



GOVERNMENT OF PUERTO RICO
DEPARTMENT OF ECONOMIC DEVELOPMENT AND COMMERCE

August 4, 2021

CIRCULAR LETTER DDEC NO. 2021-005

APPLICANTS FOR FILM TAX BENEFITS TO FILM PROJECTS UNDER THE PUERTO RICO INCENTIVES CODE, ACT. 60-2019, AS AMENDED.

FILM TAX DECREE APPLICATION PROCESS, GENERAL RULES, FILM PROJECTS REQUIREMENTS, NON-ELIGIBLE FILM PROJECTS, ELIGIBLE PRODUCTION EXPENSES AND AGREED UPON PROCEDURES

I. **Objective:**

Pursuant with Section 1010.01(c)(6) of Act No. 60-2019 ("Act"), as amended, known as the "Puerto Rico Incentive Code", promoting Puerto Rico as a unique film location is part of the Government of Puerto Rico's public policy declaration.

Section 2093.01 of the Act empowers the person who holds the position of Secretary of the Department of Economic Development and Commerce of Puerto Rico ("DEDCE Secretary"), to adopt the necessary regulations or circular letter, the documents, information, and requirements to be provided and followed by a person interested in availing itself the benefits of the Act in addition to the eligibility requirements established under Chapter 9 of the Act.

Circular Letter No. 21-01 will be the base circular letter to implement the provisions of the Act regarding eligible Film Projects subject to Section 1020.09, Section 2023.01, Section 2091.01, Section 2093.01, Section 3050.01, Section 6011.03, Section 6011.04, Section 6011.07, and Section 6020.01 of the Act.

The main objective of this Circular Letter is to establish proper evaluative standards linked to Department of Economic Development and Commerce's return of investment model in order to be selective of the most promising projects including unique considerations based on the nature of the film industry. Forthcoming regulation will include the provisions of this Circular Letter and a revised return of investment formula, as part of the requirements for film tax-credit applications, to account for the intrinsic particularities of the film industry and the economic impact associated to it.

The Secretary hereby sets forth the applicable procedure to all Film Project applications and the validation of Puerto Rico Productions Expenses.

II. **Film Tax Decree Application Process:**

- a) The Exempt Business that complies with the requirements established in Section 2091.01(a)(1) and Section 3050.01 of the Act for the granting of a Decree of Film Tax Credits ("Decree"), shall submit an application to the DEDC Secretary through the Single Business Portal tool.
- b) The application must be submitted before the end of Principal Photography. In the case of independent post-production recordings or video games, the application must be submitted before the end of post-production or production, respectively. In the case of Film Festivals, the application must be submitted before the beginning of the Film Festival.
- c) At any time of the process, the DEDC Secretary or any representative of the DEDC Secretary, will review the application and may request any additional documents or information as part of the evaluation and approval process if deemed necessary.
- d) Pursuant to the applicable evaluation process established in Section 6020.01 of the Act, once a Film Project complies with the requirements of each eligible Film Project and most of the criteria of evaluation for all Film Projects, the DEDC Secretary shall issue a Decree to the Film Project, if it is in the best social and economic interest of Puerto Rico. The Decree will be issued by the DEDC Secretary per fiscal year.
- e) For the Decree to become effective, the Applicant is required to pay a mandatory filing fee equivalent of one percent (1%) of the Production Expenses of Puerto Rico, up to a maximum rate of two hundred and fifty thousand dollars (\$250,000.00) as established in Section 3050.01(i) of the Act. In addition, the Applicant shall accept unconditionally the Decree by means of a sworn statement within thirty (30) calendar days after the approval date of the Decree. Failure to present evidence of payment and/ or to unconditionally accept the Decree will result in the Decree being considered null and void and the tax credits reserved will be forfeited.
- f) Following the payment and acceptance of the Decree, the Applicant must begin Principal Photography within one hundred and twenty (120) calendar days of the issuance of the Decree.
- g) For purposes of the beginning of Principal Photography, Decrees of Film Tax Credits will only be amended if any of the following occur:
1. Force majeure: Acts of God or nature; death of producer/director/main cast talent only when it is the starring role; war; strikes; riots; crime; changes in law; pandemics; impossibility.
 2. Cast circumstances in key roles such as changes in talent given that talent is sick, or talent cannot perform.
 3. Mutual assent to transfer the Decree to a new production entity or producer to produce the Film Project object of the Decree with prior consent of the DEDC Secretary.
 4. Mutual assent to transfer the Decree to a new project produced by the same production entity or producer with prior consent of the DEDC Secretary.

- h) As soon as the Film Project has completed Principal Photography, Production shall have a term of sixty (60) days to provide all accounting files to the auditor. If the Film Project will include post-production as part of the eligible costs, Production shall have 60 days after finishing post to provide all accounting files to the auditor. Auditor shall have a term of ninety (90) days to complete the Auditor Report for Film Projects. This period may be extended by the DEDC Secretary for reasonable cause, as defined in (h), through the filing of a sworn statement requesting an amendment to the Decree with the Department of Economic Development and Commerce. Failure to submit the Auditor Report on the required date will be deemed as non-compliance of the Grant with respect to the tax credits and tax credits reserved may be forfeited, as well as the Filing Fees paid.
- i) The Grantee may re-submit the application through our Single Business Portal with respect to the tax credits and request that the Filing Fees paid be credited with respect to the new application of tax credits presented. However, the new application of tax credits will be subject to tax credit availability at the date of its new filing and approval.
- j) Before the presentation of the Audit Report, the Film Project must present evidence of payment of the remaining Filing Fee as required by the Act in Section 3050.01(d).
- k) The Audit Report and Auditor must comply with the Agreed Upon Procedures established by the DEDC Secretary.
- l) Following the presentation of the Auditor Report, the DEDC Secretary will evaluate the Report and may request any information necessary for purposes of determining if the Audit Report complies with the Act, Regulation, Administrative Orders, Circular Letters or Agreed Upon Procedures issued by the Government of Puerto Rico or any of its agencies and representatives.
- m) Within thirty (30) days or less after receiving the Auditor's Report, the DDEC Secretary shall issue a Certification of Tax Credits based on the certification of expenses provided in the Audit Report subject to the maximum amount of tax credits established in the Decree. This thirty (30) day period may be interrupted if the DDEC Secretary requests additional information from the Auditor. The remaining days will resume counting when Auditor receives the additional documents requested.

III. **Film Decree General Rules:**

- a) Film applications will be subject to availability of credits pursuant to Section 3050.01 of the Act and the following:
1. Applications will be evaluated in relation to the best interests of Puerto Rico pursuant to the criteria of evaluation established in this Circular Letter in addition to Section 2091.01(a)(1) of the Act.
- b) Eligible Film Projects must comply with Section 2091.01(a)(1) of the Act.
- c) Tax benefits granted under Chapter 9 of Subtitle A of the Act shall become effective on the date of the issuance of the Decree.
- d) Pursuant to Section 3050.01 of the Act, the DDEC Secretary will authorize the amount of tax credits to be approved for an eligible film project within the annual cap amount of Film Tax Credits.

- e) Pursuant to Section 3050.01 of the Act, as amended by Section 88 of Act 40 of 2020, the annual cap amount of Film Tax Credit (hereon referred to as "the annual cap") is thirty-eight million dollars (\$38,000,000).
- f) The annual cap shall be effective throughout the duration that this circular is in effect. In the case that legislation is adopted that changes the annual cap amount, this circular will need to be revised to reflect the newly legislated amount.
- g) Film Tax Credits will only be issued by official Decree and each Film Tax Credit Decree will state a specific maximum dollar value limit (enumerated in dollars) of Film Tax Credits for which the film project and applicant would be eligible upon satisfaction of the terms of the Decree. The full value of the eligible dollar limit of Film Tax Credits identified in each Decree will be charged against the annual cap for the year in which the Decree is granted, reducing the available cap on a dollar for dollar basis, irrespective of if the Film Tax Credit is used in the current fiscal year, or any future fiscal year. The sum of all Film Tax Credits issued by Decree in a fiscal year shall not exceed the annual budget cap for that fiscal year.
- h) Pursuant to Section 3050.01(j) of the Act, tax credits will be subject to the maximum amount of tax credits established in a Decree for which a Decree of Film Tax Credits cannot be amended for purposes of a new reservation of credits based on an Audit Report and not established by a Decree.
- i) Decrees issued under the provisions of Chapter 9 of Subtitle B of the Act may be transferable, subject to the provisions of Section 6020.07 of the Act.
- j) The Tax Credit shall be used against any tax liability imposed pursuant to Subtitle A of Act No. 1 of January 31, 2011, as amended, known as the Internal Revenue Code for a New Puerto Rico ("Puerto Rico Internal Revenue Code"), and any income tax fixed.
- k) The Tax Credit shall be available for the taxable year in which this certification is issued. Tax Credits issued on or before the due date for filing an income tax return, including any extensions, may be claimed for the preceding taxable year associated with such return.
- l) The Decree holder may transfer or sell the Tax Credit, subject to limitations.
- m) The sale, transfer or assignment of all or any portion of the Tax Credit shall be subject to Internal Revenue Circular 11-03, issued March 14, 2011.
- n) The Tax Credit shall not be refundable.
- o) Any portion of the Tax Credit that was not redeemed could be used towards subsequent years until it is exhausted in its entirety.
- p) The proceeds from the sale of the Tax Credit shall be exempted from the payment of any tax imposed by the Government of Puerto Rico.
- q) The tax basis of an investment made in by the Grantee shall be determined according to the provisions of the Internal Revenue, except that said basis shall be reduced dollar by dollar, but never below zero, by the amount of the Tax Credit that the Grantee is authorized to use or transfer, regardless of the time in which the Tax Credit is claimed, transferred, or assigned.

- r) Upon revocation of the Grant, Grantee shall be subject to the Tax Credit recapture. Notwithstanding the above, any bona fide purchaser of the Tax Credit shall not be subject to the recapture provisions set forth in the Act, with regard to the Tax Credit acquired.
- s) Film Project's must comply with required set visits for DEDC officials and any other government representatives which should be coordinated in good faith with the production.
- t) A copy of the film project must be available when released for the DEDC Secretary's promotional use.
- u) Set photos and behind the scenes footage/photos must be provided to the DEDC Secretary during production for promotional use.
- v) Film Project's must comply with a screen credit requirement at the end credits of the Film Project. DEDC will provide the approved logos to use.
- w) Joint press releases, conferences and other press related matters are encouraged.

IV. **Eligible Film Project Requirements:**

- a) All eligible film projects should comply with DDEC's return of investment formula which will be incorporated in the manual of return of investment in forthcoming regulation as part of the foundation for evaluating film tax credit applications. The analysis should comply with its principals and specified methodology when evaluating individual film projects.
- b) The majority of the following criteria of evaluation should be met by each eligible Film Project for an approval by the DEDC Secretary:
 - 1. Applications must demonstrate that the film project is ready to begin preproduction with a complete balanced financing plan. Proof of funds may be requested.
 - 2. No less than 80% of cinematographic value must be met by each Film Project. Such items are:
 - a. Script & director's treatment: 20%;
 - b. Star value of cast, director, writer, producer(s): 30%;
 - c. Experience and CVs of film crew: 10%;
 - d. Confirmation of international distribution and/or "air date" on US National TV: 10%;
 - e. Press & media presence prior to production: 10%;
 - f. Press & media presence mentioning Puerto Rico: 10%;
 - g. Puerto Rico depicted in the story as Puerto Rico: 10%.

3. Counterfactuals to respond and measure:

- a. Will any other businesses in Puerto Rico loose employment or business dueto this Film Project?
- b. Will local suppliers and services benefit from this Film Project?
- c. Will there be new services or suppliers because of this Film Project?
- d. How much investment, employment, hotel nights and no resident labor be generated in Puerto Rico through this Film Project?
- e. Can Puerto Rico prevail as the film destination of this Film Project comparedwith other considered film industry jurisdictions?
- f. In the absence of the film tax incentives, would the film project occur in Puerto Rico?
- g. Can promotional opportunities for Puerto Rico through cast, producers and director be accomplished?
- h. Will knowledge be transferred to local crew members and opportunities for professional growth be stimulated under our cinematographic industry with this Film Project?

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c) Feature Films or Full-Length films will be eligible for a Film Tax Credit Decree if:

1. Production or postproduction is carried out in Puerto Rico.
2. \$50,000.00 minimum production expense is required.
3. Feature films applications must meet industry standard documents such as: *Final Draft, Moviemagic Budgeting & Moviemagic Scheduling.*

d) Short Films will be eligible for a Film Tax Credit Decree if:

1. Production or postproduction is carried out in Puerto Rico.
2. \$25,000.00 minimum production expense is required.
3. Short film applications must meet industry standard documents such as: *Final Draft, Moviemagic Budgeting & Moviemagic Scheduling.*

e) Documentary or live event productions such as beauty pageants, award shows and entertainment shows of which distribution includes out of Puerto Rico DMA (designated market area):

1. Production or postproduction is carried out in Puerto Rico.
2. \$25,000.00 minimum production expense is required.
3. Live event production projects will have an annual limit of \$200,000.00 within the annual cap established in Section 3050.01(c)(1)(iv) of the Act for all Film Projects.

4. Each live event production project cannot exceed \$50 ,000.00 in tax credits.
 5. Live event production projects must provide contracts for digital and international distribution.
 6. Live event production projects which are used solely for internal purposes of an artist will not be eligible.
 7. Evidence of agreement via contracts and/or artist "riders" will be requested as evidence of agreement among production and talent.
 8. Cinematographic value will be evaluated when all the following crew members are hired for purposes of filming a live event production project and are active members of the cinematographic industry in Puerto Rico. Such crew members include director, director of photography, camera operator, editor, assistant camera, digital loader, DIT.
 9. CV's will be required to demonstrate that the film crew is part of the film industry.
 10. Film plan, storyboards and any other shooting schedule documents will be requested as part of the application.
 11. The following items will be eligible film production expenses only for the day of filming: stage, camera and related equipment, lights, and sound.
 12. Copies of call sheets or any other document related to the day of filming will be requested as evidence of the production.
 13. Distribution agreements or contracts of each platform where the content will be distributed in and out of Puerto Rico.
 14. Quantification of subscribers of each digital platform in and out of Puerto Rico.
 15. For projects with distribution platforms such as, but not limited to, YouTube, Facebook Watch and/or social media platforms, audience projections will be requested.
 16. Potential industry market projections of similar projects with similar content will be requested to demonstrate the life of the project and the engagement of the audience.
 17. List of principal markets for these platforms and the audience for each market will be requested. Puerto Rico must be part of the list.
 18. The presentation of a comparative table with metrics and examples of local distribution vis a vis outside of Puerto Rico distribution will be requested to demonstrate that the main audience is not within Puerto Rico.
- f) Series in episodes, mini-series, pilots, and those for digital distribution:
1. Project must present "air date" to be considered eligible.

2. Series in episodes applications must meet industry standard documents such as: *Final Draft, Moviemagic Budgeting & Moviemagic Scheduling.*

g) TV Programs such as interviews, news, games, entertainment, comedy, kids, and variety:

1. The following are definitions under TV Programs:

- i. Interview show: is based on back-and-forth discussions between guests and a host. A "Question and Answer" format is commonly the way to present the life and/or achievements of the guests.
- ii. News show: is a show devoted to current, real events often using interviews and commentary presented in series of individual stories by one or more anchors.
- iii. Game show: is a show that presents contestants to play games, answer trivia questions or compete against each other to win prizes.
- iv. Entertainment show: is the same as a Variety show.
- v. Comedy show: is a show that showcases a multi-person comedic sketch from goofy to satirical comedy; can include sitcoms that deal with common life situations in a funny way.
- vi. Children's show: shows designed for children and family-oriented programming commonly presented during the day or afternoons. The purpose of these shows are educational on an entertaining way.
- vii. Variety show: shows that highlights the talent of their guests: singers, actors, comedians, magicians, dancers or shows that present a combination of a "variety" of talents in various forms.

2. TV programs will have an annual limit of \$300,000.00 within the annual cap established in Section 3050.01(c)(1)(iv) of the Act for all Film Projects.
3. Each eligible TV project cannot exceed \$100,000 in film tax credits.
4. Cinematographic value will be evaluated when all the following crew members are hired for purposes of live event production projects and are active members of the cinematographic industry in Puerto Rico. Such crewmembers include director, director of photography, camera operator, editor and assistant camera.
5. CV's will be required to demonstrate that the film crew is part of the film industry.
6. Film plan, storyboards and any other shooting schedule documents will be requested as part of the application.
7. Regular TV station payroll employees will not qualify as eligible production expenses for purposes of tax credits.
8. Copies of call sheets or any other document related to the day(s) of filming will be requested as evidence of the production.

9. For projects with distribution platforms such as, but not limited to, YouTube, Facebook Watch and/or social media platforms, audience projections will be requested.
10. Potential industry market projections of similar projects with similar content will be requested to demonstrate the life of the project and the engagement of the audience.
11. List of principal markets for these platforms and the audience for each market will be requested. Puerto Rico must be part of the list.
12. The presentation of a comparative table with metrics and examples of local distribution vis a vis out Puerto Rico distribution will be requested to demonstrate that the main audience is not within Puerto Rico.
13. Recurrent TV Programs must present the following:
 - i. Evidence of distribution out of Puerto Rico demonstrating that there was no incidental or minimal distribution in an approved TV program.
 - ii. Audience share & rating out of Puerto Rico demonstrating its distribution out of Puerto Rico. For example, Nielsen's report.
 - iii. Project's schedule and airtime grid outside of Puerto Rico.
 - iv. Audience share & rating in Puerto Rico for comparative purposes. Foreexample, Nielsen report.

h) Post-production Projects:

1. Post-production projects will have an annual limit of \$500,000.00 of credits per project up to a maximum of \$1,500,000.00 aggregated within the annual cap established in Section 3050.01(c)(1)(iv) of the Act for all Film Projects.

i) Film Festival:

1. Film festivals will have an annual limit of \$100,000.00 within the annual cap established in Section 3050.01(c)(1)(iv) of the Act for all Film Projects.
2. Each eligible Film festival project cannot exceed \$50,000 in film tax credits.
3. The total of approved credits for each film festival project cannot exceed \$40,000 per film festival applicant.
4. Only Film festivals with 75% (seventy-five percent) or more of international participants of the total of films to be presented will be eligible.
5. Contracts and agreements for exhibition of all the films and countries participating in the film festival will be requested.
6. The following documents will be requested: promotional plan, media plan, assistance projections and exhibition plan.

7. Film festival venues must meet the standards for exhibition purposes upon discretion of the DEDC Secretary.
8. Cultural trade agreements or any mechanism of cultural collaboration among Puerto Rico and participating countries will be requested and should be provided.
9. Film Festival as a Film project, for purposes of the Puerto Rico Incentives Fund pursuant to Section 5010.02 include the following:
 - a. Film Festivals
 - b. Cinema shows
 - c. Film expos
 - d. Traveling exhibitions
 - e. Symposiums
 - f. Cinematographic forums
 - g. Galas
 - h. Premieres
 - i. Film Conventions
 - j. Any other event that promotes and divulges the development of the cinematographic industry in Puerto Rico locally and internationally

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j) Music Videos:

1. Music videos will have an annual limit of \$200,000.00 within the annual cap established in Section 3050.01(c)(1)(iv) of the Act for all Film Projects.
2. Each eligible music video project cannot exceed \$50,000 in film tax credits.
3. Cinematographic value will be evaluated when all the following crew members are hired for purposes of live event production projects and are active members of the cinematographic industry in Puerto Rico. Such crew members include director, director of photography, camera operator(s), editor and assistant camera, digital loader and DIT. CV's will be required to demonstrate that the film crew is part of the film industry.
4. Film plan, storyboards and any other shooting schedule documents will be requested as part of the application.

V. **Non-eligible Film Projects:**

- a) Pursuant to Section 2091.01(a)(1)(iv)(K) of the Act, non-eligible projects include the following:
 - a. a production that endorses a particular religious or political believe;

- b. a production that includes pornographic material;
 - c. a radio program;
 - d. a production that primarily markets a product or service other than a national or international commercial;
 - e. a production with the primary purpose of fund-raising;
 - f. a production that primarily is for employee training or in-house corporate advertising or other similar production; or
 - g. any other project determined by the DDEC Secretary through the Incentive Regulation or a Circular Letter.
- b) In addition, pursuant to Section 2091.01(a)(1)(iv)(K)(7) this Circular Letter, the following are non-eligible film projects:

a. Sport projects:

i. Shows, events or TV programming that present a system of activities commonly in a competitive way that requires physical athleticism or physical dexterity mostly based on known disciplines governed by rules and customs such as basketball, baseball, hockey, soccer, tennis, horse racing, car racing, among many others, which are played by professional teams or competing individuals commonly represented by national or international associations or federations.

b. Any audiovisual Film Project which it is not originally intended as a film, documentary, or TV show which could be an event, show or radio programming that only places a camera to record the activity but, in its origin, is not intended as an audiovisual project.

c. Radio, live events, conventions, expos, and any other activity that is not customarily part of a regular TV roster, aimed as a theatrical/movie theatre release or for any of the major streaming platforms such as Apple, Netflix, Amazon or Hulu.

d. Gossip shows:

Any TV show that presents and reports information commonly of a secret, intimate or personal nature about public, political and entertainment figures/institutions in a damaging fashion sometimes not based on facts or research. The nature of the information reported may be interpreted as defamation, libel or slander and may inflict moral damages to the person depicted or may damage the reputation and character of the person or institution in reference.

VI. **Eligible Production Expenses:**

- a) Production Expenses are development, preproduction, production, and postproduction expenses incurred directly in the production of a Film Project. Only expenses attributable to the development of a Film Project will be included when more than fifty percent (50%) of the Principal Photography of the Film Project is carried out in Puerto Rico. The expenses attributable to preproduction, production and postproduction will not have to meet the requirement of fifty percent (50%) of the Principal Photography stated above to be considered Production Expenses.
- b) Puerto Rico Production Expenses are payments made to Domestic or Foreign Persons for services physically provided in Puerto Rico, directly attributable to the development, preproduction, production, and postproduction of a Film Project.
- c) Payments received by Domestic Persons and Foreign Persons will be subject to income taxes in Puerto Rico, pursuant to Chapter 9 of Subtitle B of the Act, either directly or through a professional services corporation or other Entity. Puerto Rico Production Expenses include payments related to the development, preproduction, production, and postproduction of a Film Project, including, but not limited to, the following:
1. Wages, fringe benefits, allowances or fees for talent, administration or labor to a person who is a Domestic Person or a Foreign Person. However, per diems paid to a person who is not a Foreign Person, may be included in the definition of Puerto Rico Production Expenses, at the discretion of the DEDC Secretary;
 2. Interest, charges, and fees paid to Persons included in paragraph (4) of section (f) of Section 1033.17 of the Puerto Rico Internal Revenue Code; or
 3. Any of the following goods or services provided by a supplier that is a Domestic entity:
 - i. the story and script that will be used for a Film Project;
 - ii. the construction and operation of set designs, clothing, accessories, and related services;
 - iii. photography, sound synchronization, lighting, and related services;
 - iv. postproduction services such as video editing, audio, color correction, visual effects and other related, including the rental of specialized rooms and postproduction equipment within them;
 - v. rental of facilities and equipment;
 - vi. rental of vehicles, including airplanes or boats, as long as the plane or vessel to be rented is registered in, and has Puerto Rico as its main port, and the rental is limited to travel within Puerto Rico, its airspace and territorial waters;
 - vii. food and lodging;
 - viii. plane tickets, as long as they are purchased through a travel agency or company based in Puerto Rico to make trips to and from Puerto Rico, or within Puerto Rico, directly attributable to the Film Project;

d) Financing Costs, interests, and fees per Administrative Order 2021-003 by DEDC Secretary:

1. Only 20% (twenty percent) of the total interests and fees of the total Puerto Rico production expenses are eligible.
2. Financing costs with over 15% (fifteen percent) interest rate will not be eligible.
3. Development expenses attributed to a Film Project will only be eligible to an 8% (eight percent) of the total Puerto Rico production expenses of the eligible Film Project.
4. Globalized or non-detailed items labeled as "production allocations" which exceed 10% (ten percent) of the total Puerto Rico production expenses will not be eligible of the total of Puerto Rico production expenses of the eligible Film Project.

e) Loan costs are not eligible expenses pursuant to Section 1020.09(ii)(iv)(A) of the Act.

1. Expenses paid to individuals with cash from any subsidiary, donation or funding from the Government of Puerto Rico are excluded from the definition of Puerto Rico production expenses.
2. Those items paid to Domestic Persons with the cash of any subsidy, donation, or allocation of funds, from the Government of Puerto Rico. Those items paid to Domestic Persons with the cash of contributions made to a Film Project, which by their nature and terms are refundable, such as loans or investments, excluding contributions by the Cinematographic Fund as defined in the "Law of Economic Incentives for Industry Film ", at the discretion of the DEDC Secretary, may be included in the definition of Puerto Rico Production Expenses.
3. The cost of goods acquired or leased by Domestic Persons, outside of Puerto Rico, for resale or rental to a Concessionaire who does not comply with the rules issued by the DEDC Secretary through regulations and / or circular letter and when, in Auditor's opinion, there is no economic substance in the transaction.
4. Those items paid to Domestic Persons, primarily, for the services of Foreign Persons, except for Entities that render the services of Foreign Persons.

f) Bond Company Costs:

1. A motion picture completion guarantees, or completion bond is a guarantee in the form of a written contract that a given project will reach completion and will be delivered on time and within budget. Completion bonds are considered a form of insurance in that they provide protection from specific financial risks.
2. Such eligible services will be subject to a resident company in Puerto Rico with evidence of registry and license granted by the Puerto Rico Insurance Commissioner.
3. Non-resident companies in Puerto Rico should provide evidence of their contractual representation with a Puerto Rico company or representative that complies with the required license from the Puerto Rico insurance commissioner.

g) Production Costs:

1. Only 10% (ten percent) of Producer's fees of the total Puerto Rico production expenses will be eligible.
2. Eligible Producer's fees will be subject to payments made only to Puerto Rico resident producers.
3. Producer's Fees are payments subject to income taxes and the appropriate withholdings in Puerto Rico as established in the Puerto Rico Internal Revenue Code.
4. In order for Producer's fee payments to be eligible, the Decree holder must submit to the Auditor evidence of payment through invoices and canceled checks.
5. The Auditor must be able to verify that eligible producer's fees are not excessive as per industry standard fees.

h) Insurance Costs:

1. Eligible insurance costs will be subject to a resident company in Puerto Rico with evidence of registry and license granted by the Puerto Rico Insurance Commissioner.
2. Non-resident companies in Puerto Rico should provide evidence of their contractual representation with a Puerto Rico company or representative that complies with the required license from the Puerto Rico insurance commissioner.

 VII.

Agreed Upon Procedures Report:

- a) The Exempt Business will hire an independent certified public accountant duly authorized to practice in Puerto Rico to complete an agreed upon procedure document (the "Report"), to validate the amount of the Production Expenses of Puerto Rico. The name and information of the CPA will be submitted to the Incentive Bureau for evaluation and approval prior to participation. The Incentive Office may consider the CPA's prior experience with other Film Projects and the compensation arrangement as part of its evaluation of the CPA.
- b) Once the Film Project incurs expenses eligible for the determination of the Tax Credits and it is desired to apply for one of the deadlines, as provided in Section 3050.01(c)(2), the Grantee will provide the certified public accountant with all documents and information necessary to prepare the Report. The delivery of this information shall be made under oath.
- c) Upon completion of the Film Project, the certified public accountant shall prepare the Report and certify the items in the application for Tax Credits pursuant to Section 6030.01 of the Act, the provisions of this Circular Letter, and any applicable regulations, administrative determination, additional circular letters, or newsletter adopted by the Department of Finance.
- d) The Report shall be submitted to the Office of Incentives and the Department of Revenue within the time limit set forth in this Circular Letter. Failure to comply with the dates or terms of compliance set forth herein may serve as just cause to revoke the granting of the Tax Credit.

- e) The CPA must be duly authorized to practice the profession in Puerto Rico, not be related to the Exempt Business or the Producer, nor be under any other type of contract or agreement with the Exempt Business or the Producer.
- f) The maximum amount of Tax Credit that may be granted will be confirmed upon completion of the Film Project in accordance with the reserved amount of tax credits per the Decree and the certification of the Puerto Rico Production Expenditures made by the authorized public accountant through the Report, subject to payment of the remaining balance of the Filing Fee and the total amount of the Non-Resident Below the Line Fee.
- g) Reporting will be carried out in accordance with the "Statements on Standard for Attestation Engagements" applicable to reports of agreed procedures and the certified public accountant must have sufficient knowledge of generally accepted or recognized accounting principles and practices in the film and television industry.
- h) The Report will include:
 - 1. A schedule of eligible expenses incurred by calendar year, and
 - 2. Notes to the Report, including the notes described in this Circular Letter.
 - 3. The schedule of eligible expenditures shall include the full name of the person who received the payment, the date of disbursement, and the appropriate budget line item.
- i) The Report will be signed and sealed in accordance with applicable regulations.
- j) Puerto Rico's Production Expenses will be eligible for Tax Credits subject to:
 - 1. In the case of pre-production, production and post-production expenses, those incurred sixty (60) days prior to, or the date of the presentation of an application through the Single Business Portal.
 - 2. In the case of development expenses, those that can be validated as related to the Film Project covered by the Decree.
 - 3. However, Puerto Rico's Production Expenses may be eligible for Tax Credits sixty (60) days prior to, or the date of the presentation of an application through the Single Business Portal.
- k) The Report must be addressed to the Exempt Business.
- l) The name, address and telephone number of the CPA must be evident on the Report.
- m) The Report must be dated at the end of the field work.
- n) The title of the Film Project must be disclosed. In addition, the period during which expenses were incurred must be indicated.

- o) The evaluation of expenditures and disbursements by the CPA shall conform to the following minimum procedures:
1. The certified public accountant must verify each disbursement made to determine that (i) has been properly billed to the Exempt Business or its designee, (ii) has been paid by the Exempt Business or its designee, (iii) relates to the production expenses of the Film Project, and (iv) is considered an eligible expense.
 2. The CPA will examine invoices, source documents, contracts, bank statements and cancelled checks. He or she will also verify that:
 - i. All deposits associated with the 20% withholding requirements applicable to payments to Qualified Non-Residents have been made by comparing the deposit coupon for the tax withheld on the source Form 480.31 (field labeled "other") and the 480.6C information returns with the Qualified Non-Resident expenses claimed by the Exempt Business, and
 - ii. The treatment to payments made to services and labor comply with the Common Law Rules, the degree of control and independence considerations as established by the IRS.
 - iii. All Puerto Rico Production Expenses claimed correspond to the economic reality of the transactions, that the benefit to Puerto Rico is more than a simple conduit transaction and that it represents a true purchase and sale by a provider of services or goods from Puerto Rico.
 - iv. The DEDC Secretary may allow certain conduit transactions when doing so would further the purposes of the Act and the best interests of the people of Puerto Rico.
 3. The expenses must be included in the appropriate budget line. Costs covered by making a lump-sum payment should be broken down by category, quantity and supplier (if the main supplier contracts with other suppliers to provide the item or service, all suppliers in the supply chain should be identified).
 4. The production expenses that will qualify for the Production Tax Credit will not exceed what is generally paid for each type of expense in the industry.
- p) For expenses that are considered only partially eligible, the CPA must verify the expense allocation formula to ensure that Puerto Rico's Production Expenses are properly reflected.
- q) The DEDC Secretary must be in U.S. dollars. Only the Film Project's production expenses can be recorded as production expenses. Reimbursements and credit notes received for discounts, returns, billing errors and purchase returns must be credited to the production expenses; similarly, revenue from the sale of props and other production assets must be deducted from the expenses presented in the Expense Report. Where support assets and other production assets are held in inventory for future production, they should also be deducted, at fair market value, in the Expense Report.
- r) Completion bond expenses should reflect any "non-rebate claims" received.
- s) Amortization costs of TV series expenses should be allocated in the specific expense category per applicable episode.

- t) The DEDC Secretary may authorize the use of a sampling method to perform the reporting procedures. In that case, the selection of eligible expenditures and expenditures incurred should be made using only an acceptable statistical sampling method (i.e., unit dollar sampling, CMA, PPS, etc.) and not a non-statistical method (i.e., "scopes," "judgemental," etc.).
- u) The DEDC Secretary may request from the CPA any information it deems necessary to validate the information submitted as part of the Report.
- v) Notes to the Report should include the following disclosures and attachments:
1. The amount spent in each Calendar Year on general expenses and on the payroll of employees in Puerto Rico.
 2. All non-Puerto Rican expenses must include the budget line item and the amount of the transaction (if there are no non-Puerto Rican expenses, the expense report must include a note to that effect). Non-Qualified Resident expenses must be broken down as above the line ("Above the line") and below the line ("Below the line").
 3. All transactions of related entities or persons (as defined in the Puerto Rico Internal Revenue Code) and must include the following:
 - i. the name of the related entity or person,
 - ii. the nature of the relationship between the related parties and the film production entity,
 - iii. the nature of the transaction, and (iv) the amount of the transaction. If there are no transactions of related entities or persons, the expense report must include a note to that effect.
 4. The number of accounts payable, accrued, and deferred expenses must be reported separately as of the completion date of the Report. If there are no accounts payable, accrued, or deferred expenses, the Report must include a note to that effect.
 5. All sources of funds that were used to finance the production of the Film Project, including non-monetary transactions that were included in the cost of production, will be disclosed. Non-cash transactions must be disclosed at fair market value.
 6. The nature of the services provided and the consideration for the services must be disclosed. If there were no non-cash transactions, the expense report should include a note to that effect.
 7. A statement that the estimated expenses of the time spent by the Producer or any partner or shareholder of the Exempt Business are excluded from the eligible expenses reported.
 8. A statement that the allocation of expenses was made in accordance with the allocation method determined by the company.

9. A statement indicating that the assigned expenses were generated due to the presentation of bank account statements, invoices canceled checks as part of the determination of eligible expenses.
 10. A statement indicating that the bond and insurance company have complied with the license payment to the Puerto Rico Insurance Commissioner. The evidence of payment and the license must be part of the Audit Report.
 11. A statement representing that the treatment to payments made to services and labor comply with the Common Law Rules, the degree of control and independence considerations as established by the IRS.
 12. A statement representing economic solvency and the credit history evaluated by the Auditor of every non-resident Decree holder without a Puerto Rico producer, line producer or UPM.
 13. Evidence of an up-to-date insurance from the Puerto Rico State Insurance Fund must be part of the Audit Report.
 14. The Auditor, through the Report must demonstrate that the Decree holder has complied with all economic obligation incurred in Puerto Rico during the Film Project by means of a sworn statement. If there are existing debts in Puerto Rico, they must all be paid in full amount.
 15. Film Tax Credits will be subject to the complete fulfillment of all economic obligations incurred in Puerto Rico by the Decree holder. In the event the Auditor, DEDC Secretary or any representative comes aware of debt incompliance on behalf of the Decree holder or Film Project, the film tax credits will not be granted until the debt is fully paid.
 16. The following are examples of entities that can confirm there are no pending payments or debts by the Decree Holder but, are not limited to: *IATSE local 494*, if applicable; Local UPM and/or local producer, if applicable; Local suppliers such as, but not limited to: *PJ Gaffers, A&R Rentals, Reaktor Post-Production Services; On Location Cuisine, Entertainment Partners of Puerto Rico (EPPR), Popular Auto, Leaseway*, any other supplier that has rendered services or rented equipment to the Film Project or Decree holder.
- w) The DEDC Secretary reserves the right to review and request revisions to the Report to ensure compliance with the requirements of the Act, Regulations and Circular Letters. In addition, the DEDC Secretary may issue and publish a model of the Report to be used by the CPA.

VIII. **Derogatory Clause:**

This Circular Letter supersedes the provisions set forth in all Circular Letters and, any other document in contrary.

IX. **Separability Clause:**

If any word, phrase, article, or part of this Regulation is declared null by a Court with jurisdiction, the rest of the Regulation will stand valid and enforceable.

X. **Effectiveness:**

This Circular Letter will be effective temporarily. Specifically, this Circular Letter will become effective immediately after its publication and until the Incentives Regulations are approved, which shall supersede this Circular Letter. Notwithstanding, the provisions of this Circular Letter may be revised when incorporated into final Incentives Regulation's section pertaining to the Film Industry.

In San Juan, Puerto Rico today, August 4, 2021.

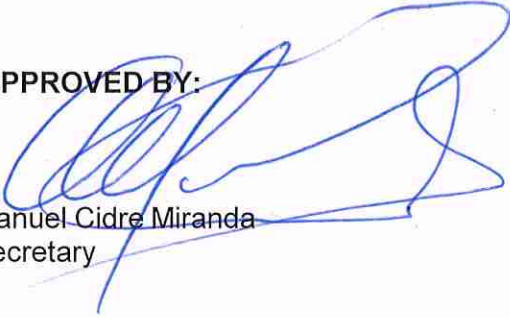
Thank you for your interest in Puerto Rico as your next film destination.

RECOMMENDED BY:



Rosi Acosta
Film Commissioner
Puerto Rico Film Commission

APPROVED BY:



Manuel Cidre Miranda
Secretary