

## MARYLAND THEATRICAL PRODUCTION TAX CREDIT GUIDELINES

A Qualified Theatrical Production Entity may claim a refundable credit against their Maryland state income tax of 25% of qualified production costs incurred within the State for certain theatrical production. Estimated total direct production costs must exceed \$100,000 to qualify. The maximum award cannot exceed \$2 million for a single Theatrical Production. The statute creating the Maryland Theatrical Production Tax Credit and defining qualified theatrical production activities [can be found here](#).

In order for a theatrical production entity to qualify for the credit, the production has to be either a National Touring Production or a Pre-Broadway Production. Additionally, productions must be for-profit and be performed live in a Theatrical Production facility (i.e., theater). Additional qualification criteria for each type of production are as follows:

1) A **National Touring Production:**

- Must have at least two public performances; and
- After the production's final performance (see above) is performed for at least four weeks in at least four cities outside the State.

2) A **Pre-Broadway Production:**

- Must have at least eight public performances: and
- In the production's original or adaptive version:
  - a) Has never been performed or or has been performed on a limited basis in the immediately preceding five years, and
  - b) Is being prepared exclusively at the Qualified Theatrical Production Facility for a presentation in the Broadway theater district within twelve months after the production's final performance in a Qualified Theatrical Production Facility.

### Current Availability of Tax Credit:

The Department of Commerce ("Department") will accept **Applications for Qualification** for FY2023 tax credits **through June 1, 2023**.

**Prior to applying, it is recommended that you consult a tax specialist and/or a tax attorney regarding the potential tax impacts of receiving a Maryland Theatrical Production Tax Credit on your taxes or your company's taxes**

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.

## Calculating the Tax Credit:

A Qualified Theatrical Production Entity may receive a refundable income tax credit of up to 25 percent of the Total Direct Costs (*authorized costs only*) for production activity with a maximum tax credit amount per Theatrical Production of \$2 million.

## Application Process:

- 1) **BEFORE** beginning any work on the theatrical production activity in the State, an **Application for Qualification** MUST be submitted to the Department along with ALL required attachment.

Applications will be reviewed and approved in the order that complete applications are received. Applications that are materially incomplete will not be considered. Applications received prior to the time and date specified above will be ineligible and not reviewed. The date and time for applications received by email will be the date and time specified by the email system currently in use by the Department.

- 2) Within 30 days after receiving a complete application, the Department will issue a Letter of Qualification confirming the applicant is qualified to receive a tax credit. The Letter of Qualification states the maximum amount of tax credits available for the qualified theatrical production activity and the fiscal year from which the credits will be drawn. Applicants who do not meet minimum statutory requirements or submit an incomplete application will be notified that they are not eligible for a tax credit.
- 3) **BEFORE** the first rehearsal, the **Application Addendum** must be submitted.

## Final Certification Process:

Within 180 days after the completion date established by the applicant and the Department, a Qualified Theatrical Production Entity shall apply for a **Tax Credit Certificate** and submit the application to the Department along with ALL required final documentation. This timeline may be extended at the discretion of the Department based on facts and circumstances beyond the control of the qualified theatrical production entity.

**All Theatrical Production entities with total authorized direct costs greater than \$250,000**, must include a copy of an independent, third-party auditor's report which meets the following minimum criteria:

### Guidelines for Agreed Upon Procedures

**NOTE:** A draft engagement letter outlining sample sizes and percentages **must**

**be approved** by the Department within 180 days of the conclusion of the final Theatrical Production. The Department will determine sample sizes and percentages.

The Department will review the Application for Tax Credit Certificate, all closing documentation, receipts, and the independent auditor's report for completeness, accuracy, and to confirm the total amount of direct costs. Based on the actual total of direct costs (*authorized costs only*) as established by the Department's review, the Department will issue a Tax Credit Certificate to the Theatrical Production entity, which will not exceed the amount of tax credits specified in the original Letter of Qualification.

Please note that as part of the Application for Tax Credit Certificate, the Theatrical Production entity must certify that there are no amounts owed to any Maryland entity which provided goods or services in connection with the Theatrical Production activity. If amounts are outstanding, the Department will not issue a Tax Credit Certificate. A Tax Credit Certificate will not be issued until the Maryland Office of Tourism and Theatrical receives confirmation that all outstanding amounts have been paid.

**Any decision made by the Department during the application process is considered final.**

#### **Qualification Criteria:**

Each applicant must meet all of the following criteria to be eligible to receive a Theatrical Production Tax Credit:

- All statutory requirements must be met.
- The submitted Application for Qualification must be **complete and signed** along with a completed Application Addendum.
- The Qualified Theatrical Production Entity must be able to demonstrate financing.

#### **General Tax Credit Rules:**

Qualification for Tax Credits is subject to rescission for failure to meet any deadline or requirement of the program.

Principal production must begin within 120 days after the issuance of the Letter of Qualification from the Department, which may be extended at the discretion of the Department, based on facts and circumstances beyond the control of the Theatrical Production entity.

Direct costs are for time or use in Maryland and must be provided by a qualified vendor. Expenditures that are eligible as direct costs are outlined in the **Authorized Direct Costs** list. This list is provided for guidance and is subject to interpretation and change by the Department at any time.

Additional guidelines regarding authorized direct costs are:

- ALL goods and services must be provided by a qualified vendor. A qualified vendor is a vendor that (1) Is qualified to do business in the State and, if applicable, registered and in good standing with the State's Department of Assessments and Taxation; (2) Maintains a physical location in the State from which employees of the vendor are based; (3) Provides goods and services to the Theatrical production entity which are provided in the vendor's historic ordinary course of business; and, (4) The goods and services provided by the vendor to the theatrical production entity are generated from the vendor's physical location in the State, unless generated from an on-line order. Goods or services which are specialized or technical in nature and are not reasonably available from a qualified vendor may be provided by a non-qualified vendor with the prior approval of the Department. This requirement must be met if the goods and/or services are bought and/or rented directly by the production company or through another entity. To use a non-qualified vendor, complete the Non-Qualified Vendor [Due Diligence form](#).
  
- The Total Direct Costs may not include any salary, wages or "*other compensation*" of an individual who receives more than \$100,000 per week for personal services in connection with the theatrical production activity. Compensation includes any payments of wages and/or benefits made to the individual whether paid directly to the individual through cash or a payroll company OR paid to the individual as a loan out or personal services corporation for work performed in State. "*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.) for work performed in State. Salary, wages and "*other compensation*" are included in calculating the \$100,000 per week threshold. If that \$100,000 per week threshold is reached, then no costs, including the "*other compensation*," qualify. In addition, the \$100,000 per week in salary, wages or "*other compensation*" is for the length of the production activity (*prep, pre-production, principal, post*); not just for time in Maryland.
  - "*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.).
  
- Direct costs must be **PRO-RATED** based upon the time personnel or materials are **IN** Maryland and working or used in connection with the Theatrical Production activity. Insurance premiums, and the like, will be considered as authorized direct costs for the portion allocable to the time spent in Maryland.
  
- The Total Direct Costs must be reasonable and negotiated at arms-length.
  
- Only direct costs directly incurred by the Theatrical Production entity are authorized.
  
- Direct costs may only be attributed to the Theatrical Production activity once.

- Direct costs must be the NET cost of the goods or services, i.e., security deposits must be netted out, etc.
- For all materials or goods with an initial cost greater than \$1,000, the direct cost will be the initial cost of the material or goods less its value, or resale, upon the completion of the theatrical production activity in the State.
- Only travel expenses **INTO** Maryland are authorized as a direct cost. Thus, the end point of that leg of travel must be in Maryland. The cost of round trip fares into Maryland would be divided in half.
- Either a relocation fee OR housing/living allowance is authorized as a direct cost, not both.
- The Total Direct Costs may not include costs for Entertainment, Gifts or Gratuities or any costs coded as such.
- The Total Direct Costs may not include costs for the purchase of vehicles, or other items, which are used primarily for personal use.
- The Total Direct Costs may not include costs for any materials, goods or services that have been recouped by any insurance policies.
- The Total Direct Costs may not include costs for taxes and fees paid to other jurisdictions, including the Federal Government.
- The Total Direct Costs may not include costs for penalties, fines, overages or similar costs.

### **Compliance with Maryland Law:**

The Theatrical Production company must comply with all applicable Maryland laws, rules, and regulations. In addition, all loan out and personal services companies are subject to Maryland laws, rules, and regulations, including all applicable withholding requirements. Each Theatrical Production company will be required, as part of the Application for Tax Credit Certificate, to provide the Department with a list of all loan out and personal services companies paid in connection with the activity.

### **Claiming the Tax Credits:**

The Qualified Theatrical Production Entity may claim a credit against the State income tax in an amount equal to the amount stated in the Tax Credit Certificate. If the tax credit allowed in any taxable year exceeds the total tax otherwise payable by the Qualified Theatrical Production Entity for that taxable year, the Qualified Theatrical Production Entity may claim a refund in the amount of excess. In order to claim the

credit, the Qualified Theatrical Production Entity must file the applicable Maryland state income tax return, must complete the Form 500CR section of the return, and must include a copy of the Tax Credit Certificate issued by the Department. **The credit is only available with electronically-filed returns.** Information regarding filing can be found on the **Comptroller of Maryland's** website.

Please contact Robin Bailey, Director of Policy and Program Development, Maryland Department of Commerce at [robin.bailey1@maryland.gov](mailto:robin.bailey1@maryland.gov) or (410) 767-6314 with questions regarding the status of the tax credit program and to discuss your production.

**Resources:**

[Statute](#)

[Application for Qualification](#)

[Application Addendum](#)

[Authorized Direct Costs](#)

[Non-Qualified Vendor - Due Diligence Form](#)

[Application for Final Tax Credit Certification](#)

[Maryland Theatrical Production Expenditure Report](#)

[Agreed Upon Procedures](#)

For further details, please contact:

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