

NEW YORK STATE MUSICAL AND THEATRICAL TAX CREDIT PROGRAM GUIDELINES

PROGRAM PURPOSE

The New York City Musical and Theatrical Tax Credit Program is a two-year program designed to jump start the entertainment industry and support tourism in New York City. The Program encourages Musical and Theatrical productions to begin performances sooner and come back stronger. The Program will offset some of the additional costs associated with producing a show as New York's economy recovers from the Covid-19 pandemic.

PROGRAM OVERVIEW

The New York City Musical and Theatrical Tax Credit Program provides incentives to qualified production companies that are principally engaged in the production of qualified musical or theatrical productions and perform in a qualified production facility and incur costs associated with the creation and ongoing performances of these musical and theatrical productions.

AMOUNT OF CREDITS AVAILABLE

Program tax credits of \$100 million can be allocated and used to encourage qualified production companies to perform and conduct productions at qualified production facilities in New York City.

Qualified production companies can receive tax credits of 25 percent of qualified production expenditures. Those that apply during the first year of the Program can receive up to \$3 million per production. Companies applying in the second year are capped at \$1.5 million unless the tourism industry does not recover. If indicators show that the tourism economy in New York City is not fully recovered, then the cap remains at \$3 million per production.

ELIGIBILITY CRITERIA

To qualify, a musical and theatrical production means a for-profit, live, scripted dramatic performance by one or more performers of a narrative presentation with or without musical performances and/or accompaniment that, in its original or adaptive version, is performed in a qualified New York City production facility.

A qualified musical and theatrical production shall not include: ballet, opera, musical solo, group, band or orchestra performance, or solo, duo or several performers' stand-up comedy performances.

For the purposes of this Program, the Department shall make final determinations on which productions meet these criteria.

The credit period of a qualified production begins on the production start date and ends on the earliest of the following:

- 1) the date the production has expended sufficient qualified production expenditures to reach its credit cap;
- 2) March 31, 2023; or
- 3) the date the qualified production closes.

The production start date is the date that is up to twelve (12) weeks prior to the first performance of the qualified production. The first performance means the first paid public performance of the qualified production after April 19, 2021. *However, if a production was first performed in a qualified New York City production facility prior to the state disaster emergency pursuant to executive order 202 of 2020, it shall still be treated as a qualified musical and theatrical production with a start date that begins after April 19, 2021.*

The date the production closes is the date after the production's final public performance on which the move of all physical production assets (i.e. sets, costumes, lighting and audio equipment) from the qualified New York City production facility to their subsequent facilities (such as lessor vendor facilities and storage facilities) is complete and all qualified costs are paid.

An applicant shall be required to complete an initial application, which includes a project summary, a production schedule, the venue where the production will be performed and financial information about the production. In addition, a complete initial application shall include:

- (1) a diversity and arts job training program plan outlining their proposed method(s) of participating in a New York state diversity and arts job training program;
- (2) a public access and availability plan outlining the ways the applicant will ensure that their production is available and accessible for low-or no-cost to low income New Yorkers; and
- (3) an attestation that they intend to comply with the legal requirement to contribute to the New York state council on the arts cultural program fund an amount up to fifty percent of the total credits received if its production earns ongoing revenue prospectively after the end of the credit period that is at least equal to two hundred percent of its ongoing production costs, with such amount payable from twenty-five percent of net operating profits, such amounts payable on a monthly basis, up until such fifty percent of the total credit amount is reached.

Any funds deposited shall be used for arts and cultural educational and workforce development programs.

Requirements for New York state diversity and arts job training programs

As part of their Initial Application, applicants submit a *diversity and arts job training program plan* outlining their proposed method(s) of participating in a New York State-approved diversity and arts job training program. Participating in a fellowship program may satisfy the requirement to participate in a New York State-approved diversity and arts job training program and applicants should explain their fellowship plans in their *diversity and arts job training program plan*.

The following fellowships are currently pre-approved to satisfy the requirement of the *New York state diversity and arts job training program* and a production's participation with said fellowship must be explained in their *diversity and arts job training program plan*.

- The Theatre Leadership Project (info@ttlp.org)
- Black Theatre Coalition (info@blacktheatrecoalition.org)

When a production company is working on multiple productions, this criterion must be satisfied separately for each qualified New York city musical and theatrical production receiving a tax credit.

- For example, a single six-month fellowship with a lead producer satisfies solely one production, even if such lead producer has multiple productions. A producer with two productions and two fellows during a six-month period, or a general manager with one fellow for a 12-month period working on two shows simultaneously, shall each be deemed as satisfying this criterion for two productions.

Fellowship programs may be submitted to New York State for approval by contacting Empire State Development (ESD) at musictheatercredits@esd.ny.gov or calling 212-803-2330.

Approval of fellowships will be based on the following criteria:

- May be part of either a formalized industry fellowship program or self-operated by the production company, producer or general manager;
- Minimum of six (6) month fellowship with the production company, or the production's lead producer or general manager; or
- For limited-run shows or applicants applying for credits of less than \$1,000,000, shorter fellowships or multiple brief fellowships, may be considered by ESD;

- Full-time (at least 35 hours a week) employment in the workforce of the qualified production, the production’s lead producer’s office, or with the production’s general manager’s office or company management team;
- Placement may be with a production’s technical department, stage management, general or company management, marketing or any other department directly involved in the qualified production or the theatrical business of the lead producer or general manager;
- Minimum annualized salary as part of fellowship of shall be at least \$42,250;
- Participants should be from underrepresented communities within the theatre industry, to ensure the theatre industry is reflective of New York State’s diversity;
- Recruitment shall include efforts throughout New York state, including through SUNY theatrical programs outside of New York City, and all fellows shall reside in New York state during duration of fellowship;
- Fellowship must be commenced or committed to during the credit period;
- The fellowship shall have:
 - Clear outlined on-boarding/mentorship/training program with a specific mentor, exposure to senior members of the qualified production production/creative team and regular education opportunities about the industry.
 - Ability to offer networking opportunities within the theatre community, including invitations to industry events, affinity groups (if applicable) and specific networking events.
- Employment in a position shall be deemed a “fellowship” if it fits the above criteria, regardless of whether it is called a fellowship or not, and if such position is created or a fellow is placed into an existing position as part of the fellowship with a principal purpose of achieving the goals of increasing diversity and retention across the theatre industry’s workforce and mentoring diverse talent.

Waiver Request when unable to participate in a fellowship program

Applicants may explain in their *diversity and arts job training program plan* why they are unable to participate in a fellowship program and upon Departmental approval may, in lieu of participating in a fellowship program, make payments to approved New York State

theater fellowships. Productions must outline their inability to participate in a fellowship program and their planned contributions in their *diversity and arts job training program plan*.

Payment to an approved theatrical fellowship program shall be at least the lesser of \$35,000 or 2.33 percent of its estimated tax credit.

Requirements for public access and availability

In order to fulfill a production's requirement under the New York City Musical and Theatrical Production tax credit program that it *create and implement a plan to ensure that their production is available and accessible for low-or no-cost to low income New Yorkers*, as part of their application the production must submit a public access and availability plan outlining the ways they will ensure that their production is available and accessible for low-or no-cost to low income New Yorkers.

The public access and availability plan shall outline how a production will meet the following minimum requirements:

- During the first year of performances after the production start date it shall provide distribution networks approved by New York State, an amount equal to or in excess of the capacity of the relevant qualified musical and theatrical production's theatre capacity, per 6-month performances during the credit period (*i.e. if a theatre has 1,400 seats, 1,400 tickets per 6-month period, or 2,800 tickets overall during the year*);
- In the event the maximum grant under the program is decreased in the second year of the program, for productions whose first performance is in such second year, the ticket minimums shall be reduced by 25 percent;
- In the event a qualified musical and theatrical production closes within any such 6-month performance period, such obligation shall be pro-rated by the number of performance weeks in the period;
- At least 50 percent of such tickets at cost of no more than \$20, (which may be located anywhere in the theater), and the remainder at a cost of no more than \$40, (which must be in the front mezzanine and orchestra sections), to low-income residents of New York State. Any fees related to such tickets shall not exceed \$4 per ticket
- Said tickets shall be for productions which are open to the general public and not at rehearsals or shows dedicated only to ticket giveaways, without the approval of New York State;

- Provide a list of community- based organizations serving low income residents in the New York City, Long Island and Mid-Hudson regions that the production company entered into an agreement with to distribute the tickets to low income residents served by those community- based organizations. A contact person for each such organization must be provided and copies of any written agreements should be available for review by ESD if requested.
- Productions may satisfy the requirement to *create and implement a plan to ensure that their production is available and accessible for low-or no-cost to low income New Yorkers* by partnering with the Theater Development Fund (TDF) which is partnering with community-based organizations serving low-income residents of New York State. Productions may outline their partnership with TDF in their public access and availability plan. TDF will provide organization contact info and have agreements available on request. When partnering with TDF all of the above minimum requirements apply.

The specific performances and allocations shall be at the qualified New York city musical and theatrical production company’s discretion.

Attestation of Profit Distribution

Applicants must agree to contribute to the New York State Council on the Arts Cultural Program Fund an amount up to fifty percent of the total credits received if the production earns ongoing revenue prospectively after the end of the credit period that is at least equal to two hundred percent of its ongoing production costs, with such amount payable from twenty-five percent of net operating profits, such amounts payable on a monthly basis, up until such fifty percent of the total credit amount is reached.

Net operating profits shall be defined, for the purposes of this requirement, as all ongoing revenue minus all ongoing production costs including marketing and advertising costs and shall be calculated on a quarterly basis.

Ongoing production costs shall be defined, for the purposes of this requirement, as weekly operating expenses associated with the production after the end of the credit period, not including marketing and advertising as reflected on a quarterly basis.

Ongoing revenue prospectively after the end of the credit period shall be defined, for the purposes of this requirement, as all gross weekly box office revenues after the end of the credit period as reflected on a quarterly basis.

An applicant that claims and receives a tax credit under this program shall submit an annual report to the Department detailing their contributions, as applicable, to the New York state council on the arts cultural program fund. Such requirement shall expire on the earlier of:

1) December 31, 2025; or

2) upon repayment of 50% of the total credit received by the applicant; provided, however, if a production closes and the applicant demonstrates that the production is not subject to the requirements above, then the applicant no longer needs to submit an annual report.

QUALIFIED FACILITY

A Qualified New York city production facility means a facility located within the city of New York

- (i) in which live theatrical productions are or are intended to be primarily presented,
- (ii) that contains at least one stage with a seating capacity of five hundred or more seats, and dressing rooms, storage areas, and other ancillary amenities necessary for the qualified musical and theatrical production, and
- (iii) for which receipts attributable to ticket sales constitute seventy-five percent or more of gross receipts of the facility.

QUALIFIED COSTS

Qualified costs are any costs paid by the applicant for tangible property used and services performed directly and predominantly in the production of a qualified musical and theatrical production within the state including:

(1) 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;

(2) all salaries, wages, fees, 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 \$200,000 per week;

(3) 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; and

(4) Up to 50% of the advertising and marketing costs incurred and paid in NYS by the applicant.

For the purposes of this definition, expenses may only be counted once on a single qualified production.

NON-QUALIFIED COSTS include:

- Airfare
- Hotels
- Per Diems
- Entertainment
- Insurance (premiums, deductibles and all costs covered by insurance, excepting workers' compensation)
- Licenses, certification, union membership
- Legal Fees
- Parking tickets
- Rights/Management
- Royalties
- Advertising 50% Qualified
- Marketing 50% Qualified

For the purposes of this Program, the Department shall make final determinations on which costs not cited in statute or regulations are qualified or non-qualified.

HOW TO APPLY

Applicants complete and submit the Project Summary Form online. All other documents which comprise a complete application (*see Chart of Application Materials for the New York City Musical and Theatrical Production Credit*) are submitted through a secure file transfer system.

A complete initial application must be submitted by an applicant to prove its eligibility for the Program and contains information concerning projected production expenditures.

Initial applications must be submitted prior to the first paid performance and submission no later than **10 days prior to such performance is highly encouraged.**

Initial applications may be submitted no later than December 31, 2022.

A final application must be submitted within ninety (90) days of the end of the Credit Period to claim the tax credit. As part of their final application, applicants shall submit proof of the execution of their diversity and arts job training and public access and availability plans listed in the eligibility section above.

When submitting an application for the New York City Musical and Theatrical Production Credit, **all materials as indicated in the chart below must be submitted in order for the application to be deemed complete.** Refer to the Chart of Application Materials for the Tax Credit when completing an initial and final application.

[Online Application Form](#)

[Chart of Application Materials](#) for the New York City Musical and Theatrical Production Tax Credit

APPLICATION INSTRUCTIONS

Applications must be submitted according to the dates indicated above.

When an initial application is deemed complete, the Program Office will notify an applicant of its eligibility and, if deemed eligible, issue a certificate of conditional eligibility.

When the credit period ends, a final application must be submitted with actual project information. If the final application is deemed completed and approved, the Program Office will issue a certificate of tax credit to the primary contact listed in the final application.

APPLICATION MATERIALS

The application consists of several documents as follows:

PROJECT SUMMARY

A project summary is submitted online as part of the initial application and consists of projected information about the musical and theatrical production necessary to determine eligibility. The project summary is updated with actual production information for the final application.

WEEKLY PAYROLL REPORT

A report to capture the weekly payroll expenses for the salaried employees, employed by the qualified musical and theatrical production must be submitted with the initial and the final application. There is a standard template (MS Excel) for this report.

The Weekly Payroll Report can be found [here](#).

This form is required to document all the hours worked and wages paid to qualified employees who worked on a qualified musical or theatrical production in New York City and whose wages are being counted toward the qualified expenses. There is a standard template (MS Excel) for this report. It is understood that initial application costs are estimated costs. If appropriate, costs for one week, based on estimated costs, may be extrapolated over the number of weeks in the application. The report submitted as part of the final application must be based on, and reflect, actual costs.

PRODUCTION BUDGET

NYC Music and Theatrical Production Tax Credit

Program Guideline

The production budget indicates how much money will be spent on the entire project during the credit period. It involves the identification and estimation of cost items for each phase of production. The estimated budget is submitted as part of the initial application and the final budget, based on actual costs, is submitted along with the final project summary.

GENERAL LEDGER REPORT

This report represents the day to day accounting of production expenses and can be generated using any software programs designed specifically for musical and theatrical production accounting.

The General Ledger Report is required of applicants when the final application is submitted and consists of the complete general ledger and separate GL reports that correspond with the budget categories identified on the project summary. There is no standard template for this report, but each report must include:

- The date the expense was incurred
- The vendor name or payee
- Budget code
- The amount of the transaction
- Item description
- The GL reports are required to be submitted as part of the final application upload of documents.

THIRD PARTY CPA REVIEW OF FINAL APPLICATION

Qualified production companies applying for the New York City Musical and Theatrical Production Tax Credit can opt to have final applications reviewed by pre-qualified CPA firms and expedite approval

Empire State Development (ESD) is offering an optional, voluntary program for third party review of final applications. This voluntary initiative is effective January 1, 2022 for the New York City Musical and Theatrical Production Tax Credit Program. This procedure enables productions that choose to participate to have their final applications reviewed by pre-qualified CPA firms according to agreed-upon procedures (AUPs) established and published by ESD. The reviews and reports prepared by the pre-qualified CPA firms must be submitted as a supplement to a production's final application.

ESD staff will review the final application for completeness and the CPA report for compliance with the agreed-upon procedures.

The Agreed Upon Procedures for the New York City Music and Theatrical Tax Credit Program are still under development and will be available by January 1, 2022.

OTHER REQUIREMENTS

Please note the following other requirements that must be followed as part of the application evaluation and approval process.

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.

SUMMARY

The New York City Musical and Theatrical Production Tax Credit is designed to jump start the entertainment industry and support tourism in New York City. The Program encourages Musical and Theatrical productions to begin performances sooner and come back stronger.

Broadway companies must agree to implement a diversity and arts jobs training plan and take actions to increase access to productions for low-income residents. Highly successful productions showing ongoing revenues more than two times their ongoing production costs after receiving a tax credit will need to contribute to the NYS Council for The Arts Cultural Program Fund up to fifty percent of the tax credit.

The Program is for two years and companies can receive credits for tax years beginning on or after January 1, 2021 but before January 1, 2024. Initial applications must be submitted prior to the first public performance and before December 31, 2022 and final applications no later than 90 days after the production closes or 90 days following the program end date of March 31, 2023, whichever comes first.

Review this guide to the Musical and Theatrical Tax Credit Program carefully.

Submit initial application materials prior to the first scheduled performance of the production for which you seek a tax credit through this Program and you are

[NYC Music and Theatrical Production Tax Credit](#)

[Program Guideline](#)

encouraged to submit the application materials no later than **10 days prior to such performance.**

The initial application is an eligibility determination. The credit is not allocated at this point. The allocation of the credit is based on the first paid performance date and will be made upon the receipt of a complete final application.

Applications must be complete as outlined in these guidelines. If your application is incomplete, you will be notified.

THIS IS A NEW YORK STATE PROGRAM.

PLEASE DIRECT QUESTIONS TO:

EMPIRE STATE DEVELOPMENT MUSICAL AND THEATRICAL TAX CREDIT PROGRAM

212-803-2328

<https://esd.ny.gov/>