

## **Film Tax Credit Program – Frequently Asked Questions**

*Updated 5/11/2022*

### **For applications submitted after July 2, 2021:**

The New Jersey Film Tax Credit Program provides a tax credit of 35% of qualified film production expenses incurred after July 1, 2018 against the corporation business tax and the gross income tax for certain expenses incurred for the pre-production, production, and post-production of certain films in New Jersey. The film tax credit may be reduced to 30% for qualified film production expenses incurred for services performed and tangible personal property purchased for use at a sound stage or other location that is located within the 30-mile radius of Columbus Circle. The 35% would be applied to all qualified wages and salary expenses statewide, including qualified payments to loan outs.

### **For applications submitted prior to July 2, 2021:**

The New Jersey Film Tax Credit Program provides a tax credit of 30% of qualified film production expenses incurred after July 1, 2018 against the corporation business tax and the gross income tax for certain expenses incurred for the pre-production, production, and post-production of certain films in New Jersey. The film tax credit may be increased to 35% for qualified film production expenses incurred for services performed and tangible personal property purchased through vendors whose primary place of business is located in Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, Mercer or Salem County.

### **General Program Questions**

#### **What is the difference between a total film production expense and a qualified film production expense? Why is this an important distinction?**

As part of eligibility for tax credits under the NJ Film Tax Credit Program, a film must meet at least one of two expense eligibility thresholds:

- **Total Film Production Expenses:** A minimum of 60% of the film's total production expenses (excluding post-production expenses) must be incurred after July 1, 2018 for services performed and goods purchased through vendors authorized to do business in New Jersey; or
- **Qualified Film Production Expenses:** The qualified film production expenses, in a single period for the applicant must exceed \$1,000,000 for services performed, and goods purchased, through vendors authorized to do business in New Jersey.
- **Qualified Film Production Expenses:** is defined as: *expenses incurred in New Jersey, after July 1, 2018 for the production of a film, including pre-production costs and post-production costs, including but not limited to: wages and salaries that are subject to the New Jersey Gross Income Tax of individuals employed in the production of the film; the costs for tangible personal property*

*used and services performed in New Jersey, directly and exclusively in the production of the film, such as expenditures for film production facilities, props, makeup, wardrobe, film processing, camera, sound recording, set construction, lighting, shooting, editing, and meals.*

However, qualified film production expenses do not include: expenses incurred in marketing or advertising the film; or payment in excess of \$500,000 for (1) a highly compensated individual (directly or indirectly through a loan out company) for costs for a story, script, or scenario used in the production of the film or (2) wages or salaries or other compensation for writers, directors, including music directors, producers, and performers, other than background actors with no scripted lines.

Please note that total film production expenses and qualified film production expenses have different definitions, and total film production expenses are used only as a means of determining eligibility for the program for those that meet the minimum 60% threshold.

Once a film project is deemed eligible for tax credits, the amount of tax credits a project will receive is based entirely on a percentage of the film's ***qualified film production expenses***.

### **What does “incurred in New Jersey” mean?**

Incurred in New Jersey is a standard used to determine if an expense is a qualified film production expense under the NJ Film Tax Credit Program. Incurred in New Jersey is defined as: *service performed within New Jersey and tangible personal property used or consumed in New Jersey. A service is performed in New Jersey to the extent that the individual performing the service is physically located in New Jersey while performing the service. Notwithstanding where the property is delivered or acquired, rented tangible property is used or consumed in New Jersey to the extent that the property is located in New Jersey during its use or consumption and is rented from a vendor authorized to do business in New Jersey or the film production company provided to the authority the vendors information in a form and manner prescribed by the authority. Purchased tangible property is not used and consumed in New Jersey unless it is purchased from a vendor authorized to do business in New Jersey and is delivered to or acquired within New Jersey; provided however, that if a production is also located in another jurisdiction, the purchased tangible property is used and consumed in New Jersey if the acquisition and delivery of purchased tangible property is located in either New Jersey or another jurisdiction where the production takes place.*

In order for an expense to be ***incurred*** in the State:

Rental Equipment: Must be rented from a vendor authorized to do business in New Jersey. If the equipment is initially acquired in another state, the expenses can be counted as incurred in New Jersey, on a prorated basis for its use in New Jersey.

Tangible Personal Property must be purchased from a vendor authorized to do business in New Jersey. The property must be purchased in New Jersey, or if from an out-of-state vendor, shipped by the vendor to New Jersey. However, if the production is also shooting in another state, the expenses for personal property incurred in or delivered to that other state, can be counted in New Jersey, on a prorated basis, for its use in New Jersey.

Services must be performed in New Jersey.

Travel (i.e. Airfare) must be purchased through a New Jersey travel agency.

CPA Audit Fees must be purchased from a CPA is licensed in New Jersey. The CPA services must be performed in the State.

Insurance (liability or real property) must be purchased through a New Jersey-based agency. Please note that to be a qualified film production expense, the film production company must be the policy holder and the policy must be exclusive to the specific film production seeking tax credits.

Payroll Handling Fees: the payroll company must be an authorized vendor and perform the services within the State.

**Can a pass-through entity apply for the credit?**

A pass-through entity can apply for the credit, but cannot use the tax credit directly on its tax return. The credit flows through to the business entity's members, partners, or shareholders. Examples of such pass-through entities are partnerships, LLCs (including a Single Member Limited Liability Company (SMLLC) or single member foreign Limited Liability Company (LLC) qualified to do business in New Jersey), S corporations, and sole proprietorships

**Do qualified film production expenses include pre-production and post-production costs?**

Yes, qualified film production expenses can include pre-production and post-production costs incurred in New Jersey after July 1, 2018.

**What about payments made to a loan out company or to an independent contractor—are such payments considered qualified film production expenses?**

Payments made to a loan out company or to an independent contractor shall not be a “qualified film production expenses” unless the payments are made in connection with a trade, profession, or occupation carried on in New Jersey or for the rendition of personal services performed in New Jersey and the taxpayer has made the withholding required by N.J.A.C. 19:31-21.3(c).

All loan out companies and independent contractors are required to be fully authorized to business in New Jersey.

**Do payments to loan out companies qualify as an expense for wages and salary or as a vendor payment for services performed?**

Payments made to loan outs whether through payroll or direct payments would be considered a wage and salary expense as long as the loan out is authorized to do business in the State, and the required withholdings are made.

**Will the NJ sales and use tax exemption program continue with the film incentive?**

The NJ Film Tax Credit Program does not impact or discontinue any existing programs.

**Is there an annual cap per project?**

There is no defined cap per project, however the annual program cap is \$100 million per State Fiscal Year (July – June)..

**Are tax credits earmarked on a first-come, first-served basis based on date of initial application?**

Yes, assuming the project meets the eligibility requirements for the program, tax credits are available on a first-come, first-served basis, based on the date/time a fully completed application is received by the NJEDA.

If an incomplete application is received, the NJEDA will notify the applicant, who will be required to provide the additional information and re-submit the application. In this scenario, the date/time of record will be based upon when the complete application is resubmitted, not the initial submittal of the incomplete application.

**What constitutes a fully completed application?**

Please visit [www.njeda.com/film](http://www.njeda.com/film) for a checklist of required items that must be provided in order for an application to be considered fully completed.

**Does the tax credit amount approved at initial application limit the maximum possible credit a project can receive? For example, if a film application is approved for a tax credit of \$6.5 million, and the production company goes over budget and incurs qualified film production expenses beyond what the tax credit approval was based upon, is the production company limited to the \$6.5 million tax credit that was initially approved?**

Yes – the initial approval provided by the NJEDA Board will be a not to exceed amount. If the project goes over budget and certifies qualified expenses beyond what was originally estimated, the award will be limited to the amount approved initially by the NJEDA Board.

In a scenario where a project is approved for tax credits that are more than what the production ultimately spends and can certify, the project will receive an amount of tax credits based upon the actual amount spent/certified.

**What happens if I need to update the budget submitted with the application to capture an increase in spend?**

If the application has already been deemed complete, and the initial budget reviewed by the consultant, the production would need to withdraw the initial application and resubmit a new application with updated numbers. This application would be treated as an entirely new application and all required fees would need to be paid again.

If the initial application had not yet been deemed complete – or if the Authority requests updated information - the production may be able to update the initial budget submitted.

**How should a television series that is looking for a multi-year commitment for tax credits apply for the program?**

Television series spanning multiple years should file individual applications for the program on a per-season or per-episode basis, as there are no multi-year commitments under the program.

**What are the criteria for meeting the diversity standard, in order to qualify for an additional 2% tax credit?**

A taxpayer shall be allowed an increase in the tax credit against the tax imposed pursuant to section 5 of P.L. 1945, c. 162 (N.J.S.A. 54:10A-5) in an amount equal to two percent of the qualified film production expenses, provided that the application is accompanied by a diversity plan, outlining:

- The intention to prioritize the hiring of minority persons and women in an amount of not less than 15 percent of the total hired for the qualified film or digital medial production;
- The efforts made to ensure equal employment opportunities for minority persons and women in the recruitment, selection, appointment, promotion, training and related employment areas;
- The specific goals, which may include advertising and recruitment actions, for hiring minority persons and women, including full-time jobs for full-time or full-time equivalent employees in New Jersey for production staff and crew, entry level positions, management positions, and talent related positions; and
- The participation in training, education, and recruitment programs that are organized in cooperation with State colleges and universities, labor organizations, and the motion picture industry and are designed to promote and encourage the training and hiring of minority persons and women who represent the diversity of the State population

If you are involved with a project that wishes to submit a diversity plan, please visit [www.njeda.com/film](http://www.njeda.com/film) for more information.

**Understanding that tax credits can be sold and transferred, can the credits be transferred multiple times or just once? Can the credits be transferred to multiple parties?**

The credits may be transferred one time only by the initial applicant, subject to a non-refundable \$1,000 transfer fee. The credits may be transferred to an individual or business entity that has CBT or GIT liability. The credits can also be sold to multiple entities; however each transfer will be subject to the \$1,000 fee and the purchaser must have a valid tax clearance.

**Is there a link to access for the tax credit transfer application?**

The Transfer Application is forthcoming and, when available, will be found at [www.njeda.com/film](http://www.njeda.com/film)

**If the tax credits for FY2019 are exhausted before a project claims the tax credit, will the production expenses automatically roll over into FY 2020?**

Allocation of tax credits will be based upon and reserved for the State Fiscal Year corresponding to the date the project is initially approved by the NJEDA Board.

Because NJEDA will not approve more than the allocation available (including rollover) in that State Fiscal Year, there will not be a scenario where a project that was approved by the NJEDA Board for a tax credit, comes in to claim that tax credit and the State Fiscal Year's allocation that the project is entitled to is exhausted.

However, a project may *apply* for a tax credit during a time where the current State Fiscal Year tax credit allocation is oversubscribed. The applicant will be asked to indicate, as part of the application, in the event the current Fiscal Year allocation is oversubscribed, whether they would like the EDA to consider the application at the earliest possible date within the next State Fiscal Year. If the applicant authorizes NJEDA to defer the application to the following Fiscal Year, then NJEDA will consider the application in the following Fiscal Year based upon the date/time a completed application was received by NJEDA.

Additionally, if an application is seeking more credits than is available in the current allocation, the applicant will be asked if they are willing to forgo the full amount of the request in order to be approved in the current fiscal year. The applicant could receive up to the amount remaining in the allocation or request the project to be reviewed for approval when additional credits are made available in the next fiscal year – allowing smaller projects behind them to use the allocation.

### **Where is a document outlining the Agreed Upon Procedures?**

The Agreed Upon Procedures can be found at [www.njeda.com/film](http://www.njeda.com/film)

EDA has recently updated its Agreed Upon Procedures. Currently there are two versions, the first of which was effective as of the December 16, 2018 that may be used for all projects. There is a second Agreed Upon Procedures that is effective as of March 1, 2021 and may be used in the CPA review of all projects approved under the program. **Projects approved by the EDA Board on or after July 1, 2021 must use the 2021 Agreed Upon Procedures.**

### **Is sampling allowed in a CPA's review of a production company's Qualified Film Production Expenses?**

Please see the Agreed Upon Procedures documents linked above for details relating to the verification of costs.

### **Is there still a need to certify a production company's total film production expenses in the instance where it is qualifying for the program on the basis of incurring more than \$1 million in qualified film production expenses?**

In the event that the project qualifies for the program on the basis of incurring qualified film production expenses of more than \$1 million for services performed and goods purchased, through vendors authorized to do business in New Jersey, the CPA verification report need only verify the qualified film production expenses, not the total film production expenses.

However, pursuant to P.L. 2018, c.56 - Garden State Film and Digital Media Jobs Act, a CPA verification report may only be prepared following the completion of the production.

### **For projects that include expenses incurred for use at a sound stage or other location within a 30-**

**miles radius of Columbus Circle, NYC (30% credit), AND outside the 30-mile radius (35% credit), what procedure(s) need to be followed to track this?**

At application, if the applicant anticipates incurring expenses for use within the 30-mile radius, they will need to fill out Schedule D on the budget template. This schedule will include the anticipated or known location where the expense will be used. To the extent a line item on the budget is incurred for use at locations both within and outside the 30-mile radius, the expense should be prorated based on its use within the zone on Schedule D. Expenses for wages and salaries, including payments of compensation to loan outs and independent contractors (who are authorized to do business in the State) would be eligible for the 35% credit, provided the required withholdings were made, regardless of shooting location. Wages and salary expenses would not appear on Schedule D.

At certification, the applicant must submit documentation which demonstrates where the qualified film production expense was used.

**Is “vendor authorized to do business in New Jersey” defined? Does the vendor need to be physically located in New Jersey?**

The regulations define “vendor authorized to do business in New Jersey” as a vendor that has obtained authorization to conduct business in this State by filing the appropriate documents with the State of New Jersey Department of the Treasury, Division of Revenue and Enterprise Services. **All qualified expenses must be incurred through Vendors authorized to do business in New Jersey.**

However, in recognition that there has been some confusion regarding the requirement that all non-payroll expenses must be paid to registered vendors in order to deem them *qualified* film production expenses, the EDA has determined it will allow projects that were approved before July 1, 2021 to choose not to perform vendor registration verification. Beginning on July 1, 2021, all approved projects will be required to demonstrate that purchases have been made from registered vendors.

Further, the EDA has determined to provide an exception from the vendor registration verification requirement for de minimis purchases as follows:

For projects with approved tax credit awards of less than \$2.5 M- purchases up to \$1,000  
For projects with approved tax credit awards from \$2.5 M to \$5 M- purchases up to \$2,500  
For projects with approved tax credit awards greater than \$5M- purchases up to \$5,000

For example, a project that has been awarded a \$3M film tax credit must verify vendor registration for all purchases greater than \$2,500.

**For the vendor verification thresholds listed above, are the limits for individual purchases or an aggregate of all purchases through one vendor?**

The schedule above applies to each individual transaction. For example, if a production is approved for \$1 million in tax credits has 10 purchases of \$120 through a single vendor, no vendor registration verification is required.

**What is the best way for a production to determine if a vendor is ‘authorized to do business in New Jersey’?**

The production should obtain a Business Registration Certificate for each vendor from the link below:  
[https://www1.state.nj.us/TYTR\\_BRC/jsp/BRCLLoginJsp.jsp](https://www1.state.nj.us/TYTR_BRC/jsp/BRCLLoginJsp.jsp)

**Production companies will need to submit a Tax Clearance Certificate throughout the process. Where can one be obtained?**

Go to: [New Jersey Tax Clearance - Premier Business Services Portal](#) for information and instruction to use the Premier Business Services Portal.

**Is there a hiatus rule? For example, if a production company were to shoot at least one day of principal photography within the 150-day period after application submission, could the production company resume a couple of months later and still qualify for the tax credit?**

There is no rule prohibiting a hiatus. Unless NJEDA provides otherwise, the required CPA certification must be submitted to NJEDA no later than four years after the NJEDA's initial approval if the applicant is seeking a credit against the tax imposed pursuant to section 5 of P.L. 1945, c. 162 and three years after the NJEDA's initial approval if the applicant is seeking a credit against the tax imposed pursuant to the N.J.S.A. 54A:1-1 et seq. Applicants that expect to undertake a hiatus following principal photography should also be aware of the following:

- At application, the applicant will be required to provide an estimated completion date for the film. If the project expects to undertake hiatus following principal photography, the applicant should account for this anticipated hiatus when providing an estimated completion date at application.
- Following approval of a tax credit, the project will be required to provide progress reports throughout the duration of the project, which will detail the progress of the project relative to the estimated completion date that was provided at application. Failure to submit timely, periodic reports that demonstrate satisfactory progress may lead to the forfeiture of the tax credit.
- Projects will be issued tax credits that are dated with a tax year corresponding to the Fiscal Year under which the project was initially approved by NJEDA. The tax credit must be used on the tax return for that tax year.

### **Additional Qualified Film Production Expense Questions**

Please refer to the first two questions of this FAQ document to review the difference between a total film production expense and a qualified film production expense, as well as how NJEDA will be determining whether a qualified film production expense has been incurred in New Jersey.

Below is a list of common expenses with a notation of whether they are generally deemed *qualified film production expenses*. Please note that this list is not exhaustive and is provided for general guidance purposes only and can be updated at any time without notice. Specific facts and circumstances relating to the purchase and usage may be examined to determine whether a cost may qualify.

**Are there certain types of expense that are not considered qualified film production expenses?**

The law excludes from qualified film production expenses those expenses incurred in marketing or advertising a film; and a payment in excess of \$500,000 for (1) a highly compensated individual



(directly or indirectly through a loan out company) for costs for a story, script, or scenario used in the production of a film or (2) wages or salaries or other compensation for writers, directors, including music directors, producers, and performers, other than background actors with no scripted lines.

**What if an individual is performing multiple ATL job functions, is the \$500,000 cap per jobs function?**

No, the cap is \$500,000 per individual. If a producer is also an actor, only the first \$500,000 would be a qualified film production expense.

**Would all employer paid taxes (FICA, FUI, SUI) qualify for all resident and non-resident cast/crew?**

These expenses would qualify as long as the labor was incurred in New Jersey and the required withholdings were met.

**Would qualified fringes (SUI, FUI, FICA etc) and per diems count towards the \$500,000 cap?**

These fringes or per diems would not count towards the \$500,000 cap.

**Are union dues considered qualified film production expenses?**

If these expenses are allocable to wages or salaries of individuals employed in the production of a film on which New Jersey Gross Income Tax is due, then these expenses would be considered qualified film production expenses.

If these expenses are separate and in addition to wages or salaries of individuals employed in the production of a film on which New Jersey Gross Income Tax is due, then the applicant must satisfactorily demonstrate that the expense was incurred in New Jersey and that the expense is direct and exclusive to the film seeking tax credits.

**Are per diems or allowances for living, travel or meals considered qualified film production expenses?**

If these expenses are allocable to wages or salaries of individuals employed in the production of a film on which New Jersey Gross Income Tax is due, then these expenses would be considered qualified film production expenses.

If these expenses are a separate benefit provided to individuals employed in the production of a film on which New Jersey Gross Income Tax is due, they are subject to the ability of the applicant to satisfactorily demonstrate that the expense was incurred in New Jersey and that the per diem or allowance was used directly and exclusively for the film seeking tax credits. Direct purchases of travel or meals by the production company may qualify.

Interstate Ridesharing and taxi expenses could qualify as long as one leg of the trip is in New Jersey and the ride was for the exclusive use of the production.

**Are expenses for tolls considered a qualified film production expense?**

Intrastate tolls would be considered qualified, but interstate tolls would not be eligible.

**Are expenses for Box or Kit Rentals considered a qualified film production expense?**

If the expenses are a non-wage expenses, then the expense must be incurred through a vendor authorized to do business in New Jersey. If the expense is allocable as wages, the required withholding must be made on the expense.

**Are expenses for location rentals including renting private property, considered a qualified film production expense?**

For the expense to be qualified, the entity receiving payment, must be authorized to do business in New Jersey. This may require the owner to form and fully register a business entity to receive payment.

**Is liability insurance, completion bonds, or real property insurance considered qualified film production expenses?**

In order to be considered a qualified film production expense, the insurance policy must be purchased through a New Jersey-based agency, the policyholder must be the film production company seeking/approved for tax credits, and the policy must be directly for and exclusive to the film for which the production company is seeking/approved for tax credits.

**If an item is purchased online, such as a costume or prop, can it be considered a qualified film production expense?**

If the vendor is authorized to do business in New Jersey, and the item is shipped by the vendor to New Jersey, the expense can be a qualified film production expense. If the item is shipped to another state, the expense can be considered a qualified expense, as long as the production is also filming in that state, and the expense is prorated based on its used in New Jersey.

**For an equipment company based out-of-State that will be supplying cameras, props, wardrobe, etc., would those expenses be considered qualified film production expenses if the equipment company has a New Jersey address and is registered to do business in New Jersey?**

The vendor renting the equipment must be an authorized to do business in New Jersey. If the production picks up the equipment from the out-of-state vendor, the expense can be considered a qualified film production expenses if the production is also filming in that state, and the expense is prorated based on its use in New Jersey.

**Are donations made to a non-profit or other entity considered a qualified film production expense?**

Donations are not considered a qualified film production expense.

**Shipping: Do shipping costs of documents or items (FedEx, UPS, USPS, etc) qualify?**

If the shipping expense is incurred in New Jersey from a vendor authorized to do business in New Jersey, the shipping expense would qualify.

**Is contingency a qualified film production expense?**

Contingency is not a qualified expense and there is no specific line item on the budget template.

**Do personal cell phone reimbursements qualify for cast and crew?**

No, these reimbursements would not qualify.

**Would expenses for cast and crew PPE, and lodging for potential quarantine requirements qualify?**

PPE and lodging could qualify as long as the purchase was incurred in New Jersey through a vendor authorized to do business in New Jersey.

**Where on the Budget Template should I include COVID expenditures?**

While there is no specific line item for these costs, they can be added to the OTHER section under Misc Expenses. The column to the right of the expenses amount should be used to let us know what is included in that line item. You may be asked to provide supporting documents regarding this line item.

**Is there a requirement that the project ends up being distributed to submit the CPA certification?**

There is no distribution requirement, however, the project needs to be fully complete and the NJ logo credit requirements satisfied as determined by the NJ Film Commission.

**APPLICATION QUESTIONS:**

**Who can fill out the application? Who can be listed as the Authorized Representative?**

Only individuals who can legally bind the applicant entity should be filling out and certifying to the contents of the application. This would not include producers or production accountants. Producers and accountants can be listed as the application contact, however only a principal executive or owner of the applicant entity should be listed as the Authorized Representative.

**What is a Privilege Period?**

A privilege period is the applicant entity's tax year.

**Am I able to edit the application after I submit it?**

No, once submitted, the application locks. You do have the ability to share a draft of the application before final submission.

**PLEASE NOTE:**

The information contained in these Frequently Asked Questions is provided for general guidance purposes only and does not replace or supersede the laws and regulations associated with the New Jersey Film Tax Credit Program, namely P.L. 2018, c.56 - Garden State Film and Digital Media Jobs Act and N.J.A.C. 19:31-21.1 et seq., and further information may be contained in such laws and regulations.

A copy of the most recent program statute and rules can be found at <https://www.njeda.com/film>