

New York State
Department of
Taxation and Finance



Report on the Empire State Film Production Tax Credit

March 2006

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Introduction

Chapter 60 of the Laws of 2004 created the Empire State Film Production credit to promote film and television production in New York State. The credit is described in Section 24 of the Tax Law and is applied against the tax imposed under Article 9-A, the franchise tax on business corporations, or Article 22, the personal income tax. The total amount of credit is limited to \$25 million in each calendar year, with an aggregate cap of \$125 million. The credit is scheduled to expire on August 20, 2008.

The credit is administered by the Governor's Office for Motion Picture and Television Development (MP/TV), which is the entity also responsible for monitoring the status of the aggregate credit cap.

Chapter 60 also mandated an annual report evaluating the effectiveness of the tax credit in stimulating the growth of the film industry in the state. This report was prepared by the Office of Tax Policy Analysis (OTPA) and MP/TV. and the data contained in this report comes from applications filed with the Governor's Office for Motion Picture and Television Development for allocation of film production credits.

Credit Eligibility and Calculation

A taxpayer which is a qualified film production company subject to tax under Articles 9-A or 22 can apply to MP/TV to receive the refundable, 10 percent Empire State Film Production credit. An additional 5 percent credit is available from New York City.

To become a qualified production company, 75 percent of film production facility expenditures must be spent at a qualified film production facility, defined as a facility in New York in which television shows and films are or are intended to be regularly produced, and which contains at least one sound stage of at least 7,000 square feet. Productions which qualify for the credit are feature length films or television films, pilots, or series. Generally, documentaries, news or current affairs programs, interview or talk shows, instructional videos, sport shows or events, daytime soap operas, reality programs, commercials, and music videos do not qualify for the credit.

Taxpayers meeting the test above can qualify for a credit of 10 percent on qualified costs incurred at the facility. Qualified costs are costs for tangible property or services used or performed within New York

directly and predominantly in the production (including post production) of a qualified film. Qualified production costs generally include most below-the-line items such as costs of technical and crew production, expenditures for facilities, props, makeup, wardrobe, set construction, and background talent, and generally exclude costs of stories and scripts, and wages for writers, directors, producers, and performers (other than extras without spoken lines).

If a production has met the 75 percent test for production facility expenditures as described above, it may also qualify for the tax credit based upon qualified expenditures outside the qualified facility that are related to pre-production, location production, and post production in New York in one of two possible ways:

a) if the qualified New York expenditures related to the qualified production facility total \$3 million or more, then all qualified expenditures related to pre-production, location, and post production in New York State qualify for the credit;

b) if expenditures on the qualified production facility days are less than \$3 million, then the production must shoot at least 75 percent of all its location days in New York State in order to include expenditures incurred in New York State outside the qualified production facility on pre-production, production, and post production. Again, similar to the production facility threshold, the 75 percent threshold here applies to a percent of the total location days only, not to the total shoot days. Shooting days spent at facilities are not used to calculate this threshold, only the ratio of shooting days spent on locations anywhere in New York State compared to shooting days on locations outside of New York State are used.

Credit Application and Allocation

The State of New York has allocated \$25 million in aggregate credit per calendar year, beginning on January 1, 2004. The credit will be offered on a first come, first serve basis. Applicants “rollover” or move into the next year’s funding cycle if the \$25 million is reached. Applications for the credit must be submitted to MP/TV not more than 180 days prior to the start of principal and ongoing photography.

To apply for the credit, a production company must first submit an initial application which leads to conditional approval of the project.

Applicants provide data, such as the type of production, production schedule, and location information, and projected expenditures which help MP/TV determine if a given production is eligible and qualifies for participation in some aspect of the tax incentive program. Projected expenditures are provided for items such as estimated total budget, estimates of expenditures at a qualifying production facility, estimates of

shooting days and expenditures in New York, and estimates of shooting days and expenditures outside of New York.

After review of the information provided in the initial application, MP/TV makes an initial determination if the applicant is certified for conditional eligibility in the program.

After the production is complete, the applicant submits a final application to MP/TV detailing actual expenditures both within and without New York demonstrating that the required thresholds were met, as well as additional supporting data, such as a payroll expenditure report, a complete cast and crew list, and daily production reports, used to form the basis for the credit. Based on a review of these documents, MP/TV determines the amount of credit earned by the applicant and provides a tax credit certificate specifying the amount of tax credit allocated. The final amount allocated to an applicant will not be established until after the production of the film is determined to be completed.

The applicant includes this credit allocation certificate with the filing of its tax return for the year in which the credit is allowed. The refundable credit is applied to the New York State liability of the applicant that owns or controls the applicable qualified film for the year in which the production was completed. If the taxpayer is unable to use the entire credit during the year in which the credit is earned, 50 percent of the unused portion of the credit may be requested as a refund. The remaining 50 percent is carried forward to the subsequent year, with any unused remainder in that year fully refundable.

Legislative Mandate

Section 8 of Part P of Chapter 60 of the Laws of 2004 requires the Commissioner of Taxation and Finance to conduct a study regarding the Empire State Film Production credit, in conjunction with the Director of the Governor's Office for Motion Picture and Television Development. The legislative mandate follows:

The commissioner of the department of taxation and finance, in conjunction with the director of the governor's office for motion picture and television development, shall submit to the governor, the temporary president of the senate, and the speaker of the assembly, an annual report to be submitted in February of each year evaluating the effectiveness of the film production tax credit provided by this act in stimulating the growth of the film industry in the state. Such report shall include, but not be limited to, in total and by qualified film, the number of qualified films, the qualified production costs, the production costs, the qualified film production facilities, and the credit

amounts claimed by each qualified film, as well as the impact on employment and the economy of the state and city of New York. Such report shall be based on data available from the application filed with the governor's office for motion picture and television development for allocation of film production credits. Notwithstanding any provision of law to the contrary, the information contained in the report shall be public information. The report may also include any recommendations for changes in the calculation or administration of the credit, and any other recommendation of the commissioner regarding continuing modification, or repeal of such act, and such other information regarding the act as the commissioner may feel useful and appropriate.

Statistical Data

Data Considerations

The following tables present information for taxpayers claiming the Empire State Film Production Credit from the 2004 allocation pool. The primary source of the data is forms and applications filed with the Office of Motion Picture and Television Development (MP/TV). MP/TV analyzes the submitted materials and determines the amount of credit for which each applicant is eligible. The tables reflect amounts after MP/TV's review and adjustments disallowing certain costs.

The credit amounts are the amounts approved by MP/TV. MP/TV issues a certificate to the applicant stating the amount of credit they may claim on their tax return. The credit amounts reported here are amounts calculated by MP/TV and issued on the certificate.

These data are not tax data. They do not reflect amounts actually used to reduce liability or requested as a refund. Such information will appear on tax returns that will not be final and verified for several years due to taxpayer extensions and varying fiscal years. Furthermore, amounts reported on tax returns are subject to Tax Department audit and adjustment for three years after the filing due date. Amounts reported on tax returns for this credit will be published in future Office of Tax Policy Analysis (OTPA) statistical reports once the data becomes available.

Employment figures contain all individuals who worked directly on the production, regardless of duration or function. Therefore, they would include individuals employed part-time, extras, and above-the-line talent. Above-the-line costs do not qualify for the credit, however.

To protect proprietary and sensitive information, productions are identified only by a letter instead of the name. Also, one production that has been granted credit does not appear in the tables. This is because the limited number of approved applicants and certain data elements may reveal enough to identify the production. As more productions are reviewed and granted credit, this production will appear in subsequent reports.

Future reports will recap data previously reported, as well as include all newly available information from MP/TV. These data will show amounts approved by MP/TV and issued on credit certificates for each credit allocation year.

Description of Tables	NYC Facility	The amount ultimately approved as qualified by MP/TV for the tax credit, based on expenses incurred related to work at a qualified production facility within the boroughs of New York City
	NYS Facility	The amount ultimately approved as qualified by MP/TV for the tax credit, based on expenses incurred related to work at a qualified production facility within the State of New York but <i>outside</i> the five boroughs of New York City
	NYC Location	The amount ultimately approved as qualified by MP/TV for the tax credit, based on all expenses incurred filming on locations, or in pre or post production, outside a production facility, within the boroughs of New York City
	NYS Location	The amount ultimately approved as qualified by MP/TV for the tax credit, based on all expenses incurred filming on locations, or in pre or post production, outside a production facility, within the State of New York but <i>outside</i> the five boroughs of New York City
	Total Qualified Costs	The total of all costs approved as qualified by MP/TV for the tax credit after review and revision of the Form E submitted
	NY Nonqualified Costs	After review by MP/TV, the final amount of costs defined as nonqualified for the tax credit that were incurred in New York State (i.e. in the review process some costs which had been submitted as qualified were deemed to be in fact <i>not</i> qualified)
	NY Spend	The total of all costs, whether qualified or nonqualified, incurred in New York State after review and adjustments by MP/TV
	Out of State Facility	Costs attributed to work at a production facility outside New York State after review of Form E by MP/TV
	Out of State Location	Costs attributed to work on locations (outside a production facility) outside New York State after review of Form E by MP/TV
	Total Budget	The total of all costs of the production, regardless of where incurred, after review and revision by MP/TV
	Amount Approved	The amount of the tax credit ultimately approved as credit by MP/TV after review and revision of final application

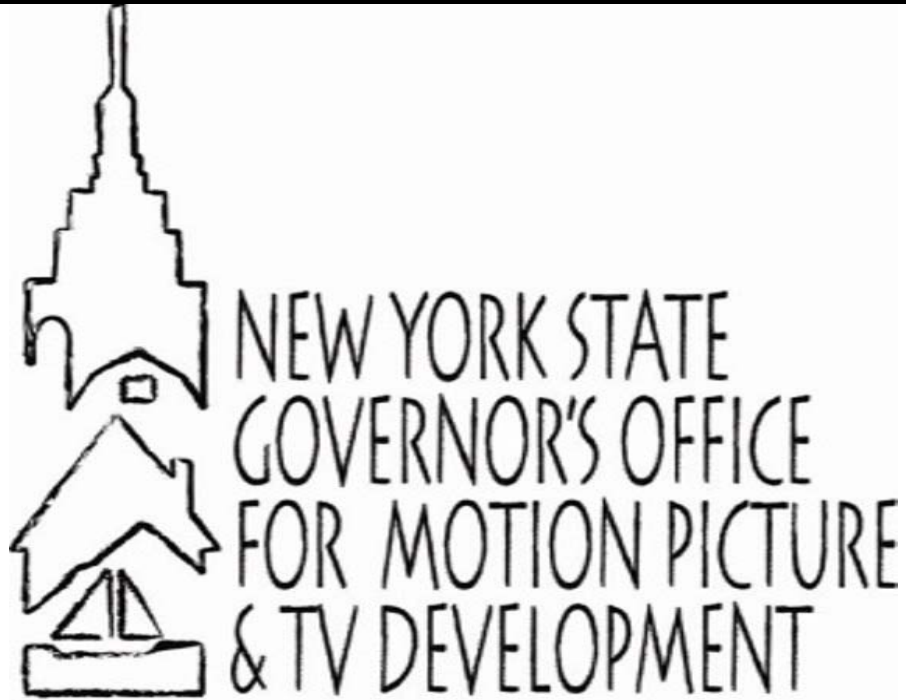
Cumulative Total \$\$	The cumulative total of all tax credits approved by MP/TV; this is essential for monitoring the status of the credit relative to the aggregate cap
Stage Days NYC	Days cameras roll on principal photography at a qualified production facility located within the five boroughs of New York City
Stage Days NYS	Days cameras roll on principal photography at a qualified production facility located within New York State but <i>outside</i> the five boroughs of New York City
Stage Days Outside NYS	Days cameras roll on principal photography at a production facility that is located outside New York State
Total Stage Days	Total of all days cameras roll on principal photography at a production facility anywhere
Location Days NYC	Days cameras roll on principal photography within the five boroughs of New York City <i>not</i> at a qualified production facility
Location Days NYS	Days cameras roll on principal photography within New York State <i>outside</i> the five boroughs of New York City and <i>not</i> at a qualified production facility
Total Location Days NYC & NYS	Total all days cameras roll on principal photography within New York State (including New York City) <i>not</i> at a qualified production facility
Location Days Outside NYS	Days cameras roll on principal photography on any location outside New York State <i>not</i> at a production facility
Total Location Days	Total all days cameras roll on principal photography within and without New York State (including New York City) <i>not</i> at a production facility
Total Shoot Days	Total all days cameras roll on principal photography anywhere, within and without New York State (including New York City), including days within and without a production facility
Total Production Employees	The total of all employees who worked on the production in New York State as listed of Form D: Section 5-2-a

Table 1: List of Credit Approved Projects and Credit Amounts (as of February 28, 2006)

												CREDIT AMOUNTS	
PROJECT	TYPE	NYC Facility	NYS Facility	NYC Location	NYS Location	Total Qualified	NY	NY Spend	Out of State	Out of State	TOTAL	Amount	Cumulative
						Costs	Nonqualified		Facility	Location	BUDGET		
Project A	Feature Film	\$0	\$130,660	\$0	\$4,561,272	\$4,691,932	\$2,820,919	\$7,512,851	\$0	\$886,149	\$8,399,000	\$469,193	\$469,193
Project B	TV Series	\$13,142,341	\$0	\$101,106	\$0	\$13,243,447	\$16,651,901	\$29,895,348	\$0	\$0	\$29,895,348	\$1,324,345	\$1,793,538
Project C	TV Series	\$12,329,609	\$0	\$7,423,943	\$0	\$19,753,552	\$9,169,517	\$28,923,069	\$92,460	\$7,798,398	\$36,813,927	\$1,975,355	\$3,768,893
Project D	TV Series	\$1,221,401	\$0	\$2,475,623	\$0	\$3,697,024	\$1,733,528	\$5,430,552	\$0	\$391,656	\$5,822,208	\$369,702	\$4,138,595
Project E	Feature Film	\$0	\$90,054	\$0	\$5,589,147	\$5,679,201	\$1,414,265	\$7,093,466	\$0	\$357,329	\$7,450,795	\$567,920	\$4,706,515
Project F	Pilot	\$1,036,649	\$0	\$2,764,021	\$0	\$3,800,670	\$813,606	\$4,614,276	\$0	\$642,760	\$5,257,036	\$380,067	\$5,086,582
Project G	Pilot	\$600,331	\$0	\$2,090,543	\$80,427	\$2,771,301	\$1,066,947	\$3,838,248	\$0	\$523,932	\$4,362,180	\$277,130	\$5,363,712
Project H	Pilot	\$746,591	\$0	\$2,928,434	\$0	\$3,675,025	\$1,129,458	\$4,804,483	\$0	\$487,808	\$5,292,291	\$367,503	\$5,731,215
Project I	Pilot	\$280,153	\$0	\$1,963,873	\$0	\$2,244,026	\$1,162,536	\$3,406,562	\$0	\$127,459	\$3,534,021	\$224,403	\$5,955,618
		\$29,357,075	\$220,714	\$19,747,543	\$10,230,846	\$59,556,178	\$35,962,677	\$95,518,855	\$92,460	\$11,215,491	\$106,826,806	\$5,955,618	

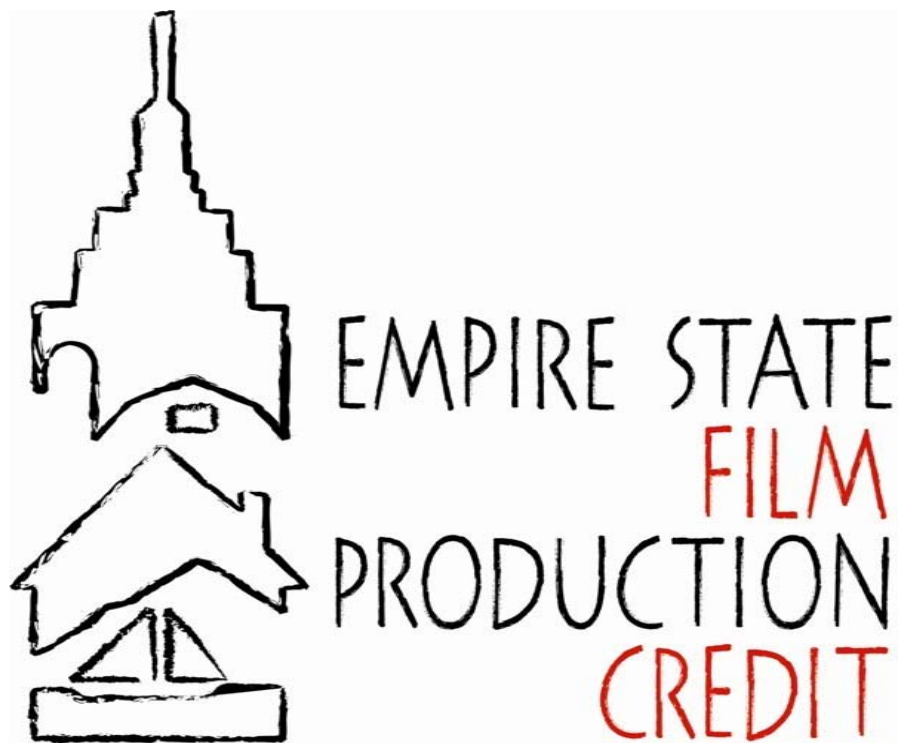
Table 2: List of Credit Approved Projects with Economic Impacts Represented by Shooting Days and Employment (as of February 28, 2006)

		SHOOTING DAYS									EMPLOYEES	
PROJECT	TYPE	Stage Days NYC	Stage Days NYS	Stage Days Outside NYS	Total Stage Days	Total Location					TOTAL SHOOT Days	Total Production Employees
						Location Days NYC	Location Days NYS	Location Days NYC & NYS	Location Days Outside NYS	Location Days		
Project A	Feature Film	0	1	0	1	1	24.5	25.5	8.5	34	35	397
Project B	TV Series	47	0	0	47	3	0	3	0	3	50	217
Project C	TV Series	75	0	1	76	32	0	32	0	32	108	1,816
Project D	TV Series	8	0	0	8	16	0	16	0	16	24	951
Project E	Feature Film	0	1	0	1	25	0	25	3	28	29	887
Project F	Pilot	1	0	0	1	14	0	14	0	14	15	806
Project G	Pilot	1	0	0	1	11	1	12	0	12	13	694
Project H	Pilot	1	0	0	1	14	0	14	0	14	15	585
Project I	Pilot	1	0	0	1	8	0	8	0	8	9	551
		134	2	1	137	124	25.5	149.5	11.5	161	298	6,904



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Analysis Of Impact As Predicted By Initial Applications*

Impact of the Incentive

The Empire State Film Production Tax Credit has had an immediate and beneficial impact on the film and television industry in New York. New York has experienced a dramatic increase in the number of projects attracted to the state as well as increases in economic activity in the form of jobs created and industry spending. Unions, guilds, vendors, and production companies report that record levels of employment and work have resulted from the establishment of the Empire State Film Production Tax Credit Program.

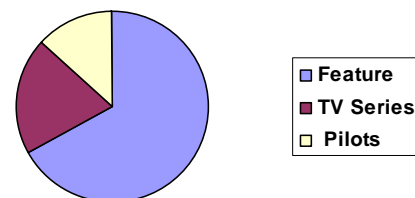
Feature films, television series, and television pilots or miniseries that qualify may claim a fully refundable tax credit on a large portion of the money that they spend while filming in New York. The program allows the state to issue a refundable tax credit in the amount of 10 percent of the films' qualified costs and also allows New York City to opt in and provide an additional 5 percent tax credit to projects based primarily in the city.

In order to be accepted into the program, a project must submit an initial application projecting the economic activity of the project to be followed by a final application detailing the actual spending and economic activity. By late February, we received a total of 105 initial applications; 8 applications have been withdrawn, leaving a total of 97 active applications. We received 20 final applications, 10 of which have been processed and reviewed by MP/TV and for which official certificates of credit have been issued.

The data to follow are based on the information supplied in the 97 active initial applications received by the state.

The 97 active applications consist of:

- 65 Feature Films
- 19 Television Series
- 13 Television Pilots



*This section is authored by the Governor's Office for Motion Picture and Television Development

Project Spending

Project spending is measured in three ways: Total Budget (i.e., all money spent on a project in or out of New York State); NY Spend (i.e., all money spent in New York State only on both qualified and non-qualified costs); and Qualified Spend (money spent in New York State on costs qualified for the credit, such as labor, materials, facilities, etc.).

The 97 active projects in the program represent:

- \$ 2.1 billion in Total Budgets;
 - \$ 1.7 billion of that amount (80%) was spent in New York State (NY Spend);
 - \$1.056 billion (61%) of the NY Spend was on qualified costs (e.g., labor, materials, facilities, etc.);
 - \$105 million of the \$125 million allocated for the program through 2008 has been already been committed.
-

Impact On Industry Growth

The program was signed into law on August 20, 2004. Film and television productions generally require more than three months of preparatory time. As a result, no new projects were able to file an application and actually begin production in 2004. Thus, nine projects that qualified in 2004 were already slated to film in New York and cannot be said to have been attracted by the incentive.

As noted previously, in order to qualify for the full credit, projects must spend 75 percent or more of their facility budget at a qualified stage in New York, and must shoot 75 percent or more of their location days in New York. In the following table, figures for 2004 include all projects that *could* have qualified for the credit if it had existed *plus those that did*. Figures for 2005 and 2006 reflect projects that are all in the program.

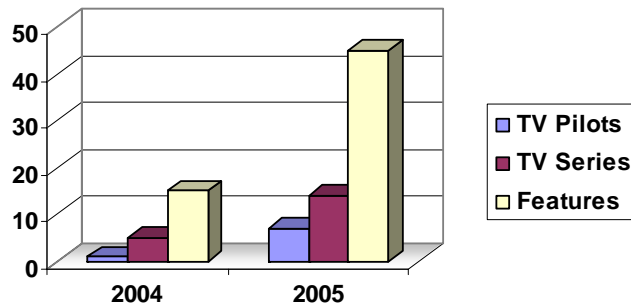
Number of Projects That Could or Did Qualify Per Year

The numbers in parenthesis represent a subset of projects in calendar year 2004 which predate the program and thus did not qualify but would have qualified had the program already existed. For example, there were 15 feature films, of which 11 predate the program. All projects that could qualify in 2005 and 2006 could and did apply.

	2004	2005	Jan-Feb 2006	Total qualified
Film	15 (11 pre program)	45	16	65
Series	5	14		19
Pilot	1 (1 pre program)	7	6	13
Total	21 (12 pre program)	66	22	97

Comparing the number of projects that could have qualified in 2004 to the number that qualified in 2005, we can calculate a percentage in change generated from one year to the next by the creation of the Empire State Film Production Tax Credit Program:

	2004	2005	% Change
Film	15	45	200%
Series	5	14	180%
Pilot	1	7	600%
Total	21	66	214%



Timing of Allocations/ Disbursements

Close to \$105 million out of the \$125 allocated through 2008 has been committed. The legislation creating the current program sunsets in 2008. The first disbursements will come due in 2006. For the most part, the applications coming in now are for projects that will not be ready to collect their disbursements until 2007 or early 2008. Clearly, it is critical that we get the sunset lifted and the allocations increased so that this program can continue to move forward and create jobs. An interruption in the program will result in an immediate loss of incoming projects.

Future of the Program

The film and television production industry is highly globalized and mobile. Decisions regarding where to locate projects are very sensitive to budgetary pressures. Hence the creation of the Empire State Film Production Tax Credit had an immediate and profoundly positive effect. The possibility that the incentive might be exhausted or significantly constrained or reduced has recently had an equally profound and negative effect.

A gauge of how significant a role the incentive is playing in the decision making process of studios and producers can be measured by their concern regarding the approaching exhaustion of the funds. In the past month, several major Hollywood studios have redirected projects to other states in anticipation of either the funds running out or aspects of the program changing significantly in nature. In the past month we have lost

a number of pilots and possibly one series due to the uncertainty of future funding. In addition, concerns regarding possible changes to the program have led to an air of uncertainty that has also resulted in other potential new projects being redirected away from New York and to other states. Assuming the program is extended and fully funded, these concerns will be eliminated and the program will continue to attract projects at a robust rate.

It should also be noted that in recent months, New Jersey has enacted an incentive program which is substantially similar to the New York program with one serious difference. The maximum credit available in NJ is 20 percent as compared to New York's maximum rate of 15 percent. It would also appear that New Jersey's program will allow the credit for a larger portion of a project's budget than is allowed in New York. Rhode Island and Massachusetts have also initiated their own programs. These programs will add to the competition for projects we are trying to attract to New York. An extended and fully funded program will allow New York to compete effectively.

For more information concerning the data provided in this publication, please contact:

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