

FREQUENTLY ASKED QUESTIONS FOR INDEPENDENT FILMS

April 2017

GENERAL Q & A

Q: What is an “Independent Film”?

A: An Independent Film means a production of a film with a running time of at least 75 minutes intended for commercial distribution to a motion picture theater, home video, television or via the internet. It must have a minimum budget of \$1 million and be produced by a company that is not publicly traded and publicly traded companies do not own directly or indirectly more than 25% of the producing company. Only independent films can sell their tax credits.

Q: If I had a project in the old program, shot one day, but didn't finish the project (making it ineligible for the old program), would it be eligible for the new program?

A: Since the 2.0 program is a completely different program, you are eligible to submit an application for the project in the new 2.0 program.

Q: If principal photography cannot begin prior to receiving a Credit Allocation Letter (CAL) approval, what about pre-production spending?

A: Pre-production spending before the CAL approval would not qualify for tax credits, but is certainly allowed.

Q: Can a production begin principal photography outside of California before receiving a Credit Allocation Letter (CAL)?

A: A production may begin filming outside of California prior to receiving a CAL. Principal photography in California before the CAL date would disqualify the project from the program.

Q: If we spend less money than our estimated credit amount, will we be penalized?

A: No, there is no penalty if your budget decreases, but you may be penalized if your Jobs Ratio is reduced after an audit of all your expenditures. Please refer to our Guidelines, Section XII, for more information.

Q: If our budget goes up, would we be eligible for the additional amount?

A: No, productions are capped by the amount on the Credit Allocation Letter.

Q: Does 2nd unit or VFX work count as a principal photography day?

A: “Principal photography days” means the number of days shot by the principal unit with the director and lead actors present. “Principal photography days” in California does not include the filming of primarily backgrounds, visual effects, action and or/crowd scenes by the second, stunt or visual effects units.

Q: Will the Narrative Statement on why we would like to shoot in California versus another location be used to make a decision as to whether a production will be granted approval for tax credits?

A: No; however, a Detailed Narrative Statement will be requested in Phase 2 of the application process – It is a written statement which describes the extent to which the credit is expected to influence the choice of filming locations with respect to financial considerations. The statement should include other locales which would be considered in the absence of a tax credit.

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- Q:** If 50 projects apply and 10 are accepted, am I correct that these are the projects with the highest Jobs Ratio figures?
- A:** The projects are ranked by Jobs Ratios in their categories. The projects with the highest Jobs Ratios (top 100% of projects for which we have tax credits) will receive a tax credit reservation. The projects with lower Jobs Ratios (the bottom 100%) will be placed on the waitlist, where they will remain until more funds become available. The waitlist expires when the next allocation period begins for independent films.
- Q:** Regarding the insurance statement on proration of premiums for qualified dates, is there a specific way that dates are prorated? Is it based on calendar days of the policy or is it based on overall shoot days?
- A:** Insurance premiums are usually prorated 10% for pre-production, 70% for production and 20% for post-production. Alternatively, applicants may request a statement from their insurance brokers which would state the amount of premium proration.
- Q:** The program requires independent films to spend a minimum of \$1 million. Does the minimum spend of \$1 million mean total budget or California only budget?
- A:** The \$1 million minimum spend refers to Qualified and Non-Qualified expenditures in California. So ATL talent, although a non-qualified expenditure, would count toward your total production budget as long as their services are provided in California. Overhead costs do not count towards the \$1 million minimum spend requirement.
- Q:** Is a stop motion project eligible to apply to the tax credit program?
- A:** Yes, stop motion projects are eligible for the Tax Credit Program as stop motion photography is not part of the animation exclusion. Note: Projects cannot begin principal photography prior to acceptance and production must be completed within 30 months from the date the credit allocation letter is issued.
- Q:** If my project is accepted into the program, will my budget be published to the public?
- A:** The CFC is required by law to publish specific information on our website, including the project title, tax credit amount, production days in California, California jobs directly created by the production, and the total amount of estimated qualified expenditures. Please note that any other information that is part of the application is not subject to public disclosure.

APPLICATION Q & A

- Q:** Regarding the 75% spend test: What if I am shooting a portion of the film in another state?
- A:** The 75% spend test is based on total production spend – not just qualified expenditures. Wages, goods and services must be prorated proportionately to accurately estimate your California spend. Wages, rented or purchased items from California such as camera equipment, self-drive cars, production trucks, picture cars and the like must all be prorated if they will be used out of state for a portion of the schedule.

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Q: Why do I need to provide proof of funding?

A: The production company must show a viable plan to finance the production with evidence that it has at least 60% of the financing in place. The application requires a detailed listing of your funding sources and verification of this funding must be submitted upon request. Acceptable forms of documentation include financing agreements with signed letter(s) on letterhead from your investor(s), stating the amount of funds secured from the investor along with a bank or brokerage statement which verifies the funds are on hand. If you have concerns regarding confidentiality, please call the CFC to discuss.

Q: Can I use a foreign production company taxpayer ID number? My project is an independent production and we would be transferring the credits.

A: A foreign corporation will need to register to do business in the state and obtain a California ID number issued by the [California Secretary of State](#).

Q: If my project is on the waitlist, can I revise my budget and credit estimation?

A: The initial credit reservation cannot be increased, but a budget and corresponding schedule may be modified to more accurately reflect the anticipated production plan

Q: I understand that the contingency amount of up to 10% of all qualified expenditures can be added to the budget when figuring out the tax credit amount. Does the contingency get tagged as expenditures or can some of it be tagged as wages?

A: Neither. Contingencies, as well as bonds, need to be set up as contractual charges in the qualified expenditure budget – not a line item.

Q: Do I need to have the LLC formed in order to submit my application?

A: No. However, if your project is ranked high enough to be eligible for tax credits, an LLC would need to be formed and a tax payer ID given to the CFC by the Credit Allocation Issuance date.

PRODUCTION COMPANY FORMATION Q & A

Q: Two different companies are financing my film and both members are partners in the production company. Both of them have a tax liability in the state. Do I need to provide the tax ID for both?

A: We accept only one taxpayer ID on the application, which should be the tax ID of the company that is formed to produce the project. One thing to be aware of, however, is the disproportionate allocation rules governed by the IRS. California conforms to IRS code section 704(b). Applicants should consult their tax advisors with respect to allocating credits to investing entities.

Q: The project we are budgeting is below \$10M. We are setting up a separate LLC for this project which will be a subsidiary of a publicly traded company. The LLC will not be publicly traded however. Would this project qualify for the 25% credit? Could we then “sell” or transfer the tax credits to the publicly traded company for their tax liability in California?

A: No. If the LLC is owned wholly or partially (over 25%) by the publicly traded company, the project will only qualify for a 20% credit and be considered a non-independent film. In this case credits cannot be sold, but the LLC may assign its credits to an affiliate.

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JOBS RATIO & BONUS POINTS Q & A

- Q:** Why doesn't the contingency count toward the Jobs Ratio calculation?
- A:** Contingencies are not included in the Jobs Ratio calculation since they are funds that may not be spent and it is difficult to estimate wage vs non-wage. Also, many projects do not include contingencies.
- Q:** Is shooting on a "backlot" at an approved production facility, considered a qualified stage day and thus able to qualify for bonus points?
- A:** If a facility with a backlot is on the approved facility listing, backlot filming will also qualify as a facility day. A facility day requires a minimum of 6 hours of principal photography at the facility.
- Q:** I need clarity on the Jobs Ratio penalty.
- A:** Independent Films: If the CFC determines that the Jobs Ratio has been reduced by more than 30%, the CFC shall reduce the amount of credit allowed by an equal percentage, plus 10% of the amount of credit that would otherwise have been allowed, unless the qualified applicant demonstrates reasonable cause, and the CFC determines the reasonable cause exists for the Jobs Ratio reduction.
- Q:** When calculating the Jobs Ratio, can items like fringes, meal penalties, car allowances, box rentals, cell phone allowances and per diems be included as qualified wages?
- A:** The Budget Tagging and Tracking Tips 2.0 defines what can be considered wage and non-wage. Of the items you listed, all are considered a wage except box rentals and cell phone allowances/rentals. Per diems, for instance, are considered a qualified wage. All of the above apply to qualified labor only. Applicants shall visit the [CFC website](#) for tutorials and frequently asked questions specific for independent projects.
- Q:** Do pension and health payments and California state income tax withholding count as qualified wages in the Jobs Ratio calculations?
- A:** Yes, but with the exception of the California solvency tax.
- Q:** When calculating the Jobs Ratio (on the initial application), would we ignore the \$10 million cap and calculate the Jobs Ratio based on the entire qualified spend budget?
- A:** The Jobs Ratio calculator is programmed to limit the amount of tax credits allowed based on the qualified expenditure caps for Indies. Tax credits for Independent productions will cap out at \$10 million qualified spend.

FACILITY Q & A

- Q:** Do we need to shoot all day at a facility for it to be considered a facility day?
- A:** First unit crew must utilize a production facility for 6 hours or more for the day to be considered a production facility day.

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OUT OF ZONE Q & A

- Q:** If we park the crew inside the zone and shuttle them out to the location every day, is that still considered outside the zone and qualify for bonus points? I'm unsure because the website says that if a day is split between places in and outside the zone that you have to start outside the zone. In this instance, my first shooting location would be outside the zone, but their report to location would be inside the zone.
- A:** As long as the main unit's first scene of the day is filmed outside the zone, it will qualify as an out of zone principal photography day.
- Q:** Does 2nd unit work count as one day out of zone (OZ) or are OZ days only for 1st unit work that starts the day OZ?
- A:** Only 1st unit principal photography days count toward OZ bonus point days. OZ principal photography days must begin with filming the first scene of the day OZ to qualify.
- Q:** Our project is shooting outside of the LA zone for several days. Do we need to fill out a community expenditure report? If so, do I tag my camera package from LA which will be used out of the zone as an out of zone expenditure?
- A:** If a production is spending over \$100,000 in a county, a form should be filled out. Do not include items purchased and/or rented in L.A. county. For all out of Los Angeles county purchases and/or rentals, the county where the vendor is located must be noted. For wages (local hire payroll only), note the county where the work is incurred during prep, shoot, and strike. Please create a free field code for each county, e.g., HC for Humboldt county, OC for Orange county, etc. so as to report the spend for each county. Exact spend is not crucial; estimates are acceptable.
- Q:** What is the definition of the LA studio zone?
- A:** The studio zone is a 30 mile radius used by union film projects to determine per diem rates and driving distances for cast and crew members. Per the statute, "Los Angeles zone" means the area within a circle 30 miles in radius from Beverly Boulevard and La Cienega Boulevard, Los Angeles, California, and includes Agua Dulce, Castaic, including Lake Castaic, Leo Carillo State Beach, Ontario International Airport, Piru, and Pomona, including the Los Angeles County Fairgrounds. The Metro Goldwyn Mayer, Inc. Conejo Ranch property is within the Los Angeles zone.

LABOR Q & A

- Q:** Do productions have to be signatories to Unions, IA, Teamsters, SAG, DGA, and WGA?
- A:** No, there are no Union or Guild requirements.
- Q:** Does the crew have to be California residents?
- A:** No. There is no residency requirement.

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- Q:** [The line producer is also the UPM. Will her wages qualify?](#)
- A:** Producer hyphenates (ATL/BTL functions) are allowed a maximum of \$100,000 exclusive of fringes, box rental, etc. in the UPM category; **vacation and holiday paid as salary must be included in the \$100K maximum or it is excluded.** The rest of her salary is not a qualified expenditure. With respect to ATL/BTL positions in other departments, the BTL salary and rentals must be commensurate with that of other department heads at the project's budget level. The BTL function must be credited for the BTL salary to qualify.
- Q:** [Is a box rental or car allowance eligible for producers?](#)
- A:** If qualified hyphenate, the rate equal to other department heads would be eligible. Otherwise, it would not qualify.
- Q:** [If we outsource set construction to a company that breaks out labor versus materials, does the labor qualify as labor or expenditure?](#)
- A:** In order for an expenditure to be considered qualified wage, the wage must be paid directly by the production company or its payroll company. Wages paid by a vendor are qualified non-wage.
- Q:** [Are dancers considered qualified labor?](#)
- A:** Yes, if they are paid as extras; if they are paid under a SAG/AFTRA talent contract, they are considered performers and do not qualify.
- Q:** [If a qualified individual is being paid via invoice and not payroll, are their wages considered a QW?](#)
- A:** Yes, the payment is qualified as long as the funds are being paid by the production company via accounts payable to the person or his/her personal services company.
- Q:** [Are casting fees qualified labor or qualified non-labor?](#)
- A:** If you hire an extras casting service to cast your extras, this is considered qualified non-labor since you are hiring a vendor (a service). If you hire a casting director or casting associate, they are typically hired directly and are considered qualified labor. Please refer to the [non-indie in-zone qualified expenditure chart](#) for more details on how to tag these fees.

TRAVEL Q & A

- Q:** [I understand that airfare outside of California does not qualify. What about travel day salary payments to qualified crew?](#)
- A:** Travel day payments to crew flying out of or into California are not considered qualified expenditures.
- Q:** [For intrastate airfare, for example Burbank to Sacramento, do we need to purchase through a California travel agent for it to qualify or can we simply purchase a ticket from the airline, Southwest for example?](#)
- A:** Airfare, ancillary charges, and agency fees qualify when purchased from a California travel agency for intrastate travel. Adversely, if you purchase a flight from an airline's website, this cost would not qualify.

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Q: If a crew member receives a living allowance, does that living allowance get tagged as a QW?

A: Yes, if the living allowance is paid to the qualified individual directly (or via payroll) then it is considered a QW.

BUDGET/TAGGING/AUDIT Q & A

Q: The Application form says to submit a budget of qualifying expenditures. What's that?

A: The budget of qualifying expenditures is a budget in industry-standard format which includes only those line items which the state of California considers qualified wages and expenditures (see expenditure charts for your type of project). Please also refer to the Expenditure Tracking Tips 2.0 for a full explanation as to how to create a qualified budget and watch the budget tutorial for independent films at: http://www.film.ca.gov/Independent_Film_Resources.htm

Q: Do I have to use the same Chart of Accounts (template) as the CFC qualified expenditure charts?

A: No, but please refer to the chart applicable to your production so as to be clear what are qualified expenditures.

Q: What if the director also performs a key BTL function, such as DP or editor? Would the salary qualify?

A: The BTL salary would be considered a qualified expenditure within the bounds of either industry standard rates or on par with other key crew members on your production, whichever is the lesser of the two.

Q: Do preview costs qualify?

A: No. Items such as preview travel, screening room rentals, projectionist, audience recruitment costs, focus group costs and any additional labor (outside of the normal picture and sound editorial crew) do not qualify.

Q: The production paid \$10,000 to the bank lender toward legal fees. Is this qualified?

A: No. Legal fees related to financing, distribution, litigation, or marketing are not qualified. However, all other production-related legal fees paid to a CA based attorney are qualified.

Q: Are internet purchases permitted?

A: Yes, with qualified back-up receipts verifying the item was purchased in California from an in-state California vendor and shipped from a California location.

Q: In regards to vendors that have a presence in California, like Staples, but their billing comes from another state, will they qualify for the California tax credits?

A: Yes. The definition of an in-state vendor "...is a vendor or supplier which has an office or other place of business in California and is registered or qualified with the California secretary of state or is required to file a return with the California Franchise Tax Board under Parts 10 or 11 of the Revenue and Taxation Code." Visit the [Secretary of State website](#) to check if a company is registered. Here are the guidelines:

1. Goods purchased or rented from an out of California business that is registered to do business in California qualify, as long as those goods are rented or purchased in California.

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2. Internet purchases from on-line vendors such as Best Buy or Staples which have physical stores in California qualify as long as the goods are purchased in California (shipping label verification).
3. Goods purchased on-line that are shipped from a California fulfillment center (e.g., Amazon) would not qualify, as a fulfillment center is considered a “pass through business”.

Q: [The California Healthy Workplace Family Act, requires employers to provide paid sick leave to employees. Will those days be considered as qualified wages?](#)

A: Yes. The sick days taken must be indicated on the time card as well as listed on the daily production report to qualify. Sick day pay is not, however, allowed when applying for the tax credit since it may not be paid. Please bear in mind that this requirement only goes into effect after the employee has worked at least 90 days on the production.

Q: [Are Promo Dubs eligible?](#)

A: No. Publicity related costs do not qualify.

Q: [Does the contingency have to be included in the budget or can we add 10% of the QW/QE to the application only?](#)

A: If an applicant wants to include a contingency to the direct cost budget, the applicant must include a contingency of no more than 10% of qualified spend as a contractual charge in the budget (not a line item). The budget total must match the total entered into application portal.

Q: [We are purchasing a vehicle for our project and we will be destroying it during the course of the production. Do we need to obtain a certain form from the DMV proving that it was destroyed?](#)

A: The CPA performing your AUP will need to verify that the car has been destroyed and has no residual value. That might be accomplished by showing the CPA footage or photographs of the car before and after, as well as receipts and/or pictures from the scrap metal company that they have received the car as scrap. There is no formal requirement to register the destroyed vehicle with the DMV but certainly such a form would be definitive proof. Check with the CPA performing your AUP to make sure that whatever evidence you have will be deemed sufficient.

TAX CREDIT USAGE/TRANSFER Q & A

Q: [Is there a list of available qualified California companies who can broker the tax credits?](#)

A: A list of tax credit buyers and brokers is available upon request.

Q: [Can the tax credit be used by a company with the same ownership as the production company?](#)

A: Affiliated companies may utilize the tax credits.

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CAREER READINESS Q & A

- Q:** [How do we find interns, instructors, or schools which want to participate in the Career Readiness requirement?](#)
- A:** Please contact the CFC to discuss your career readiness options. The CFC has compiled a database to help match productions with nearby schools, teachers, and students. Producers can also call the CFC to inquire if we have a contact for schools in the area in which the production is based. If necessary, the CFC will refer you directly to either high school, community college and/or workforce programs that will fulfill this requirement.
- Q:** [Our production wants to make a financial contribution – how do we do that?](#)
- A:** The Career Readiness website has a section for financial contributions which includes forms and copies of W9 forms for both the high school and community college funds that will be receiving the contributions. Be sure to go to the individual websites for either the high schools or community colleges for more detailed information. The filled out form and check should be mailed to one of the funds listed. The check should indicate the contribution is for the Career Readiness program and receipt requested for submittal to the CPA performing the Agreed Upon Procedures.
- Q:** [We would like to hire interns for a craft position \(grip/electric/sound/camera/etc.\). Is it necessary to notify the unions?](#)
- A:** Yes, when hiring interns in these categories, productions must contact the prevailing union to inform them of the names and dates when interns will be on set. Union crew members may not understand the situation and notify their unions that non-union workers are on set.