

THE CITY OF NEW YORK
MAYOR'S OFFICE OF FILM, THEATRE AND BROADCASTING

**RULES RELATING TO THE
NEW YORK CITY MADE IN NEW YORK FILM PRODUCTION TAX CREDIT**

Title 43 of the Rules of the City of New York, chapter 7:

NEW YORK CITY MADE IN NEW YORK FILM PRODUCTION TAX CREDIT PROGRAM

§7-01 Purpose and general description.

(a) The purpose of these regulations is to set forth the application process for the New York City Made In New York Film Production Tax Credit program established by Local Law Number 2 of the Year 2005, as amended by Local Law No. 24 of the Year 2006, pursuant to subdivision (b) of section 1201-a of the Tax Law. The Mayor's Office of Film, Theatre and Broadcasting has 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 Mayor's Office of Film, Theatre and Broadcasting shall administer the program, including the issuance of tax credit certificates. These regulations do not govern the New York State film production tax credit program. Eligibility in and receipt of a tax credit in the New York State program does not guarantee eligibility in or receipt of a tax credit in the New York City Made In New York film production tax credit program. In addition, eligibility in and receipt of a tax credit in the New York City Made In New York film production tax credit program does not guarantee eligibility in or receipt of a tax credit in the New York State program.

(b) A taxpayer which has been issued a certificate of tax credit shall be allowed to claim a New York City Made In New York film production tax credit pursuant to sections 11-503(m) or 11-604.20 of the Administrative Code of the City of New York, whichever is applicable.

(c) Such tax credit shall only be allowed with respect to a qualified film that is completed on or after January 1, 2005. For this purpose, a film will be considered completed upon substantial completion of post-production.

§7-02 Definitions. As used in this regulation, the following terms shall have the following meanings:

(a) "Authorized applicant" means a qualified film production company that is scheduled to begin principal and ongoing photography on the qualified film no more than ninety (90) days after submitting an initial application to the Office and intends to shoot a portion of principal and ongoing photography on a stage at a qualified film production facility on a set or sets.

- (b) “Approved applicant” means an authorized applicant that has been issued a certificate of conditional eligibility by the Office.
- (c) “Certificate of conditional eligibility” means a certificate issued by the Office which states that the authorized applicant has met the criteria set forth in §7-06(a) of this chapter and is being considered for the New York City Made In New York film production tax credit, pending successful completion of the final application and issuance of a certificate of tax credit. Such certificate of conditional eligibility shall include, but not be limited to, the following information: name and address of the authorized applicant, effective date, , taxpayer identification number, a statement that the initial application meets the appropriate criteria for conditional eligibility under this regulation and a disclaimer stating that actual receipt of the tax credit is subject to availability of City funds for the program.
- (d) “Certificate of tax credit” means a certificate issued by the Office which states the amount of the New York City Made In New York film production tax credit that the approved applicant has qualified for, based on the Office’s analysis under sections 11-503(m) or 11-604.20 of the Administrative Code of the City of New York and the provisions of this chapter. Such certificate shall 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 and a disclaimer stating that actual receipt of the tax credit is subject to availability of City funds for the program.
- (e) “Completeness of the application” means that all questions on the application itself were fully addressed by either the authorized or approved applicant and that any additional substantiating documents that were requested by the Office were provided in a manner sufficient to allow the Office to properly evaluate the application.
- (f) “Completion of production of a qualified film” for purposes of paragraph (1) of subdivision (c) of section 7-03 and paragraphs (4) and (5) of subdivision (b) of section 7-06 and subdivision (k) of section 7-02 of these rules, means that post-production of a qualified film has been finished and a cut negative, video master or other final locked form of the qualified film is ready for the striking of prints or electronic copies, and/or ready for broadcast or delivery to a distributor. All activities and expenses related to marketing and distribution, including the making of release prints, video dupes or other forms of copies, promotional images, and poster art are considered to occur after the production of a qualified film is completed
- (g) “Commissioner” means the Commissioner of the City of New York Mayor’s Office of Film, Theatre and Broadcasting.
- (h) “Effective date” means the date the certificate of conditional eligibility becomes effective. Such date is determined by the date the initial application is received by the Office. In the event that the applicant’s principal and ongoing photography on a qualified film does not actually begin within ninety (90) days of the submission of the initial application, the applicant’s effective date will be recalculated to correspond to the date ninety (90) days prior to the date that the approved applicant submits, and the Office receives, a notification of

actual commencement of principal and ongoing photography. If the actual commencement of principal and ongoing photography does not begin within one hundred eighty (180) days of submission of the initial application, the application shall no longer be deemed valid.

- (i) “Feature-length film” means a production intended for commercial distribution to a motion picture theater or directly to the home video market that has a running time of at least seventy-five (75) minutes in length.
- (j) “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 produced and which contain at least one sound stage.
- (k) “Final application” means a document created by the Office and submitted by an approved applicant after it has completed production of a qualified film which contains information concerning expenditures actually paid regarding a qualified film that could make it eligible for the New York City Made In New York film production tax credit under sections 11-503(m) or 11-604.20 of the Administrative Code of the City of New York and the provisions of this chapter. Such application shall 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, and the total number of shooting days in and outside of New York and any other information the Office determines is necessary to properly evaluate the application.
- (l) “Initial application” means a document created by the Office and submitted by an authorized applicant which contains information concerning projected expenditures regarding a qualified film that could make it eligible for the New York City Made In New York film production tax credit under sections 11-503(m) or 11-604.20 of the Administrative Code of the City of New York and the provisions of this chapter. Such application shall 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 and expenditures in New York City and outside of New York City and any other information the Office determines is necessary to properly evaluate the application.
- (m) “Notification of actual commencement of principal and ongoing photography” means the date the Office receives written notice from the approved applicant that the actual production of a qualified film, including the principal and ongoing photography, has commenced on a date specified in such notice, which date is on or before the date that the approved applicant has submitted such notice.
- (n) “Office” means the City of New York Mayor’s Office of Film, Theatre and Broadcasting.
- (o) “Pre-production” means the process of preparation for actual physical production which begins after a qualified film has received a firm agreement of financial commitment (“greenlit”) with, for example, the establishment of a dedicated production office, the hiring of key crew members such as a Unit Production Manager, Line Producer and Location

Manager, and includes, but is not limited to, activities such as location scouting, hiring of crew, and execution of contracts with vendors of equipment and stage space.

- (q) “Priority number” means the number used by the Office to determine allocation of the New York City Made In New York film production tax credit. Priority number shall be based on the applicant’s effective date; provided, however, that in the event that there is more than one initial application with the same effective date, priority shall be given to the authorized applicant with the earliest anticipated date of commencement of principal and ongoing photography. Provided further that if the principal and ongoing photography does not begin on the anticipated date, and the commencement date is within the one hundred eighty (180)-day limitation provided in subdivision (h) of this section, such priority number shall be recalculated based upon the date that the Office receives notification of actual commencement of principal and ongoing photography from the approved applicant.
- (r) “Post-production” means the final stage in a qualified film's production after principal and ongoing photography is completed, including, but not limited to, editing, Foley recording, Automatic Dialogue Replacement, sound editing, special effects, scoring and music editing, beginning and end credits, negative cutting, soundtrack production, the addition of sound/visual effects, dubbing, and subtitling. Advertising and marketing activities and expenses are not included in post-production.
- (s) “Premature application” means an initial application in which the Office reasonably determines that the applicant cannot commence principal and ongoing photography within ninety (90) days of the date the initial application was submitted. Such determination may, but is not required to, be based on, among other things, vagueness of the applicant’s answers on the initial application and during the initial interview and lack of documentation supporting an applicant’s initial application.
- (t) “Principal and ongoing photography” means the filming or broadcasting of major and significant portions of a qualified film that involves the lead actors.
- (u) “Production costs” means any costs actually paid for tangible property used and services performed directly and predominantly (including pre-production and post-production) in the production of a qualified film. Production costs shall not include (i) costs for a story, script or scenario to be used for a qualified film and (ii) wages or salaries or other compensation for writers, directors, including music directors, producers, actors and performers (other than background actors or other performers with no scripted lines). Production costs generally include 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.
- (v) “Qualified film” means a feature-length film, television film, television pilot and/or each episode of a television series, regardless of the medium by means of which the film, pilot or episode is created or conveyed. Qualified film shall not include (i) a documentary film, news

or current affairs program, interview or talk program, magazine 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 (ii) 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).

- (w) “Qualified film production company” means a corporation, partnership, limited partnership, or other entity or individual which or who is principally engaged in the production of a qualified film and controls the qualified film during production and is responsible for payment of the direct production expenses (including pre and post-production) and is a signatory to the qualified film’s contracts with its payroll company and facility operators.
- (x) “Qualified film production facility” means a film production facility in New York City, which contains at least one sound stage having a minimum of seven thousand square feet of contiguous production space.
- (y) “Qualified production costs” means production costs actually paid, but only to the extent such costs are incurred directly in New York City and are attributable to the use of tangible property or the performance of services within New York City directly and predominantly in the production (including pre-production and post-production) of a qualified film.
- (z) “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.
- (aa) “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).
- (bb) “Television pilot” means the initial episode produced for a proposed television series. This category will include shorter formats which are known as “television presentations,” productions of at least fifteen (15) minutes in length, produced for the purposes of selling a proposed television series, but not intended for broadcast.
- (cc) “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).

§7-03 Application Process. For the purposes of this Chapter, only an authorized applicant shall be eligible to apply for the New York City Made In New York film production tax credit.

(a) Initial application.

(1) An authorized applicant shall submit an initial application to the Office prior to the start of principal and ongoing photography.

(2) The authorized applicant shall have an interview with the Office to discuss the details of the initial application. A producer and either the line producer, unit production manager, production accountant or their designee, approved by the Office, shall attend such meeting.

(3) The Office shall approve or disapprove the initial application based upon criteria set forth in section 7-06(a) of these rules.

(4) If the initial application is approved, the Office shall issue a certificate of conditional eligibility to the authorized applicant. If the initial application is disapproved, the Office shall provide the authorized applicant with a notice of disapproval which shall state the reasons therefor. Such disapproval shall be a rejection of the authorized applicant's initial application. If the initial application is disapproved as premature, an authorized applicant may resubmit the application.

(5) Applications shall be reviewed by the Office in the order they are received.

(b) Notification. The approved applicant shall notify the Office, in writing, on the date principal and ongoing photography begins on the qualified film. In addition, the approved applicant shall provide a sign off budget or its equivalent and other supporting documents requested by the Office on this date.

(c) Final application.

(1) Within ninety (90) days after the completion of production of a qualified film, or, if a written extension request is submitted, one hundred fifty (150) days after the completion of production, the approved applicant shall submit a final application to the Office.

(2) The Office shall approve or disapprove the final application based upon criteria set forth in §7-06(b) of this chapter. The Office may request additional documentation, including copies of receipts of qualified production costs, in connection with its consideration of the final application. If the final application is approved, the Office shall issue a certificate of tax credit to the approved applicant. The Office shall provide a copy of such certificate of tax credit to the Department of Finance. If the final application is disapproved, the Office 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.

§7-05 Allocation of New York City Made In New York film production tax credit

(a) The Office shall allocate the amount of the credits allocated for each calendar year in order of priority based upon an applicant's effective date. In the event that an approved applicant's New York City Made In New York production tax credit would exceed the maximum amount of credits allowed for that given year, the approved applicant will be allocated credits on a priority basis in the immediately succeeding calendar year. A maximum of \$12.5 million of credits may be allocated in 2004 and 2005, and \$30 million in 2006 through 2011.

§7-06 Criteria for evaluation of applications.

(a) Initial application. In the event that any of the following criteria are not met, or in the event that the Office concludes that the authorized applicant knowingly submitted false or misleading information, the Office shall disapprove the initial application:

(1) the application is substantially complete;

(2) the application is not premature and is submitted prior to the start of principal and ongoing photography;

(3) the application is submitted within one hundred eighty (180) days of the start of the principal and ongoing photography;

(4) the authorized applicant is a qualified film production company;

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

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

(7) the qualified film will be completed on or after January 1, 2005, within the meaning of subdivision (c) of section 7-01 of these rules.

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

(9) in the event that the projected qualified production costs (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 a qualified film are less than three million dollars, the shooting days spent in the City of New York outside of a film production facility in the production of a qualified film are expected to equal or exceed seventy-five percent of the total shooting days spent within and without the City of New York outside of a film production facility in the production of such qualified film.

(b) Final application. In the event that any of the following criteria are not met, or the Office determines that the approved applicant knowingly submitted false or misleading information, the Office shall disapprove the final application:

(1) the application is substantially complete;

(2) the approved applicant shot a portion of principal and ongoing photography on a stage at a qualified film production facility on a set or sets;

(3) the application is submitted with respect to a completed qualified film that was completed on or after January 1, 2005, within the meaning of subdivision (c) of section 7-01 of these rules.

(4) the approved applicant's actual date of completion of production of the qualified film was within one year of its projected completion date;

(5) the final application was submitted within ninety (90) days after the completion of production of a qualified film, or, if a written extension request has been submitted, one hundred fifty (150) days after the completion of production;

(6) the approved applicant's actual qualified production costs (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 seventy-five percent of the production costs (excluding post-production costs) that were attributable to the use of tangible property or the performance of services at any film production facility within and without the City in the production of the qualified film; and

(7) in the event that the actual qualified production costs (excluding post-production costs) that 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 three million dollars, the shooting days spent in the City of New York outside of a film production facility in the production of a qualified film equaled or exceeded seventy five percent of the total shooting days spent within and without the City of New York outside of a film production facility in the production of such qualified film. If the shooting days spent in the City of New York equaled or exceeded the seventy five percent threshold, the Office shall include in their calculation of the New York City Made In New York 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.

(c) For purposes of this section, the Office may consider whether an authorized applicant executes or has executed an agreement with the Office that obligates the authorized applicant to include the Office's "Made In New York" logo in the screen credits of the qualified film indicating receipt of the tax credit.

§7-07 Record retention. Each authorized and approved applicant must maintain records, in paper or electronic form, of any qualified productions 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 Office shall have the right to examine such records upon reasonable notice.

§7-08 Appeal process. If the authorized applicant's initial application or an approved applicant's final application is disapproved by the Office, or if the approved applicant disagrees with the amount of the tax credit granted by the Office, the applicant may appeal such determination. In the case of an appeal from a disapproval of an initial or final application, such appeal shall be made by sending a letter to the City of New York Mayor's Office of Film, Theatre and Broadcasting, Attn: Commissioner, 1697 Broadway, New York, NY 10019, within thirty (30) days from the date of the denial letter issued by the Office. In the case of an appeal from a determination of the amount of the tax credit, such appeal shall be made by sending a letter to the same address as listed above within thirty (30) days from the date of issuance of the certificate of tax credit. Failure to request an appeal within thirty (30) days will finalize the denial decision and/or the amount of the tax credit.

Upon receipt of a timely letter of appeal, the Commissioner will appoint an appeal officer within the Office to review. Such appeal officer will make a report on the appeal to the Commissioner. The Commissioner or his designee shall issue a final order within sixty (60) days of the report. A copy of the final order will be issued to the appellant within ten (10) days after the date the Commissioner or his designee renders the final order.

§ 7-09 Applicability

The amendments made by the rules that added this section shall not apply to initial or final applications submitted prior to the effective date of such amendments, with the exception of the amendments made to §7-05 of this chapter by section 4 of such rules.