

Frequently Asked Questions For CPAs Performing AUPs

January 2021

75% SPEND TEST

- Q:** I have a client whose show shot a large portion out of state. How do you determine what qualifies when performing the 75% spend test?
- A:** Per the statute, one of two possibilities can qualify. Either at least 75 percent of the principal photography days must occur wholly in California; or 75 percent of the entire production budget* must be incurred for services performed within the state and the purchase and rental of property used within the state. ATL salaries – qualified and non-qualified – must be pro-rated so that only the portion incurred within the state figures into the 75% spend test. This of course is true for any non-wage items as well.
- * "Budget" means an estimate of all expenses paid or incurred during the production period of a qualified motion picture. It shall be the same budget used by the qualified taxpayer and by the production company for all qualified motion picture purposes.*
- Q:** Are marketing or financing expenses to be included in the 75% spend test?
- A:** Marketing and/or financing expenditures are not routinely incurred during prep, shoot or post production and therefore would not be considered part of the negative cost of the film. Marketing and/or financing expenses should be excluded from the 75% spend test.

ASSETS

- Q:** Is there a listing of electronic assets that CPAs can refer to when determining which items should be discounted?
- A:** Appendix B in the Budget Tagging and Tracking tips contains a listing of electronic items that require the discount. If a CPA finds additional items that should be added to the listing, please notify the CFC to verify.

AUP RELATED FORMS

- Q:** For shows that have season 1 and season 1.5 (a back order), is it acceptable to submit one Exhibit A1 (2.0) or 1A (3.0) form for both season 1 and season 1.5?
- A:** No. Each season is treated as a separate project regardless of whether or not it was a back order. Therefore, a Form will need to be completed for each season. In addition, a separate AUP will need to be submitted for each as well. The CPA may need to request payroll records that indicate qualified payroll no more than 30 days after completion of the last episode of season 1 in order to bifurcate the qualified wages and expenditures between seasons. Visual Effects work may also require bifurcation.

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CAREER READINESS

Q: Do the career readiness verification forms need to be turned in with the AUP?

A: Yes, the forms should be completely filled out. If a financial contribution was made, proof of the contribution should also be included. The forms for Program 3.0 can be filled in via the on line portal and digital copies should be included with the other documents.

HIATUS

Q: What would a production have to show to verify their hiatus period? Day 1 call sheet and Day 2 call sheet?

A: The Call Sheet from Day 1 of Principal Photography AND the Call Sheet from the first day after Hiatus should be submitted, as well as ALL Production Reports from the entire show. As Hiatus periods are generally bookended by the call sheet and production report for the time prior to the hiatus and the call sheet and production report for the day immediately following the hiatus, that will serve as verification.

OUT OF ZONE

Q: Which locations outside of the 30-mile zone are still considered "in zone"?

A: Several locations that lie outside the 30-mile radius boundary are generally recognized as being within the 30-Mile Studio Zone. These include: Agua Dulce, Castaic (including Castaic Lake), Leo Carrillo State Beach, Ontario International Airport, Piru, Pomona (including the Los Angeles County Fairgrounds) and the Metro-Goldwyn-Mayer Ranch property.
Here is a link to the studio zone map on the CFC website: <http://film.ca.gov/locations/studio-zones/Studio-Zone-Map.pdf>

Q: If my client has a crew traveling to San Diego, do the travel days count towards an uplift? If their show has a crew traveling to Mexico, does the flight back to LA qualify?

A: Travel costs such as airfare only qualify if they are for travel entirely within the state of California AND only if purchased from a CA vendor. To qualify for the uplift, travel must be purchased from an out of zone CA vendor. Salaries for qualified individuals traveling into and out of the zone qualify for the uplift. However, travel from Mexico back to LA would not qualify at all since the travel does not commence within the state.

Q: The crew reported inside the zone, was bused outside the zone, shot a driving scene outside the zone, then wrapped inside the zone after shooting a scene inside the zone. Does the day qualify as outside the zone?

A: As long as the first unit shot the first scene of the day outside the zone, the day qualifies as an out of zone principal photography day.

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OUT OF ZONE (continued)

- Q:** My client is shooting a series out of the zone and is bringing in a caterer from the LA area. Will their meal costs and labor qualify for the uplift since the work is being done out of the zone?
- A:** The labor working out of the zone will qualify as ZW, assuming they are paid directly on your payroll and not on a third-party invoice. When the production company is invoiced per person for meals, the invoice will be coming from a vendor that is not out of the LA Zone, so those costs would not qualify for the uplift. If the production company reimburses the caterer for supplies (water, gas) that are purchased out of the zone, those items may be tagged ZC (assuming they are consumables). If the caterer is charging for their own table and chair rentals, they were not rented out of the zone from an out of zone vendor, so those would not qualify for the uplift either.
- Q:** Is there a listing of items that are considered consumables with respect to out of zone work?
- A:** In both the Program Guidelines and the Budget Tagging and Tracking Tips, there is a listing of items that can be classified as consumables (and tagged QE/ZC). If a CPA finds additional items that should be added to the listing, please notify the CFC to verify.

PAYROLL

- Q:** Company A uses two separate outside companies (FRB Productions & LRF Productions) to process the WGA payroll and IATSE Payroll. They are signatories to both the WGA and IA and would initially pay the payroll company invoice and then invoice Company A for the cost. Is this allowable?
- A:** The CFC will allow the arrangement with the signatory companies that are reimbursed by the production entity and the applicant would be able to tag that labor QW.

QUALIFIED EXPENSES

- Q:** Does a kit rental paid to a non-CA resident for a kit used in CA qualify?
- A:** No. The kit would have to be purchased and used in CA.
- Q:** Are Record Album art clearance fees qualified?
- A:** No, the tax credit program only qualifies expenditures related to the production of the qualified motion picture. Also, license fees for artwork or music do not qualify.
- Q:** Do sideline musicians qualify, as they are basically like extras miming to a pre-recorded song, paid through AFM instead of SAG/AFTRA?
- A:** Sideline musicians qualify, as long as they have no lines, and therefore are not paid as SAG/AFTRA members.

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QUALIFIED EXPENSES (continued)

- Q:** If the production reimburses a cast member for his/her work with a dialect coach which was performed in California, does the reimbursement count as a qualified expense?
- A:** The fee for the dialect coach would need to be paid directly to the dialect coach for it to be considered qualified wage. Any monies paid to an actor directly are considered compensation and do not qualify. The qualified expenditure chart indicates that cast expenses only qualify with proof of payment by the production company – not as a reimbursement for expenditures. This is necessary to prevent any non-qualified individuals from receiving monies for expenditures which may or may not have been incurred and having them qualify.
- Q:** My client's show rented an office, a stage, and purchased insurance prior to the issuance of the CAL. Can these expenses be pro-rated since they are all qualified expenses? What about furniture and equipment rentals prior to the CAL?
- A:** The only rentals or purchases made prior to CAL issuance which can be pro-rated and qualify as of the date of the CAL are office, stage, insurance and bond fees. Applicants who must pay for show rentals prior to the CAL are advised to structure the purchase order so that payments can be made in installments; in that way, subsequent rentals and payments incurred during the qualified period will qualify.
- Q:** If a trucking company hired by the production pays a citation for excess weight, is that a qualified expenditure?
- A:** As long as the trucking company is registered to do business in CA and the trucking is taking place in the state, the citation would qualify.
- Q:** If the dates of a wardrobe rental go beyond the 30 days after creation of the final element, should the entire amount be disqualified or can it be pro-rated?
- A:** The rental costs incurred during the qualified period will qualify. Costs beyond the 30 days after final element creation do not qualify, so the amount should be pro-rated.
- Q:** The director was paid a living allowance through payroll. Is this qualified?
- A:** The director's salary is not qualified so therefore, neither is the living allowance.
- Q:** Do subscription fees to internet subscription series providers qualify?
- A:** If the provider is based in California, the subscription fees would qualify.
- Q:** Is Cast It software qualified?
- A:** We consider it more of a subscription, so OK to include as QE.
- Q:** If a car service picks up an actor at LAX, is this qualified?
- A:** The car service is a qualified expense. Assuming the car service is paid directly by the approved applicant, the service, performed in the state by a CA vendor, would qualify.

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QUALIFIED EXPENSES (continued)

- Q:** If my client's production uses a church for a location, does the fee qualify?
- A:** If a location fee is paid, and there is a location agreement, and the production is actually utilizing the location in CA, it would qualify. There is no restriction on paying non-profits. However, if the money is paid strictly as a donation, then it would not qualify.
- Q:** Does ACA Health Insurance qualify?
- A:** ACA health insurance is qualified for the qualified period.

QUALIFIED WAGES

- Q:** What is the definition of qualified wages?
- A:** Qualified Wages must be paid directly by the "Applicant" or its payroll service in order to be included in this calculation as a wage; labor paid via third party contracted vendor must be identified as a qualified (non-wage) expenditure.
- Q:** Per the new Chart of Accounts, "On qualified labor only. Per Diem portion up to Union Daily Rate allowed." Does this mean that we would need to break out the union per diem from the daily rate? For example, IATSE's per diem requirement is \$53.50, however a standard rate is \$60/day. In this case, would \$53.50 be QW and \$6.50 be QE?
- A:** If it is strictly per diem, it should all be QW. The limit is when it is a "living allowance", in which case the per diem amount would be QW and the rest QE. So you can leave the \$60 all tagged as QW.
- Q:** For producer hyphenates, does the \$100,000 cap include or exclude fringes, box rentals, etc?
- A:** The cap excludes fringes, box rentals, allowances, meal penalties, etc.
- Q:** Does a VFX budget consultant qualify as a wage? If so, does it count towards the 5% uplift?
- A:** As long as the consulting took place during the qualified period, the wages qualify and apply towards the uplift.
- Q:** If a project hires a tax credit consultant that performs services in CA, would this be considered qualified? It is an add-on service for financiers.
- A:** This is an expense related to financing and therefore does not qualify.
- Q:** During my review, I noticed that non-resident SUI is being charged by Entertainment Partners payroll service for work performed in California. Shall I disallow?
- A:** The CFC is aware that EP charges CA SUI for work in CA regardless of the work state. It should not be included with Qualified Wages.

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QUALIFIED WAGES (continued)

- Q:** When my client's production was shooting the tank on their last week of work, they had stunt riggers working in the water. The riggers were not on camera. They were helping to pull the on-camera stunt person through the water. However, due to them working in the water, they were paid stunt adjustments. Should those stunt adjustments count as qualified spend since they were provided to qualified labor?
- A:** The stunt adjustment for a stunt rigger who was not on camera would qualify.

RELATED PARTY STUDIO CHARGES

- Q:** What are related party studio charges?
- A:** A studio would allocate (usually via a system download or journal entry) qualified production wages utilized by the production for services (i.e., transportation, construction, assistants). In order for these positions to be considered qualified wages (QW), instead of qualified expenditures (QE) the production would have to comply with the following, at a minimum, to be considered QW and not QE:
1. The entity who applied for the tax incentive is the same entity paying the overall wage to the studio employee being allocated to the production (same tax payer ID). The production would have to provide documentation that the studio employee worked on the production (e.g., time card, appearing on production report, appearing on credits, etc.) If both the items above are provided, along with the other necessary related party testing, the wage can be tagged as QW.
- Q:** What if a producer who has an overall studio deal allocates their assistant's salary to the qualified production?
- A:** The studio would have to supply backup indicating how the assistant's salary was divided between productions to ensure total salary was not more than 100%. Also, the assistant would need to be paid directly by the applicant.
- Q:** What if a studio employee gets paid directly by the qualified production A, but splits time on qualified production B. The start paperwork would be with production A, but maybe there will be a time card indicating work on production B. Their salary would get moved via a journal entry, so we would not see production B actually paying the employee. If the same entity is producing the qualified productions A and B, would it be QW as long as wages are not double counted?
- A:** Yes, as long as not double-counted.
- Q:** There are a few employees who were paid via the studio's payroll, so do I assume since this is a labor related party cost, that can be considered QW?
- A:** Unless the wages were paid by the same applicant entity/same taxpayer ID, the expenditure is not considered QW. If these employees were not hired directly by the production company, then their salaries would still qualify but they would qualify as QE, not QW.

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SAMPLING

- Q:** While sampling costs for a series, I found \$160k of costs that were erroneously tagged as a result of the pilot reshoot costs (and the pilot was not in the program). Would the easiest fix for this be to just take out the pilot errors and not apply them towards any kind of misstatement rate?
- A:** The easiest way to correct this would be to resample under the AUP. Let's assume that the "gross error" was discovered in the first testing sample of Stratum 1 and 2. We can remove the \$160k of costs and resample again under "test 2." If the problem is not prevalent, then you should not discover any new errors. If test 2 is clean, you don't need to extrapolate any error. So in a way, the AUP is giving a concession to the company by giving them a 2nd sample. If the error noted in the first sample was an isolated event (and the issue removed in this case), then the 2nd sample should be able to verify that fact with a clean result.
- Q:** When performing an AUP for a relocating TV series, I observed that this category is not included on the Appendix A. Why not?
- A:** "Relocating series" was never included in the sampling chart, Appendix A, as it is assumed that whether it relocated or not, it is still a TV series and therefore subject to this sampling methodology. Therefore, utilize the TV series category, as it includes relocating TV series.
- Q:** I am testing non-qualified expenditures on a show that shot partially in another state. Do I need to test expenditures from out of state (tagged XX) or just the NQ items from California?
- A:** For the non-qualified testing procedure, CPAs are required only to test items tagged NQ which would include labor incurred or goods and services utilized in the state.

SHIPPING

- Q:** For online purchases from a vendor who has a physical presence in CA, does the item absolutely have to be shipped from an actual store in CA, or can it be shipped from a warehouse in CA? I'm specifically looking at the big boys like Macy's, Lowe's, Home Depot, etc.
- A:** If a vendor has physical stores in CA and qualifies as an in-state CA vendor, shipping from a vendor warehouse will qualify as in-state vendor purchase. However, shipping from a pass-thru entity (e.g., Amazon) would not qualify. If shipped from a physical store outside of CA, neither the shipping nor the item would qualify.
- Q:** What about a service like Amazon Prime Now, which delivers within a 2 hour time frame?
- A:** Since the goods would have to be from a CA vendor in order to be delivered within that time frame, assuming the items are qualified items, they would qualify, as would the shipping costs.

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SHIPPING (continued)

- Q:** A Staples Advantage invoice does not show where any of the items are coming from on the invoice itself. The shipping label has a “From” address on the top left of the label. If my client includes a copy of this shipping label, would this work as a Qualified Expense? If so, can they use a copy of the label, as the original is on the box and may rip if they try to remove it?
- A:** Original shipping labels only – no copies – as duplicates of the same label could be submitted.
- Q:** At the top right of the shipping label it says “Carton 2 of 3”. Would all three of the cartons need to come from California in order for the order to qualify and would my client have to have copies of all three carton labels?
- A:** Items could be shipped from different locations, so a return shipping label or individual invoice evidencing that the items were shipped from a CA location is required.

TAGGING & TRACKING

- Q:** I am confirming that payments to companies that perform services, such as script clearance and security, are tagged as QE and not QW. What if a company performs accounting services for a production (outsourced production accountant), is that QW?
- A:** Regarding an accountant performing post production services, if the accountant has his or her own loanout (or is a sole proprietor), then it would be QW; if the accountant is working for a post-accounting firm and his/her services are being billed out, it would be QE. (Only wages paid through the production’s payroll service, musicians’ payroll service, or directly by the production company to an individual or their loanout company can be considered wage.)
- Q:** Should box rentals for individuals working outside the zone be tagged ZC or ZE?
- A:** Only box rentals from local hires were likely purchased from an out of zone supplier, so only box rentals from local hires can be tagged QE/ZC (Program 2.0) when working out of the zone. For Program 3.0, since box rentals are now considered wages, local hire box rentals should be tagged QW/LW.
- Q:** A client hired a company to monitor the tax credit and to probably sell the tax incentive. They are calling this a “financing fee” and assume it should be NQ. Thoughts?
- A:** Correct – these types of fees do not qualify.
- Q:** What are payroll fees to be tagged as?
- A:** They should be tagged as QW, assuming the payroll work is performed in CA by a CA business.

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TAGGING & TRACKING (continued)

- Q: A project has security, fire, and police fees tagged as "QE/ZC". The company who hired them/paid them is located inside the zone. Should these expenses be tagged as "QE" because the company was paid directly, even if work was performed outside of the zone?
- A: Yes, only vendors that are located outside of the zone can be tagged as QE/ZC.

UPLIFTS

- Q: Do visual effects (VFX) drop-ins or pulls qualify for the uplift?
- A: VFX pulls/drop-ins qualify as visual effects but do not qualify for the uplift.

VENDOR LETTERS

- Q: Are original signatures necessary for vendor verification letters?
- A: Not necessary.
- Q: Do I need to adjust post expenditures for wages identified in the verification letters for the jobs ratio?
- A: No – those wages were paid by the vendor and not directly by the production company so they are considered QE for purposes of the jobs ratio.