



# Empire State Development

## NEW YORK STATE FILM TAX CREDIT PROGRAM GUIDELINES

### PROGRAM PURPOSE

The New York State Film Tax Credit Program is designed to increase the film production and post-production industry presence and overall positive impact on the State's economy.

### PROGRAM OVERVIEW

The Film Tax Credit Program provides incentives to qualified production companies that produce feature films, television series, relocated television series, television pilots and television movies, and/or incur post-production costs associated with the original creation of these film productions.

The Film Tax Credit Program is divided into two distinct programs, the Film Production Credit and the Post-Production Credit. Each Program is outlined in detail below.

### Amount of Credits Available

Program credits of \$700 million per year can be allocated and used to encourage companies to produce film projects in New York and help create and maintain film industry jobs. Up to \$45 million of the \$700 million may be dedicated to supporting and growing the post-production industry in the State. There are no per project caps for credits, and there is rollover in the annual \$700 million allocation going forward until 2034.

Film Production Credit and Post-Production Credit applicants may be eligible to receive a fully refundable base line credit of **30 percent** of qualified production costs incurred in New York State (NYS).

There is a 5 percent increase in credit to **30 percent** applicable to the Post-Production Credit only for post-production costs incurred in Upstate NY, outside the Metropolitan Commuter Transportation District (MCTD)<sup>1</sup>.

For the period 2015-2034 any production with a budget over \$500,000 can receive an **additional 10 percent credit** on qualified labor expenses incurred in the following counties:

Albany, Allegany, Broome, Cattaraugus, Cayuga, Chautauqua, Chemung, Chenango, Clinton, Columbia, Cortland, Delaware, Dutchess, Erie, Essex, Franklin, Fulton, Genesee, Greene, Hamilton, Herkimer, Jefferson, Lewis, Livingston, Madison, Monroe, Montgomery, Niagara, Oneida, Onondaga, Ontario, Orange, Orleans, Oswego, Otsego, Putnam, Rensselaer, Saratoga, Schenectady, Schoharie, Schuyler, Seneca, St. Lawrence, Steuben, Sullivan, Tioga, Tompkins, Ulster, Warren, Washington, Wayne, Wyoming, or Yates.

This additional 10 percent credit is applicable to both the Film Production Credit and the Post-Production Credit.

Changes to the Film Tax Credit Program which are effective April 1, 2023 are as follows:

Base tax credit rate has increased to 30%.

Annual Allocation has increased to \$700 million, of which \$45 million is allocated to Post Production Tax Credit Program. Allocation for the program continues through 2034.

Above the Line salaries as follows are qualified for the tax credit: director, writers, actors, composers and 2 Producers (one Executive Producer responsible for overall creative management, one Line Producer responsible for overall production management). ATL salaries identified are subject to a \$500,000 cap per individual and limited to 40% of all other qualified production costs.

Upstate Production in counties specified above shall include Above the Line salaries specified above and incurred in those counties in qualified labor eligible for 10% additional credit. In addition, if the production company shoots more than 50% of principal photography days in the specific counties, all other qualified costs incurred in those counties are eligible for 10% additional credit.

Relocating Talk/Variety series must be in production outside NYS for two years only (reduced from 5 years).

Relocating Television series (narrative dramatic or comedy series) must have been in production outside NYS for a minimum of six episodes with a per episode budget of \$1 million minimum. For network/cable, the length requirement is at least 30 minutes with commercials; for streaming media, the length must be at least 75 minutes for the total number of episodes in the season. Production costs up to \$6 million for relocation (excluding salaries) are eligible for the tax credit for the first season in NYS.

## **ELIGIBILITY CRITERIA**

The Film Tax Credit Program is limited to film production companies producing feature films, television series, relocated television series, television pilots and television movies, regardless of the medium by means of which the film, pilot or series is created or conveyed. Television series and relocated television series must submit separate applications for each complete season.

Certain categories of productions are excluded from the Program, including, but not limited to, documentaries, news or current affairs programs, interview or talk shows, variety talk, variety sketch and variety entertainment shows, instructional videos, sport shows or events, daytime soap operas, reality programs, commercials and music videos.

- The production credit is available for companies that film a substantial portion of their project in NYS.
- The post-production credit is available if the project was filmed predominantly outside of the State, or was ineligible for the production tax credit program, and the film production company contracts their post-production work to NYS post-production companies.
- More specific eligibility requirements for the credits are outlined below. You may also wish to review Appendix A to these Program Guidelines for more complete definitions used in these Guidelines and for more detailed information about Program requirements.

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<sup>1</sup> The Metropolitan Commuter Transportation District is defined in Section 1262 of the Public Authorities Law and includes New York City, Dutchess, Nassau, Orange, Putnam, Rockland, Suffolk and Westchester counties.

## Film Production Credit

Eligibility requirements vary based on the type of company and the budget.

Level 2: If the film has a production budget over \$15 million and/or is being produced by a publicly traded entity; at least 10 percent of the total principal photography shooting days must be at a qualified production facility (QPF) in NYS on a set built expressly for the production.

Level 1: Productions with budgets of \$15 million or less produced by companies that are independently owned must shoot at least one full day of principal photography at a QPF on a set built expressly for the production.

For the purposes of this program a full day means a minimum of eight hours from first unit crew call to wrap. Principal photography is defined by criteria including, but not limited to, the presence of first unit crew, director and principal performers, and the recording of scenes in which lines of dialogue are spoken. Re-shoot days with actors, director and crew are considered principal photography. Second unit shoots, and pickup shots without director and actor(s) are not considered principal photography.

A qualified film whose majority of principal photography shooting days in the production of the qualified film are shot in Westchester, Rockland, Nassau, or Suffolk counties or any of the five New York City boroughs shall have a **minimum budget of one million dollars**. A qualified film, whose majority of principal photography shooting days in the production of the qualified film are shot in any other county of the state than those listed in the preceding sentence shall have a **minimum budget of two hundred fifty thousand dollars**.

If a non-qualified production facility (in NYS or Out of State) is used by the Production Company, at least 75 percent of the total of all expenses related to work (excluding post-production) done at all facilities anywhere must be related to work done at the QPF.

Pilots are exempted from the 10 percent principal photography day requirement. Pilots will still have to shoot one principal photography day at a QPF, and at least 75 percent of the total of all expenses related to work (excluding post-production) done at all facilities utilized by the Pilot must be related to work done at the QPF.

If a production has met the 75 percent test for production facility expenditures, it may also qualify for credit based upon qualified expenditures outside the qualified production facility that are related to pre-production, location production and post-production if:

1. The production spends \$3 million or more at a qualified production facility, then all qualified expenditures related to pre-production, location production and post-production in NYS can be used for calculating the credit; or

2. The production spends less than \$3 million at a qualified production facility then at least 75 percent of principal photography location shooting days must be spent in NYS. This threshold applies to a percent of the total principal photography location days only, not the total principal photography shoot days. Shooting days spent at facilities are not used in the calculation – i.e., the test is the ratio of principal photography days spent on locations anywhere in NYS to total principal photography days on location both within and outside of NYS.

Further definition of certain terms such as film production facility, qualified production facility and armories are provided below.

### Definitions:

A “film production facility” generally means a building and/or complex of buildings and their improvements and associated back-lot facilities on which films are, or are intended to be, regularly produced and must contain at least one sound stage.

A Qualified Production Facility (“QPF”) must be within NYS and is further defined according to the type of film Production Company (i.e., level 1 or level 2), the budget for the project, and whether the facility is located within NYC. All QPF’s are listed on our [website](http://esd.ny.gov/soundstage-directory) (esd.ny.gov/soundstage-directory)

For any production outside NYC, a QPF must contain at least one sound stage having a minimum of 7,000 ft<sup>2</sup> of contiguous open unimpeded production space.

If the production is in NYC and has a budget of more than \$15 million, or is being produced by a publicly traded entity, a QPF must, in addition to the 7,000 ft<sup>2</sup> contiguous open unimpeded production space requirement:

- be soundproof with a noise criteria (NC) rating of 30 or better;
- have sufficient heating and air conditioning for shooting without the need for supplemental units,
- incorporate a permanent grid and sufficient built-in electrical service for shooting without the need for generators, and
- be column-free with a clear height of 16’ under the permanent grid (12’ for facilities constructed before January 1<sup>st</sup> 2019)

### **Armories**

There are special conditions established for armories owned by NYS or NYC:

- If an armory is being used by an independent film production company with a budget of \$15 million or less, it is considered a QPF, and can be used in the calculation for meeting the 75 percent facility threshold.

- If an armory is located within NYC, it may be considered a QPF if it is certified by the Governor's Office for Motion Picture and Television Development (MP/TV).<sup>2</sup>

### **Post-Production Credit**

A qualified post-production facility is any building or complex of buildings and their improvements in which post-production activities take place and is located in NYS and engaged in finishing a qualified film.

A film production company can qualify for the post-production credit if it meets either one or both of the following thresholds:

1) **Visual Effects and Animation** - the qualified VFX/Animation costs incurred at a qualified post-production facility in NYS must EITHER meet or exceed:

- 20 percent of the total VFX/Animation qualified costs paid or incurred for VFX/Animation for the qualified film at any post-production facility anywhere; OR
- \$3 million in qualified costs

2) **Post-Production** - the qualified post-production costs incurred at post-production facilities in NYS, (excluding cost for VFX/Animation), must meet or exceed 75 percent of the total qualified post-production costs paid or incurred in the post-production of the film at any post-production facility.

\*A film production company that meets the program requirements for production with its project can include post-production costs incurred in NYS in the calculation for the film production credit. The post-production credit is available to film production companies that film a substantial portion of a project outside NYS, or are ineligible for the production program in NYS, but are seeking to contract some or all of the post-production work to facilities in NYS. **A Film production company cannot apply for the film production credit and the post-production credit for the same qualified post-production costs.**

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<sup>2</sup> To be certified the production company must submit a petition to the MP/TV Office establishing that no qualified Level 2 film production facility in the City of New York has stage space available that is appropriate for shooting such company's film. Such petition shall be submitted no later than ninety days prior to the start of principal photography for the qualified film and the Governor's Office for Motion Picture and Television Development shall have ten days to certify or reject the petition. A stage will be deemed unavailable if consideration has been paid for its use or such stage is currently under an agreement with an option for use and, in either circumstance, such period of use includes the petitioner's estimated start date of principal photography.

## **QUALIFIED COSTS**

Whether a film production company is applying for the film production credit or the post-production credit, only certain costs qualify. As with eligibility, there are separate requirements for the production and post-production credits.

### **Film Production Credit**

Qualified production costs are for tangible property or services used or performed within NYS directly and predominantly in the production of a qualified film. Qualified costs generally include most below-the-line items associated with production such as labor costs incurred on set construction, crew and camera equipment, film stock and development, hard drives etc. as well as above-the-line wages for directors, writers, actors, composers and two producers up to \$500,000 per individual. These above the line wages are limited at 40% of all other qualified costs.

### **Post-Production Credit**

Post-production costs are costs associated with the 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, re-recording 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 directors and music composers.*

Post-production costs qualify for the credit ONLY to the extent they are incurred for post-production and/or visual effects and animation work done in NYS; work done by or contracted to vendors, employees, service providers or any parties located outside NYS is not qualified, and costs related to such work are not eligible for the tax credit. See the SCHEDULE OF QUALIFIED EXPENDITURES for detailed information on specific costs that are eligible for the post-production credit.

### **Live Action**

For live action films, certain activities defined as “production” in other contexts, can be defined as “post-production” and become qualified costs for the post-production credit. For example, digital content created to be merged with content captured through the camera, (i.e. “real” images and/or performers), would be eligible for the post-production credit. Digital content not designed to be integrated with content captured by the camera would not be eligible (such as an entire digital landscape sequence).

“Production” related costs **not** eligible for the post-production credit include any activity which occurs on set with actors or physical models, captured by a camera or similar image capture device – such as filming live performers for motion capture purposes; filming or scanning miniatures or 3D models; performers or set models filmed in front of “green screen” etc. Pre-visualization work done for production purposes only, e.g., the design of sets, the plotting of

camera moves, etc. is not eligible unless it is done in support of the addition of post-production content such as a creature/character, an effect, or set enhancements.

### **Fully Animated Production**

Primary content is generated through whatever processes the animator employs to generate the images (paint on cells, CGI, stop motion photography, motion capture, etc.). Processes that help plan the animation, e.g., layout, design, pre-vis, modeling, storyboard, etc. are eligible for the post-production credit. Processes that precede, or produce the digital assets for animation - recording, modeling, rigging, etc. are also eligible for the credit.

Qualified costs attributable to the animation process are eligible for the credit. Those operations on a fully animated production that are conducted after completion of animation are eligible for the credit (e.g., final scene integration, FX animation, lighting, compositing, rendering, color timing/correction, music recording, editing, etc.).

For fully animated production, there are 2 thresholds:

1. For Qualified Costs in the Producer/Director and Final Deliverable Elements categories, the threshold on total qualified expenditures is 75%.
2. For Qualified Costs in the Categories for Animation Production/Post-Production, which are Talent, Editing, Music, Sound, Film/Lab, VFX/Animation, Titles & Optical, the threshold of total qualified expenditures is 20%.

### **HOW TO APPLY**

**Film Production Credit** - Applications must be submitted prior to the start of principal and ongoing photography. All application materials can be downloaded from the [website](#).

**Post-Production Credit** - An application must be submitted before incurring any qualified post costs in NYS and must include in the post budget all post-production costs incurred in and outside NYS prior to the application date. All application materials can be downloaded from the [website](#).

### **APPLICATION MATERIALS**

All application materials are available on the [film production](#), and [post-production](#) program's websites.

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Costs covered by NYS ESD grants and/or other economic assistance provide by NYS ESD are not eligible for the tax credit.. It is recommended that applicants consult with tax credit program administration regarding any NYS funding provided for an eligible project. Grant/assistance amount should be coded in appropriate column(s) on Budget Cost Qualifier and will automatically be deducted from Qualified Costs.



## **Project Summary**

is the initial/final online application document. This document contains personnel, budget, QPF and location shoot day information, etc. This document must be signed electronically by an authorized corporate representative of the Applicant entity.

## **Schedule Of Qualified Expenditures**

The schedule indicates, line by line, whether a particular budget line item is or is not considered a qualified cost eligible for the calculation of thresholds and for the tax credit. As such, there is a separate SCHEDULE for the film production credit and the post-production credit (either Live Action or Animation) listing the specific qualified costs for each. Be sure to reference the correct SCHEDULE related to the credit program to which you are applying.

This schedule is for reference purposes only. It is not a Form to be completed by an applicant. The expenses listed on the SCHEDULE should be used as a reference when completing the BUDGET COST QUALIFIER. Please note the comments provided on this Form alongside certain line items, or call the Department for further clarification at (212) 803-2328.

## **Budget Cost Qualifier**

This form lists the qualified costs being considered for the project's tax credit. There are separate BUDGET COST QUALIFIERS specific to the film production credit and the post-production credit (either Live Action or Animation). There is a standard template (MS Excel) for the BUDGET COST QUALIFIER and it must be submitted in this format (*not as a pdf*). Be certain that the appropriate BUDGET COST QUALIFIER is being completed for your application.

## **Diversity Plan** (*included in the initial Project Summary*)

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. Applicants must explain whether and how they intend to participate in training, education, and recruitment programs that are designed to promote and encourage the training and hiring in the film and television industry of New York residents who represent the diversity of the State's population; and how the applicant plans to work with vendors with diverse ownership.

Examples of training, education, and recruitment programs applicable to section 5-2 of the application, include but are not limited to, studio or union Traineeship Programs, SUNY Production Training Programs, Partnerships and visits with local schools, programs which skills training as well as job placement opportunities for individual looking for careers in film and tv production. Ideal programs will include in person training, job placement support, mentoring, union coordination, and employer coordination.

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, explained how the applicant intends to implement a workforce development plan, and selected among the options listed in the application for hiring and vendors. Applicants may send additional documentation and diversity plans in addition to the sections of the application.

**Diversity Report** *(included in the final Project Summary)*

As part of the applicant's Final Application all applicants must file a Diversity Plan 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.

This report includes, but is not limited to: 1) diversity impact data, 2) illustrates how the authorized applicant has met or made good faith efforts to meet the specific goals for hiring a diverse workforce outlined in their diversity plan; 3) whether and how the authorized applicant has participated in training, education, and recruitment programs that are designed to promote and encourage the training and hiring in the film and television industry of New York residents who represent the diversity of the State's population; and 4) how the authorized applicant has executed its plan for hiring vendors of diverse ownership.

Productions who do not meet their goals, must demonstrate the good faith efforts that were made to meet the goals. Applicants must include additional supporting documentation, such as published notices, emails regarding attempted hires as part of their final submission, and/or other documentation regarding the specific efforts indicated on the initial and final application.

**Employment Report**

This form is required for the documentation of 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 New York State. The EMPLOYMENT REPORT is the same whether an applicant is applying for the film production credit or the post-production credit. There is a standard template (MS Excel) for this report.

## **End Credit Requirements**

This form states the End Credit requirements. There are separate forms for the Film Production End Credit and the Post-Production End Credit. This form must be signed by the applicant, to acknowledge and agree to the terms of the END CREDIT REQUIREMENTS. A Frame Grab of the End Credits must be submitted with the form. Failure to comply fully with the END CREDIT REQUIREMENTS will jeopardize receipt of the film tax credit.

## **Production Budget**

The film **PRODUCTION BUDGET** represents how much will be spent on the entire film project. It involves the identification and estimation of cost for each phase of filmmaking (development, pre-production, production, post-production and distribution). The budget structure is normally split into "above-the-line" (creative) and "below-the-line" (technical) costs. The PRODUCTION BUDGET is required of applicants for the film production credit. For applicants for the post-production credit, the top sheet of the production budget and the complete post-production budget are required. For the post-production credit, for fully animated projects, a complete production/post-production budget is required. The estimated budget or locked budgets are submitted as part of the initial application.

## **General Ledger and Separate Ledger Reports**

GENERAL LEDGER (GL) represents the day-to-day accounting of production expenses and can be generated using a variety of software programs designed specifically for film production accounting. For the production program, the final application must include the complete general ledger and separate GL reports that correspond to the qualified cost columns indicated in the BUDGET COST QUALIFIER. For the post-production program, the final application must include the complete general ledger and separate GL reports that correspond to EACH column of the BUDGET COST QUALIFIER, both qualified and non-qualified. The GL and separate reports should be submitted in their original format and emailed in pdf format AND as MS Excel files.

## **Vendor List**

Vendor List is a list (in excel) of all vendors utilized by production/post-production and paid through Accounts Payable. Names and mailing addresses including City, State and Zip Code, and NYS Sales Tax ID (if applicable) are required.

## **Daily Production Reports**

A **DAILY PRODUCTION REPORT** is a form completed each day of production for a project to summarize what occurred on that day. The DAILY PRODUCTION REPORT, BOTH FRONT AND BACK, is required of applicants for the film production credit. (Call Sheets are not acceptable substitutes for Production Reports.)

### **Shoot Days Summary**

This report shows detailed information about each shoot day (principal photography and second unit/other) completed for the film production project. There is a standard template for this report in MS Excel that all applicants must download, complete and submit as a required component of the final application.

### **Cast & Crew List**

The Cast & Crew List is a final listing of all members of the cast and crew that were employed during the film production project (The Cast & Crew List is only required for applicants for the Film Production Credit).

### **Schedule Of Retained Assets**

This schedule is a list of assets that were not destroyed in the film production process and that is being held for future productions or other purposes and has a purchase price over \$5,000. This report is required of applicants to the Film Production Credit who applied after January 1, 2015. It is submitted as part of the final application.

### **Related Party Transaction Report**

This report is a listing of related party transactions (including parties with a 5% or greater ownership directly or indirectly, in or affiliation with the production company applicant) that the production company is including as qualified expenditures. This report is submitted with the final application.

### **Diverse Vendor Report**

This report lists all the vendors paid by the applicant for goods and/or services and their diverse ownership to the extent which the production is able to ascertain the demographics of the business owner.

### **Workforce Utilization Report**

This report is a summary of production employees and days worked categorized by employees' race/ethnicity and gender.

## OTHER REQUIREMENTS

### End Credits

Include in the end credits of the qualified film “Filmed With the Support of the New York State Governor’s Office for Motion Picture and Television Development” **and include** the logo provided by the Film Office:



For applicants for the post-production credit, an applicant must comply with this requirement by:

Include in the end credits of the qualified film “This production participated in the New York State Governor’s Office for Motion Picture and Television Development Post Production Credit Program” **and include** the logo:



Note: The acknowledgement language AND the logo must be included in the end credits in order to satisfy the requirement; one item does not suffice. A frame grab or video file of the end credits must accompany the End Credit Requirement form as part of the final application. (If the frame grab does not establish proof of compliance, the Department may request other materials before issuance of Certificate of Tax Credit.)

### 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. Please refer to Appendix A to the Program Guidelines for the specific information that must be disclosed.

## **Vendors and Sales Tax**

Applicants to the Program must certify that they will purchase taxable tangible property and services, defined as qualified production costs, only from companies registered to collect and remit NYS and local sales and use tax.

To determine if a given individual or company is registered, their NYS Sales Tax Vendor ID Number must be obtained:

Go to: <https://www7b.tax.ny.gov/TIVL/tivlStart>

Enter Vendor Tax I.D. number to determine registration

It is highly recommended that the Applicant download a copy of the Vendor Verification and retain documentation with all company documents until audit has been completed and Certificate of Tax Credit issued.

If the sales tax identification number provided by the vendor cannot be verified through the system:

- Contact the vendor to confirm that the correct number was provided; or
- Call the Sales Tax Information Center 518-485-2889 or 800-698-2909 and a representative can search by the vendor's name.

[Publication 28: A Guide to Sales Tax for the Film Industry](#) issued by the NYS Department of Taxation and Finance, provides a list of items considered exempt from sales tax and therefore not subject to verification.

For more information on sales tax issues go to [www.nylovesfilm.com/pdf/SalesTaxExemption.pdf](http://www.nylovesfilm.com/pdf/SalesTaxExemption.pdf) or call the NYS Film Tax Credit Program (212) 803-2328.

## **SUMMARY**

The NYS Film Tax Credit Program is designed to expand the film industry in NYS. The Film Production Tax Credit is available for all eligible productions filming a substantial portion of the project in New York State (and post-production costs qualify toward the credit).

The Post-Production Credit is available for those productions not filmed in the state, or not filming enough in NYS to meet the eligibility criteria for the film production credit, but contract post-production work with any of the companies located in NYS specializing in this work. This credit is also available for fully animated productions completing all or part of production and post-production in NYS.

Review this guide and the appendix to the Film Tax Credit Program carefully. Program staff is available to answer questions, but ultimately it is your responsibility to comply with all program requirements in order to qualify for the credit.

Submit initial application materials before starting your film project for the film production credit and no later than the last day of principal photography and/or before incurring any costs with a qualified post-production vendor in NYS with respect to the post-production credit.

The initial application is an eligibility determination. The credit is not allocated at this point. The credit will be allocated based on receipt of a complete final application. Applications must be complete as outlined in these guidelines. If your application is incomplete, you will be notified. Final applications will not be considered for audit until it is deemed complete.

Good luck with your project and we look forward to the investment and jobs it will bring to New York State.

**THIS IS A NEW YORK STATE PROGRAM.  
PLEASE DIRECT QUESTIONS TO:**

**EMPIRE STATE DEVELOPMENT  
FILM TAX CREDIT PROGRAM**

**212-803-2328**

[filmcredits@esd.ny.gov](mailto:filmcredits@esd.ny.gov)

## NEW YORK STATE FILM TAX CREDIT PROGRAM

### APPENDIX

#### Terms and Definitions

The Film Tax Credit Program contains many key terms and definitions that are used in the Guidelines, statute, regulations and documents that comprise the application. These terms and definitions are organized alphabetically for reference purposes:

**Above the Line (ATL)** refers generally to expenditures such as rights to the script (and source material), compensation for the screenwriter, producer, director, principal actors, support staff and other line items such as casting. ATL employees on a film project generally refers to the individuals who guide and control the creative direction and process of a film and their related expenditures. Effective April 1, 2023, previously non-qualified ATL employees (certain producers, director, actors, writers, and composers) became qualified costs in the program. See the **SCHEDULE OF EXPENDITURES** for a detailed listing of costs that are qualified and non-qualified.

**Above the Line – Qualified NY Employees** refers to the number of Above the Line NY Production Employees, whether resident or not, whose wages or salaries qualify for the credit. Certain ATL wages and salaries are subject to a double cap. Wages and salaries for directors, writers, actors, composes and two producers (one Executive Producer, and one Line Producer) can be qualified up to \$500,000 per individual and cannot collectively exceed 40% of all other qualified costs.

**Additional Photography, or Reshoot,** refers to camera roll days that occur after the main contiguous schedule of principal and ongoing photography. This additional photography or reshoot could be considered part of Principal Photography and Ongoing Photography if certain conditions are met (see definition for Principal and Ongoing Photography below) and, in such instances, would be included in calculations affecting the Location Days threshold.

**Additional Principal Photography / Second Unit Start Date** is the first date on which either Second (2<sup>nd</sup>) Unit (or other additional photography that does not include the main actors) begins; or when the lead actors are reconvened for Principal Photography 'reshoots' or additional scenes that were not part of the initial phase of principal and ongoing photography.

**Allocation Year** means the pool of funds by tax year from which the tax credits are allocated pursuant to subdivision e of section 24 of the tax law and is determined by the amount of funds available as of the date of issuance of the tax credit certificate. Allocation year cited on the tax credit certificate identifies the period for which the Applicant can file for the tax credit. Effective April 1, 2023, Applicants file for the allocation year of the tax credit (the first taxable year in the allocation year if the Applicant's tax year differs from the calendar year).



**Applicant** is the corporation, partnership, limited partnership, or other entity or individual that is principally engaged in the production of the film or television program and that controls the film or television program during pre-production, production and post-production. The applicant is the entity that, upon approval of the final application, 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 Film Production Credit and Post-Production Credit must complete. The Project Summary Form can be completed and submitted online. All other documents must be submitted through the secure file transfer system. Forms are located on the Film [Production](#) and [Post-Production](#) Tax Credit Program websites

**Armory** refers to facilities (formerly used for weapon storage) that are owned by NYS or NYC. If located in NYC, an armory is considered a Level 1 qualified production facility (QPF) and may be used by any Qualified Independent Film Production Company (with a production budget less than \$15 million) to meet the Facility Threshold requirements. Outside of NYC, an armory is considered a QPF and any Qualified Film Production Company may use an armory to meet the Facility Threshold requirements. In NYC, an armory is not considered a Level 2 QPF suitable for meeting the Facility Threshold requirements unless certified by the Governor's Office for Motion Picture and Television Development (MP/TV). An applicant (which is not an independent film production company and/or with a production budget more than \$15 million) must petition the MP/TV Office requesting an armory be authorized as a QPF and demonstrate that no QPF in NYC has stage space available that is appropriate for shooting the applicant's film. Such petition shall be submitted no later than ninety days prior to the start of principal photography for the qualified film and the MP/TV Office shall have ten days to certify or reject the petition. A stage will be deemed unavailable if consideration has been paid for its use, or, such stage is currently under an agreement with an option for use and, such period of use includes the applicant's estimated start date of principal photography.

**Background actors** refer to extras (non-speaking performers, usually in the background) employed during the production of the film.

**Below the Line (BTL)** refers generally to expenditures for employees who provide craft and technical services for a film or TV production, (e.g., camera operators, make-up artists, and electricians), and differentiates these employees from the above-the-line people who are charged with the creation of the production (e.g., directors, producers, and writers). Costs associated with such items as equipment rental, set construction materials and props would be below-the-line costs. Below the line wages and production costs are generally qualified for the NYS Film Tax Credit if incurred in NYS. See the SCHEDULE OF EXPENDITURES for a detailed listing of costs that are qualified and non-qualified.

**Below the Line -- Qualified NYS Employees** refers to the number of Below the Line NYS Production Employees, (excluding post-production Qualified NYS Employees), engaged in the pre-production and production (shooting) process who are qualified, whether resident or not. If an employee performs more than one production and/or post-production job, list all wages but include in the headcount only once, in production.

**Budget Cost Qualifier** is the MS Excel Template designed 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 film production credit and to the post-production credit (one for live action post, including VFX/animation, and one for fully animated production/post-production). THE BUDGET COST QUALIFIER is included in the initial/final application template book as part of the application and must be submitted through the **Secure File Transfer System**.

**Certificate of Conditional Eligibility (CCE)** is a form issued by the Department which states that a project is eligible to receive a tax credit if the applicant meets all program requirements and files a complete final application, and that receipt of the Credit is subject to the availability of state funds and continuation of the program.

**Certificate of Tax Credit** is a form issued by the Department that indicates the amount of the film 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 film, completion date of the project, amount of the tax credit to be received by the approved applicant, allocation year of the tax credit earned.

Certificate of Tax Credit will be issued and sent to the Applicant listed on the Project Summary form. To receive the credit, an **Applicant** must submit the Certificate of Tax Credit with the Applicant's NYS income tax return. The NYS return will either be a Corporate (Form CT-248 for production credits, or Form CT 261 for post-production credits) or Individual for S Corp/LLC members (Form IT-248 for production credits, or Form IT 261 for post-production credits) income tax return. Each member of an S Corp or LLC must file a return for their share of the credit.

For projects applying to the Production Program, the film tax credit may be claimed for the tax year in which the project was completed, or for the allocation year, whichever is later. For projects applying to the Post-Production Program, the film tax credit should always be claimed for the year in which the project was completed. The tax credit will be issued from the NYS Department of Taxation and Finance, either as a credit towards tax liability, or, if there is no liability, as a refund for the full dollar value of the credit. For a credit from the Film Production program, the refund is issued in one payment if less than \$1 million; 2 payments between \$1 and \$5 million; 3 payments if more than \$5 million. If applicable, a return must be filed over 2 or 3 successive years to receive 100 percent of the credit. For a credit from the Film Post-Production program, the refund is issued in two payments if less than \$5 million; 3 payments if more than \$5 million. If applicable, a return must be filed over 2 or 3 successive years to receive 100 percent of the credit.

**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, whom 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 and/or exchange information to/with the Department.

**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.

**Diversity impact data** means information submitted by an authorized applicant that describes the gender and race/ethnicity of all individuals working on a production seeking the tax credit under this Part. This shall include information on the diverse business ownership of vendors working on a production, to the extent the information is known and verifiable to the production, in addition to job creation numbers for production and post-production staff and crew at entry, middle and management level positions; and talent positions (cast and extras). Productions may utilize self-reporting and identification by the individual members of the production workforce and vendors, employment, payroll, and human resources data, and other sources in order to collect and aggregate this information.

The categorization of individual crew members into the categories listed above is at the applicant’s discretion. These are general guidelines for each category:

- **Entry Level:** Any position considered to be the starting position in its department, including but not limited to production assistants and assistants in any department, runners, and interns.
- **Mid-level:** Mid-level hires will usually comprise the majority of crews. Positions that are beyond the scope of entry-level and report to a department head are considered mid-level. Examples include: Production Coordinators, 2nd ADs, Art Directors, Set Dressers, Prop Masters, Foremen, Carpenters, Camera Operators, 1st and 2nd ACs, DIT, G&E teams excluding Key Grip and Gaffer (including Best Boys), Hair & Make-Up teams excluding Keys, Wardrobe team excluding the Costume Designer, Production Sound Team including Mixers and Boom Operators, Locations team other than Manager, Transportation crew, Craft Services and Catering crews.

- **Management:** Department head positions and non-cast ATL positions are considered management level. Examples include: 1st AD, Associate Director, Line Producer, UPM, Production Designer, Director of Photography, Gaffer, Key Grip, Key Hair Stylist, Key Make-Up Artist, Costume Designer, Location Manager
- **Cast:** Individuals hired as on-screen actors for the project.
- **Extras:** Individuals hired as on-screen background talent for the project.

**Employment Practices Form** is a form which gathers data about whether a code of conduct is in place that applies to the production, crew and talent, and highlights certain best practices for such code of conduct. It is a required form which is part of the Initial Application.

**End Credit Requirements** for participants in the Film Production Credit Program are the inclusion in the end credits of a qualified film the statement: “Filmed with the Support of the New York State Governor’s Office of Motion Picture and Television Development” and a logo provided by the Governor’s Department.

Compliance with the End Credit requirements is mandatory per NYS law governing the film production credit. A frame grab must be provided with the End Credit Requirement form, submitted as part of the final application. The Department may require additional substantiation if the frame grab does not constitute proof of performance.

For participants in the Post-Production Credit Program include the statement: “This Film Participated in the New York State Post-Production Tax Credit Program” And a logo provided by the Department. A frame grab verifying the statement and logo in the end credits is required to be submitted with the End Credit Requirement form.

**Facility Costs** refers to costs incurred at a film production facility that are used in the calculation to determine if the facility threshold requirement is met. The Facility Cost information must be included in the appropriate columns of the **BUDGET COST QUALIFIER** (i.e. NYC QPF, NYS (outside NYC) QPF, Outside NYS Facility). Expenditures at the facility(s) could include but are not limited to:

- **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 any 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.
- **Camera Roll Days:** refers to the days when filming at a facility and includes all costs related to production activity at the facility, including set operations, crew salaries,

meals, camera and equipment rentals, transportation, set dressing, wardrobe, props, etc.

- **Other Facility Expenditures:** refers to all costs that are incurred at any facilities that do not relate specifically to days prepping, shooting or wrapping on a stage, including, for example, production office rental if at the facility, (including office equipment and staff salaries), telephone charges, etc.

**Facility Threshold** refers to the minimum requirements that must be met regarding use of a **Qualified Production Facility (QPF)** in order to participate in the Program. The requirements for meeting this threshold differ for **Level One** and **Level Two** productions. There is also a **Pilot Exemption**. An applicant must secure a signed license or operating agreement with a QPF in order to qualify for the Program. (A complete list of all **Qualified Production Facilities** in NYS can be found on this [website](https://esd.ny.gov/soundstage-directory) (<https://esd.ny.gov/soundstage-directory>)).

**Feature-Length Film** means a production intended for commercial distribution regardless of the medium by means of which the film is created or conveyed. that has a running time of at least seventy-five (75) minutes in length.

**Film Production Facility** means a building and/or complex of buildings and their improvements and associated back-lot facilities in which films are or are intended to be regularly produced and which contain at least one sound stage. (See above definition of Armory in re usage as Qualified Production Facility.)

**Final Application** means information concerning actual expenditures regarding a qualified film that could make it eligible for the film tax credit provided in a form and manner as prescribed by the Department and submitted by an approved applicant after it has completed production and post-production of a qualified film. Such application may include, but not be limited to: actual data with regard to the qualified film's total budget, the total production costs at film production facilities in and outside of New York, the total number of shooting days in and outside of New York 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 filmed;
- 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, non-production meals, etc. paid to individuals who are brought into NYS to work on the qualified film. General Travel costs are not qualified costs in New York City, with the exception of one round trip airport pickup/drop-off. However, travel and living costs incurred while shooting on **Distant Location** in NYS are qualified costs, e.g., travel within NYS to/from set, hotels at the rate paid for the average crew member, and per diem paid at either average crew rate or union mandated rate.

**Good faith efforts** in relation to the Diversity Plan and Diversity Plan Report 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, etc.--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.

If the applicant's final Diversity Plan Report falls significantly short of the goals set in the Initial Diversity Plan filed as part of the Initial Application, the Department reserves the right to make a final determination on whether the applicant has made sufficient effort to be considered a

'good faith' attempt to meet the goals of diversity and inclusion as outlined in the regulations governing the program.

**Gross wages** are all payments to individuals for services provided, including wages, salaries, fees and any fringe benefits that are subject to being reported as income to the IRS (i.e., vacation and holiday pay). All other fringe benefits should be included in 'all other qualified costs' up to the caps prescribed (\$500,000 per individual for certain ATL positions).

**Level One Production** is a qualified production that:

- (a) Has a production budget of no more than \$15 million, AND
- (b) Is being produced by a company in which no more than five percent of the beneficial ownership is owned, directly or indirectly, by a publicly traded entity.

If there is any change of budget or ownership structure of the applicant at any time after the filing of the Initial Application that would affect the designation of the production as a Level One Production, the Applicant must notify the Department. The determination of whether an applicant has met the appropriate **Level One** Production or **Level Two** Production requirements will be based on the budget and ownership structure of the Applicant upon submission of the Final Application.

**Level Two Production** is a qualified production that:

- (a) has a production budget over \$15 million, OR
- (b) is being produced by a company in which more than five percent of the beneficial ownership is owned, directly or indirectly, by a publicly traded entity.

**Location Threshold** refers to the requirement relating to the eligibility for on-location filming, pre or post-production, or any other costs for work done in NYS outside the **Qualified Production Facility (QPF)**. There are two possible ways to meet the Location/Other Threshold:

- 1) If less than \$3,000,000 is spent on facility-related work, then at least 75% of the location principal photography shoot days must be in NYS, OR
- 2) If \$3,000,000 or more is spent on facility-related work, then there is no required percentage of location days that must be in NYS.

It is possible to meet the Facility Threshold but not the Location Threshold. For example, a film may use a **QPF** within NYS, but only shoot 50% of its location days in NYS; the other 50% is shot outside the State. If less than \$3 million is spent at the **QPF**, all qualified costs related to the work at the facility would be eligible for the credit. However, the location costs, post-production costs, or other non-facility costs, would not be eligible, because the location threshold was not met.

If more than \$3 million is spent at the **QPF**, any location days or other qualified non-stage costs, including post-production costs, in the State would be eligible for credit.

**Location/Other NYC** – is a category of qualified costs in the **BUDGET COST QUALIFIER** that refers to all qualified costs incurred anywhere within NYC other than at a **Film Production Facility**.

**Location/Other NYS** – is a category of qualified costs in the **BUDGET COST QUALIFIER** that refers to all qualified location and other costs incurred in NYS but OUTSIDE NYC. Do not include the Location/Other NYC costs in the Location/Other NYS column.

**MP/TV Office** refers to the Governor’s Office For Motion Picture and Television Development. For further information about the MP/TV Office visit the website at <http://www.nylovesfilm.com> or call (212) 803-2330.

**NY Production Employees** are ALL employees assigned to work on the film in New York City or New York State (regardless of their residence).

**NY Wages** are ALL wages and compensation paid to all **NY Production Employees** (regardless of their residence) for work performed in NYS or NYC.

**NYS Distant Location Travel & Living refers** to travel costs incurred for travel within NYS to and from both qualified production facilities and locations outside the NYC studio zone. Costs for NYS Distant Location Travel & Living, including transportation to the distant location from a point of origin within NYS, hotels, meals and travel-related per diems, are qualified for all production personnel (both ATL and BTL). The maximum dollar amount qualified for each type of travel-related expense, (e.g. transportation, hotel, meals, per diem, etc. cannot exceed the amount for an average crew member or union mandated minimums.

**NON- Qualified NY Employees** – refers to the number of **NY Production Employees** whose wages or salaries are NOT Qualified (e.g., director, producers, actors, etc.), whether resident or not.

**NON-Qualified in NYS** refers to costs that are NOT considered qualified (*indicated as "NO" on the SCHEDULE OF QUALIFIED EXPENDITURES*) even though the costs are incurred within NYC or NYS, such as **General Travel & Living Costs**, costs for a story, script or scenario, wages or salaries for writers, directors, producers, actors and performers other than extras, license fees, etc.

**NON- Qualified Outside NYS** refers to costs that are NOT considered qualified (*indicated as "NO" on SCHEDULE OF QUALIFIED EXPENDITURES*) and that are incurred outside NYS, such as General Travel, directors fees, actors’ salaries, license fees, etc.

**NON-Qualified Production Facility** means a facility, within or outside NYS, that does not meet the criteria for a **Qualified Film Production Facility**. All facilities outside NYS are, de facto, Non-Qualified.



**Pilot Exemption** refers to the fact that Pilots are exempted from the Facility Threshold criteria regarding 10% of principal photography days at the **Qualified Production Facility (QPF)**. One shoot day fulfills the QPF requirement. However, at least 75% of the total of all expenses related to work, (excluding post-production), done at all facilities anywhere utilized by the Pilot must be related to work done at the **QPF**.

**Post-Production Costs** means production of original content for a qualified film employing techniques used in post-production for picture, sound and music editorial, rerecording and mixing, visual effects, graphic design, musical composition, original scoring, and animation; but shall not include the editing of previously produced content for a qualified film. 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; Post-production costs on a fully animated production shall mean the process and operations in the animation workflow which are conducted after completion of animation (key frame and/or stop motion animation, motion capture data acquisition and solving), including but not limited to final scene integration, fx animation, lighting, compositing, rendering, color timing/ correction, music recording and editing.

**Post-Production Facility** means any company located in NYS and engaged in providing post-production services to film and television.

**Post-production, Qualified NYS Employees** refers to the number of NYS Production Employees engaged only in the post-production process who are qualified, whether resident or not.

**Post-Production End Date** means the date post-production on the qualified film has been completed and the project is ready for delivery to a distributor. Post-production can continue beyond a festival screening. No costs related to festival screenings are qualified costs. Post-production does NOT include activities related to marketing, promotion or distribution. In the case of a film with a planned theatrical release or a television project with a broadcast or cable release, post-production does NOT include any activity specifically related to DVD or home video distribution. In the case of a Television Series, the production season will be considered complete when post-production on the final episode of the season is completed and the entire season is ready for delivery.

**Pre-production** means the process of preparation for actual physical production and is considered to begin with the establishment of a dedicated production office, the hiring of key crew members such as a Line Producer and/or Unit Production Manager, and includes, but is not limited to, activities such as location scouting, hiring of crew, construction of sets, etc. Pre-production does NOT include the development process.

**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**.

**Principal and Ongoing Photography** means the filming of major and significant portions of a qualified film that involves the principal actors and director. Additional criteria for determining if a camera roll day is a major and significant portion of the film include the presence of members of the first unit production team, (e.g., DP, first assistant director, etc.); or scenes in which lines of dialogue are spoken. For questions regarding whether a given shoot day can be considered a part of Principal and Ongoing Photography and counted towards the facility and location thresholds, call the Film Tax Credit Program office at (212) 803-2328.

**Principally engaged in the production of a qualified film and controls the qualified film during 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 and facility operators.

**Principal Photography End Date** means the date Principal and Ongoing Photography is concluded.

**Principal Photography Start Date** means the first date of Principal and Ongoing Photography filming of major and significant portions of a qualified film that involves the main actors.

**Project Summary** is the initial/final online application document. This document contains personnel, budget, QPF and location shoot day information, etc. This document must be signed electronically by an authorized corporate representative of the Applicant entity.

**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 Film 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.

**Production Costs** means any costs for tangible property used and services performed directly and predominantly, (including pre-production and post-production), in the production of a qualified film. Production costs shall not include (1) costs for a story, script or scenario to be used for a qualified film; (2) licensing or rights associated with the production of a qualified film; or (3) salaries of producers excluded from the ATL salaries deemed to be qualified effective April 1 2023, i.e., only 1 Executive Producer and 1 Line Producer are qualified; Production costs generally include technical and crew production costs, such as expenditures for film production facilities, or any part thereof, props, makeup, wardrobe, camera, sound recording, set construction, lighting, shooting and meals.

**Projected Release/Air Date.** Refers to the date the production will be ready for release or broadcast if there is no distribution agreement in place, and no tentative projected release or air date.

**Qualified Facility NYC on Budget Cost Qualifier:** all qualified costs related to all activity/days at a NYC **Qualified Production Facility (QPF)** are indicated in column under this heading.

**Qualified Facility NYS –on Budget Cost Qualifier:** all qualified costs related to all activity/days at a **Qualified Production Facility (QPF)** in NYS but OUTSIDE NYC are indicated in column under this heading. Do not include NYC costs in the Qualified Facility NYS column of the Budget Cost Qualifier because doing so would result in double counting of the facility costs.

**Qualified Film** means a feature-length film, television film, relocated television production, television pilot and/or 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, “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; or
- (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). 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; or
- (3) other than a relocated television production, a television series commonly known as variety entertainment, variety sketch and variety talk, i.e., a program with components of improvisational or scripted content (monologues, sketches, interviews), either exclusively or in combination with other entertainment elements such as musical performances, dancing, cooking, crafts, pranks, stunts.
- (4) A compilation of short films or webisodes aggregated to meet either the definition of television film or television series under these regulations.

**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.

**Qualified Independent Film Production Company** means a corporation, partnership, limited partnership, or other entity or individual, that or who (1) is principally engaged in the production of a qualified film with a maximum budget of fifteen million, and (2) controls the qualified film during production, and (3) either is not a publicly traded entity, or no more than five percent of the beneficial ownership of which is owned, directly or indirectly, by a publicly traded entity.

**Qualified Post-Production Facility** means a post- production facility located in the state, engaged in providing post-production services, e.g., compositing, recording, mixing, which contribute to the finishing of a qualified film.

**Qualified Film Production Facility** means a film production facility in NYS, which contains at least one sound stage having a minimum of 7,000 square feet of contiguous open unimpeded production space, provided, however, that except with respect to a qualified film production facility being used by a qualified independent film production company:

(i) a film production facility in NYC must contain at least one sound stage having a minimum of seven thousand square feet of contiguous open unimpeded production space that is sound proof with a Noise Criteria ("NC") of 30 or better, has sufficient heating and air conditioning for shooting without the need for supplemental units, incorporates a permanent grid and sufficient built-in electric service for shooting without the need for generators, and is column-free with a clear height of at least sixteen feet under the permanent grid for facilities constructed on or after January first, two thousand nineteen, and at least twelve feet under the permanent grid for facilities constructed before and which have otherwise met the requirements of this section by January first, two thousand nineteen;

and (ii) an armory owned by NYC or NYC the state or city of New York located in NYC that does not satisfy the criteria of subparagraph (i) of this paragraph shall be treated as a qualified film production facility upon certification by the governor's office of motion picture and television development of a petition submitted to that office by a qualified film production company establishing that no qualified film production facility is available in the city of New York that has stage space available for shooting such company's film. Such petition shall be submitted no later than ninety days prior to the start of principal photography for the qualified film and the governor's office of motion picture and television development shall have ten days to certify or reject the petition. A stage will be deemed unavailable if consideration has been paid for its use or such stage is currently under an agreement with an option for use and, in either circumstance, such period of use includes the petitioner's estimated start date of principal photography.

**Qualified Production Costs** means production costs only to the extent such costs are attributable to the use of tangible personal property or the performance of services within NYS directly and predominantly in the production, (including pre-production and post-production) of a qualified film. Generally Qualified Production Costs includes most ‘below the line’ expenditures, such as costs for technical and crew production, use of film production facilities, props, makeup, wardrobe, extras, camera, sound recording, set construction, lighting, and meals. Certain types of costs are specifically excluded, e.g. Qualified Production Costs shall NOT include:

- (i) costs for a story or script to be used for a qualified film and wages or salaries or other compensation for producers (with the exception of 1 Executive Producer and 1 Line Producer). Please note the comments provided on the Schedule of Qualified Expenditures, and contact the Department for further clarification, if necessary.

**Qualified Production Facility (QPF)** means a **Qualified Film Production Facility** certified by the MP/TV Office and listed on [website \(https://esd.ny.gov/soundstage-directory\)](https://esd.ny.gov/soundstage-directory)

**Relocated Television Production** refers to a television production that is a talk or variety program that filmed at least two seasons outside NYS prior to its first relocated season in NYS; the episodes are filmed before a studio audience of two hundred or more, and the production incurs at least:

- (i) 30 million dollars in annual production costs in NYS, or
- (ii) 10 million dollars in capital expenditures at a QPF in NYS.

**Relocated Television Series** refers to a television series with narrative dramatic or comedy content and links between episodes presented via network/cable or streaming media. For network/cable and for streaming media/digital platform, series must have produced a minimum of 6 episodes with a production budget of minimum \$1 million per episode which have been produced outside New York.

Relocation Costs refers to relocation production costs incurred by a Relocated Television Series prior to or during the first season of production in NYS. Qualified Relocation costs exclude salaries and are capped at \$6 million dollars.

**Secure File Transfer System** is the method for submitting support documentation for the Film Production and Post-Production Tax Credit Program after the online application has been submitted.

**Schedule of Qualified Expenditures** is a form which indicates, line by line, whether a particular budget line item is considered a qualified production cost that can be used in the calculation of the facility and location thresholds and eligibility for the tax credit. Applicants must refer to the Schedule to determine if a particular cost can be considered a qualified production cost when filling out the Budget Cost Qualifier.

**Second (2<sup>nd</sup>) Unit Photography**” includes action sequences and shots generally without principal performers and dialogue, filmed by a crew different from 1st unit crew and directed by a 2nd unit director. Second Unit shooting would typically include inserts, , action sequences and establishing shots, etc. Second Unit Days are not included in threshold calculations for Principal Photography.

**Other Days** refers to shooting not included in Principal Photography threshold calculations. Makeup and costume tests, camera tests, etc., would also be considered Other Days and are not included in any threshold calculation.

**Sound Stage** means a large interior space which provides a controlled environment in which filming takes place on sets built or assembled specifically for the production.

**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.

**Television Film**, also known as “made for television movie” means a production intended for broadcast on television, whether free or via a subscription-based service, which has a running time of at least ninety (90) minutes (inclusive of commercial advertisement and interstitial programming).

**Television Pilot** means the initial episode produced for a proposed television series which has a running time of at least thirty (30) minutes (inclusive of commercial advertisement and interstitial programming).

**Television Series**, also referred to as “episodic television series,” means a regularly occurring production intended in its initial run for weekly broadcast on television, whether free or via subscription-based service, that has a running time of at least thirty (30) minutes (inclusive of commercial advertisement and interstitial programming). A television series produced by and for media services providers described as streaming services and/or digital platforms (and excluding network/cable) shall mean a regularly occurring production intended to run in its initial release in a series of narrative and/or thematically related episodes, the aggregate length of which is at least 75 minutes, although the episodes themselves may vary in duration from the thirty (30) minutes specified for network/cable production. Television Series/episodic programs should apply per production season and indicate the number of episodes included in the application. The production season is considered complete when post-production on the final episode of the season is completed.