

## **GUIDELINES**

For the Film and Entertainment Grant Fund  
Set Forth in N.C. Gen. Stat. § 143B-437.02A (the “Program”)

The following Guidelines for the Program are submitted for publication and comment by the Department of Commerce.

Hard copies of the Guidelines will be made available by the Public Affairs Office of the Department of Commerce to those persons requesting them. Electronic copies will be posted on the Department of Commerce website at the following location:

Public comments on the Guidelines will be accepted in oral and written form until 5:00 p.m. on January 23, 2015. Written comments are to be provided to the Commerce Finance Center by mail addressed to:

Commerce Finance Center  
N.C. Department of Commerce  
4301 Mail Service Center  
Raleigh, North Carolina 27699-4301

or by hand delivery addressed to:

Commerce Finance Center  
N.C. Department of Commerce  
Education Building  
301 North Wilmington Street  
Raleigh, North Carolina

or by e-mail delivery to the following address: \_\_\_\_\_@nccommerce.com

An opportunity for oral comments will be provided as well. Persons wishing to offer oral comments may appear before a representative of the Commerce Finance Center at **[INSERT TIME AND DATE]**, in the Department of Commerce Fourth Floor Boardroom in the Education Building, 301 North Wilmington Street, Raleigh, North Carolina, and provide their oral comments.

Absent action by the Secretary of Commerce directing a contrary result, these Guidelines will become effective on January 26, 2015.

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# GUIDELINES AND PROCEDURES

For Administration of the North Carolina Film and Entertainment Grant Fund  
Set Forth in N.C. Gen. Stat. § 143B-437.02A

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## 1.0 GENERAL ADMINISTRATION

### 1.1 Authority

The Guidelines, criteria and procedures (“Guidelines”) set forth herein are established pursuant to [N.C. Gen. Stat. §143B-437.02A](#).

### 1.2 Scope and Purpose of Guidelines

These Guidelines apply to funds appropriated or otherwise deposited, granted or allocated to encourage the production of motion pictures, television shows, and commercials and to develop the filmmaking industry within the State, as set forth in N.C. Gen. Stat. § 143B-437.02A, the North Carolina Film and Entertainment Grant Fund (the “Program”).

They are designed to provide internal direction and guidance to state officials responsible for administering the Program and negotiating the financial terms and arrangements under which money may be allocated under it.

Any term used in these Guidelines shall have the same definition as set forth in [N.C. Gen. Stat. §143B-437.02A](#).

In the event of any conflict between these Guidelines and the terms of [N.C. Gen. Stat. §143B-437.02A](#), the language of [N.C. Gen. Stat. §143B-437.02A](#) shall supersede the language found in these Guidelines. Additionally, where these guidelines are more restrictive than the express terms of [N.C. Gen. Stat. §143B-437.02A](#), the Secretary of Commerce or his designee (the “Secretary”) has the authority to waive any of the requirements of these Guidelines.

The general procedures outlined in these Guidelines are intended to be applied consistently to all projects. Significant deviations in procedure should occur only when, in the exercise of discretion and considering the particular and unusual circumstances, the Secretary concludes that the best interests of the State and the purposes of the Program will be advanced. Such deviations should be noted when they occur.

### 1.3 Amendments

These Guidelines may be amended from time to time as the size and nature of the Program or the economic circumstances and condition of the State may warrant.

At least 20 days before the effective date of any nontechnical amendments to the Guidelines, the North Carolina Department of Commerce (the “Department”) will publish the proposed Guidelines on the Department's Web site and provide notice to persons who have requested notice of proposed Guidelines.

The Department will accept oral and written comments on the proposed Guidelines during the 15 business days beginning on the first day that the Department has completed these notifications.

A technical amendment is either:

- 1) An amendment that corrects a spelling or grammatical error, or
- 2) An amendment that makes a clarification based on public comment and could have been anticipated by the public notice that immediately preceded the public comment.

## 1.4 Administration

The Secretary administers the Program. Administrative support for the Program will be provided by the Commerce Finance Center (“CFC”), or such other division as the Secretary may designate, or any successor division performing a comparable function.

## 2.0 PROGRAM MISSION AND GUIDING PRINCIPLES

### 2.1 Purpose of Program

The purposes of the Program include those set out in [N.C. Gen. Stat. §143B-437.02A](#), including to encourage the production of motion pictures, television shows, and commercials and to develop the filmmaking industry within the State.

### 2.2 Recipients of Money Allocated Under the Program

Moneys from the Program will be allocated to Production Companies that meet eligibility criteria set forth in [N.C. Gen. Stat. §143B-437.02A](#) and these Guidelines, for use in connection with efforts to secure commitments for the production of motion pictures, television shows, and commercials in the State, and to develop the filmmaking industry within the State.

### 2.3 Entities in Default Barred From Receiving Funds

The Department will not make an award of grant funds (“Grant Award”) to any individual, organization, or governmental unit that is currently in default on any loan or grant previously made by the Department.

#### **2.4 Form of Financial Assistance Provided From the Program**

Financial assistance provided by the Program will take the form of Grant Awards to Production Companies for qualifying expenses incurred in connection with a production (a “Grant Award”). A Production Company is defined by [N.C. Gen. Stat. § 105-164.3](#). A grantee is a Production Company that has received a Grant Award from the Department under the Program.

#### **2.5 Provisions to Ensure Performance and Recapture Funds**

It is the intent of this Program to ensure accountability for funds disbursed under it. To that end, grantees are to allow the State of North Carolina and the Department, or their agents, access to all records necessary to confirm compliance with the Guidelines and with terms of agreements negotiated and executed under them. As further addressed in Sections 3.6a and 6 below, such agreements are to include provisions adequate to protect the State’s interests in the funds.

#### **2.6 Overdue Tax Debts**

Persons or entities with overdue tax debts to the State of North Carolina, as defined in [N.C. Gen. Stat. § 105-243.1](#), are not eligible for grants until the debts are paid.

#### **2.7 Tax Events**

The State of North Carolina, including the Department, assumes no liability or responsibility for any tax implications of a project or a grant from the Program. Any tax liability arising out of a project shall be borne fully by the applicable taxpayer.

#### **2.8 Specific Legislative Direction**

To the extent the General Assembly’s allocation of money to the Program directs a use or process different than those set out in these Guidelines, the General Assembly’s direction controls and supersedes these Guidelines.

### **3.0 PROCEDURE FOR COMMITMENT AND AWARD OF GRANT FUNDS**

#### **3.1 Assignment of Employees of Economic Development Partnership of North Carolina, Inc. (“Partnership”)**

Projects appropriate for funding may be brought to the attention of the Department in a variety of different ways. As a general rule, when a project is first identified, it should be assigned to a representative in the Partnership’s N.C. Film Office (“Film Office”). The Film Office will work as a liaison between the Department and the potential Applicant.

#### **3.2 Confidentiality of Information Submitted**

All documents submitted to the Department, including Applications, Compliance Audits and Certified Reports (both addressed below), are public records governed by Chapter 132 of the General Statutes and applicable provisions of the General Statutes protecting confidential information. When specific information in an Application is regarded by the Applicant and by law as confidential and not subject to disclosure under the North Carolina Public Records Act, the Applicant should specifically and clearly designate it as such in writing on that portion of the Application in which the information appears at the time of initial disclosure to the Department. An Applicant should provide an explanation for why particular information is regarded as confidential. Applications should not be indiscriminately marked as confidential. However, the final determination of whether a document constitutes confidential information, whether or not it is so marked by the Applicant, shall be made by the Department, in accordance with applicable law.

#### **3.3 Step One: Notification to the Partnership’s Film Office of Intent to File Application**

In order to be eligible for a grant from the Program, an Applicant must first provide notice to the Partnership’s Film Office of its intent to do so. The notice to the Film Office shall include at least the following information:

- 1) Name of Individual Signing and Submitting Application
- 2) Job Title of Individual Signing and Submitting Application

- 3) Title of Production
- 4) Type of Production
- 5) A Detailed Description of the Production
- 6) Name of Production Company
- 7) Approximate Overall Number of Crew
- 8) Approximate Overall Number of Talent/Cast
- 9) Approximate Overall Number of Extras/Background Talent
- 10) Total Production Budget
- 11) Estimated Spending on Qualifying Expenses in North Carolina
- 12) Estimated Amount of Grant to be Requested
- 13) Principal Photography Dates in North Carolina
- 14) Financial Contact Name, Street/Mailing Address, Phone and Fax Numbers and Email

### 3.4 Step Two: Formal Application

Potential grantees seeking money from the Program are required to submit a formal Application to the CFC. The Secretary, in consultation with CFC and Department staff, shall review the Application to reach a decision on whether an award will be made. Applications for Grant Awards will be reviewed at least once a month.

The Application is designed to aid the Secretary in making an assessment of whether the project will encourage the production of motion pictures, television shows, and commercials and to develop the filmmaking industry within the State.

The Application will solicit information regarding the project, including, among other things, information necessary to address some or all of the considerations set forth in Section 6 below.

Applicants must use the required Application forms available from the Partnership's Film Office or the CFC and must fully comply with all requirements of these Guidelines within the time period specified, in order to be eligible for a Grant Award. Applications that do not include ALL of the documents requested therein, or that contain documents that have not been fully completed, may be considered incomplete and may be returned to the Applicant without further review.

#### 3.4a Information in Application Form

The information to be collected in the process of Application for grants from the Program may include anything that allows consideration of the factors set forth in Section 3.5 below, or any other criteria considered relevant by the Department or Applicant, including financial statements of the proposed Applicant.

The Application shall include at least the following information:

- 1) Name of Individual Signing and Submitting Application
- 2) Job Title of Individual Signing and Submitting Application
- 3) Title of Production
- 4) Type of Production. In Addition, If the Production Is a Television Series, Indicate the Anticipated Number of Episodes
- 5) Name of Production Company/Applicant and Identification of Any Pre-Existing Presence the Production Company Already Has in North Carolina
- 6) Production Company Street/Mailing Address
- 7) Production Company/Applicant Phone Number
- 8) Production Company/Applicant Email
- 9) Approximate Overall Number of Crew
- 10) Approximate Number of Crew Who Are Anticipated to be Permanent North Carolina Residents
- 11) Approximate Overall Number of Talent/Cast
- 12) Approximate Number of Talent/Cast who Are Anticipated to be Permanent North Carolina Residents
- 13) Approximate Overall Number of Extras/Background Talent
- 14) Anticipated Number of Extras/Background Talent Who Are Anticipated to be Permanent North Carolina Residents
- 15) Approximate Total Number of Individuals Who Are Anticipated to Work on the Production in North Carolina
- 16) Approximate Total Number of Permanent North Carolina Residents Who Are Anticipated to Work on the Production in North Carolina
- 17) Total Production Budget
- 18) Estimated Spending on Qualifying Expenses in North Carolina
- 19) Pre-Production Dates in North Carolina
- 20) Principal Photography Dates in North Carolina
- 21) Wrap/Post-Production Dates in North Carolina
- 22) Estimated Overall Duration of Production Activities within North Carolina

- 23) Anticipated Location Areas (Towns/Cities)
- 24) Any Specific Identifiable Locations, Such As Open Public Spaces, Commercial Districts, Identifiable Attractions, Traditional Downtown Areas, Public Landmarks, Residential Areas or Other Similar Properties or Areas
- 25) Whether the Production Will Involve Permanent Improvements to Such Specific Identifiable Locations
- 26) Producer Name
- 27) Producer's Phone Number and Email
- 28) Line Producer or UPM Name
- 29) Line Producer or UPM Phone Number and Email
- 30) Financial Contact Name
- 31) Financial Contact Street/Mailing Address, Phone and Fax Numbers and Email
- 32) Brief Synopsis of the Production
- 33) A Copy of the Script for the Production Being Produced

The Department will provide the Applicant with a form separate from the Application on which the Applicant should provide only the Department (and not the Film Office) with the Federal Employer Identification Number being used for the production.

#### **3.4b Ability to Request Additional Information**

The Secretary may require additional information to be provided from an Applicant or from a business or industry beyond that which may be contained in the Application forms or specified in these Guidelines.

#### **3.4c Failure to Provide Information**

The Secretary may request supplemental materials from the Applicant, and such materials must be received within 15 days of the date of the request.

Failure to provide information requested, as well as failure to provide requested information in sufficient detail, may serve as grounds for rejecting an Application.

#### **3.5 Step Three: Consideration and Award**

Upon receipt of a final version of the Application, satisfactory compliance with all requirements stated in these Guidelines and consideration of the criteria set forth below, the Secretary shall

determine whether or not the proposed project should receive a Grant Award under the Program. Such determination shall be made in the sole discretion of the Secretary (or his delegate, as set forth above).

The Secretary, based upon the availability of funds, sets the available award amounts and the dates during which proposals may be submitted. The Secretary will review Applications at least once a month until the funds available for the Program have been exhausted.

Grant Awards are limited to one grant per Production Company for a single production. In addition, grants awarded shall not exceed any of the following criteria:

- 1) Twenty-five percent (25%) of the qualifying expenses for the production.
- 2) Five million dollars (\$5,000,000) for a feature-length film.
- 3) Five million dollars (\$5,000,000) for a television or video series.
- 4) Two hundred fifty thousand dollars (\$250,000) for a commercial for theatrical or television viewing.

The final Grant Award amount may not exceed the maximum Grant Award amount certified, neither per fiscal year nor in the aggregate.

#### **3.5a Statutory Criteria for a Grant Award**

In reviewing and deciding whether to make a Grant Award, the Department will review and consider the following criteria.

In order to be considered for a Grant Award under the Program, the Production Company shall have secured at least seventy-five percent (75%) of its funding prior to submitting an Application.

In addition, pursuant to N.C. Gen. Stat. §143B-437.02A(a)(1), a Production Company that submits an Application and thereafter receives a Grant Award acknowledges in doing so that it must meet one of the following criteria prior to receiving a disbursement of grant funds:

- 1) For a feature-length film, the Production Company must have qualifying expenses of at least five million dollars (\$5,000,000) :

- 2) For a video or television series, the Production Company's total qualifying expenses must average at least two hundred fifty thousand dollars (\$250,000) per episode.

A television "series" is the total number of episodes for a specific season that is filmed in the State. Therefore, if an Applicant will only film a portion of the total season in North Carolina, the Applicant should include with its Application only those anticipated qualifying expenses for those episodes the Applicant intends to film in the State. For a television pilot, the pilot itself will count as one season; or

- 3) For a commercial for theatrical or television viewing, the Production Company must have qualifying expenses of at least two hundred fifty thousand dollars (\$250,000).

Pursuant to N.C. Gen. Stat. § 143B-437.02A(a)(4), a Production Company will be ineligible for a grant under the Program or, if awarded a grant, will be ineligible for any disbursement of grant funds under the grant and the Program if the Secretary determines in his sole discretion that the production involves one or more of the following conditions:

- 1) The production contains material that is "obscene," as defined in N.C. Gen. Stat. § 14-190.1.
- 2) The production contains material that is "harmful to minors" as defined in N.C. Gen. Stat. § 14-190.13.
- 3) The production has the primary purpose of political advertising, fundraising, or marketing (other than marketing a product or service by commercial).
- 4) The production is for news programming, including weather, financial market and/or current events reporting.
- 5) The production is for live sporting event programming, including pre-event and post-event coverage and scripted sports entertainment. Note that the term does not include commercial advertising, an episodic television series, a television pilot, a music video, a motion picture, or a documentary production in which sporting events are presented through archived historical

footage or similar footage taken at least 30 days before it is used.

- 6) The production is for radio.
- 7) The production is for a talk, game, or awards show or other gala event.
- 8) If the production is a feature-length film or a video or television series which was filmed or on which pre- or post-production work was completed in North Carolina, then the production must contain end credits with (i) a statement, as applicable, that the production was "Filmed in North Carolina" that its "Pre-Production Work Was Performed in North Carolina" or that its "Post-Production Work Was Performed in North Carolina," (ii) a logo provided by the Department, and (iii) an acknowledgement of the regional film office(s) responsible for the geographic area(s) in which the filming of the production or the pre- or post-production work occurred. If the production is a commercial for theatrical or television viewing filmed in North Carolina and the production contains end credits at all, then the end credits must include whichever of the above statements is applicable, the logo and the acknowledgement.
- 9) The Production Company fails to offer marketing opportunities to be evaluated by the Film Office to ensure that they offer promotional value to the State.

### **3.5b Additional Factors to be Considered in Allocation and Award Decisions**

In reviewing and deciding whether to make a Grant Award, the Department will also review and consider the following criteria.

- 1) The percentage of individuals the Applicant estimates will work on the production in North Carolina who may also be permanent State residents.
- 2) Whether the production features identifiable attractions or State locales that could induce visitation by nonresidents of the State to said attraction or State locale.
- 3) Whether the production invests in permanent improvements to open public spaces, commercial districts, traditional downtown areas, public landmarks, residential areas, or similar properties or areas.

- 4) Whether the production takes place in an economically distressed county or area of the State, including in a development tier one or development tier two area of the State as defined in N.C. Gen. Stat. § 143B-437.08.
- 5) The duration of production activities in the State.
- 6) Whether the production is a recurring series that is shooting a consecutive season in the State.
- 7) The total of anticipated in-State qualifying expenses.
- 8) Whether the Production Company has an existing presence in North Carolina.
- 9) Any other factors that the Department in its discretion determines are relevant.

### **3.6 Step Four: Execution of Appropriate Contracts**

The appropriate contract for a grant will be a satisfactory Grant Agreement (the “Grant Agreement”) between the grantee and the Department in a form acceptable to the Department and including the performance criteria necessary for funds to be released and expended. The Department will have basic forms for these Grant Agreements, although performance criteria for specific Agreements will vary.

#### **3.6a Terms to be Included in Grant Agreements**

The basic form of a Grant Agreement between a grantee and the Department will be prescribed by the Department. In addition, it may contain the following:

- 1) An agreement to comply with the terms of the grantee’s Application, these Guidelines and the Grant Solicitation.
- 2) An agreement to submit the information required by Exhibit A to these Guidelines and Section 8, below, including the certified audit report (“Certified Report”) to the Department to be prepared by a Certified Public Accountant (“CPA”) licensed to practice in the State of North Carolina.
- 3) An agreement to permit the Department access to all records necessary to evaluate compliance with the relevant law, Guidelines and all agreements executed under them.

- 4) An agreement that the production will begin principal photography within 100 days of receiving confirmation of the Grant Award.
- 5) A clawback provision, as addressed further in Section 6 below.

### **4.0 SUBMISSION OF PROOF OF PERFORMANCE AND DISBURSEMENT OF FUNDS**

Program funds shall be disbursed upon submission and confirmation of evidence of all qualifying expenses already incurred by the Production Company for the production, as set forth in Exhibit A to these Guidelines and herein. If the Department determines the appropriate performance criteria have been met, payment will be issued in a timely manner, typically within 30 days.

#### **4.1 Qualifying Expenses**

Exhibit A to these Guidelines addresses the requirements for Qualifying Expenses.<sup>1</sup>

#### **4.2 Proof of Compliance in the Compliance Audit, Certified Report to the Department and Summary Report to the Film Office**

Before funds are disbursed, the Department must be provided with proof of compliance with the terms of the grant. In accordance with Exhibit A to these Guidelines, the grantee shall provide such proof as follows.

First, as set forth in Exhibit A, the Production Company shall provide the CPA with access to documentation of all of the claimed qualifying expenses for the production for review and completion of an independent compliance audit (“Compliance Audit”) performed at the expense of the production.

Next, also as set forth in Exhibit A, the CPA shall determine all actual qualifying expenses for the production and submit the results as the Certified Report to the Production Company and the Department. Additionally, the CPA shall prepare and submit a Summary Report to the Film Office,

<sup>1</sup> Exhibit A contains non-exclusive examples of the documents the CPA should review in the course of completing the Compliance Audit, guidance for the CPA in determining what constitute qualifying expenses and non-exclusive requirements for what the CPA should include in its Certified Report and its Summary Report.

summarizing the conclusions of the Certified Report but removing any confidential tax information pertaining to the Production Company or any third party.<sup>2</sup>

#### **4.3 Review of the Compliance Audit and Certified and Summary Reports**

Following the CPA's submission of the Compliance Report and the Summary Report, the Department and the Film Office will review their respective Reports. Both the Department and the Film Office have the absolute discretion to direct any questions or request any additional information (including supporting documents or data) from the CPA or the Production Company so as to clarify or verify a claimed qualifying expense.

If the information or any requested written responses are not forthcoming within 10 business days, the Department has the absolute discretion to consider the challenged expense to be non-qualifying.

#### **5.0 CLOSEOUT**

Closeout shall occur upon certification and proof of completion of the entire project in a form and manner satisfactory to the Department. However, grantees may remain subject to forfeiture, repayment and other requirements following closeout, as set forth below and in the Grant Agreement.

#### **6.0 CLAWBACK**

To the extent it is discovered that grant funds already disbursed to a Production Company were expended ineligibly, or the Production Company failed to conform to any applicable grant requirements, the Department shall have the ability to recapture all grant funds disbursed to the Production Company and de-obligate any additional grant funds not yet disbursed.

Without limitation, the Department may recapture the grant funds if, following the Closeout of the grant, a later version of the production (such as a "director's version" or "unrated version") is released which the Department determines is violative of N.C. Gen. Stat. § 143B-437.02A(a)(4), including by being obscene or harmful to minors.

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<sup>2</sup> This distinction between the Certified Report and the Summary Report is necessary because of the difference in time between the passage of N.C. Gen. Stat. § 143B-437.02A versus the transfer of the functions of the Department's Division of Tourism, Film, and Sports Development Film Office to the Partnership, as well as because of how the functions of this Division were transferred to the Partnership.

## EXHIBIT A

### Guidance For Calculating Qualifying Expenses, Conducting Compliance Audits And Completing Certified And Summary Reports Under The NC Film Grant Program

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In this Exhibit A, the North Carolina Department of Commerce (“Department”) supplements its Guidelines and Procedures (“Guidelines”) for the Administration of the North Carolina Film and Entertainment Grant Fund (“Program”) with non-exclusive guidance on how a CPA should calculate the qualifying expenses for a certified production, conduct a Compliance Audit and complete the resulting Certified Report to the Department and Summary Report to the Film Office. *See* N.C. Gen. Stat. §§ 143B-437.02A(b)(7) & (d); Guidelines § 8.2.

#### A.1 THE CPA’S ROLE

The role of the independent, certified North Carolina-licensed CPA in conducting the Compliance Audit under the Program is to determine the actual qualifying expenses that the overall production has incurred in North Carolina and then accurately represent these expenses to the Department in the Certified Report and to the Film Office in the Summary Report. *See* N.C. Gen. Stat. § 143B-437.02A(d) Guidelines § 8.2. For example, if a feature-length film has already incurred at least \$1,000,000 in qualifying expenses but has yet to finish filming in North Carolina, the CPA cannot complete its Compliance Audit because, among other reasons, the production is still incurring qualifying expenses.

For the purposes of the Guidelines, an “independent” CPA is one within the definition of N.C. Gen. Stat. § 97-165(3) who has no direct financial interest in the Production Company or the production and whose compensation for the Compliance Audit, the Certified Report and the Summary Report is not derived in any part from the outcome of the Audit, including whether any specific claimed qualifying expenses in fact qualify.

The Compliance Audit must be performed in accordance with generally accepted auditing standards as set forth in Generally Accepted Auditing Principles (GAAP) and Generally Accepted Auditing Standards (GAAS). Additionally, the CPA should have sufficient knowledge of accounting principles and practices generally recognized in the film and television industry. Further, the CPA should have significant knowledge about the North Carolina Revenue Laws and the interpretation and application of them by the North Carolina Department of Revenue (“NCDOR”).

#### A.2 THE CPA MUST DETERMINE AND IDENTIFY QUALIFYING AND NON-QUALIFYING EXPENSES.

The CPA’s duty to identify in its Compliance Audit all of the actual qualifying expenses for the overall production includes a responsibility to identify those specific expenses which the Production Company has claimed as qualifying but which, in the course of the Audit, the CPA determines do not qualify. (The Department does not require, however, that such non-qualifying expenses be identified in the Summary Report to the Film Office, as noted in Section A.5 below).

For example, the Production Company may submit to the CPA a receipt for a rental of goods. If, upon investigation, the CPA determines the goods were not both rented from a person with a physical location in the State and actually rented at an in-State location belonging to the person, then the CPA should specifically identify the transaction as non-qualifying in its Compliance Audit. *See* N.C. Gen. Stat. § 143B-437.02A(b)(7)a. Similarly, if the Production Company submits to the CPA receipts for payments of compensation or wages on which North Carolina withholding taxes were **not** remitted, the CPA should specifically identify such payments as non-qualifying in its Compliance Audit. *See* N.C. Gen. Stat. § 143B-437.02A(b)(7)b.

#### A.3 DOCUMENTS THE CPA SHOULD REVIEW IN COMPLETING THE COMPLIANCE AUDIT

The following is a non-exclusive list of documents to which the CPA should obtain access and which the CPA should review in the course of completing its Compliance Audit.

1. A detailed corporate flowchart of the structure of the divisions, consolidated corporations, affiliates, partnerships, LLC, LLP, etc. of which the Production Company is a member.
2. A detailed explanation of the Production Company’s business activities in North Carolina throughout the course of the production, including a listing of all State locations at which the production was filmed.
3. A detailed list of all individuals who were paid by the Production Company, a payroll company or a loan-out company for working on the production in North Carolina, including

- Social Security Numbers (“SSNs”) or Individual Taxpayer Identification Numbers (“ITINs”) for each such individual. This list should include all individuals who received a W-2 or 1099.
4. A detailed list of all claimed qualifying expenses in North Carolina. The list should include the name, address and business location of the relevant lessor, retailer or vendor, as applicable. Further, the list should include the price of any claimed qualifying expenses and a description of the nature of such expenses.
  5. For any individual working on the production in North Carolina during the period covering the claimed qualifying expenses, copies of all North Carolina withholding tax returns filed by the Production Company, any payroll company and any loan-out company registered to do business in North Carolina.
  6. For the period covering the claimed qualifying expenses, detailed payroll reports from the Production Company, any payroll company and any loan-out company registered to do business in North Carolina for all work performed on the production in North Carolina. The reports must be run on a pay-period basis, which will usually be a weekly basis. They cannot be run on a summary-period basis.
  7. Copies of W-2s and 1099s for all individuals paid for working on the production in North Carolina during the period covering the claimed qualifying expenses, including all W-2s and 1099s from the payroll company.
  8. Copies of W-9s from all individuals working on the production in North Carolina for a loan-out company during the period covering the claimed qualifying expenses, regardless of whether the loan-out company is registered to do business in the State.
  9. For any individual working on the production in North Carolina, any W-4s and NC-4s with nine (9) or more exemptions or claiming exempt status for the period covering the claimed qualifying expenses.
  10. For the years in which the Production Company is claiming qualifying expenses, copies of only those of the Company’s federal and North Carolina income tax returns **already** filed as of the time the CPA submits the Certified and Summary Reports.
  11. Copies of the Production Company’s North Carolina sales and use tax returns for the period covering the claimed qualifying expenses.
  12. The petty cash receipts for any work on the production in North Carolina from the period covering the claimed qualifying expenses.
  13. For the period covering the claimed qualifying expenses, all sales and purchase invoices, bills and receipts, all journals and all general ledgers for any work on the production in North Carolina.
  14. A chart of all of the accounts the Production Company used to pay for all claimed qualifying expenses and copies of all bank statements reflecting such payments.
  15. A finished copy of the production on a DVD.
  16. Any other information that the Production Company or CPA deems necessary to substantiate a claimed qualifying expense.

#### A.4 QUALIFYING EXPENSES

1. N.C. Gen. Stat. § 143B-437.02A(b)(7) provides:

Qualifying expenses. – The sum of the amounts listed in this subdivision, substantiated pursuant to subsection d) of this section, and spent in this State by a production company in connection with a production, less the amount paid in excess of one million dollars (\$1,000,000) to a highly compensated individual.

- a. Goods and services leased or purchased. For goods with a purchase price of twenty-five thousand dollars (\$25,000) or more, the amount included in qualifying expenses is the purchase price less the fair market value of the good at the time the production is completed. Goods and services includes the costs of tangible and intangible property used for, and services performed primarily and customarily in, production, including preproduction and postproduction and other direct costs of producing the project in accordance with generally accepted entertainment industry practices. Goods and services exclude costs for development, marketing, and distribution; costs of financing for the production, of bonding

- related to the production, of production-related insurance coverage obtained on the production; and expenses for insurance coverage purchased from a related member.
- b. Compensation and wages and payments on which withholding payments are remitted to the Department of Revenue under Article 4A of Chapter 105 of the General Statutes. Payments made to a loan-out company for services provided in North Carolina shall be subject to gross income tax withholding at the applicable rate under the Article 4 of Chapter 105 of the General Statutes.
  - c. Employee fringe contributions, including health, pension, and welfare contributions.
  - d. Per diems, stipends, and living allowances paid for work being performed in this State.

2. Taxes

Taxes paid, whether federal, local or state, are never qualifying expenses. The CPA should carefully examine every document supporting a claimed qualifying expense for any taxes charged, from fuel taxes to sales taxes, and remove them from its calculation of qualified expenses.

3. Qualifying Expenses “In Connection With” a Certified Production

The Department considers otherwise qualifying expenses incurred up to six (6) months before approval of the Production Company’s Application for its Grant under the Program to be expenses incurred “in connection with” the certified production.

4. Qualifying Payments for Goods and Services in North Carolina

- a. Goods
  - i. The Production Company must make the payment for goods to a person with a physical location in North Carolina. That the person merely charged the Production Company North Carolina sales

tax, such as for equipment rentals, is not necessarily evidence that the person has a physical location in the State.

- ii. But, even if the Production Company rents the goods from an individual with a physical location in North Carolina, if the goods are used for filming outside of the State for half of the rental period, only half of the rental price is a qualifying expense.
- iii. The fact that a retailer or lessor obtains a good from outside of the State may not necessarily be relevant to determining whether the good is a qualifying expense. For example, if a Production Company asks a North Carolina retailer to order a piece of equipment, the retailer orders it from South Carolina, and the Company picks it up from the retailer in North Carolina, it is a qualifying expense.

b. Services

- i. Services do not have to be rendered by a North Carolina resident or by an individual with a physical location in the State so long as they are actually rendered within the State.
- ii. Payments to a shipping company (such as FedEx, DHL or UPS) are qualifying expenses so long as the shipping services are obtained from a North Carolina location of the shipping company. If goods are delivered into North Carolina from an out-of-state location, the shipping services charge does not qualify because it is not considered to have been rendered within the State.
- iii. The CPA is expected to distinguish between a true service provider/independent contractor for whom no withholdings were due to be remitted and an individual who has incorrectly characterized him/herself as such

- iv. when withholdings were actually due on his/her payments. This will require the CPA to apply the independent contractor test of the Internal Revenue Service (“IRS”) and any additional guidance on the test offered by the NCDOR. Payments for services performed by a true service provider/independent contractor do not have to have withholdings remitted in order to be qualified expenses.
  - v. For example, payments to a craftsman who is accurately characterized as an independent contractor may be qualifying expenses for which withholdings do not have to be remitted.
  - vi. But, if the CPA determines that a payment has been made to an individual for whom withholdings should have been remitted but were not, the payment is **not** a qualifying expense, and the CPA must specifically identify the transaction in its Compliance Audit. In such event, the relevant payor can always re-characterize the payment to the individual according to the NCDOR’s procedures and remit all applicable withholding taxes, thereby converting the payment into a qualifying expense.
  - vii. CPAs are expected to exercise great caution in analyzing claimed qualifying expenses by smaller Production Companies working on low-budget productions. Such Companies often have either extremely limited payroll records or none at all, instead attempting to characterize as independent contractors practically all individuals working on the production.
- c. CPAs may confront “mixed transactions” involving, for example, goods brought from outside the State but used for services performed inside the State. For example, if an out-of-state caterer brings its mobile kitchen and food from outside North Carolina and then charges the Production Company for the use or consumption of these items inside the State as well as for its food-preparation services rendered inside the State, only the food preparation services are qualifying expenses.
- d. As the statute notes, goods used and services performed primarily and customarily in pre-production and post-production are qualifying expenses. The statute also specifically excludes certain typical production costs, however, such as financing, marketing and production insurance costs.
  - e. The cost of the CPA’s Compliance Audit and its creation of the Certified and Summary Reports is not a qualifying expense because, but for the Grant Award, these services would not be customarily performed in post-production.

#### **A.5 QUALIFYING COMPENSATION, WAGES OR PAYMENTS**

1. If a payment is made for wages or compensation to an individual for whom no withholding taxes have been remitted, it is not a qualifying expense. As noted above, the only exception to this rule is if the CPA determines, after reviewing N.C. Gen. Ch. 105, Art. 4A and applying the IRS independent contractor test and any related guidance by the NCDOR, that the payment represents a payment to a true service provider/independent contractor.
2. If the CPA identifies a payment for wages or compensation to an individual for whom no withholdings have been remitted, the relevant payor (whether the Production Company, payroll company or loan-out company registered to do business in North Carolina) can always remit the withholdings, thereby converting the payment into a qualifying expense.
3. Payroll companies or Production Companies must remit taxes on their payments to out-of-state loan-out companies that are not registered to do business in North Carolina.
4. Only the first \$1 million of each individual’s compensation and wages will count towards the qualifying expenses total.

#### **A.6 QUALIFYING PAYMENTS FOR EMPLOYEE FRINGE BENEFIT CONTRIBUTIONS**

1. In order for a payment for an employee fringe benefit contribution to be a qualifying expense, it must relate exclusively to compensation or wages for work performed on the production in North Carolina.
2. Additionally, to determine whether a payment is a qualifying expense for an employee fringe benefit contribution, the CPA must determine whether the payment is for an “employee.” For employee fringe benefits under the statute, an employee is “a person who is employed for consideration for at least 35 hours a week and whose wages are subject to withholding under Article 4A of Chapter 105 of the General Statutes.” N.C. Gen. Stat. § 143B-437.02A(b)(2).
  - a. To determine an individual’s weekly work hours, the CPA should review the payroll records, withholding returns and any other relevant documents.
3. If it so qualifies, an employee fringe benefit payment can include health insurance, pension and other employee fringe benefit contributions by the Production Company. The CPA must be certain to distinguish any such payment from required federal or State tax payments, however.

#### **A.7 QUALIFYING PAYMENTS FOR PER DIEMS, STIPENDS AND LIVING ALLOWANCES**

Per diems, stipends and living allowance payments are qualifying expenses so long as they represent payments for work actually performed in North Carolina. The CPA may have to review hotel receipts, shooting schedules and related documents to determine whether the payment at issue represents an allowance for expenses on a date on which the individual who received the payment was actually working in North Carolina. Records of such qualifying payments are not necessarily located in payroll reports but rather may only be reflected in petty cash receipts or other accounts payable invoices.

#### **A.8 CONTENTS OF THE CPA’S CERTIFIED REPORT TO THE DEPARTMENT**

The CPA’s Certified Report is a public record governed by N.C. Gen. Ch. 132, including the confidentiality exceptions therein.

The CPA’s Certified Report to the Department must be submitted in   hard copies and in **electronic form** and contain the following documents.

1. A statement specifying every individual qualified expense broken out by (i) goods, (ii) services, (iii) wages/compensation/payments on which withholdings were remitted, (iv) employee fringe benefit contributions and (v) per diems, stipends and living allowances. The CPA should include with this statement those documents required by Nos. 1 through 4 and 6 through 11 of Section A.3 above, as well as an electronic copy of any ledger from the Production Company on which the CPA relied. Additionally, the CPA should organize and, if requested, make available to Commerce and any other State officials designated in the Grant Agreement all other documents required under Section A.3 above, as well as any other documents or data substantiating the CPA’s conclusions in the Compliance Audit.
2. The Compliance Audit should contain a separate statement identifying and explaining, by payee and date, all transactions which were claimed qualifying expenses but which the CPA found to be non-qualifying for any reason. This statement should indicate to the Department where the documents relating to such non-qualifying transactions are contained among the documents the CPA produces with the Compliance Audit. If the documents are not otherwise required to be produced under this Section, the CPA should produce them.
3. A letter from the CPA outlining its verification procedures.
4. A statement determining the final amount of all qualifying expenses incurred by the Production.
5. The total qualifying expenses should be broken out in categories of (i) goods, (ii) services, (iii) qualifying wages/compensation/payments, (iv) employee fringe benefit contributions and (v) per diems, stipends, and living allowances. Each category should have its own total.

6. The category for qualifying compensation, wages or payments should be further broken out by separate categories identifying by name the members of the cast, the crew and the background talent/extras who worked on the production in the State and, specifying all such individuals in each category who are North Carolina residents.
7. A completed summary statement of the Compliance Audit and the Production Company's compliance with its Grant Agreement.
8. A final North Carolina crew list.
9. A final list of all providers of goods or services to whom or which qualifying expense payments were made.
10. A list of North Carolina sites by location used in the production.
11. A finished copy of the production on a DVD.

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7. A finished copy of the production on a DVD.

#### **A.9 CONTENTS OF THE CPA'S SUMMARY REPORT TO THE FILM OFFICE**

The CPA's Summary Report to the Film Office of the Partnership is a public record governed by N.C. Gen. Ch. 132. As noted below, the Summary Report does not require the inclusion of any confidential information, including tax information.

1. A statement identifying every individual qualified expense broken out by (i) goods, (ii) services, (iii) wages, compensation or payments on which withholding taxes were remitted, (iv) employee fringe benefit contributions and (v) per diems, stipends, and living allowances.
2. A statement determining the final amount of all qualifying expenses incurred by the Production.
  - a. The total qualifying expenses should be broken out in categories of (i) goods, (ii) services, (iii) wages, compensation or payments on which withholding taxes were remitted, (iv) employee fringe benefit contributions and (v) per diems, stipends, and living allowances. Each category should have its own total.
  - b. The category for qualifying compensation, wages or payments should be further broken out by