Expenditures is an industry standard detailed budget form that indicates, line by line, whether a particular budget line item is or is not considered a qualified cost that can be used in the calculation of the facility, labor and transportation costs eligible for the tax credit. Applicants must refer to the Schedule to determine if a particular cost can be considered a qualified cost when filling out the Budget Cost Qualifier.

Show means a live performance of a dramatic musical or theatrical presentation.

Start Date means the date the initial application has been deemed complete by the department. Expenses incurred after this date can be recorded on as qualified costs on the BUDGET COST QUALIFIER.

Summary Page refers to a worksheet within the Budget Cost Qualifier that is automatically generated from the Detail Page. When applying for the musical and theatrical production credit, both the Detail Page and Summary page must be submitted with the initial application and updated for the final application as Excel documents.

Technical period means activities, performed by technical personnel of a qualified touring production prior to the commencement of a qualified touring production, for example those personnel responsible for lighting, sound, wardrobe, and props and associated expenses.