



# Empire State Development

## Empire State Digital Gaming Media Production Tax Credit Program PROGRAM GUIDELINES

### PROGRAM PURPOSE

The Empire State Digital Gaming Media Production Credit Program, also known as the New York State Digital Game Development Program, is designed to accelerate and promote economic development in the digital game industry by offsetting some production costs associated with developing digital games in New York State. Economic benefits of this program include increased digital game development investment, increased number of jobs and studios, and a bolstering of the existing digital game development industry in New York State.

### PROGRAM OVERVIEW

The New York State Digital Game Development Program provides incentives to digital gaming media production companies that create and maintain digital game development industry jobs in New York State.

Qualified digital gaming media production companies are required to submit an initial application to New York State before beginning a project. Once the project is completed and the final application is audited, applicants can receive a tax credit of 25% of qualified production costs in New York City and 35% outside of the New York City metropolitan commuter transportation district (MCTD)\*.

### AMOUNT OF TAX CREDITS AVAILABLE

To create and maintain digital game development industry jobs, tax credits of up to \$5 million per year will be allocated to support companies producing digital games in New York State. Maximum qualified costs of \$4 million per project may be used in the calculation of the New York State Digital Game Development Program Tax Credit.

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\*The MCTD includes the counties of New York (Manhattan), Bronx, Kings (Brooklyn), Queens, Richmond (Staten Island), Rockland, Nassau, Suffolk, Orange, Putnam, Dutchess, and Westchester.

## **ELIGIBILITY CRITERIA**

The New York State Digital Game Development Program is intended for a company engaged in the development of a Qualified Digital Gaming Media Production, including but not limited to:

- Video or interactive games, including extensions of video games provided their content is new and playable for an end-user; or
- Simulation software; or
- Interactive educational or training products; or
- Software applications that provide connectivity and communications between mobile devices and digital gaming media production web platforms.

A qualified digital gaming media production does not include a website, video, interactive game, or software that is used predominantly for:

- Electronic commerce (retail or wholesale purposes other than the sale of video interactive games); or
- Gambling (including activities regulated by a New York gaming agency); or
- Political advocacy purposes.

In addition, a qualified digital gaming media production does not include a website, video, interactive game, or software that depicts obscene material as defined in section 235 of the penal law. The Department, in its sole discretion, shall determine what constitutes a qualified digital gaming media production.

### **Threshold requirement**

In addition to the type of production, eligibility is determined by the amount of qualified digital gaming media production costs, as a percentage of the total digital gaming media production costs, that are incurred and paid in New York State.

Qualified digital gaming media production costs incurred and paid in New York State must be at least 75% of all digital gaming media production costs paid or incurred anywhere.

Digital gaming media production costs, or production costs, are defined as costs for wages or salaries paid to individuals, other than actors or writers, for services performed directly and predominantly in the creation of a digital gaming media production.

Qualified digital gaming media production costs, or qualified costs, are any digital gaming media production costs incurred and paid in New York State that are directly and predominantly related to the creation, production, or modification of the qualified digital gaming media production. For more information on qualified costs see below.

## **QUALIFIED COSTS**

Qualified costs are digital gaming media production costs incurred and paid within New York State directly and predominantly related to the creation, production, or modification of a qualified digital gaming media production.

This includes up to one hundred thousand dollars (\$100,000) in wages and salaries paid to each individual, other than actors or writers, directly employed in the qualified digital gaming media production for services related to the development (including concept creation), design, production (including concept creation, and testing), editing (including encoding) and compositing (including the integration of digital files for interaction by end users) of digital gaming media.

Qualified costs do not include:

- Salaries and wages for actors or writers
- Non-labor costs
- Travel costs (Per diems, housing, travel)
- Expenses related to distribution, marketing, publicity, promotion, and advertising.
- Costs used by the taxpayer as a basis of the calculation of any other tax credit
- Costs not directly and predominantly related to the creation, production, or modification of the qualified digital gaming media production
- The Department, in its sole discretion, shall determine which costs are directly and predominantly related to the creation, production or modification of the qualified production.

## **HOW TO APPLY**

Initial applications must be submitted prior to the commencement of production but no more than 90 days before the start of production. The Department will review the initial application and determine whether the applicant meets the eligibility criteria. The applicant will be notified if the initial application is incomplete or if any revisions are needed. 90 days after the submission of the initial application the Department may contact the applicant to verify that production on the qualified project has started as stated on the initial application.

Once the initial application is approved, the Department will notify the authorized applicant of its eligibility and issue a Certificate of Conditional Eligibility. This certificate states that a project is eligible to receive a tax credit if the applicant files a complete final application and meets all the program requirements.

Final applications are due after the project has been completed, meaning all the costs related to the qualified production have been paid, and all the final deliverables have been created. The Department shall, in its sole discretion, have the right to request a copy of the final game for its inspection.

## **APPLICATION MATERIALS**

All application materials are available on the program's [website](#).

### **Initial Application:**

#### **Project Summary (Initial)**

The project summary is the online application form. It contains contact information as well as information about the applicant and the project. This form is also a summary of all the information contained in the other application documents.

To fill out the Project Summary applicants must create an account for the digital gaming media production. The form must be signed electronically by the person listed as the primary contact.

#### **Game Design Document**

A descriptive document containing detailed information relating to the design of a qualified digital gaming media production. This information can include a project description, story and character design, gameplay, UI, art, music and sound, platforms, monetization, etc. There is no standard template for this document.

#### **Estimated Project Budget**

The budget represents how much money will be spent on the entire project. It involves the identification and estimation of costs for each phase of the game development.

#### **Estimated Project Schedule**

A timeline of the different tasks and processes involved in the creation of the digital gaming media production that includes the project's milestones and deliverables.

#### **Diversity Plan**

As a part of the Initial Application, all applicants must file a Diversity Plan that includes specific goals for hiring a workforce with a gender and racial/ethnic makeup reflective of the diversity of New York state. The Department shall establish minimum requirements for such plans. The Diversity Plan must include specific proactive steps the applicant will take to ensure outreach to target populations for direct hires on the production.

Notwithstanding the Department's right to make final determinations on the minimum requirements for diversity plans, the Department considers the minimum requirements to have been met when the applicant has set hiring goals and selected among the options listed in the application for meeting that goal. Applicants may send additional documentation and diversity plans in addition to the sections of the application.

## **Final Application:**

### **Project Summary (Final)**

This is the final Project Summary submitted with the final application and based on actual costs. It contains actual information about the work that has been completed in relation to the project.

To fill out the final Project Summary applicants must log into the form using the same credentials created during the initial submission. The form must be signed electronically by the person listed as the primary contact.

### **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 and out of New York State.

### **Related Persons Report**

A report that lists every person employed in the creation of the qualified digital gaming media production who serves in the role of chief executive officer, chief financial officer, president, treasurer, or similar position, and was employed by an entity related to the digital gaming media production entity on the sixty (60) months prior to the submission of the initial application. This report should include compensation for each individual listed and an explanation of their relation to the qualified digital gaming media production entity.

### **Proof of In-Credits Requirements**

A picture, frame grab, video clip or physical element that shows the required elements were included in a location easily accessible in the qualified digital gaming media production.

### **General Ledger**

The general ledger represents the regular accounting of production expenses and can be generated using a variety of accounting software. This form must be submitted in excel format.

### **General Ledger Reports**

Separate reports, in excel, from the general ledger for each of the following cost categories:

- Qualified New York State costs: Qualified costs as defined above

- Non-Qualified New York State Costs: Non-qualified costs as defined above that occurred within New York State
- Out-of-state costs: All remaining project costs that occurred outside of New York State

### **Diversity Report**

As part of the applicant's Final Application and as a condition of receipt of the credit, all applicants must file a Diversity Report that will be evaluated to verify that the applicant has either met the goals it set or made good-faith efforts in achieving said goals.

## **OTHER REQUIREMENTS**

### **End Credits**

Applicants agree to include on each digital gaming media production a logo, provided by the Department, and a sentence acknowledging the State's role in the creation of the production. This logo must be placed in a location readily accessible and easily readable by the end user such as: in-game credits, printed packaging, and other locations the Department deems appropriate.

### **Record Retention**

Each authorized and approved applicant must maintain records, in paper or electronic form, of any qualified 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**

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.

FOIL provides that certain records are exempt from disclosure, including, but not limited to, those that contain (1) trade secrets, (2) information that, if disclosed, would cause substantial injury to the competitive position of your organization, or (3) critical infrastructure information. The applicant will be given the opportunity to identify documents that in their application that they believe contain information that should be exempted from disclosure and protected from FOIL.

### **Other/General Terms and Definitions**

**Diversity Impact Data** means information submitted by an authorized applicant that describes the gender and race of all employees hired for a production seeking the tax credit under this Part. This information shall include job creation numbers for production and post-production staff and crew; entry level positions; management positions; and talent related positions.

**Diversity Report** means a form submitted with the final application that includes, but is not limited to, diversity impact data and how the applicant has met or made good faith efforts to meet the specific goals outlined in their diversity plan.

**Target Populations** means Asian and Pacific Islander persons having origins in any of the Far East countries, South East Asia, the Indian subcontinent or the Pacific Islands; Black persons having origins in any of the African racial groups; Hispanic / Latino persons of Mexican, Puerto Rican, Dominican, Cuban, Central or South American Descent of either Native American or Latin American origin, regardless of race; Native American or Alaskan native persons having origins in any of the original peoples of North America.

**Good Faith Efforts** means the extent to which the applicant can document specific steps taken, including but not limited to copies of outreach emails, phone calls and advertisements to targeted organizations and individuals, in-person meetings and interviews held, to meet the specific goals outlined in their diversity plan; including how the applicant has participated in training, education and recruitment programs that are designed to promote and encourage the training and hiring of New York State residents who represent the diversity of the State's population.

**THIS IS A NEW YORK STATE PROGRAM.**

**PLEASE DIRECT QUESTIONS TO:**

**EMPIRE STATE DEVELOPMENT  
Digital Game Development Program  
212-803-2328**

<http://esd.ny.gov/BusinessPrograms/filmCredit.html>  
[NYDigitalGameDev@esd.ny.gov](mailto:NYDigitalGameDev@esd.ny.gov)