



October 13, 2021

SUPPLEMENTAL AGREED UPON PROCEDURES INSTRUCTIONS

RE: CIRCULAR LETTER 2021-005

THE FOLLOWING GUIDELINES ARE TO BE INCORPORATED IN ADDITION TO THE COMMON PRACTICES ESTABLISHED AND FOLLOWED BEFORE AUGUST 4, 2021.

I. Additional Support Documents

The following accounting documents are standard production documents and examples of the information the Auditor¹ and/or the Puerto Rico Film Commission may reserve the right to request to validate expenses for the audit purposes²:

- a) Detailed payroll registry of all production company personnel (including loan-outs), detailing wages, per diem and any other payments. The detailed reports should include income tax withholding and fringes. If a Payroll Provider is used, Payroll Reports must be submitted directly to the auditor by the Payroll Provider in Excel format;
- b) Show Bible per Sample Attached, prepared by the Payroll Provider;
- c) Check Registry;
- d) Vendor List;
- e) State Insurance Fund Certification (“Fondo del Seguro del Estado”);
- f) Production Balance Sheet;
- g) Production Trial Balance;
- h) Final detailed general ledger, containing qualified and non-qualified expenditures;
- i) Bank Statements and Reconciliations;
- j) Vendor invoices for goods and services;
- k) Contracts for good and services;
- l) W-9s for vendors;
- m) Vendor’s SURI certificates (Puerto Rico Treasury Department) ;
- n) Box Rental Agreements;
- o) Journal entry backup;
- p) Schedule of Retained Assets (as established in **II(k)** of this supplemental document);

¹ The Auditor must be duly authorized to practice the profession in Puerto Rico. All the services that the Auditor provides to the Producer and/or the Exempt Business must comply strictly with the Code of Ethics promulgated by the American Institute of Certified Public Accountants or any other applicable code of ethics.

² The Auditor may request assistance from the Puerto Rico Film Commission if the Grantee fails to present the abovementioned documents when requested. Any request of additional documentation will represent a pause in the audit process and/or the certification of tax credits. The remaining time of those periods will resume when the Grantee complies.

- q) Schedule of related parties (as established in VI of this supplemental document);
- r) Other items upon request.

II. Production Assets/Extraordinary Purchase/Outside Vendors Acquisitions and/or Pass-Throughs

The following guidelines will help the Auditor determine how to properly allocate the referenced-above items acquired by production³:

- a) Regular qualified expenditures include, but are not limited to: props, wardrobe, expendables, food, among all common production expenses present in any other film project. These regular expenditures do not require special sampling for AUP's purposes.
- b) In addition, instructions are provided for goods acquired/rented from Outside Vendors when said goods are unavailable in Puerto Rico or when those can't be provided by the local vendors that commonly provide those goods in the Island. These costs will only be considered eligible when the transaction includes a Puerto Rico Domestic Person to provide such goods. A Domestic Person could be an entity incorporated in Puerto Rico or an individual as described in Section 1021.01(a)(56) of Act 60-2019, as amended.
- c) Only the items described as extraordinary purchases and retained assets will require the Auditor to prepare a separate spreadsheet table describing:
 - 1. item per item including its cost;
 - 2. invoice number;
 - 3. date of purchase;
 - 4. purpose of its use during production and,
 - 5. a calculation of the percentage of that item cost based on the overall total Puerto Rico's eligible expenses.
- d) The Auditor must inform the Puerto Rico Film Commission when any of the referenced herein items are present or when the Grantee does not have authorization from the PRFC as Outside Vendors Acquisitions or Pass Through.
- e) Example of production assets or extraordinary purchases include but are not limited to: specialty custom made props/wardrobe/set dressing/SFX makeup among others, designer wardrobe/items, film equipment, computers, technology items, vehicles and/or any transportation item, furniture for sets, reusable sets or permanent/recurring set dressing items, among others, common production purchases or goods used during any production.
- f) All of these may be considered extraordinary expenses and are considered eligible costs pending the need of the item as scripted, the cost itself and proof of unavailability in Puerto Rico by the local vendor/supplier available of such items.
- g) Any purchases that will become retained assets need to be prorated/amortized as a rental fee for the actual time it was used during the show. Prorated/amortized costs shall reflect industry standards rental fees or fair market value comparable similar, comparable items. This exercise can be a joint effort between the Auditor and the Puerto Rico Film Commission, if necessary.

³ If those items were provided by a Related Party, additional sampling and documentation will be required by the Film Commission when Auditor request such assistance. See Section VII of this Supplemental Document.

- h) If assets were destroyed or consumed in its entirety, the Grantee should inform the Auditor.
- i) Unavailable item cost eligibility and/or Pass-Through transactions will require prior authorization from the Puerto Rico Film Commission, in writing, on a case-per-case basis. To request authorization, please contact the PRFC for additional instructions⁴.
- j) Any Outside Vendor Acquisition and/or Pass-Through transactions will be evaluated considering all facts and circumstances of the transaction.
- k) Approval of Outside Vendor Acquisitions and/or Pass-Through transactions are subject to proof of economic substance for the Domestic Person when performing the acquisition at a 10% or greater discount than the price being offered by another Puerto Rico resident supplier and when the Domestic Person derives a profit of no less than 10% margin for the goods provided.
- l) If any of the referenced items in this section reflect a cost that is above industry standards or Fair Market Value for comparable goods acquired at retail or in similar projects, only the industry standard cost or Fair Market Value will be deemed eligible for the calculation of the tax credit. Example of costs can be found online in reputable supplier's websites and/or with local suppliers even if those were not provided by a local supplier. Assistance from the Puerto Rico Film Commission can be requested, as needed.
- m) A Schedule of Retained Assets will be requested when any of said costs are to be presented as eligible costs.

III. Foreign Workers/Non-Resident Labor in Puerto Rico

In case an eligible film project must hire foreign (non-US citizens) labor as non-resident workers, the film tax credits certification for those costs will be subject to the presentation of working visas, the corresponding contracts and proof of the applicable withholding to the Auditor. All these supporting documents should be included as addendums in the Audit Report.

IV. Regular TV Station Employees

Regular TV Station payroll employees will not qualify as eligible production expenses for purposes of tax credits if they work for all the TV programs attributed with the station behind the eligible film project. However, allocations for regular TV station payroll employees for the work attributed directly to the eligible film project will qualify as long as the corresponding evidence of their allocation is presented to the Auditor and approved by the Film Commission.

V. Per Diems & Salaries

- a) Per diems will be considered eligible costs under the per diem guidelines published by the United States Department of Defense for Alaska, Hawaii, US Territories and Possessions available at: www.defensetravel.dod.mil/site/perdiemCalc.cfm
- b) Excess paid in per diem to residents of Puerto Rico will be considered wages of income and are subject to taxes pursuant to the Internal Revenue Code of 2011.

⁴ Proof of such lack of availability or inability to provide said goods from the local vendor will be required.

- c) Excess paid in per diem to non-residents are subject to the 20% withholding pursuant to Section 2092.01(d) of Act 60-2019, as amended.
- d) Auditor must validate that all production workers were paid as employees as per IRS ruling and DTRH. Exceptions may include those services that do not work directly in filming or only provide services when called by production: IT technicians, computer technicians, exterminators, maintenance workers, copier technicians, among other common services to production offices.

VI. Related Parties

- a) For any related party transaction that will provide services or goods to any Grantee/Film Project, a detailed note of the nature of the relationship between the related party & Grantee/Film Project, services/good provided and the amount of the transaction should be included in the Audit Report.
- b) All related party guidelines and approvals are the same as those included in Section II of this supplemental document.
- c) Additional sampling and/or documentation should be requested as the Auditor and/or Film Commission deem appropriate to validate eligibility of such disbursements.
- d) If any of the referenced items in this section reflect a cost that is above industry standards or Fair Market Value for comparable goods in similar films, only the industry standard cost or Fair Market Value will be deemed eligible for the calculation of the tax credit. Example of costs can be found online in reputable suppliers' websites and/or with local suppliers even if those were not provided by a local supplier. Assistance from the Puerto Rico Film Commission can be requested, if necessary.
- e) If there are no related party transactions, a note must be included in the Audit Report.

VII. Producer's Fees, Financing & Loan Costs, Development Expenses and Production Allocations

- a) All the costs within this category are to be evaluated and approved on a case-per-case basis.
- b) For all expenses/costs that may fall within the above descriptions and may exceed the allowed percentages as established in CC 2021-005, please refer to the Puerto Rico Film Commission in advance for approval and/or further considerations.
- c) Financing Institutions providing services as Domestic Entities must provide the license from "Oficina del Comisionado de Instituciones Financieras".
- d) If any of the items in this section reflects a cost that is above industry standards or Fair Market Value for comparable productions, only the industry standard or Fair Market Value cost will be deemed eligible for the calculation of the tax credit. Example of costs can be found in sample contracts, comparable films budgets and/or by means of the valid unions and guilds collective agreements. Assistance from the Puerto Rico Film Commission can be requested, as needed.

VIII. Sworn Statements/Economic Solvency

It is important to note that the burden of responsibility for the requested sworn statements in CC 2021-005 falls on the Grantee and not the Auditor. The Auditor will receive the sworn

statement from the Grantee and all pertaining documents for the Audit Report which may be included as addendums in the Audit Report as listed in item XI of this letter.

- a) A sworn statement confirming full delivery of all production and accounting documents in the established timing pursuant to CC 2021-005:
 1. Grantees should guarantee the Auditor, thus the Puerto Rico Film Commission, that the delivery of documents was fully complied with. Delivery of documents can be made in full or in portions. If in portions, a note should be included in the audit report. Grantee must request authorization in advance for deliveries in portions from the Puerto Rico Film Commission as extending the allowed time may be necessary.
- b) A sworn statement confirming no pending debts in Puerto Rico:
 2. Grantees should guarantee the Auditor, thus the Puerto Rico Film Commission, that all economic responsibilities have been complied with and that all suppliers, vendors, crew, services and goods have been paid in full. A note should be included in the audit report that Auditor did not come across any pending debts by the production. In case, Auditor suspects of debts, the Puerto Rico Film Commission must be informed immediately.
- c) All sources of funds that were used to finance the production must be disclosed including all non-monetary transactions and other monies/incomes such as sponsorships, subsidies as per Section IX.
- d) Additional economic solvency proof may be requested if deemed necessary by Auditor and/or Puerto Rico Film Commission.

IX. Non-Cash Transactions/Subsidies, Donations, Other Government Aids or Funds/In-Kind Transactions

- a) Those expenses paid with funds from any of the above-mentioned incomes are ineligible costs and the total monies must be deducted from the total disbursement amount.
- b) Copies of those agreements or contracts must be provided to Auditor.
- c) If there were no transactions as such referenced above, a note should be included in the Audit Report.

X. Qualifying Expenses Period

To provide better clarity in the qualifying period for expenses, the period will consist of:

- a) Sixty (60) days prior to submission of application at the Single Business Portal. An additional period of time can be granted by the Puerto Rico Film Commission on a case-per-case basis and with prior request on behalf of the applicant;
- b) The production period per DOOD's and shooting schedule;
- c) Reshoot period, if applicable and discussed in advanced with PRFC;
- d) 60 days after wrap of Principal Photography or 60 days after finishing post-production (per post-calendar);

- e) Please communicate with the Film Commission in order to validate the qualifying period of expense.

XI. Agreed Upon Procedures Report

- a) Table of Contents;
- b) Independent's Accountant report summary must include:
 - 1. Date of Audit;
 - 2. Detailed list of all AUP's included in that Audit.
- c) Name, license number and full contact information of the Auditor.
 - 1. Name of Grantee and contact information of the Grantee;
 - 2. Title of Film Project;
 - 3. Decree Number & Date;
 - 4. Date of wrap of Principal Photography or post-production, as applicable;
 - 5. Total Puerto Rico Budget (Residents and Non-Residents);
 - 6. Total Tax Credit Reserve;
 - 7. Applicable Law per the Decree,
 - 8. Percentage of Tax Credit Reserve,
- d) Detailed qualified costs summary must include:
 - 1. Detailed calculation of disbursements;
 - 2. Detailed Tax Credit Allowance;
 - 3. If Film Project received an advancement of film tax credits, present the quantity of that advancement and if it was granted by means of a Bond or partial Audit Report;
 - 4. Retained Assets: A note must be included, if applicable;
 - 5. Related parties: A note must be included, if applicable;
 - 6. Foreign Labor: A note must be included with details of the person, salary and withholdings;
 - 7. Non-cash or sponsorships/subsidies agreements: A note must be included, if applicable;
 - 8. Proof of non-resident withholdings and payment to Hacienda;
 - 9. Attestation of delivery of production documents per Section VIII of this supplemental documents.
- e) Detailed spreadsheet with eligible costs must include the following:
 - 1. Names of individuals or companies per each payment;
 - 2. Positions or description of payment;
 - 3. Date of Payment;
 - 4. Total Disbursement;
 - 5. Non-Residents must reflect 20% withholding totals per each applicable line.
- f) Adendums, as applicable:
 - 1. Spreadsheet of Schedule of Retained Assets.
 - 2. Spreadsheet of Schedule of Related Parties.
 - 3. Sworn Statements presented and signed by the Grantee addressing full delivery of accounting & production documents and no pending debt.

4. Working Visas & Contracts.
5. License from “*Oficina del Comisionado de Instituciones Financieras*” for Financing Entities as Domestic Persons.
6. License from “*Oficina del Comisionado de Instituciones Financieras*” for Insurance Producer.
7. License from “*Oficina del Comisionado de Instituciones Financieras*” for Completion Bond Services.
8. Sponsorship contracts or agreements.

Please note that the Puerto Rico Film Commission is more than willing to attend each particular circumstance for your eligible film project and work on a case per case basis for which, please contact us for assistance as needed.

Thank you,

Rosi Acosta



Director
Puerto Rico Film Commission
Department of Economic Development and Commerce