

PART 172  
EMPIRE STATE INDEPENDENT FILM PRODUCTION TAX CREDIT  
PROGRAM

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Section 172.1 Purpose and general description.

(a) The purpose of these regulations is to set forth the application process for the Empire State independent film production tax credit program established by chapter 59 of the Laws of 2025. Pursuant to chapter 60 of the Laws of 2004, the Department of Economic Development has been granted the authority to promulgate regulations to establish procedures for the allocation of such credits, including, but not limited to, the application process, standards for application evaluations, and any other provisions deemed necessary and appropriate. The Department of Economic Development shall administer the program, including the issuance of tax credit certificates.

(b) A taxpayer that is a qualified independent film production company or that is a sole proprietor of or a member of a partnership that is a qualified independent film production company and which is subject to tax under articles 9-A or 22 of the Tax Law shall be allowed a credit against such tax, pursuant to the provisions referenced in section 24(d) of the Tax Law, to be computed as hereinafter provided.

§ 172.2 Definitions.

As used in this regulation, the following terms shall have the following meanings:

(a) Authorized applicant means a qualified independent film production company that is scheduled to begin principal and ongoing photography within 180 days on a qualified film after submitting a complete initial application to the department and intends to shoot a minimum of one day of principal and ongoing photography on a stage at a qualified film production facility on a set or sets. For the purposes of this definition a day of shooting principal photography shall mean a minimum of eight hours from first unit crew call to wrap during which time the director, first unit crew and principal performer(s) are engaged in the production of principal photography on a stage, on a set or sets, built specifically for the production. A level two applicant must shoot 10 percent of all principal photography days at a qualified film production facility on a set or sets built specifically for the production as outlined above.

(b) Certificate of conditional eligibility means a notification by the department to the authorized applicant indicating that the applicant appears to meet the criteria set forth in section 172.5(a) of this Part and is being considered for the Empire State independent film production tax credit, pending successful completion and approval of the final application. Such notification may include, but not be limited to, the following information: name and address of the authorized applicant, taxpayer identification number, a statement that the initial application meets the criteria for conditional eligibility under section 172.5(a) of this Part and a disclaimer stating that actual receipt of the tax credit is subject to completion and approval of the final application and availability of state funds.

(c) Certificate of tax credit means a certificate issued by the department which states the amount of the Empire State independent film production tax credit that the approved applicant has qualified for, based on the department's analysis under section 24-d of the Tax Law and the provisions of this Part. Such certificate may include, but not be limited to, the following information: name and address of the approved applicant, name of the qualified film the credit applies to, the amount of the tax credit to be received by the approved applicant, the completion date of the project and the taxable year in which the production of qualified film is completed.

(d) Complete application means that all required information is provided in the form and manner prescribed by the department.

(e) Completion of a qualified film means that the process of post production of a qualified film has been finished and a DCP or other final locked form of the qualified film is ready for delivery to the primary venue. An applicant may qualify deliverables for up to two primary venues. All expenses related to additional venue deliverables, archiving, publicity, marketing and distribution, including, but not limited to, the making of copies and promotional materials are considered to occur after the production of a qualified film is completed. The department may deem the

application of a qualified independent film production company complete if such production has completed principal and ongoing photography but elects to submit its final application prior to completion of post-production, forgoing any qualified post-production costs incurred after the last day of principal photography.

(f) Commissioner means the Commissioner of the New York State Department of Economic Development.

(g) Department means the New York State Department of Economic Development.

(h) Digital Cinema Package (DCP) means a collection of digital files used to store and convey digital cinema (DC) audio, image, and data streams.

(i) 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. In order for the department to aggregate the data, this includes the legal gender of all individuals and, to the extent disclosed, the race/ethnicity/gender identity of all individuals. 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.

(j) Diversity plan means that information contained in the initial application's project summary and supporting documentation as necessary which includes, but is not limited to:

(1) an authorized applicant's specific goals for hiring a diverse workforce on a production such as numerical goals for each category of employment identifies by the State, or a detailed narrative explaining the actions the authorized applicant intends to take in order to achieve its specific goals for hiring a diverse workforce on a production that applies for the tax credit under this Part;

(2) whether and how such authorized applicant intends 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

(3) an authorized applicant's plan for hiring vendors with diverse ownership.

(k) Diversity report means written information provided in the final production summary, reports and supporting documentation that 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 its diversity plan;

(3) whether and how the authorized applicant has participated in or intends 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

(4) how the authorized applicant has executed its plan for hiring vendors of diverse ownership.

(1)(1) Relocated television series eligible for relocation costs pursuant to section 190.2(ai) of this Title shall mean the first two years of a regularly occurring production intended to run in its initial broadcast, regardless of the medium or mode of its distribution, in a series of narrative and/or thematically related episodes.

(2) The series must have filmed a minimum of six episodes of the television series outside New York State, with a total minimum budget of at least \$1 million dollars per episode immediately prior to relocating to the State.

(3) For a television series produced for network/cable television, each episode must have a running time of at least 30 minutes in length (inclusive of commercial advertisement and interstitial programming).

(4) For a television series produced for media services providers described as streaming services and/or digital platforms (and excluding network/cable) the aggregate length of episodes must be at least 75 minutes, although the episodes themselves may vary in duration from the 30 minutes specified for network/cable production.

(5) For the purposes of this definition only, first two years of a regularly occurring production shall include only the first two seasons of such production.

(6) Relocated television series which do not produce a minimum of two seasons in New York State are ineligible to receive the Empire State independent film production tax credit on qualified relocation costs pursuant to section 190.2(ai) of this Title but may still receive the independent film production tax credit on qualified costs for the first season of the series.

(m) End credit requirements means those acknowledgements that a qualified film production company or qualified independent film production company, which has applied for credit under the provisions of this section, agrees to include in each qualified film as a condition for the granting of the credit. Each qualified film shall include in the end credits, the phrase Filmed with the support of the New York State Governor's Office of Motion Picture and Television Development and a logo provided by the department.

(n) Feature-length film means a production intended for commercial distribution to a motion picture theater or directly to the consumer viewing market that has a running time of at least 75 minutes in length.

(o) 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; provided, however, that an armory owned by the State or City of New York located in the City of New York shall not be considered to be a film production facility unless such facility is used by a level one qualified production or it meets the criteria contained in the definition of a qualified film production facility in subdivision (af) of this section. Specifically, an armory located in the City of New York used by a level two qualified production must be certified by the department.

(p) Final application means information concerning actual expenditures regarding a qualified film that could make it eligible for the Empire State independent film production tax credit under section 24-d of the Tax Law and the provisions of this Part provided in a form and manner as prescribed by the department and submitted by an applicant after it has completed 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 State; and the total number of shooting days in and outside of New York State and any other information the department determines is necessary.

(q) Initial application means information concerning projected expenditures regarding a qualified film that could make it eligible for the Empire State independent film production tax credit under section 24-d of the Tax Law and the provisions of this Part provided in a form and manner as prescribed by the department and submitted by an authorized applicant. Such application may include, but is not limited to, the following information: the estimated total budget for the qualified film; estimates of expenditures at a qualifying production facility; estimates of shooting days; expenditures in New York State and outside of New York State; and any other information the department determines is necessary.

(r) Level one qualified production means a qualified production that has a maximum production budget of \$15 million and is being produced by a qualified independent production company.

(s) Level two qualified production means a qualified production that has a production budget over \$15 million or which is being produced by a qualified independent film production company.

(t) Other compensation means payments by the applicant to qualified production personnel which constitute taxable income to the individual; said payment may be in the form of goods, services or monetary compensation and is directly and

predominantly related to the labor provided by the qualified personnel to the production.

(u) Pre-production means the process of preparation for actual physical production which begins after a qualified film has a locked budget and has begun, for example, opening a production office, hiring key crew members such as a line producer, location manager, and department heads and includes, but is not limited to, activities such as location scouting, and execution of contracts with equipment vendors and stage space.

(v) Principally engaged in the production of a qualified film and controls the qualified film during production means that the legal entity is ultimately responsible for payment of the direct production expenses (including pre- and post-production).

(w) Post-production means the final phase in a qualified film's production after principal and ongoing photography is completed, including, but not limited to, editing, automatic dialogue replacement, special effects, scoring and music editing, beginning and end credits, soundtrack production, the addition of visual effects. Advertising, publicity, and marketing activities and expenses are not included in post-production.

(x) Premature application means an initial application from which the department reasonably determines that the applicant cannot commence principal and ongoing photography within 180 days of the date the initial application was submitted. Such determination shall be based on, among other things, completeness of the applicant's answers on the initial application and lack of documentation supporting an applicant's initial application.

(y) Principal and ongoing photography means the period of time during which the majority of the film is shot with the participation of actors, director and first unit crew. 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.

(z) Production costs means any costs for tangible property used and services performed directly and predominantly in the production (including pre-production and post-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; or

(2) licensing or rights associated with the production of a qualified

Film. Production costs generally include the wages or salaries or other compensation for writers, directors, composers and performers, technical and crew production costs, such as expenditures for film production facilities, or any part thereof, props, makeup, wardrobe, film processing, camera, sound recording, set construction, lighting, shooting, editing and meals and shall include the wages,

salaries or other compensation of no more than two individual producers per qualified film. Productions which hire individuals whose wages and salaries are eligible for this program and who are also compensated for another qualified position on the qualified film must elect to choose only one of the position's costs for inclusion in their final application's qualified costs. In a qualified film which is a series or relocated television production, only one qualified position per individual per episode is eligible for the credit; the qualified position for an individual can change from episode to episode. Production costs include production assets as defined herein.

(aa) Program means the Empire State independent film production tax credit program.

(ab) Qualified certified public accountant means a New York State certified public accountant approved by the department to conduct a third party verification.

(ac) Qualified film means a scripted narrative feature-length film, television film, television series, regardless of the medium by means of which the film, or series is created or conveyed. For the purposes of the credit provided by these regulations only, a qualified film for which the majority of principal photography shooting days in the production of the qualified film are shot in Westchester, Rockland, Nassau, and/or Suffolk counties and/or any of the five New York City boroughs shall have a minimum gross budget of \$1 million. A qualified film whose majority of principal photography shooting days in the production of the qualified film are shot in any other county or counties of the State than those listed in the preceding sentence shall have a minimum gross budget of \$250,000. Qualified film shall not include:

(1) a television pilot, 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, fundraising 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) a compilation of short films or webisodes aggregated to meet either the definition of television film or television series under these regulations; or

(4) 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, and games. A series that changes either or both the title of the series or the principal cast prior to March 31, 2023, shall be considered to remain in continuous production for each season, provided the series films at the same location as prior seasons, is produced by the same entity, and retains at least 80 percent of the staff from the prior season.

(ad) Production Plus qualified film means a feature-length film, television film, relocated television series which are narrative or thematically related episodes, or television series, regardless of the medium by means of which the film or series is created or conveyed. Production Plus qualified film shall not include:

(1) a pilot, a relocated talk, sketch, or variety show, 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, and games, 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, fundraising film or program, daytime drama (i.e., daytime soap opera), commercials, music videos or reality program; except that a pilot, relocated talk, sketch, or variety show, or a grandfathered talk, sketch or variety show can be an application which is included in the threshold requirement to qualify for the additional credit; 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) a compilation of short films or webisodes aggregated to meet either the definition of television film or television series under these regulations.

(ae) Production Plus majority owner means an entity not publicly traded on the U.S. stock exchange that owns, directly or indirectly, 51% or more of the authorized applicant or has itself, or via a subsidiary, a contractual agreement with a production service company, as long as the authorized applicant is ultimately responsible for the production and provides a letter of attestation that it is ultimately responsible for all production costs and expenses.

(af) Qualified film production facility means a film production

facility in the State, which contains at least one sound stage having a minimum of 7,000 square feet of contiguous production space.

(ag) 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;

(2) is not publicly traded; and

(3) is not majority owned, 51 percent or more, by a company publicly traded on a United States stock exchange and, as a condition of receiving the Empire State independent film production tax credit, agrees to indemnify the department and New York State for any and all claims brought by a third party in connection with the production of the qualified film and/or associated with the claiming, processing and issuing of the tax credit.

(ah) Qualified production costs means production costs only to the extent such costs are attributable to the use of tangible property or the performance of services within New York State directly and predominantly in the production (including pre-production and post-production) of a qualified film which are incurred and paid during the credit period. For the purpose of this definition, attributable to the use of tangible property or the performance of services within New York State shall only include costs and their pro rata portions which are incurred directly in New York State. In the case of an eligible relocated television series, the term qualified production costs shall include, in the first season that the eligible relocated television series is produced in New York State after relocation, qualified relocation costs. Provided, however, that the aggregate total eligible qualified production costs for producers, writers, performers (other than background actors with no scripted lines) and composers shall not exceed 40 percent of the aggregate sum total of all other qualified production costs.

(ai) Qualified relocation costs means the costs incurred, excluding wages, salaries and other compensation, in the first season that an eligible relocated television series relocated to New York State such costs incurred to transport sets, props and wardrobe to New York State and other costs as determined by the Department of Economic Development to the extent such qualified costs do not exceed \$6 million.

(aj) Sound stage means a large interior room or space which provides a controlled environment in which filming takes place on sets built or assembled specifically for the production.

(ak) Television film means a production that has a running time of at least 90 minutes in length (inclusive of commercial advertisement and interstitial programming, if any), regardless of the medium or mode of its distribution.

(al) Television series means a regularly occurring production intended to run in its initial broadcast, regardless of the medium or mode of its distribution, in a series of narrative and/or thematically related episodes, each of which has a running time of at least 30 minutes in length (inclusive of commercial advertisement and interstitial programming, if any). A television series produced for streaming services or digital platforms shall mean a regularly occurring production in a series of narrative episodes. The aggregate length of this series is at least 75 minutes. Each episode may vary from the 30-minute length specified for network/cable production.

(am) Third party verification means a report issued by a qualified certified public accountant on an applicant's final application using agreed upon procedures as prescribed by the department to verify that all criteria pursuant to section 172.5(b) of this Part have been met.

### § 172.3 Eligibility.

For the purposes of this Part, only an authorized applicant shall be eligible to apply for the Empire State independent film production tax credit.

### §172.4 Application process.

The department shall establish at least two application periods per year for the Empire State independent film production tax credit program. During each application window, the department shall accept applications on a first-come, first-served basis based on receipt of the complete initial application for applications that meet the requirements of the program as delineated in section 172.5 of this Part.

#### (a) Initial application.

(1) An authorized applicant shall submit an initial application to the department prior to the start of principal photography. An authorized applicant must submit a diversity plan as part of its initial application. The amount of credit an applicant is eligible to receive shall not exceed the estimated credit based on the estimated total qualified production costs in its initial application. If actual qualified production costs are less than the estimated qualified production costs, credit is based on the final actual qualified production costs. Applications shall be reviewed by the department in accordance with statute and regulations governing the Empire State independent film production tax credit program at the time of

the initial application's effective date.

(2) During its application review, the department may request additional documentation of the viability of the prospective project, such as a finance plan, pre-sales information, casting director engagement, actor commitments, advanced or locked script, verifiable track record of key personnel, and/or evidence of location scouting. Such information should demonstrate credible substantive efforts by the applicant to enable the production to begin principal and ongoing photography within 180 days from the effective date of the application.

(3) The department shall review the initial application and determine whether the applicant meets the eligibility criteria set forth in section 172.5(a) of this Part.

(4) After review of the initial application, the department will notify the authorized applicant of its eligibility and may issue a certificate of conditional eligibility to the authorized applicant.

(b) Final application.

Upon receipt of the final application and third party verification, the department may request additional documentation, including copies of receipts of qualified production costs, to help determine if the production is a qualified film and qualifies for the Empire State independent film production tax credit. An authorized applicant must submit a diversity report as part of its final application. The department shall approve or disapprove the final application based upon criteria set forth in section 172.5(b) of this Part. If the final application is approved, the department shall issue a certificate of tax credit to the approved applicant. The department shall provide a copy of such certificate of tax credit to the Department of Taxation and Finance. If the final application is disapproved, the department shall provide the applicant with a notice of disapproval which shall state the reasons therefor. Such disapproval shall be a rejection of the applicant's final application. A disapproved applicant may appeal such decision pursuant to section 172.8 of this Part or reapply pursuant to the provisions of this Part.

§ 172.5 Criteria for evaluation of applications.

(a) Initial application. An initial application shall be reviewed by the department to determine, in its discretion, that all of the following criteria are met:

(1) the application is complete;

(2) the authorized applicant shall begin principal and ongoing photography within 180 days of the initial application submission date; failure to do will result in the initial application being disqualified; unless the authorized applicant notified the department in advance of exigent circumstances causing the delay; the final determination of the acceptance of the application lies in the sole discretion of the department;

(3) the authorized applicant is a qualified independent film production company or a sole proprietor of a qualified independent film production company or the majority owner thereof;

(4) the authorized applicant has applied to Pool 1 if total qualified production costs do not exceed \$10 million or the authorized applicant has applied to Pool 2 if total qualified production costs are \$10 million or more;

(5) the authorized applicant or the majority owner thereof has not had two or more applications accepted into the Empire State independent film production tax credit program in the calendar year;

(6) the authorized applicant intends to shoot the required portion of principal and ongoing photography on a stage at a qualified film production facility on a set or sets;

(7) the authorized applicant is planning to produce a qualified film;

(8) the authorized applicant's projected qualified production costs (excluding post-production credits) paid or incurred which are attributable to the use of tangible property or the performance of services at a qualified film production facility in the production of a qualified film is likely to equal or exceed 75 percent of the projected production costs (excluding post-production costs) paid or incurred which are attributable to the use of tangible property or the performance of services at any film production facility within and without the State in the production of the qualified film;

(9) if the qualified film being produced is a level two qualified production, then the applicant intends to shoot at least 10 percent of its principal photography days at a qualified film production facility;

(10) the authorized applicant did not knowingly submit false or misleading information to the department;

(11) the authorized applicant certifies that it will purchase taxable tangible property and services, defined as qualified production costs, only from companies registered to collect and remit New York State local sales and use taxes;

(12) the authorized applicant intends to comply with the end credit requirements set forth in section 172.2(m) of this Part;

(13) if the applicant is seeking credit on any costs incurred in New York State outside a qualified film production facility, and the projected qualified

production costs (excluding post-production costs) paid or incurred which are attributable to the use of tangible property or the performance of services at a qualified film production facility in the production of a qualified film are less than \$3 million then the shooting days spent in New York State outside of a film production facility in the production of the qualified film are projected to equal or exceed 75 percent of the total shooting days spent within and without New York State outside of a film production facility in the production of such qualified film;  
and

\_\_\_\_\_ (14) the authorized applicant has submitted a diversity plan.

(b) Final application. A final application shall not be approved by the commissioner unless the commissioner determines, in their discretion, that the following criteria are met:

(1) the application is complete;

(2) the authorized applicant began principal and ongoing photography within 180 days from the initial application submission date unless the department received notice pursuant to subdivision (a)(2) of this section;

(3) the authorized applicant applied to Pool 1 if total production costs did not exceed \$10 million or the authorized applicant applied to Pool 2 if total production costs are \$10 million or more;

(4) the authorized applicant or majority owner of the authorized applicant did not submit more than two applications in the calendar year;

(5) the applicant shot the required portion of principal and ongoing \_\_\_\_\_ photography on a stage at a qualified film production facility on a set \_\_\_\_\_ or sets;

(6) if the qualified film produced was a level two qualified production, then the applicant shot at least 10 percent of its principal photography days at a qualified film production facility;

(7) a qualified film was produced and completed or if an applicant which is a qualified independent production company chooses to submit its final application after completing principal and ongoing photography, the credit period ends on the last day of principal photography and the applicant forgoes any post production costs incurred after principal photography completion;

(8) the applicant's actual qualified production costs paid or incurred (excluding post-production costs) which are attributable to the use of tangible property or the performance of services at a qualified film production facility in the production of the qualified film equaled or exceeded 75 percent of the production costs (excluding post-production costs) paid or incurred which are attributable to the use of tangible property or the performance of services at any

film production facility within and without the State in the production of the qualified film;

(9) the authorized applicant did not knowingly submit false or misleading information to the department;

(10) in the event that the actual qualified production costs (excluding post-production costs) paid or incurred which are attributable to the use of tangible property or the performance of services at a qualified film production facility in the production of a qualified film are less than \$3 million then the shooting days spent in New York State outside of a film production facility in the production of a qualified film equaled or exceeded 75 percent of the total shooting days spent within and without New York State outside of a film production facility in the production of such qualified film. If the shooting days spent in New York State equaled or exceeded the 75 percent threshold, the department shall include in its calculation of the Empire State independent film production tax credit the portion of qualified production costs attributable to the use of tangible property or the performance of services in the production of a qualified film outside of a qualified film production facility;

(11) the applicant has supplied documentation (e.g. still shot, frame grab, finished DVD or other documentation such as the department may require) that the end credit requirements set forth in section 172.2(m) of this Part have been met; and

(12) the applicant has completed a diversity report and the extent to which the applicant has met or made good faith efforts to meet the specific goals outlined in its 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. With respect to this paragraph, the department may issue guidelines to delineate its process for analyzing good faith efforts to meet goals on a diversity plan.

(13) the final application was received within 24 months of the post-production end date or completion of the production if applicable. An extension may be considered if the department is notified prior to expiration.

### § 172.6 Third party verifications

(a) The department shall require from an applicant a third party verification as part of an applicant's final application. Submission of a third party verification shall be subject to review and approval by the department pursuant to this section.

(b) The department shall maintain a list of certified public accountants which shall be utilized by approved applicants to provide the third party verification services

pursuant to subdivision (a) of this section. The department may also develop procedures and performance standards for such certified public accountants to follow. Any certified public accountants failing to meet the requirements of the department's procedures and performance standards for certified public accountants may be removed from the list immediately.

#### § 172.7 Record retention.

All authorized and approved applicants must maintain records, in paper or electronic form, of any qualified productions costs used to calculate their potential or actual benefit(s) under this program for a minimum of three years from the date the applicant claims the Empire State independent film production tax credit. The department shall have the right to request such records upon reasonable notice.

#### § 172.8 Appeal process.

If the applicant's final application is disapproved by the department, or if the approved applicant disagrees with the amount of the Empire State independent film production tax credit granted by the department, the applicant shall have a right to appeal. In the case of an appeal from a disapproval of a final application, such appeal shall be made by sending a letter to the New York State Department of Economic Development, Attn: Counsel's Office, 625 Broadway, 8<sup>th</sup> floor, Albany, NY 12245, within 30 days from the date of the denial letter issued by the department. In the case of an appeal from a disagreement of the amount of the Empire State independent film production tax credit issued, such appeal shall be made by sending a letter to the same address as listed above within 30 days from the date of issuance of the certificate of Empire State independent film production tax credit. Failure to request an appeal within 30 days will be deemed a waiver of applicant's right to appeal.

Upon receipt of a timely letter of appeal, an independent hearing officer will be appointed by the commissioner to handle the appeal. The independent hearing officer shall make a report on the appeal to the commissioner. The commissioner or their designee shall issue a final order within 60 days of the report. A copy of the final order will be issued to the appellant within 10 days after the date the commissioner or their designee renders the final order.

#### § 172.9 Exchange of Information with Department of Taxation and Finance.

Notwithstanding any provision of this Part, employees and officers of the department and the Department of Taxation and Finance shall be allowed and are directed to share and exchange information regarding the credits applied for, allowed, or claimed pursuant to this Part and taxpayers who are applying for credits or who are claiming credits, including information contained in or derived from credit claim forms submitted to the department and applications for credit submitted to the department.

§ 172.10 Production Plus program.

(a) A qualified independent film production company or a company that is a majority owner of one or more qualified independent film production companies, may apply to participate in the Production Plus program after it or the qualified independent film production companies of which it is the majority owner, has submitted two or more initial applications to the Empire State independent film production and/or Empire State film production tax credit program after January 1, 2025.

(b) The Production Plus Threshold 2 is met when an authorized applicant or a majority owner meets or exceeds \$100 million in qualified costs in total with a minimum of two initial applications for any qualified film for the Empire State independent film production tax credit program. After reaching the threshold requirement, an applicant or Production Plus majority owner may be eligible for an additional 10 percent on subsequent qualified film applications for the Production Plus additional credit. The threshold requirement must be met in order of the submission of the initial applications. Evidence of meeting the Production Plus threshold may be submitted by the applicant prior to the completion of the final applications for the two or more qualifying productions. The department shall, in its sole discretion, determine if the threshold requirement has been met.

(c) The Production Plus Threshold 1 is met when a qualified independent film production company applicant or Production Plus majority owner meets or exceeds \$20 million in qualified costs in total with a minimum of two initial applications for any qualified film for the Empire State independent film production tax credit program. After reaching the threshold requirement, an application or majority owner may be eligible for an additional five percent on subsequent qualified film applications for the Production Plus additional credit. The threshold requirement

must be met in order of the submission of the initial applications. Evidence of meeting the Production Plus threshold may be requested by the department and submitted by the applicant prior to the completion of the final applications for the two or more qualifying productions. The department shall, in its sole discretion, determine if the threshold requirements have been met.

(d) If a qualified independent film production company or a company that is a majority owner of a qualified independent film production company, meets the Production Plus Threshold 1, subsequent applications may be eligible to receive an additional five percent credit. If additional applications are submitted which reach the Production Plus Threshold 2, subsequent applications may be eligible to receive an additional 10 percent credit. The department shall, in its sole discretion, determine if the threshold requirement has been met.

(e) Initial applications for feature length films and new television series submitted after December 31, 2028 shall not be eligible for the Production Plus program; provided, however, a season of a television series that enters the Production Plus program or is used to meet a threshold of the Production Plus program before January 1, 2029 shall continue to be eligible. Pilots which are subsequently picked up for a series in New York State are eligible to receive the additional 5 percent or 10 percent Production Plus additional credit even if the series' is not submitted before December 31, 2028.

