

400 CMR 10.00: LIVE THEATER TAX CREDIT

Section

- 10.01: Purpose and Scope
- 10.02: Definitions
- 10.03: Eligibility and Applications
- 10.04: Evaluation and Initial Certificate
- 10.05: Final Certificate
- 10.06: Claiming and Transferring the Credit
- 10.07: Public Records
- 10.08: Recordkeeping
- 10.09: Severability

10.01: Purpose and Scope

400 CMR 10.00 establishes the procedures to establish eligibility and claim the Live Theater Tax Credit, pursuant to M.G.L. c. 23A, § 3M, M.G.L. c. 62, § 6(ff) and M.G.L. c. 63, § 38QQ, for the purpose of supporting the expansion of Eligible Theater Productions and assisting in the development of long run show development and growth within the Commonwealth.

10.02: Definitions

Advertising and Public Relations Expenditure. A cost incurred within the Commonwealth by an Eligible Theater Production for goods or services related to the marketing, public relations, creation and placement of print, electronic, television, billboards or other forms of advertising to promote an Eligible Theater Production.

Commissioner. The Commissioner of Revenue or the Commissioner's duly authorized representative.

Cost Accounting Report. A cost accounting of expenditures in connection with an Eligible Theater Production prepared and signed by the certified Eligible Company. Such cost accounting shall set forth in detail all Eligible Production Costs, including Payroll Costs, Production and Performance Expenditures, Transportation Expenditures, and documentation acceptable to the Office to substantiate reported costs and expenses, and shall include an accountant's certification, in the form of an opinion, confirming the accuracy of the information included in the Cost Accounting Report. An Eligible Theater Production shall not include any Eligible Production Costs paid with state funds, state loans or state guaranteed loans in computing Payroll Costs, Production and Performance Expenditures and Transportation Expenditures for which a Live Theater Tax Credit may be claimed.

Economic Impact Report. A report provided to the Office by an Eligible Company describing the direct and indirect economic impact of an Eligible Theater Production prior to the issuance of a Final Certificate. Such report may include, but is not limited to, jobs created and associated wages, theater ticket sales to domestic and international visitors, spending by live theater productions on adjacent businesses, wages paid for setting up and taking down productions, and impacts on hotels, restaurants and other businesses in proximity to theaters. The Office may from time to time specify in program guidelines the information required to be provided.

Eligible Company. An individual or business that produces, co-produces or presents an Eligible Theater Production with a Massachusetts-based theater venue, theater company, theater presenter or producer for the purpose of supporting the expansion of Eligible Theater Productions and assisting in the development of long run show development and growth within the Commonwealth.

Eligible Production Costs. Payroll Costs, Production and Performance Expenditures, and Transportation Expenditures that are incurred in the Commonwealth.

10.02: continued

Eligible Theater Production. A live stage musical, dance or theatrical production or tour being presented in a Qualified Production Facility that is either:

- (a) a Pre-broadway Production;
- (b) a Pre-off-broadway Production;
- (c) a National Tour Launch; or
- (d) a Regional Professional Theater Production.

Final Certificate. The certificate issued by the Office to an Eligible Company pursuant to 400 CMR 10.05.

Initial Certificate A certificate issued by the Office certifying that a production is an Eligible Theater Production that is eligible to claim a Live Theater Tax Credit in a specified amount, pursuant to M.G.L. c. 23A, § 3M, upon issuance of a Final Certificate.

Live Theater Tax Credit. The tax credit authorized pursuant M.G.L. c. 62, § 6(ff) and M.G.L. c. 63, § 38QQ.

National Tour Launch. A live stage production that, in its original or adaptive version, is performed in a Qualified Production Facility and opens its national tour in the Commonwealth.

Office. The Massachusetts Office of Business Development or any constituent office thereof.

Payroll. All salaries, wages, fees and other compensation from sources within the Commonwealth, including, but not limited to, taxes, benefits and any other consideration incurred or paid to talent and non-talent employees of the applicant for services rendered within the Commonwealth to and on behalf of an Eligible Theater Production; provided, that the Payroll expenditure shall be incurred or paid by the applicant for services related to any portion of an Eligible Theater Production from its pre-production stages, including, but not limited to:

- (a) the writing of the script;
- (b) casting;
- (c) hiring of service providers;
- (d) purchases from vendors;
- (e) marketing;
- (f) advertising;
- (g) public relations;
- (h) load in;
- (i) rehearsals;
- (j) performances;
- (k) other Eligible Theater Production related activities; and
- (l) load out; and provided further, that the Payroll expenditure shall be directly attributable to the Eligible Theater Production and shall be limited to the first \$100,000 of wages incurred or paid to each employee of an Eligible Theater Production in each tax year.

Pre-broadway Production. A live stage production that, in its original or adaptive version, is performed in a Qualified Production Facility having a presentation scheduled for the city of New York's Broadway theater district within 24 months after its presentation in the Commonwealth.

Pre-off-broadway Production. A live stage production that, in its original or adaptive version, is performed in a Qualified Production Facility having a presentation scheduled for the city of New York's off-Broadway theater district within 24 months after its presentation in the Commonwealth.

Production and Performance Expenditures A contemporaneous exchange of cash or cash equivalent for goods or services related to development, production, performance or operating expenditures incurred in the Commonwealth for an Eligible Theater Production, including, but not limited to, expenditures for design, construction and operation, including sets, special and visual effects, costumes, wardrobes, make-up, accessories, costs associated with sound, lighting, staging, Advertising and Public Relations Expenditures, facility expenses, rentals, *per diems*, accommodations and other related costs.

10.02: continued

Qualified Production Facility. A facility located in the Commonwealth in which live theater productions are, or are intended to be, exclusively presented that contains at least one stage, a seating capacity of not less than 175 seats, dressing rooms, storage areas and other ancillary amenities necessary for the Eligible Theater Production.

Regional Professional Theater Production. A live stage production that is performed in a Qualified Production Facility with a professional cast and crew.

Transportation Expenditures. Expenses incurred in the Commonwealth for the packaging, crating and transportation both to the Commonwealth for use in an Eligible Theater Production of sets, costumes or other tangible property constructed or manufactured outside the Commonwealth, or from the Commonwealth after use in an Eligible Theater Production of sets, costumes or other tangible property constructed or manufactured in the Commonwealth and the transportation of the cast and crew to and from the Commonwealth; provided, that Transportation Expenditures shall include any portion performed in the Commonwealth of the packaging, crating and transporting of property and equipment used for special and visual effects, sound, lighting and staging, costumes, wardrobes, make-up and related accessories and materials and any other performance or production-related property and equipment.

10.03: Eligibility and Applications

(1) An applicant may establish its eligibility to claim the Live Theater Tax Credit by applying for and receiving an Initial Certificate from the Office. Applications for an Initial Certificate shall be accepted during one or more application periods established by the Office with deadlines for application established on the Office's website.

(2) Applications for an Initial Certificate shall be made on a form required by the Office and shall include:

- (a) The legal name, address and contact information of the applicant seeking an Initial Certificate and any related partners or presenters;
- (b) Information sufficient to establish the applicant is producing, co-producing or presenting an Eligible Theater Production with a Massachusetts-based theater venue, theater company, theater presenter or producer in a Qualified Production Facility;
- (c) The Eligible Theater Production's budget, including an estimation of costs and expenses to be incurred in Massachusetts that is not less than \$100,000;
- (d) Information demonstrating the Eligible Theater Production is a Pre-broadway Production, Pre-off-broadway Production, National Tour Launch or Regional Professional Theater Production;
- (e) A schedule of the Eligible Theater Production including, but not limited to, pre-production, production, performance and post-production stages;
- (f) An estimate of the Eligible Production Costs associated with the Eligible Theater Production for which the applicant intends to claim Live Theater Tax Credits;
- (g) A description of the estimated direct and indirect economic impacts of the Eligible Theater Production;
- (h) Information sufficient to establish that the applicant is a duly organized and existing entity in good standing with the Commonwealth of Massachusetts and is compliant with all applicable state and federal tax and employment laws; and
- (i) Any other information the Office deems necessary to determine the applicant's eligibility for an Initial Certificate.

10.04: Evaluation and Initial Certificate

(1) The Office shall review and approve applications for an Initial Certificate on a competitive basis and may consider the following criteria in determining whether and to what amount to award an applicant a Live Theater Tax Credit:

- (a) Location, size, duration and budget of the Eligible Theater Production;
- (b) Whether the Eligible Theater Production is a Pre-broadway, Pre-off-broadway, National Tour Launch or Regional Theater Production;
- (c) Estimated direct and indirect economic impacts of the Eligible Theater Production;

10.04: continued

- (d) Demonstration of a competitive need for the Live Theater Tax Credit to support the expansion of the Eligible Theater Production; and
- (e) Any other factors the Office determines are necessary to evaluate applicants for an Initial Certificate.

(2) The Office will issue an Initial Certificate only if an applicant demonstrates that it meets all eligibility requirements. The Office shall have the sole discretion to determine:

- (a) Whether an applicant is eligible for a Live Theater Tax Credit;
- (b) The amount of Live Theater Tax Credits to award to an applicant; and
- (c) The total amount of Live Theater Tax Credits available to Pre-broadway Productions, Pre-off-broadway Productions, National Tour Launches or Regional Professional Theater Productions on an annual basis.

If the Office determines that an applicant is not eligible for a Live Theater Tax Credit, it will notify the applicant of that determination in writing.

(3) The Office shall not issue an Initial Certificate of the Live Theater Tax Credit:

- (a) To an Eligible Company for more than one Eligible Theater Production per year or to multiple Eligible Companies for the same Eligible Theater Production; and
- (b) For more than a total of \$7,000,000 annually.

(4) If the Office approves an application for Live Theater Tax Credits, it will issue an Initial Certificate to the Eligible Company, with a copy to the Commissioner, containing the following information:

- (a) The recipient issued the Initial Certificate who will be eligible to claim the Live Theater Tax Credits upon issuance of a Final Certificate;
- (b) The total amount of Live Theater Tax Credits approved, subject to confirmation in the Final Certificate;
- (c) The anticipated date the Eligible Production will submit the Cost Accounting Report and Economic Impact Report;
- (d) The anticipated year in which the recipient will claim Live Theater Tax Credits;
- (e) A unique identification number for the production and statement of conditional eligibility for the production;
- (f) Any other information the Office deems necessary to indicate the recipient's eligibility for the Live Theater Tax Credit; and
- (g) Any conditions, restrictions or limitations that the Office may in its discretion establish.

(5) The Initial Certificate may require the Eligible Company to collect data about the direct and indirect economic impact of the Eligible Theater Production, to be included in the Economic Impact Report, and may require such other conditions and limitations as the Office shall deem necessary to ensure the proper administration and to assess the effectiveness of the Live Theater Tax Credit program.

10.05: Final Certificate

(1) An Eligible Company that has received an Initial Certificate shall not claim the Live Theater Tax Credit unless and until the Office has issued a Final Certificate confirming the amount of the Live Theater Tax Credits.

(2) To obtain a Final Certificate, an Eligible Company issued an Initial Certificate shall provide the Office with a Cost Accounting Report and Economic Impact Report no later than six months after the last performance of the Eligible Theater Production. The Office and the Commissioner may rely, without independent investigation, upon the accountant's certification of the Cost Accounting Report. If the Office or Commissioner receives information that is materially inconsistent with representations made in an application, the Office may modify or rescind the Initial Certificate, and may decline to issue a Final Certificate.

(3) The Office shall issue the Final Certificate confirming the amount of Live Theater Tax Credits allowed to be claimed after receipt and approval of a completed Cost Accounting Report and Economic Impact Report.

10.06: Claiming and Transferring the Credit

(1) An Eligible Company that has been issued a Final Certificate shall be allowed a tax credit against taxes imposed by M.G.L. chs. 62 and 63 for Eligible Production Costs not to exceed the amount specified in the Final Certificate. The total credits specified in the Final Certificate shall in no event exceed:

- (a) 35% of the total in-state Payroll Costs;
- (b) 25% of the Production and Performance Expenditures; and
- (c) 25% of Transportation Expenditures.

(2) The Live Theater Tax Credit shall be allowed against the tax for the taxable period in which the credit is issued and any amount of the tax credit that exceeds the tax due for a taxable year maybe carried forward for not more than five succeeding tax years.

(3) An Eligible Company issued an Initial Certificate may assign, transfer or convey the tax credits, in whole or in part, by sale or otherwise to any individual or entity. An Eligible Company seeking to assign, transfer, or convey tax credits must submit to the Commissioner a transfer application on a form prescribed by the Commissioner. The assignor shall provide any information as may be required by the Commissioner to administer and carry out the transfer of the tax credits. Upon confirmation that the assignor is in possession of a valid tax credit as described in the application, the Commissioner will issue a certificate to the assignee stating the amount of the credit assigned. The assignee of the tax credits may use acquired credits to offset up to 100% of the tax liabilities otherwise imposed pursuant to M.G.L. chs. 62 or 63. The assignee may apply the tax credits against taxes imposed on the assignee for not more than five succeeding tax years from the date an Initial Certificate is first issued by the Office. Such assignments shall be subject to any additional regulations or requirements established by the Commissioner.

10.07: Public Records

All documentation and materials submitted to the Office may be subject to public disclosure under M.G.L. c. 66, commonly known as the Public Records Law.

10.08: Recordkeeping

(1) The certified Eligible Company shall retain records necessary to substantiate its eligibility for the Live Theater Tax Credit in accordance with guidance issued by the Commissioner, including but not limited to:

- (a) Initial and Final Certificates issued by the Office establishing eligibility;
- (b) Actual expenditures on Eligible Production Costs and total costs incurred within and outside of the Commonwealth for the Eligible Theater Production;
- (c) Information that a Pre-broadway Production or Pre-off-broadway Production presented the Eligible Theater Production in the City of New York's Broadway Theater District or Off-broadway Theater District within 24 months after its presentation in the Commonwealth, if applicable; and
- (d) Location and dates of a National Tour Launch's performances following its presentation in the Commonwealth, if applicable.

10.09: Severability

The provisions of 400 CMR 10.00 are severable. If any provisions of 400 CMR 10.00 or the applications of such provisions to any person or circumstance are held invalid or unconstitutional, the other provisions of 400 CMR 10.00, or the application of such provisions to any person or circumstance other than that as to which it is held invalid or unconstitutional, will not be affected thereby.

REGULATORY AUTHORITY

400 CMR 10.00: M.G.L. c. 23A, § 3M; M.G.L. c. 62, § 6(ff); and M.G.L. c. 63, § 38QQ.