



Film New Jersey: Financial Incentives to Make Movies within the Garden State

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Introduction

Motion pictures and film production have an extensive history in New Jersey. In 1891, Thomas Edison patented the kinetoscope, a device that allowed a single viewer to see a short motion picture through a small opening.¹ This machine has often been credited as “the original movie machine” and was developed by Edison and his assistant William Dickson in a tarpaper shack that they called the “Black Maria.”² The Black Maria is considered the world’s first movie studio and was set up near Edison’s laboratories in West Orange, New Jersey.³ Since serving as the birthplace of motion

¹ Funk & Wagnalls New Encyclopedia, 2007 edition.

² *Id.*

³ *Id.*

pictures, the Garden State has been the backdrop for many movie and television productions including Goodfellas, Broadway Danny Rose, The Sopranos, and The Guiding Light.⁴

New Jersey's proximity to Manhattan and diverse backgrounds has made it an appealing location to create motion pictures. While the artistic community benefits from New Jersey, the State profits as well. The additional revenue that the State can earn from production within its boundaries has provided New Jersey with incentive to attract filmmakers and movie producers. In an attempt to lure production companies and film studios, the State of New Jersey created tax breaks for production companies that incur a large portion of the filming costs within the State.

Tax Credit for Filming in New Jersey

Until 2015, films made in New Jersey may earn producers a substantial tax credit. If a production company qualifies for the tax credit, it will earn certificates worth 20 percent of its qualified expenses.⁵ These expenses include, but are not limited to the costs of operations, construction, photography, editing, lighting, sound synchronization, accessories, wardrobe, rental facilities, rental equipment, and the wages of employees.⁶

In order to qualify, a production company must accumulate at least 60 percent of

⁴ New Jersey Motion Picture and Television Commission, www.njfilm.org (follow "New Jersey Filmography" hyperlink).

⁵ N.J. Stat. § 54A:4-12(a) (2009).

⁶ N.J. Stat. § 54A:4-12(e) (2009).

its production expenses for a project within New Jersey.⁷ For the purposes of the statute, “production expenses” do not include post-production expenses. Production expenses exclude all costs that are accumulated following the film’s principal photography and any costs of marketing or advertising the film.⁸ For example, if a film had a budget of \$100,000, then the production company would need to spend at least \$60,000 dollars in New Jersey during the principal photography for the film. If this was met, the company would qualify for the tax credit. However, if \$40,000 was spent to have the film edited and \$10,000 was spent on advertising, than \$50,000 out of the \$100,000 would have been spent after principal photography had been completed and the production company would not be eligible for the tax credit. Likewise, if \$80,000 for the same movie was spent in connection with the principal photography, but only half of that money was spent on goods and services from New Jersey, the production company would not be eligible for the credit because they would have spent only 40 percent of their budget during principal photography in New Jersey. Therefore, it is extremely important for a production company to keep detailed records of their expenses.

Also, the 60 percent limitation is only a requirement for spending and does not limit the amount of the credit you will receive. If a production company spends the requisite 60 percent of its budget for principal photography in New Jersey, then it can earn a credit worth 20 percent of its total qualified expenses *including* post-production.⁹

⁷ N.J. Stat. § 54A:4-12(a) (2009).

⁸ N.J. Stat. § 54A:4-12(e) (2009).

⁹ See N.J. Stat. § 54A:4-12 (2009).

Thus, if a project with a budget of \$100,000 incurred \$60,000 of more of its principal photography expenses within New Jersey, they would receive a credit of \$20,000.

Finally, the project must be a film, television series or television show that is at least 15 minutes long and intended for a national audience.¹⁰ This does not include news, weather, or market reports; public programming; talk or game shows; sporting events; award shows or other gala events; or anything intended for private, industrial, corporate or institutional purposes.¹¹ In addition, the project cannot be classified as obscene or an attempt to solicit funds.¹²

Applying for the Credit

Parties who are interested in earning this credit need to file an application and preliminary application with the New Jersey Economic Development Authority (NJEDA).¹³ The application must include the filming schedule, biographies of the talent, filming locations, a copy of the script, and other information.¹⁴ Most importantly, the application needs to contain the projected budget of the film with a breakdown of all costs, including post-production costs.¹⁵ Specifically, the application must clarify which

¹⁰ N.J. Stat. § 54A:4-12(e) (2009).

¹¹ *Id.*

¹² *Id.*

¹³ N.J.A.C. 18:7-3B.4 (2009).

¹⁴ *Id.*

¹⁵ *Id.*

costs will be incurred within New Jersey.¹⁶ Copies of the application and preliminary application can be found by going www.njeda.com clicking on Applications and then clicking on the Film Program Application link.

The State has set a limit of \$10 million worth of tax credits per year that can be distributed.¹⁷ Applications will be evaluated and approved in the order that they are received¹⁸ and, therefore, filmmakers should act quickly to increase their chances of earning the credit. The NJEDA will then review the application and determine if it has met the qualifications and has earned the tax credit. If an application is approved by NJEDA, the film's principal photography must begin within 150 days of approval.¹⁹ Furthermore, the commencement of principal photography must be confirmed by the New Jersey Motion Picture and Television Commission.

During the production and post-production phases, it is important that the filmmakers keep accurate records of their expenses. Once the film has been completed, the production company must submit their actual budgets and proof of their qualified expenses to the NJEDA.²⁰ The submitted budgets must include a listing of the names of companies or people paid for their services and their Federal identification number.²¹

¹⁶ *Id.*

¹⁷ N.J.A.C. 18:7-3B.1 (2009).

¹⁸ N.J.A.C. 18:7-3B.4 (2009).

¹⁹ N.J.A.C. 18:7-3B.3 (2009).

²⁰ N.J.A.C. 18:7-3B.5 (2009).

²¹ *Id.*

Furthermore, the expense report must be verified by a certified public accountant who can authenticate that the expenses claimed were incurred in New Jersey.²² After all of this information, along with a copy of the project, has been submitted to the NJEDA, they will attempt to verify the eligibility of the taxpayers and review the submission. Upon approval of the NJEDA, the Division of Taxation will issue tax credit certificates to the appropriate entities within 30 days.²³

It is important to remember that this credit, when combined with all other tax credits, cannot exceed 50% of the taxes that a company or party owes for a particular period and also cannot reduce a taxpayer's owed taxes below the established statutory minimum.²⁴ However, the remaining tax credit may be carried over for up to the next seven tax periods.²⁵ If applicants wish to spread this tax credit out over a number of years, they will need to submit multiple applications at the beginning to ensure that their intentions are known.²⁶

There are many potential problems that may arise with attempting to earn this credit. For example, to be counted toward the 60 percent, companies or vendors need to be authorized to do business within New Jersey and be classified as New Jersey businesses. Therefore, it is important to discuss the application with an attorney.

²² *Id.*

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.*

²⁶ N.J.A.C. 18:7-3B.4 (2009).

Selling a Tax Credit

While larger production companies are likely to benefit from this program, smaller companies may not owe enough in taxes to receive the full benefit of this tax credit. However, if a production company can earn the 20 percent tax credit, but is unable to use it, they are allowed to sell the tax credit to another eligible New Jersey taxpayer.²⁷

If a production company decides to sell or assign their tax credit to another eligible taxpayer, they will first need to apply to the director and executive director of NJEDA for a tax credit transfer certificate that they can then sell to another taxpayer.²⁸ The application for a credit transfer must be sent to NJEDA within 60 days of the completion of the film and must include (1) a certified statement of the actual costs incurred for the project, (2) a sworn statement that credit has not been claimed yet and will not be claimed by the production company, (3) a signed request for the transfer certificate, and (4) a signed agreement between the parties that includes the value that they have agreed to and the name of the purchaser.²⁹ If NJEDA pre-approves the application, the parties will be asked to complete more applications that ask about taxpayer information and the specific information about the tax credit being sold.³⁰ NJEDA will then discuss the application with the Division of Taxation. If approved, the

²⁷ N.J. Stat. § 54A:4-12(c) (2009).

²⁸ *Id.*

²⁹ N.J.A.C. 18:7-3B.6 (2009).

³⁰ *Id.*

Division will issue new certificates of tax credit to reflect the sale of these credits.³¹

Unlike some commodities, there is a minimum that a production company can charge for the tax credit. The section of the statute permitting this transfer also states that a tax credit transfer certificate cannot be exchanged for less than 75 percent of its worth.³²

The applicant should remember that the sale of these credits can potentially create larger legal problems if they are not handled correctly. Thus, it is important to make sure that the tax credit has actually been earned or will definitely be earned before attempting to sell the credit. Furthermore, the buyer should be certain that they will be able to use all of the tax credit that they purchase. For certain filmmakers, it may also be possible for the production company to find a bank who is willing to advance them part of their funding in exchange for an anticipated tax credit.³³ These production companies would have to create completion guarantees that ensure that the project will be finished and the credits will be earned.³⁴ Because the risk is multiplied by the complex nature of these procedures, it is in the best interest of the filmmakers and production companies to consult an attorney before moving forward.

Sales Tax Exemption for Films

³¹ *Id.*

³² N.J. Stat. § 54A:4-12(c) (2009).

³³ See Matthew Savare, John Genz & Christine Peluso, *Cultivating Entertainment in the Garden State: Financial and Production Incentives for Filming in New Jersey*, SCREEN MAGAZINE, May 2008.

³⁴ *Id.*

The State of New Jersey also allows filmmakers and production companies to avoid paying sales tax on items that are directly related for the production of a motion picture or television program.³⁵ This exemption applies to all “sales of tangible personal property for use or consumption directly and primarily in the production of film or video for sale. . . .”³⁶ Accordingly, the sales tax exemption does not apply to property that only has an incidental use in the production of a motion picture. Similar to the 20 percent tax credit, the sales tax exemption is meant for the production of films, television programs, and documentaries that are meant for commercial distribution, and it does not cover the production of videos or films that are made for a business or other person for internal use.³⁷ In order to take advantage of this exemption, filmmakers and production companies need to use the appropriate Form ST-4 from the New Jersey Division of Taxation. A copy of Form ST-4 must be presented to vendors by the production company to be exempt from the state sales tax. Copies of the ST-4 form can be found at the New Jersey Division of Taxation website (<http://www.state.nj.us/treasury/taxation/prntsale.shtml>).

Again, before attempting to use any of these programs, it is advised that a filmmaker or production company seek legal or financial advice. For more information on these programs, you can contact the New Jersey Motion Picture and Television Commission at www.njfilm.org.

³⁵ N.J. Stat. § 54:32B-8.49 (2009).

³⁶ *Id.*

³⁷ *Id.*

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