

# **Maryland Department of Commerce**

## Maryland Theatrical Production Tax Credit

### **AGREED UPON PROCEDURES**

#### GUIDELINES

An independent, third-party auditor's report on Agreed Upon Procedures is required as part of the Application for Final Tax Credit Certification.

This report, along with the Application for Final Tax Credit Certification, must be submitted within 180 days of the completion date established by the applicant and the Department,

The report must be performed by a licensed CPA. The CPA must be licensed in Maryland in order for the cost to be authorized for the tax credit.

A draft engagement letter outlining sample sizes and percentages must be approved by the Department of Commerce ("the Department"). The Department will determine sample sizes and percentage rates.

Following is the DRAFT report and a summary of the minimum procedures to be performed and the associated findings (Exhibit A).

Applicants should be aware that all information submitted in or accompanying an application may be subject to the provisions of the Maryland Public Information Act (MD Code, General Provisions, Article, Title 4) and to the provisions of the MD Code, Tax General Article, §10-754.

## AGREED UPON PROCEDURES – Page 2

### *DRAFT REPORT*

## INDEPENDENT AUDITOR’S REPORT ON APPLYING AGREED-UPON PROCEDURES

To [Theatrical Production entity] and the Maryland Department of Commerce (“the Department”):

We have performed the procedures enumerated in the attached Exhibit A below, which were agreed to by the [insert name of Theatrical Production entity] (the Theatrical Production entity) and the Department, solely to assist you in evaluating the completeness and accuracy of the accompanying Application for Final Tax Credit Certification for the production, [insert Theatrical Production Title] (the production). We followed these procedures to demonstrate compliance with the criteria specified by the Department for qualifying the Total Direct Costs incurred by the Theatrical Production entity for the production. The Theatrical Production entity’s management is responsible for maintaining records of the information contained in the Application for Final Tax Credit Certification for the production. This agreed-upon procedures (AUP) engagement was conducted in accordance with attestation standards established by the American Institute of Certified Public Accountants (AICPA). The sufficiency of these procedures is solely the responsibility of those parties specified in this report. Consequently, we make no representation regarding the sufficiency of these procedures except as specified in the attached Exhibit A below.

The summary of procedures and associated findings are as set forth in Exhibit A below.

We were not engaged to, and did not, conduct an audit, the objective of which would be the expression of an opinion on the completeness and accuracy of the accompanying Application for Final Tax Credit Certification for the production. Accordingly, we do not express such an opinion. Had we performed additional procedures, other matters might have come to our attention that would have been reported to you.

This report is intended solely for the information and use of the Theatrical Production Entity and the State of Maryland and is not intended to be and should not be used by anyone other than these specified parties.

[Firm’s Signature]

[Location of Firm (City, State)]

[Report Date]

Applicants should be aware that all information submitted in or accompanying an application may be subject to the provisions of the Maryland Public Information Act (MD Code, General Provisions, Article, Title 4) and to the provisions of the MD Code, Tax General Article, §10-754.

## AGREED UPON PROCEDURES – Page 3

### EXHIBIT A

The following minimum procedures will be performed:

#### **Theatrical Production Entity Qualification Procedures**

1. The CPA will review Maryland's Theatrical Production Tax Credit statute, Tax General Article, Section 10-754, of the Maryland Annotated Code, any related regulations and any other guideline materials provided by the Department, which can be found on the Maryland [Department of Commerce website](#).
2. The CPA will review the Theatrical Production entity's Application for Final Tax Credit Certification to the Department and agree the qualified Total Direct Costs amount to trial balance detail provided by the Theatrical Production entity.
3. Review the financial records to determine that the Theatrical Production Entity has incurred a minimum of \$100,000 of qualified Total Direct Costs in Maryland.
4. Obtain documentation of all production expenses (straight run of the full general ledger) all call sheets for the length of production).
5. Obtain a schedule or analysis of qualified Total Direct Costs incurred in Maryland for the Production (straight run of the general ledger for Maryland authorized costs only).

#### **Cost Review Procedures**

1. Obtain from the Theatrical Production entity a schedule of TOTAL, final payroll costs for all employees (individual, contractor or loan-out company) connected with the Theatrical Production activity for which they will be claiming eligible costs (final full earnings report) and a schedule of the authorized payroll costs which they claim eligibility for the payroll credit.
2. The CPA will test, on a sample basis, payments to individual talent, whether they were made to an individual, a contractor OR a loan-out company and verify the agreement of: (1) the date the expense was incurred; (2) the individual, contractor or loan-out company paid; and, (3) the amount of the expense.

The CPA will also inspect the invoices, timesheets or equivalent documentation for evidence of the expense being for time in Maryland.

Applicants should be aware that all information submitted in or accompanying an application may be subject to the provisions of the Maryland Public Information Act (MD Code, General Provisions, Article, Title 4) and to the provisions of the MD Code, Tax General Article, §10-754.

## AGREED UPON PROCEDURES – Page 4

### **Cost Review Procedures (continued)**

The criteria for determining the sample size for this procedure will be as follows:

- The CPA will select ALL individuals/contractors/loan outs/personal services companies whose total earnings were in excess of \$100,000 per week.

- The CPA will select a reasonable sample size of individuals whose total earnings range between \$1,000 and \$100,000 per week. The sample size must be greater than \_\_\_\_\_% of all individual employees whose total earnings range between \$1,000 and \$100,000 per week. **The Department will determine the percentage rate.**

- Error rate of the sample will be applied to the population to determine a projected error (or disallowed amount).

3. Trace payroll costs for each employee to the final payroll register/earnings report and determine that Maryland withholding is made. Confirm that the withholding reports are filed with Maryland. Obtain an SSAE 16 report, if available, and verify controls were met. If in-house payroll is used, test to confirm correctly done.

4. Confirm that the qualified aggregate payroll schedule excludes 100% of salary, wages or “other compensation” costs of employees receiving more than \$100,000 per week for personal services in connection with the production, as well as all costs for writers, directors and producers, which are defined as crew members whose credited position contains either writer, director or producer in the title. (“Other compensation” includes employer fringes and payments made directly to the employee - i.e., per diem, housing allowance, travel allowance, meal allowance, car allowance, cell phone allowance, kit/box rental, relocation fees, etc.) Identify and provide list of the employees/contractors/loan outs/personal services companies receiving more than \$100,000 per week.

5. The CPA will test, on a sample basis, expenses, other than payments to individual talent, from the list of [Authorized Direct Costs](#) and compare to the supporting invoices and verify agreement of: (1) the date the expense was incurred; (2) the vendor paid; (3) that the vendor met the definition of a qualified vendor; and, (3) the amount of the expense. The CPA will also inspect the invoice or equivalent documentation for evidence of the expense being incurred in Maryland by the Theatrical Production entity; and, inspect Due Diligence waivers if the expense was not from a qualified vendor.

Applicants should be aware that all information submitted in or accompanying an application may be subject to the provisions of the Maryland Public Information Act (MD Code, General Provisions, Article, Title 4) and to the provisions of the MD Code, Tax General Article, §10-754.

## AGREED UPON PROCEDURES – Page 5

### **Cost Review Procedures (continued)**

The criteria for determining the sample size for this procedure will be as follows:

- The CPA will select all individual expenditures in excess of \$20,000.
- The CPA will select a sampling of expenditures to any vendor which received an aggregate of \$100,000.00 or more. The sample size must be greater than \_\_\_\_%. **The Department will determine the percentage rate.**
- The CPA will select a reasonable amount of expenditures less than or equal to \$20,000, and not included in the prior criteria. The sample size must be greater than \_\_\_\_% of all non-payroll expenditures less than or equal to \$20,000. **The Department will determine the percentage rate.**
- Error rate of the sample will be applied to the population to determine a projected error (or disallowed amount).

6. Through inspection of purchase orders, invoices and canceled checks, determine whether the Maryland production expenses were “clearly and demonstrably” incurred in Maryland by the Theatrical Production entity and meet the definitions of an authorized direct cost. If purchase orders, invoices and cancelled checks are not available, obtain other suitable documentation (such as contracts, letters, deal memos, etc.) that support such expenses and meet the definitions of an authorized direct cost.

7. Based upon the sampling required under item 5 above, confirm that authorized direct cost claimed for materials or goods over \$1,000 are the initial cost of the material or good less its value, or resale, upon the completion of the production in the State.

8. If differences in excess of 5% of the population being tested (payroll, non-payroll expenses, etc.) are identified as a result of the above procedures, the accounting records of the Theatrical Production entity should be reviewed and corrected by the Theatrical Production entity. The above procedures should then be completed again on the revised accounting records. The revised accounting records should have a higher level of testing with specific emphasis on the parts of the records that were revised.

9. The CPA will independently calculate qualified Total Direct Costs based upon the Theatrical Production entity’s financial information and compare such calculation with the qualified Total Direct Costs claimed by the Theatrical Production entity in its Application for Final Tax Credit Certification. The CPA will separately list any area of discrepancies

Applicants should be aware that all information submitted in or accompanying an application may be subject to the provisions of the Maryland Public Information Act (MD Code, General Provisions, Article, Title 4) and to the provisions of the MD Code, Tax General Article, §10-754.