



# New York State Post Production Credit

## Instructions for Initial Application

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## Eligibility Requirements

The NY State Post Production tax credit is a fully refundable 10% tax credit on qualified post production costs paid in the production of a qualified film at a qualified post production facility in New York State.

“Post production facility” means a building and/or complex of buildings and their improvements in which films are intended to be post produced. “Qualified Post Production Facility” means a post production facility located in the state, engaged in finishing a qualified film.

The tax credit program is available for post production costs incurred in the original creation of narrative feature films, television series, television pilots and television movies only; documentaries, reality shows, talk shows, news programming, shorts, music videos, and others are not eligible. Programs created from the editing of previously produced content are also not eligible for the credit.

### PROGRAM THRESHOLD REQUIREMENTS

In order for costs related to post production on a qualified film to be eligible, at least 75% of the total of all qualified post production costs on the qualified film must be incurred in NY State.

**Note that only qualified costs, as defined on Form B, whether they are incurred within or without NY State, are included in this calculation. Costs defined as NON qualified on Form B, whether they are incurred within or without NY State, are not included.**

**No qualified post production costs costs used by a taxpayer as the basis for the allowance of the NY State Post Production credit can be used in the calculation of any other NY State tax credit, including the NY State Film Production credit.**

## Application Information

A complete Initial Application consists of the following documents:

**FORM A** – Initial Application for New York State Post Production Credit. An original signed copy of Form A must be submitted to the NY State Governor's Office for Motion Picture & Television Development .

**FORM C** – Budget Cost Qualifier. This form must be submitted with the application in Excel format (*not a pdf*) as provided on the Film Office website at <http://www.nylovesfilm.com/tax/postProduction>. The Budget Cost Qualifier is a summary of projected budget costs, separated into columns identifying the costs as either qualified or not qualified to count towards the tax credit or the threshold requirements. The completed FORM C provides the supporting detail for information requested on FORM A.

**Project Budget** – The budget upon which the Application is based is a mandatory part of the application.

**Post Production Schedule** – A complete post production schedule for the entire project including all post days within or outside NY State is a mandatory part of the application

**FOIL Letter** – To protect confidentiality, you may submit a letter along with the application requesting that application information be withheld from disclosure. See page 9 of these instructions for FOIL disclosure information.

These documents constitute the Initial Application which leads to conditional approval of the project for the New York State Post Production tax credit. Receipt of a certificate of conditional eligibility does not guarantee receipt of the credit, which is dependent on the final application submission meeting the requirements of the credit. Please see the last page of this application for more information on "Next Steps".

This application and its accompanying instructions are consistent with the New York State regulations governing the administration of the post production tax credit. However, should anything in the form or instructions be inconsistent with the regulations, the regulations will control.

### When to apply:

Applications can be submitted no sooner than 60 days prior to the start of principal and ongoing photography on the qualified film, but no later than the last day of principal photography (or, in the case of a television series, no later than the last day of principal photography on the first episode of the series). Applications submitted more than 60 days prior to the scheduled start of or after the conclusion of principal photography will not be accepted.

### Where to apply:

Submit to:

The New York State Governor's Office  
for Motion Picture & Television  
Development  
633 Third Avenue, 33rd Floor  
New York, NY 10017  
(212) 803-2330  
[www.nylovesfilm.com](http://www.nylovesfilm.com)

## FORM A INSTRUCTIONS

### SECTION ONE: Production Information

#### 1-1 Film or Program Title:

The name of the qualified feature film or television program being post produced. If the production does not yet have a name, use the working title. You must notify the NY State Film Office in writing of any name changes.

#### 1-2- Type of Production

Indicate as follows the type of production being post produced:

Feature Film means a production intended for commercial distribution to a motion picture theater or directly to the home video or DVD market that has a running time of at least seventy-five (75) minutes in length.

Television Pilot means the initial episode produced for a proposed television series. This category will include shorter formats which are known as "television presentation," a production of at least fifteen (15) minutes in length, produced for the purposes of selling a proposed television series, but not intended for broadcast.

Television Series, which may also be known 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 in length (inclusive of commercial advertisement and interstitial programming).

NOTE: Television Series/episodic programs should apply per production season, i.e., one application should be filled out for the total of all episodes being produced for that show's broadcast season. 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. Indicate the number of episodes included in this application.

Television Film, which may also be known as "movie-of-the-week," "mow," "made for television movie," or "mini-series," means a production intended for broadcast on television, whether free or via a subscription-based service, that has a running time of at least ninety (90) minutes in length (inclusive of commercial advertisement and interstitial programming).

#### 1-3 Post Production Schedule:

Indicate the key dates for each major phase of the production and post production process as accurately as possible.

NOTE: While it is understood that start dates may change, the Applicant MUST be scheduled to begin principal and ongoing photography on the qualified film within 60 days after submitting this application. Applications submitted more than 60 days prior to the start of principal photography will not be accepted.

- a. Principal Photography Start Date means the first date of principal and ongoing filming of major and significant portions of a qualified film that involves the main actors. "Ongoing" means that once the process of principal photography begins it continues with no significant breaks or delays in an industry standard work schedule for the majority of the total days scheduled for principal photography. Principal Photography End Date means the date principal and ongoing photography is concluded.

NOTE: Re: Television Series: It is understood that under certain industry practices episodic television production seasons can include planned, reasonable interruptions of "ongoing" production. If the project being applied for in this Initial Application is a production season of an episodic television program series, and such an interruption is anticipated, notify the NY State Film Office.

- b. Post Production End Date means the date post production on the qualified film has been finished and the project is ready for delivery to a distributor. Post production can continue beyond a festival screening. 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.

## **SECTION TWO: Applicant & Production Contact Information**

### **2-1 Applicant:**

**PLEASE CONSULT YOUR TAX ADVISOR TO DETERMINE THE TAX IMPLICATIONS FOR THE APPLICANT AND ANY PARTNERS, MEMBERS OR SHAREHOLDERS IN THE APPLICANT PRIOR TO FILLING OUT THIS FORM.**

The 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 final approval, will receive the tax credit certificate.

The applicant must be the entity that incurs and pays direct expenditures related to the physical production process and which is signatory to contracts with a payroll company, facility operators, vendors, etc. during the production.

Indicate the Applicant's name, Employer Identification (EIN) or Social Security Number (SSN) and business address.

LLC, Partnership or S Corp: In addition, if the Applicant is an LLC, a partnership or an S-Corporation, attach additional sheet(s) listing the names, addresses and EINs or SSNs of all members, partners or shareholders and their respective percentages

**PRIVACY ACT NOTIFICATION:** 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 New York State 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.

### **2-2 Applicant's Primary Contact:**

The name, address, telephone number and email address of the designated person who signs this application on behalf of the Applicant, and who will be primarily responsible for the supervision of the preparation of this and all future communication or correspondence with the NY State Office on behalf of the Applicant in regard to this application.

The Applicant's Primary Contact should be a person of authority - i.e., a corporate officer, general partner, managing member, or sole proprietor - of the applicant that is seeking the tax credit(s), and who will be in this position of authority through the completion of post production and submission of the Final Application. In the case of a corporation, this would be an officer of the corporation. This person should have authority to provide such additional documents and information about the Applicant and the qualified film as may be required by the NY State Film Office through the completion of the Final Application.

### **2-3 Primary preparer of this application:**

The name, address, telephone number and email address of the person who was primarily responsible for the completion of this Initial Application. This may be one of the above listed individuals, or an accountant, line producer or other employee of the Applicant who completed the forms and prepared the actual application itself.

## **2-4 through 2-11 Production / Post Production Contacts**

Provide the name, address, telephone number, and email address for the key personnel listed in this section. The Producer and/or post Production Supervisor will be the primary production-related contacts with the Office through at least the post production process. They will be directly involved with the day-to-day operations of post production and have access to current budgets, schedules, and similar documents that will be updated as various phases of production and post production progress.

## **2-12 through 2-14 Additional Key Personnel:**

Indicate key creative and administrative personnel.

## **2-15 Distributor:** (List all—for TV, list network, cable channel, etc.)

If there are any contractual distribution agreements in place, list all distributors for all domestic and foreign markets and territories, beginning with US domestic theatrical, broadcast, cable and/or satellite television and home video.

## **2-16 Presentation Credits**

List here additional production company partners, financial partners, or other companies participating in the production of the qualified film that are anticipated to appear in the opening or closing credits as producers or presenters of the completed production.

## **SECTION THREE: Post Production Detail Information**

The purpose of this section is to help you calculate which of the costs your production will incur can be considered “qualified post production costs” eligible for the New York State Post Production credit program.

In order to complete this section, you will need to refer to two additional forms: Form B (Schedule of Qualified Expenditures) and Form C (Budget Cost Qualifier). See page 6 of these instructions for more information on completing Form C.

### **Form B – Schedule of Qualified Expenditures**

Form B is an industry standard detailed budget form that indicates, line by line, whether a particular budget line item is or is not considered a Qualified post production cost eligible for the calculation of thresholds and for the tax credit. You will need to refer to this document to determine if a particular cost can be considered a Qualified post production cost when filling out the Budget Cost Qualifier (Form C).

Qualified post production costs generally include most ‘below the line’ expenditures, such as costs for editorial staff/crew, use of post production facilities, sound and music editorial, rerecording and mixing, post production lab, visual effects, titles creation, post production animation, etc.

Certain types of costs have been specifically excluded from eligibility to be considered Qualified post production costs. Qualified post production costs shall NOT include: wages or salaries or other compensation for writers, directors, producers, actors and performers; the editing of previously produced content for a qualified film; music clearance fees or licenses; travel costs (hotel, airfare, per diems); costs related to the marketing, promotion or distribution of the finished film; etc.

Certain other commonly encountered post production costs may require a further qualifying step to determine if or when they can be considered Qualified post production costs. Please note the comments provided on the Schedule of Qualified Expenditures (Form B) alongside certain line items, and see the note below "Defining Production vs Post Production". Call the NY State Film Office for help with any questions (212-803-2330).

**NOTE: DEFINING PRODUCTION vs POST PRODUCTION:**

*For questions regarding whether or not a given activity or service can be considered a part of post production and included on Form C as a qualified cost eligible to be counted towards the Post Production credit program thresholds, call the Film Office. This note is general and advisory in nature only; it should not be construed as definitive or authoritative. Final determination of any issue or resolution of any conflict in relation to the definition of "post production" will be determined by the Film Office on a case by case basis.*

***These comments apply to the Post Production credit program ONLY; for information on defining post production costs for any other NY State tax credit program, including the Film Production credit or the Commercial credit programs, see the Instructions and Form B specific to those programs.***

For purposes of the Post Production tax credit, some activities can be defined as "production" in one context -- hence NOT qualified for the post production thresholds or credit -- while in other contexts the same activity can be defined as "post production", and all related costs become qualified costs.

Some activities and services which shall be considered a part of "production" whose related costs will not be eligible for the post production credit include:

- Any activity which occurs on set, with live actors or physical models, which is captured by a camera, video camera or similar image capture device. Examples would include filming of live performers for motion capture purposes; filming or scanning of miniatures or 3D models; live performers or physical set models filmed in front of "green screen" or similar backdrop designed for digital removal/ substitution; stunts; physical effects, etc.

- On set digital or visual effects personnel, such as visual fx supervisor, coordinator, data wrangler, vfx stereographer, etc. (while working on set)

- Previsualization when done in support of production only --e.g., the design of sets, the plotting of camera moves which do not directly integrate with post production generated content, or which otherwise essentially replaces or augments traditional art department design and concept work, as opposed to previsualization done directly in support of the addition of post generated image content such as a creature/character, an effect (e.g. digitally augmented explosion), or set enhancement (creation of an environment which does not physically exist in front of the camera)

- Creation of animated or digital content which is not designed to be integrated with content captured by the camera or other physical means; e.g., the creation of a wholly animated sequence which is presented on its own as an animated sequence would not be eligible, whereas the creation of animated creatures or elements which are then merged with content (i.e.. "real" images and/or performers) that has been captured through the camera would be eligible.

**Form C – Budget Cost Qualifier**

Form C is designed to assist you in determining which costs are qualified and eligible to be applied to the program and to the program thresholds.

Qualified post production costs are eligible for the credit 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 post production of a qualified film. 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 the state. NO cost or salary which is incurred OUTSIDE NY State can be considered eligible for the credit; thus services (e.g., rotoscoping, rendering, etc.) contracted out by a New York based provider to subsidiaries, third party companies or individuals working outside the state are not eligible for the credit.

Form C is a summary of post production costs as found in an industry standard budget 'top sheet' which has been adapted to help you identify which costs within your specific budget qualify and can be applied to the New York State post production tax credit program and to the threshold requirements of the program.

Form C breaks costs into 2 general types of costs:

**Qualified** costs (i.e., costs which are eligible for the credit as indicated by a YES on Form B)

**Non Qualified Costs** (i.e., costs which are not eligible for the credit as indicated by a NO on Form B)

These two general types of costs are then further divided into two subcategories. Each subcategory is represented by a separate column on the form.

**Qualified** costs consists of two subcategories:

a. **Qualified NYS POST** - means all Qualified costs related to all post production activity at a post production facility located in NY State. These costs WILL be eligible for the credit and WILL count towards the 75% threshold.

b. **Qualified OUTSIDE NY** – means all Qualified costs related to all post production activity at a post production facility OUTSIDE NY State. These costs WILL NOT be eligible for the credit, but these costs WILL count towards the 75% threshold.

**Non Qualified** costs consist of two subcategories:

e. **NON Qualified NYS POST** – means those costs that are NOT eligible to qualify for the credit (as indicated by a NO on Form B) even though they are incurred within NY State. These costs WILL NOT count towards the 75% threshold.

e. **NON Qualified OUTSIDE NYS** –means those costs that are NOT eligible to qualify for the credit (as indicated by a NO on Form B) and that are incurred outside NY State. These costs WILL NOT count towards the 75% threshold.

Because it is a summary or 'top sheet' of a more extensive budget form, Form C will collapse or combine a number of lines from the more detailed Form B, Schedule of Qualified Expenditures, and/or your own detail budget, into larger departmental totals. Both Qualified and non-qualified costs will be subsumed within departments. For example, in the department 102 of Producer & Staff, while the salary and some costs associated with the Producer are NOT qualified, the salaries and expenses related to the Producer's assistant, office needs, etc. are Qualified and become eligible for the credit when they are incurred in New York during the post production period.

When filling out the form, simply place the appropriate totals in the appropriate columns. Use Column B (Project Acct #) to indicate the account numbers/codes as they appear in your budget. This will allow for easy correlation between your budget's accounts and the account codes utilized on Form C Column A. It is not uncommon for each cell in Column B to include multiple project account numbers or codes.

**NOTE:** Cells displaying subtotals, totals and percentages contain formulas that will automatically calculate the appropriate amounts. These cells are locked; do not attempt to adjust these amounts.

### 3-1 NYS Post Costs Threshold calculation

Refer to Form C: NY Post Production Threshold Calculation. Enter the amounts in the appropriate cells for any NY State Qualified post costs and Outside NYS Qualified post costs. The TOTAL Qualified Post Costs and the %Total cells will be filled in automatically by formulas. NYS Qualified Post Production costs MUST equal 75% or more of the TOTAL Qualified Post Costs to meet the program threshold requirement.

### 3-2 Post Production Facilities

**"Post production facility"** means a building and/or complex of buildings and their improvements in which films are intended to be post produced.

**"Qualified Post Production Facility"** means a post production facility located in the state, engaged in finishing a qualified film.

Enter the name, address and contact of the primary New York State Qualified Post Production Facilities. If you are also doing major and significant post production work at more than two Qualified Post Production Facilities in NY State please attach additional pages. "Major and significant" can generally be understood to mean any facility at which you will be spending more than 10% of your total post production budget.

### 3-3 **NON-Qualified Production Facility**

If you are also doing major and significant post production work at any non-qualified post production facility, and/or any facility outside New York State, attach copies of section 3-2 with information for each additional facility.

## **SECTION FOUR: New York Employment Information**

4-1 **Qualified Employees** (whether NYS resident or not) are post production employees working in New York on the qualified film and whose costs are eligible for reimbursement in the tax credit program (*as indicated "YES" on Post Form B*).

Non-Qualified Employees (whether resident or not) are those employees whose costs are NOT eligible for reimbursement via the tax credit program (*as indicated "NO" on Post Form B*).

**New York Wages/Comp** are ALL wages and compensation paid to all post production Employees (regardless of their personal residence or point of origin) for work they performed in NY State.

## **SECTION FIVE: End Credits**

By signing and submitting this application, an applicant for the NY State Post Production credit program agrees to include in the end credits of the qualified film "This production participated in the New York State Governor's Office for Motion Picture & Television Development Post Production Credit Program" **and in addition** to include the logo for the "NY ♥ FILM" program.

## **SECTION SIX: Required Attachments**

The following attachments are a mandatory part of this Initial Application; they must all be submitted in order for this application to be considered complete.

1. Completed Form A: Post Production Credit Initial Application, with authorized signature.
2. Completed FORM C (Budget Cost Qualifier) in Excel electronic version.
3. The most current detailed post production budget in an industry standard budget format. If the budget is not finalized, you will need to submit a copy of the final (sign off) budget at the start of principal photography.
4. A topsheet budget summary from the most current complete Production budget.
5. A complete production schedule (including post production)
6. FOIL letter to protect your confidentiality (optional)

## **SECTION EIGHT: Signature**

The individual who signs the application should be the person listed as the primary contact in Section 2-2 above.

The signature on the Initial Application must be provided by the corporate officer, general partner, managing member, or sole proprietor of the applicant seeking the New York State Post Production tax credit. Please indicate the signer's title and relationship to the applicant.

All other information requested by the application should be provided by the corporate officer, general partner, managing member, or sole proprietor of applicant seeking the film production tax credit.

The signer of the application attests, under penalties of perjury, that they have examined the application and accompanying documents and, to the best of their knowledge and belief, they are true, correct and complete.

## **FOIL Disclosure**

**IMPORTANT— HOW TO PROTECT YOUR INFORMATION** The New York State Governor's Office for Motion Picture & Television Development, as part of 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 applicants who submit information to the Film Office may request that the information be exempted 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 NY State Film Office, must specify the information to be withheld and must state the reasons for the requested exception.

The NY State Film Office reserves the right to determine whether the information submitted by the applicant will be withheld from disclosure. The Office 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 Office.

## **Next Steps**

### **What happens after you submit this Initial Application?**

1. Interview – You must call The New York State Governor's Office of Motion Picture Development at (212) 803-2330 to schedule an appointment prior to the start of principal photography to discuss the application. This meeting can be in person or via phone conference, but it must be attended by a producer, the post production supervisor, and the post production accountant.
2. Approval – If the initial application is approved, the NYS Film Office shall issue a certificate of conditional eligibility to the authorized applicant. If the Initial application is disapproved, the NYS Office shall provide the applicant with a notice of disapproval which shall state the reasons therefore. Such disapproval shall be a rejection of the applicant's initial application. An authorized applicant that disagrees with the disapproval or the amount of the credit may appeal pursuant to the process as set forth in the regulations of the New York State Film Production Tax Credit program. For a copy of the regulations please visit the website listed below. Receipt of the certificate of conditional eligibility does not guarantee availability of the credit or amount of the credit. Final eligibility and the amount of the credit will be determined after submission and review of the final application and the required supporting documentation.

3. Final Application – No more than 60 days after the completion of post production on the qualified film, the production must submit a completed Post Production Final Application (FORMS D & E) and all the supporting documents, including but not limited to a final post production budget, separate general ledger runs for each qualified column in Form E, payroll report (Form F), cast & crew list, post production schedule, and any other documents required to accompany that Final Application. Failure to provide the final information may result in a loss of the credit.
4. Record Retention - Each authorized and approved applicant must maintain records, in paper or electronic form, of any qualified 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 NYS Film Office shall have the right to request such records upon reasonable notice.

Thank you for bringing your project to New York and for applying for the New York State Post Production Credit program.

If you have further questions, please contact us at:

The New York State Governor's Office for  
Motion Picture & Television Development  
633 Third Avenue, 33rd Floor  
New York, NY 10017  
(212) 803-2330  
[www.nylovesfilm.com](http://www.nylovesfilm.com)

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