



Instructions for Form IT-261 Claim for Empire State Film Post-Production Credit

Tax Law – Section 31, Section 606(qq)

General information

Tax Law sections 31 and 606(qq) provide for tax credits for the film and television post-production industry. The Empire State film post-production credit is available to taxpayers subject to tax under Article 22 (personal income tax) or Article 9-A (general business corporations). Form IT-261 is for taxpayers subject to tax under Article 22. Those subject to tax under Article 9-A (including New York S corporations), should complete Form CT-261, *Claim for Empire State Film Post-Production Credit*.

The credit is based on qualified post-production costs paid or incurred in the production of a qualified film at a qualified post-production facility in New York State. For tax years beginning on or after January 1, 2015, and before January 1, 2023, there is an additional credit available equal to 10% of the wages or salaries paid to qualified individuals for services performed by those individuals in the post-production work on a qualified film in certain counties. The credit is allowed for the tax year in which the production of the qualified film is completed. If the amount of credit shown on your certificate of tax credit received from the New York State Governor's Office of Motion Picture & Television Development is at least \$1 million but less than \$5 million, the credit must be claimed over a two-year period. If the amount of the credit allocated is \$5 million or more, the credit must be claimed over a three-year period.

If the amount of the credit allowable for any tax year exceeds the tax for that year, 50% of the excess is treated as an overpayment to be credited or refunded. No interest will be paid on the refund. The remaining excess may be carried over to the following tax year and may be deducted from the tax in that year. Any excess after application in the succeeding year is treated as an overpayment to be credited or refunded. No interest will be paid on the refund.

If the film post-production credit is claimed for *qualified post-production costs*, no other income tax credit may be claimed for those costs.

The amount of credit allowed for the current tax year is allocated by the New York State Governor's Office of Motion Picture & Television Development. **Submit a copy of your certificate from this office for the credit allowed.** You are required to submit a separate Form IT-261 for each individual certificate issued to you by the Governor's Office of Motion Picture & Television Development. For rules and regulations regarding the credit, contact the New York State Governor's Office of Motion Picture & Television Development at filmcredits@esd.ny.gov or call 212-803-2328.

Eligibility

After receiving a certificate of tax credit from the New York State Governor's Office of Motion Picture & Television Development, the following taxpayers, subject to tax under Article 22, are eligible to claim the film post-production credit by filing Form IT-261:

- individuals (including sole proprietors);
- fiduciaries of estates and trusts;
- partners in a partnership (including members of an LLC if the LLC is treated as a partnership for federal tax purposes);
- shareholders of a New York S corporation; **and**
- beneficiaries of an estate or trust.

Taxpayers subject to tax under Article 9-A must complete Form CT-261.

Line instructions

See the instructions for your tax return for the *Privacy notification* or if you need help contacting the Tax Department.

Individuals (including sole proprietors): Complete Part 1 and if applicable, Part 4.

Partnerships: Complete Part 1, lines 1 through 7, and if applicable, Part 4.

A married couple in a business enterprise that made an IRC 761(f) election to file two federal Schedule C forms instead of a partnership return: If you file jointly, compute your credit amount as if you were filing one federal Schedule C for the business. Complete Part 1 and if applicable, Part 4.

Partners in a partnership, shareholders of a New York S corporation, and beneficiaries of an estate or trust: Complete Part 1, lines 3 through 18, Part 2, and if applicable, Part 4.

Fiduciaries: Complete Parts 1, 3, and if applicable, Part 4. An estate or trust that divides the credit among itself and its beneficiaries must submit Form IT-261 with Form IT-205 showing each beneficiary's share of credit.

Note: If more than one of the above applies to you, complete all appropriate parts on one Form IT-261.

Part 1 – Computation of credit

Note: If completing Form IT-261 to claim only credits allowed in a prior year, skip lines 1 and 2.

Line 1 – Obtain this amount from the certificate of tax credit issued by the Governor's Office of Motion Picture & Television Development. Submit a copy of the certificate with Form IT-261.

Line 2 – If the amount on line 1 is **less** than \$1 million, enter the amount from line 1 on line 2.

If the amount on line 1 is at **least** \$1 million but **less** than \$5 million, complete Worksheet A.

If the amount on line 1 is at **least** \$5 million, complete Worksheet B.

Note: Due to this limitation, it is the entity's responsibility to ensure that the correct shareholder, partner, beneficiary, or member receives the correct amount of the credit to be reported in succeeding tax years.

Worksheet A

1 Enter the amount from Form IT-261, line 1 1 _____

2 Divide line 1 by two (see instructions below) 2 _____

This is the amount of credit that may be claimed for this tax year and for the 2019 tax year.

Worksheet A instructions

Individuals: Enter the amount from Worksheet A, line 2, on Form IT-261, line 2, and on Worksheet C, line 1.

Partnerships: Enter the amount from Worksheet A, line 2, on Form IT-261, lines 2 and 20 (see *Lines 20 and 21*).

Fiduciaries: Include the line 2 amount on the total line of Part 3. Provide your beneficiaries with their allocated share of the line 2 amount to claim on their 2018 and 2019 tax returns. (See *Lines 20 and 21*.)

Worksheet B

1 Enter the amount from Form IT-261, line 1 1 _____

2 Divide line 1 by three (see instructions below) ... 2 _____

This is the amount of credit that may be claimed for this tax year and for each of the next two tax years.

Worksheet B instructions

Individuals: Enter the amount from Worksheet B, line 2, on Form IT-261, lines 2 and 21, and on Worksheet C, line 1.

Partnerships: Enter the amount from Worksheet B, line 2, on Form IT-261, lines 2, 20, and 21 (see *Lines 20 and 21*).

Fiduciaries: Include the line 2 amount on the total line of Part 3. Provide your beneficiaries with their allocated share of the line 2 amount to claim on their 2018, 2019, and 2020 tax returns. (See *Lines 20 and 21*.)

Line 3 – Partners, shareholders, and beneficiaries: Enter the amount from Part 2, line 19.

Line 4

Individuals: Include the amount from your 2017 Form IT-261, line 20.

Partners, beneficiaries, and shareholders: Include the amount from your 2017 Form IT-261, line 20.

Partnerships: Do not make an entry on line 4. Credit carryovers from partnerships, S corporations, estates and trusts that were limited in prior years are claimed by partners, shareholders, and beneficiaries of those entities for the year in which the credit certificate was issued.

Fiduciaries: Only include on this line the fiduciary portion of the credit from prior years.

Line 11 – If you are applying any credits against the tax before this credit, enter those amounts here.

When applying credits, use the following rules:

- First apply any household credit.
- Next apply any credits that cannot be carried over or refunded.
- Then apply any credits that can be carried over for a limited duration.
- Then apply any credits that can be carried over for an unlimited duration.
- Apply refundable credits last.

Line 13 – Enter the amount from line 7 or line 12, whichever is less. This is your **nonrefundable** portion of the Empire State film post-production credit.

Enter this amount and code **356** on Form IT-201-ATT, line 6, or Form IT-203-ATT, line 7, or include it on Form IT-205, line 10.

Line 14 – If zero, and you have no prior-year carryover, stop; you do not have any refundable credit or credit to be carried forward to next year.

Line 16 – Enter the amount from your 2017 Form IT-261, line 18.

Line 17 – Add lines 15 and 16. Enter this amount and code **356** on Form IT-201-ATT, line 12, or Form IT-203-ATT, line 12, or include it on Form IT-205, line 33.

Line 18 – Subtract line 15 from line 14. This is the amount of credit to be carried forward to next year. You will need this figure to complete next year's Form IT-261.

Part 2 – Partnership, New York S corporation, and estate and trust information

Enter the appropriate information for each partnership, S corporation, or estate or trust from which you received a share of the Empire State film post-production credit. If you need more space, submit a separate sheet following the same format (be sure to include your name and taxpayer identification number).

Partners: find your current year amount on Form IT-204-IP, line 51, code 356.

Also report any 2019 and 2020 amounts on lines 20 and 21.

Partners: Find your 2019 and 2020 amounts on Form IT-204-IP, line 51, codes *B56* and *C56* respectively.

Part 3 – Beneficiary's and fiduciary's share of Empire State film post-production credit

Enter the total of lines 2 and 3 on the *Total* line, column C. If an estate or trust allocates or assigns the credit to its beneficiaries, base the division on each beneficiary's proportionate share of the income of the estate or trust. Provide the beneficiaries with their share of the credit. Enter the total of all credit allocated to the beneficiaries on line 6.

Part 4 – Amount of credit to be claimed in succeeding tax years

Complete this part if the amount on line 1 is at **least** \$1 million or if you had an amount on your 2017 Form IT-261, line 21.

Lines 20 and 21

Individuals: Complete Worksheet C to compute the amount of credit to be claimed on your 2019 return.

Partnerships: Do not use Worksheet C. Enter the amount from line 20 and code **B56** on Form IT-204, line 147. Enter the amount from line 21 and code **C56** on Form IT-204, line 147.

Partners, beneficiaries, and shareholders: Do not use Worksheet C. Include on line 20 the amount of credit reported to you by your partnership, estate, trust, or S corporation to be claimed for 2019. **Partners:** Find this amount on Form IT-204-IP, line 51, code *B56*.

Include on line 21 the amount of credit reported to you by your partnership, estate, trust, or S corporation to be claimed for 2020. **Partners:** Find this amount on Form IT-204-IP, line 51, code *C56*.

Fiduciaries: Do not use Worksheet C. Enter the fiduciary portion of the credit to be claimed for 2019 on line 20, and for 2020 on line 21.

Worksheet C

1 Enter the amount (if any) from Worksheet A, line 2, or Worksheet B, line 2 1 _____

2 Enter the amount (if any) from your 2017 Form IT-261, line 21 2 _____

3 Credit to be claimed for 2019 (add lines 1 and 2; enter here and on Form IT-261, line 20) 3 _____