

Garden State Film and Digital Media Jobs Act Film Tax Act NJEDA Agreed Upon Procedures Requirements- Film Tax Credit

An Independent Certified Public Accountant (CPA) shall perform the following procedures and produce an Agreed Upon Procedures (“AUP”) report. This AUP report must be prepared following completion of the film and submitted to NJEDA (“New Jersey Economic Development Authority”) no later than 12 months from the date the last Total Film Production Expense was incurred and must include the name and contact information for the CPA responsible for the review and final sign off of this report, the name of the production and the date that the agreed upon procedures were completed. All determinations must be made in consideration of the Garden State Film and Digital Media Jobs Act, supporting administrative rules, and the specific project Approval Letter.

Eligibility:

1. Obtain the following documents from the Production Company (“the Company”) relating to the production (preproduction through post-production) of the film for which the Company was approved for a tax credit by the NJEDA:
 - a. Detailed production expenditure ledgers
 - b. Payroll register(s) from the 3rd party payroll company
 - c. New Jersey Film Tax Credit Program Film Production Cost Certification including:
 1. Cost Certification Report
 2. Total Film Production Expenses – All
 3. Total Film Production Expenses – Vendors Authorized to do Business in New Jersey
 4. New Jersey Qualified Film Production Expenses from Vendors with Primary Places of Business in Targeted Counties (for projects that submitted an application before January 7, 2021 and were approved for the 5% Targeted Counties bonus.)
 5. New Jersey Qualified Film Production Expenses for use at a sound stage or other location that is located in the State within a 30-mile radius of the intersection of Eighth Avenue/Central Park West, Broadway, and West 59th Street/Central Park South, New York (only for applications submitted on or after July 2, 2021)
 6. Payroll certification report
 7. Qualified New Jersey Vendor listing
 8. Film Production tax credit application, including budget and production schedule, and diversity bonus materials (e.g., Form A - diversity plan, Form B - diversity tracking sheets, 3rd party payroll company reports, diversity goal tracker, etc.)
 9. Executed Approval letter between the Company and the NJEDA
 10. Listing of loan out companies and independent contractors
2. Obtain the production company’s documentation to support the basis for eligibility based on the below criteria:
 - a. At least 60 percent of the Total Film Production Expenses, exclusive of Post-Production Costs were incurred for services performed and goods purchased through vendors authorized to do business in New Jersey (e.g., the 60% threshold), or

- b. The Qualified Film Production Expenses (“QFPE”) of the Company, including only services performed and goods purchased through vendors authorized to do business in New Jersey and payroll expenditures, exceeded \$1,000,000 during the privilege period.
 - c. For “Reality shows”, which are otherwise ineligible, may be eligible for the Film Tax Credit Program if the production company of the reality show owns, leases, or otherwise occupies a production facility of at least 20,000 square feet in an Urban Enterprise Zone for at least two years, and, after July 1, 2018, makes a capital investment of at least \$3 million in that facility.
3. Obtain a copy of the vendors Business Registration Certificate in order to determine that the vendor from whom the purchase was made is registered for sales tax by the Division of Taxation. Inquire with a responsible official at the Production Company that Business Registration Certificates have been downloaded from the New Jersey Division of Revenue On-Line Registration Service website by the Company and have been retained by the Company in the event NJEDA staff request that it be provided.
4. Obtain documentation evidencing that the approved film production meets the definition of Film in the Garden State Film and Digital Media Jobs Act (the “Act”) by comparing the approved film production to the definition of “Film” in the Act.
5. Obtain and inspect post-production documents for film (e.g., vendor invoices) evidencing the date the final elements (e.g., final composite answer print, air master, or digital cinema files) were created and that the approved film production has been completed. Document the date the approved film production has been completed.
6. Obtain documentation that the final production credits include a ‘Filmed in New Jersey’ statement or logo.
7. Identify the start and end dates in which the Company had QFPE for which it is seeking to receive film tax credits based on dates QPFE expenditures were paid.
8. Obtain copies of daily production reports, call sheets, or equivalent documents evidencing principal photography of the film commenced within 180 days from the date of the original application to the NJEDA for the tax credit.

If the Company has not met eligibility standards as noted above, there is no need to continue with the AUP. The CPA should notify the Company management to inform NJEDA that they are ineligible for the credit.

Non-Payroll Expenditures

1. Inspect the non-payroll expenditures in the detailed production expenditure ledgers for non-qualified expenses. Deduct any errors from the QFPE and remove them from the population to be sampled. Attach a detail listing of exceptions to the AUP Report. Non-qualified expenses are including but not limited to:
 - a. Marketing or advertising
 - b. Cell phone reimbursements
 - c. Airfare not purchased in New Jersey (NJ) airport or through NJ travel agent
2. Business Registration Certificates should be downloaded from the New Jersey Division of Revenue On-Line Registration Service website by the Company and must be retained by the Company in the event NJEDA staff request that it be provided. Verification of Vendor Registration must be performed based upon the criteria listed below:
 - Film Credit Awards less than \$2.5 million – Select all expenses greater than \$1,000
 - Film Credit Awards \$2.5 million to \$5.0 million – Select all expenses greater than \$2,500
 - Film Credit Awards greater than \$5.0 million – Select all expenses greater than \$5,000

Deduct any errors from the QFPE and remove them for the population to be sampled below. Attach a detail listing of exceptions to the AUP Report. Expenses below the stated thresholds should not be considered for Procedure 3 immediately below.

3. Select a sample, excluding any known errors noted above in Non-Payroll Expenditures, Procedure 1 of all nonpayroll QFPE items according to the sampling methodology below:
 - All items greater than or equal to \$20,000
 - 100 randomly selected items greater than \$2,500, and less than \$20,000
 - 100 randomly selected items less than or equal to \$2,500
4. For each expenditure item selected in the sample, perform the following procedures:
 - a. Determine if the expenditure is an eligible cost (incurred within NJ and directly related to the production). "Incurred in New Jersey" means, a 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. 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.
 - b. Inspect invoices and proof of payment (i.e., canceled checks, check images, check copies, bank statements, credit card statements, or equivalent documents). and determine the expenditure was paid for expenditures incurred in New Jersey.
 - c. Determine that the use portion in New Jersey was appropriately pro-rated to reflect usage in New Jersey of rented tangible personal property and tangible personal property that is purchased in New Jersey or another jurisdiction where the production takes place.
 - d. Determine that the expenditure was recorded net of any refunds, discounts, rebates, sale proceeds, invoicing errors, and purchase returns, as recorded in the detailed production expense ledgers.
 - e. Determine that the expenditure was not for in-kind services or any other activities specifically excluded by NJEDA.
5. For non-qualified costs noted in the expenditure test for the sample identified above, any exceptions should be noted in the AUP and the related costs disallowed.
6. Adjust the QFPE for known errors noted during the expenditure test. Calculate the rate of misstatement from the expenditure test by dividing the dollar amount of the misstated items by the dollar amount of the strata sample population.
7. Perform the following procedures based upon the results of the calculation of the rate of misstatement:
 - a. If the rate of misstatement does not exceed 1%, no further action is required.
 - b. If the rate of misstatement exceeds 1%, adjust the QFPE for known errors AND adjust the untested expenses by projecting the rate of misstatement to the remainder of the untested expenses in each strata.
 - c. Attach a listing of any exceptions noted to the AUP Report. If a projected misstatement is calculated, attach a detail of the calculation and adjustment to the AUP Report.

Payroll Expenditures:

1. Inspect the payroll expenditures and non-payroll expenditures to determine whether total aggregate payroll for highly compensated individuals paid, directly or indirectly, to any individual, personal service company or Loan Out Company, exceeded \$500,000. For any such individuals, determine that the amount of payroll expense included in the QFPE did not exceed \$500,000. Deduct any errors from the QFPE and remove them from the population to be sampled. Attach detail listing of exceptions to the AUP Report.
2. Obtain a listing of all Loan Out Companies and/or Independent Contractors paid through both payroll and accounts payable. For all Loan Out Companies and Independent Contractors determine that the payments have withholding of at least 6.37%. Deduct any errors from the QFPE for amounts without proper withholding and remove them from the population to be sampled. Attach detail listing of exceptions to the AUP Report.
3. Select a sample of payroll expenditures according to the methodology described below:
 - The 15 employees, independent contractors, or loan out companies with the highest qualified wages (exclusive of box rental, car allowances, per diems, and fringe benefits)
 - 35 additional randomly selected employees, independent contractors, or loan out companies
4. For each item selected in the sample perform the following procedures:
 - a. Inspect the payroll records and other accounts payable documentation to determine that each such expense meets the definition of a Qualified Film Production Expense in accordance with the Garden State Film and Digital Media Jobs Act.
 - b. Inspect timecards, call sheets, production reports, or other equivalent documentation to determine that work was performed in New Jersey. Determine that qualified wages do not include compensation for any work performed out of the State.
 - c. Inspect and reconcile the QFPE for each employee per the detailed production expenditure ledger with the payroll report from the 3rd party payroll provider. Investigate variances and determine adjustments to the QFPE.
5. For non-qualified costs noted in the payroll test in Procedure 4 above, any exceptions should be noted in the AUP and the related costs disallowed.
6. Adjust the QFPE for known errors noted during the expenditure test. Calculate the rate of misstatement from the expenditure test by dividing the dollar amount of the misstated items by the dollar amount of the strata sample population.
7. Perform the following procedures based upon the results of the calculation of the rate of misstatement:
 - a. If the rate of misstatement does not exceed 1%, no further action is required.
 - b. If the rate of misstatement exceeds 1%, adjust the QFPE for known errors AND adjust the untested expenses by projecting the rate of misstatement to the remainder of the untested expenses in each strata.
 - c. Attach a listing of any exceptions noted to the AUP Report. If a projected misstatement is calculated, attach a detail of the calculation and adjustment to the AUP Report.

Insurance Claims

1. Inquire with a responsible official at the Company that any QFPE included in insurance claims have been credited from the QFPE. If the Company filed an insurance claim and received funds, the CPA is to inspect the supporting documentation of the claim to ensure the expenditures were properly credited to the correct accounts in the Ledger.

Wrap Up Procedures

1. Obtain the following application materials from the Company:
 - a. FTC Cost Certification Workbook, including Schedules 1-5 as applicable, which reconciles to the unadjusted detailed expenditure ledgers prior to any exceptions noted in this AUP report.
 - b. Vendor Listing for those Qualified to Do Business in NJ
 - c. Reality TV Show Certification of Costs (if applicable)
2. If the Company has incurred \$1,000,000 or less of QFPE, including only services performed and goods purchased through vendors authorized to do business in New Jersey and payroll expenditures, recalculate that 60 percent of the Total Film Production Expenses, exclusive of Post-Production Costs were incurred for services performed and goods purchased through vendors authorized to do business in New Jersey.
3. For those projects that applied **before** January 7, 2021:

Prepare a NJ Qualified Cost Summary with the adjustments for non-qualified costs (Exhibit A). Calculate the tax credit utilizing a base credit of 30% and 35% for services and purchases in Targeted Counties. If the Company was approved by the NJEDA for an additional 2% tax credit for having a diversity plan, the tax credit percentages shown above increase to 32% and 37% respectively. Compare the product of the tax credit calculations to the amount of tax credit approved by the NJEDA for the film and show the lower amount as the recommended final tax credit amount.

For those projects that applied **on or after** January 7, 2021 through July 1, 2021

Prepare a NJ Qualified Cost Summary with the adjustments for non-qualified costs (Exhibit A). Calculate the tax credit utilizing a base credit of 35%. If the Company was approved by the NJEDA for an additional 2% tax credit for having a diversity plan, the tax credit percentage shown above increases to 37%. Compare the product of the tax credit calculations to the amount of tax credit approved by the NJEDA for the film and show the lower amount as the recommended final tax credit amount.

For those projects that applied **on or after** July 2, 2021

Prepare a NJ Qualified Cost Summary with the adjustments for non-qualified costs (Exhibit A). Calculate the tax credit utilizing a base credit of 35% and 30% for services and purchases for use at a sound stage or other location that is located in the State within a 30-mile radius of the intersection of Eighth Avenue/Central Park West, Broadway, and West 59th Street/Central Park South, New York. If the Company was approved by the NJEDA for an additional 2% tax credit for having a diversity plan, the tax credit percentages shown above increase to 37% and 32% respectively. Compare the product of the tax credit calculations to the amount of tax credit approved by the NJEDA for the film and show the lower amount as the recommended final tax credit amount.

4. Include the following in the AUP report:
 - a. NJ Qualified Cost Summary with adjustments for non-qualified costs.
 - b. Detail listing of exceptions.

This AUP is effective as of March 1, 2021 and may be utilized for all approved projects. However, projects that were approved before July 1, 2021 may choose not to perform Non-Payroll Expenditures Procedures No. 2. Additionally, the AUP previously issued and dated December 16, 2018 can be utilized for all approved projects approved before July 1, 2021. All projects approved on July 1, 2021 or thereafter must use this AUP.

CPAs should anticipate questions of clarification from NJEDA staff regarding the AUP report. NJEDA will not recommend film tax credits be issued based upon an unsatisfactory AUP report.