

PART 51

THEATRICAL ACCOUNTING

(Statutory authority: Arts and Cultural Affairs Law, art. 23)

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Section 51.1 Definitions. (a) Front money shall have the same definition as that contained in section 50.1 (i) of Part 50.

(b) Opening shall mean the initial performance of the original production and shall not include any tryout or preview performance of such production or workshop.

(c) Theatrical production and theatrical production company shall have the same definitions as contained in article 23 of the Arts and Cultural Affairs Law.

(d) Producer or other principal shall mean and include every person or firm directly or indirectly controlling the business affairs or operations of a theatrical production company, as defined herein.

51.2 Records to be kept by an issuer or other offeror of a theatrical production company. (a) Permanent type books and records of account shall be kept by the issuer or other offeror of each theatrical production company, with entries in ink on paper of quality suitable for maintaining a permanent record. Entries in pencil, work sheets and similar entries and stationery, temporary in nature, shall not be deemed adequate as permanent type books and records of account. Nothing herein shall prohibit the use of recordkeeping automation such as entries made by punched cards.

(b) The books and records of a theatrical production company are to be organized in such a way as to fully record and clearly reflect all financial transactions, and with a view to assembling information and data appropriate for financial reports to be rendered. The following constitutes the minimum basic requirement for permanent type books of account to be kept (which may be combined in one volume):

- (1) cash receipts book;**
 - (2) cash disbursement book;**
 - (3) general journal;**
 - (4) general ledger (which should include in accounts or columns: production cost distribution; weekly running income and expense distributing; and closing costs distribution);**
 - (5) payroll records; and**
 - (6) house seat record book. (This shall record the disposition of house seats and passes allocated to the theatrical production company. It shall clearly indicate on a daily basis the number of house seats and passes for each performance, location and box office price thereof, the persons in the theatrical production company who are entitled to such seats and the disposition by them of these seats as recorded on receipt slips signed by them. If any monies are received in excess of the box office prices for such tickets by any person, such receipt should be set forth as well as a statement as to disposition of such proceeds. This record shall further indicate the location and dates of any house seats or passes which are not used by, or at the direction of, anyone connected with the theatrical production company and shall indicate whether such seats have been sold or made available for sale at the box office, through theater ticket brokers or otherwise as well as the price, if any, at which such tickets were actually sold and the disposition of the proceeds.)**
 - (7) Such other permanent and subsidiary books and records as are necessary to permit the preparation of true, accurate and complete financial reports.**
- (c) Books and records shall be kept from the start of all financial transactions pertaining to the theatrical production company, beginning with the offering of interests in a theatrical production company, and not merely from the initial expenditure of investors' funds. Records shall be kept regarding the expenditure of the funds of any principal or front money investors when such funds are to be reimbursed out of the proceeds of the offering or credited as investment units. Funds received from investors as capital contributions should be entered in the books when received by the theatrical production company or the escrowee, on an individual basis including the entry of the investor's name and address.**

(d) The issuer or other offeror of each theatrical production company shall maintain and preserve or cause to be maintained and preserved in good order all permanent books of account and all subsidiary records and documents (including, but not necessarily consisting exclusively of, bank statements, cancelled checks, bank deposit book or duplicate deposit slips, and other documents relating to the bank statements, theater settlement statements, vouchers, invoices, bills, receipts, sales slips, memoranda, schedules, summaries, contracts, instruments, tax report copies, correspondence, notes, letters, excerpts and any other pertinent and applicable materials) that pertain to, explain and/or support all transactions and all entries made or that should have been made.

(e) The minimum basic books of account and subsidiary records and documents as described in subdivisions (b) and (d) above shall be maintained and preserved by the issuer or other offeror in good order for a period of not less than two years after

the last public performance of each theatrical production produced, developed, or invested in by the theatrical production company or the date at which the production company has lost its right to produce, develop or invest in the play or has terminated, dissolved or otherwise formally indicated abandonment of intent to produce, develop or invest in such play, whichever is earlier. Irrespective of the above, post-closing records accounting for subsidiary rights shall be accurately maintained and preserved for a period of not less than two years after the timely making thereof.

51.3 Financial reports to be rendered by a theatrical production company. The financial reports listed below are to be prepared in the manner set forth in the applicable portion of section 51.5 and are to be submitted when due to all investors, and, except where otherwise noted, to the Office of the Attorney General and where the report is unaudited, accompanied by a letter of transmittal subscribed to by the issuer or other offeror as set forth in section 51.4.

(a) A pre-opening report consisting of a balance sheet covering each six-month period (or portion thereof) occurring prior to the first paid performance of any production produced, developed or invested in by the theatrical production company. Each such report shall also include a schedule of production costs incurred during the period and, if applicable, a cumulative schedule of total production costs. The first such report shall be due six months and 30 days after the initial expenditure of investors' funds for any such production other than the funds of any principal or front money investors (but shall include such latter transactions) or not later than 30 days after the close of the period covered thereby. This paragraph shall only be applicable to periods not covered by a previously issued annual report, as defined hereafter, or an annual report required to be issued by this Part which covers a period ending with the close of the applicable six-month period.

(b) A monthly report consisting of a summary balance sheet (or financial summary or analysis) and profit and loss statement for each theatrical production produced, developed or invested in by the theatrical production company covering each monthly period (or portion thereof) beginning with the date of the first paid tryout performance (or opening if there is none) of any such production and continuing production until the last public performance of the original production. Such monthly report is due not later than 30 days after the close of the period covered thereby. The monthly report shall be submitted to all investors but need not be submitted to the Office of the Attorney General. (Until the capital is recouped, the monthly reports should describe the excess of income over expense as amounts recovered for the period, and not as profit.)

(c) An annual report consisting of a balance sheet (or similar financial summary or analysis) and profit and loss statement for each 12-month period (or portion thereof), occurring prior to the last public performance of any production produced, developed or invested in by the theatrical production company. All annual reports covering a period ending prior to the opening of any such production or in which the opening occurred shall also include a schedule of production costs

incurred during the period, and if applicable, a cumulative statement of total production costs. The first annual report shall be due four months after the close of 12 months following initial expenditure of investors' funds (other than the funds of any principal or front money investors) in any such production, but shall include all previous financial transactions. If the production closes prior to the end of the 12 month period after the initial expenditure of investors' funds, then the first report is due four months after the last public performance. Each succeeding annual report is due four months after the close of the period covered thereby. The statement of production costs should show comparison with the budgeted amount, with large variations explained. Such annual reports shall continue to be made for each year in which the theatrical production company has had any earnings or expenditures or other financial transactions of any nature and shall include in addition to a balance sheet (or financial summary or analysis) a statement of earnings and expenditures as well as a description of any financial transactions such as settlement of accounts, loans by the theatrical production company, and any other transactions not reflected in the statement of earnings and expenditures. The issuer or other offeror's accountant may obtain a 30-day extension in filing the annual report by advising the Office of the Attorney General in writing, prior to the due date of the annual report, that such report will be submitted no later than 30 days following the original due date.

(d) In those cases where the proceeds of the theatrical production company, or any part thereof, are used to develop or invest in a production or productions not under the direct control of the issuer or other offeror, such issuer or other offeror shall require, through a legally enforceable contract, that the above reports be provided as set forth in this Part.

(e) With respect to a theatrical production company formed to produce, develop or invest in more than one specified or non-specified theatrical production, in addition to the above reports, an annual report of the theatrical production company, consisting of a balance sheet and profit and loss statement for each fiscal year of the theatrical production company.

51.4 Letter of transmittal by issuer or other offeror (to be submitted with unaudited reports). All reports to be prepared for the theatrical production company must be accompanied by a letter of transmittal on the letterhead of either the theatrical production company or the issuer or other offeror and shall be subscribed to by the issuer or other offeror. The letter shall include:

- (a) what statement have been prepared;
- (b) inclusive dates of the periods covered;
- (c) the date of the letter;
- (d) a statement by the issuer or other offeror that the accompanying financial report has been personally examined by him or them and that such report fairly presents the financial and operating information of productions actually produced by them, and is accurate and complete. If the theatrical production company uses its proceeds to develop or invest in productions it does not directly control, then the letter

required by this section shall be subscribed to by the producer of such production.
(e) a representation that the accompanying financial report has been submitted to all investors.

51.5 Contents of financial reports. All financial reports are to be prepared in the manner set forth below except the areas not specifically covered by this section shall be governed by generally accepted accounting principles consistently applied.

(a) Balance sheet (or similar financial statement or analysis) prepared as part of the pre-opening resort and the annual report shall contain the following information:

- (1) Capital section. (i) The total original capitalization should be stated, with a separate schedule, if necessary, indicating any amounts yet unpaid and the persons from whom such amounts are due.
(ii) Capital contributions in the form of service or property should be so designated, with a supplemental schedule indicating the service or property that has or will be contributed if the information is not contained on the statement.
(iii) The total overall, if any, should be stated, with a separate schedule, if the information is not contained on the statement, indicating any amounts yet unpaid and the persons from whom such amounts are due.
(iv) Capital contributions in excess of the original capitalization and overall should be set forth and the source thereof stated. If necessary a separate schedule should be used.
(v) Distributions constituting return of capital should be set forth. If preferential distributions were made, identify the person to whom made.
(vi) Distributions of profit should be set forth. If preferential distributions were made, identify the person to whom made.

(vii) Both current and accumulated charges to capital, including production cost, running losses, closing costs and similar items of cost (properly classified).
(viii) Both current and accumulated credits to capital, including profits from run or other income (properly classified).
(ix) Capital reserves and other capital items (specify); supply appropriate descriptive detail.

(2) Assets section. (i) Cash on hand and in banks (segregate amount for sinking fund reserve).

(ii) Loans and accounts receivable including identification of persons or entities from whom amounts are due (attach schedule, if necessary).

(iii) Amounts due from any of the principals or producers, and/or his spouse, relatives and/or entities owned or controlled by them or in which they have any financial interests should be separately shown, apart from loans and accounts receivable.

(iv) Prepaid items, with explanations where appropriate concerning advances which may have no recoverable value under certain circumstances. (For example, author's advances to be applied against author's royalties, but not returnable if insufficient

royalties are earned.)

(v) Bonds and deposit guarantees; each such bond and deposit should be shown separately. If conditional in any way, appropriate footnotes should be supplied.

(vi) Any amounts currently due to the theatrical production company for payments made in excess of or in advance of contractual requirements. Unless set forth in the statement, state in a separate schedule the person or entity to whom payment was made, the nature of the transactions and the amount of such excess payment.

(vii) Any other assets; specify and supply appropriate descriptive detail.

(3) Liabilities section. (i) Loans and accounts payable are to include a list of each creditor and the amounts payable thereto.

(ii) Liabilities and reserves for taxes (e.g., New York City commercial rent tax, N.Y.S. unincorporated business tax).

(iii) Accruals, as appropriate.

(iv) Any amounts payable to principals and producer or persons related to them or entities owned or controlled by them or in which they have any financial interest. Such payments should be set forth separately from other loans and accounts payable and the nature of the transaction giving rise to such amount payable should be set forth.

(v) Liabilities for royalties.

(vi) Any other liabilities; specify and supply appropriate descriptive detail. The difference between total assets and total liabilities must agree with the balance in the capital account section of the balance sheet.

(b) The balance sheet prepared for purposes of the monthly report shall be prepared as set forth under subdivision (a) of section 51.5 above except that separate or supplemental schedules required in subdivision (a) of section 51.5 above need not be used; names of individual investors from whom original capital contributions or overall is due need not be stated; the names of individual debtors and creditors need not be given; prepaid items may be set forth without further explanation; bonds and deposits may be shown as a total sum without further breakdown. However, all transactions with producers or other principals or related parties or entities in which they have a financial interest must be specifically noted by footnote or parenthetical remark.

(c) Schedule and cumulative schedule or production costs. (1) The pre-opening report and annual report covering each period ending prior to the opening, or in which the opening occurred, shall include a production cost schedule. These schedules may be shown on one statement in columnar form and shall encompass the following categories:

(i) Sets and scenery

Designing

Construction

Other materials and cost

(ii) Properties, purchases and rentals

(iii) Costumes and wardrobe

Designing

Costs to make and acquire

(iv) Sound, lighting and electrical equipment

Purchases and rentals

(v) Fees to directors (specify)

(vi) Music copying and arranging, if any

(vii) Rehearsal costs

Salaries by categories (e.g., cast, crew, stage managers, stagehands, assistants, etc.)

Script and parts

(viii) Publicity

Press agent - salaries

Press agent - expenses

Photos, signs, printing

Advertising

(ix) Personnel transportation

(x) Personnel subsistence and expense

(xi) Transportation and handling of property

Hauling and carting; take in; set up and hang

(xii) Net loss (or gain) on tryout or preview performances (Annex a statement covering income and expenses regarding these performances prepared in the same manner as the profit and loss statement used in monthly reports. See subdivision (d) of section 51.5.)

(xiii) Other production costs (specify)

(xiv) General and administrative expenses

Office expense or change

Insurance

Legal

Accounting

Payroll taxes (if not included in cost of salaries above)

Welfare and pension fund contributions (if not included in cost of salaries above)

Salaries (if not included above - such as general and company manager)

Other (specify).

(2) In general, for classifications not specifically mentioned above provide as much detail as possible. As a minimum, create a separate category for any individual item or homogeneous class of expenses not specifically mentioned above which amounts to one per cent or more of the total production costs. The categories listed are a minimum. As long as there is no loss in detail, the categories do not necessarily have to be grouped in the manner set forth above.

(3) The production cost schedule and cumulative production cost schedule must expressly state the amount involved and the name of the recipient for any item of cost whatsoever, where such item or part thereof was paid to, or liability was incurred on behalf of, the producer or other principal, parties related to them or any entity in which they have a financial interest. This may be accomplished by

appropriate footnote or parenthetical remark. This requirement shall include disclosure of any reimbursement for expenses previously advanced by such person or entity.

(d) Profit and loss statement. (1) During the run of the theatrical production. The profit and loss statement required in the monthly report and the portion of the annual report covering the period after the initial paid performance, shall be prepared in the following manner:

(i) The statement of income shall include, by separate classification, all income received by the theatrical production company whether from box office receipts; proceeds from the sale of tickets in excess of box office prices, advertising rebates, subsidiary rights and other income of any nature whatever.

(ii) As a minimum, the following categories of expense should be presented insofar as any such expense was actually incurred:

(a) Salaries

Cast

Stage managers

Musicians, if any

Company crew and department heads

Stagehands

Wardrobe and dressers

Press agent

Company and general manager

Other (specify)

(b) Royalties

Producer

Director (specify whether general, lighting, etc.)

Choreographer

Designers (specify - scenery, costumes, etc.)

Arranger

Composer

Other payments (specify purpose) based on a percentage of gross admissions or profits

(c) Publicity and advertising

Newspapers

Signs, printing

Press agent's expenses

Subscription, circularizing, displays and photos

Others (specify)

(d) Departmental and rentals

Electrical

Carpentry

Properties

Costume and wardrobe

Rental (specify)

Other (specify)

(e) General and administrative expenses
Office charge or allowance
Insurance
Accounting
Legal
Dues
Payroll taxes
Pension and welfare fund contributions
Gross business tax (N.Y.C. excise tax)
Commercial rent tax (N.Y.C. occupancy tax)
Other (specify)
(f) Transportation expenses
Personnel transportation
Personnel subsistence (hotel and living)
Transportation and handling of property
Other (specify).

(2) In preparation of these reports income and expenses for the monthly reports are to be set forth on the basis of each weekly period or portion thereof and should include a statement as to the number of performances in each week. The profit and loss statement for the annual report may present income and expenses on an annual basis. In all profit and loss statements if any party involved in a transaction is the producer, or other principal or any party related thereto, or an entity in which they have a financial interest, the details must be stated by appropriate footnote or parenthetical remark.

(e) The financial report prepared immediately after the close of the theatrical production shall contain a schedule of all closing costs.

(f) Statement of earnings and expenditures. The statement of earnings and expenditures of the theatrical production company to be used in the reports following the last public performance of each theatrical production produced, developed, or invested in by the theatrical production company shall contain the following:

(1) An itemization of all earnings of the theatrical production company from subsidiary rights or from any other source including an identification of each such source, as well as a cumulative statement thereof.

(2) An itemization of all expenditures of the theatrical production company. If any payment was made to the issuer or other offeror, other principal, or any party related thereto, or an entity in which they have any financial interest, this must be so noted.

(3) A description of any other financial transaction engaged in by the theatrical production company which are not included in the listing of earnings and expenditures, e.g. loans by the theatrical production company, settlement of accounts with creditors. Such additional description should include the nature of the

transaction, the party involved, and the amount thereof. If the party involved is the issuer or other offeror, other principal or any party related thereto, or an entity in which they have a financial interest, this must be so stated.

51.6 Exemptions. The Attorney General may, upon written application of the issuer or other offeror of a theatrical production company which produces or develops productions, issue an exemption from the requirement of providing a "certified statement" pursuant to section 23.03 (2) of the Arts and Cultural Affairs Law for theatrical productions which are to have a total capitalization of less than \$250,000 or will offer syndication interests to less than 36 persons. In those cases where all of the proceeds of the production company are used to invest in specified or non-specified productions, such theatrical production company shall be exempted from filing certified statements provided that it forwards to its investors all the financial reports of the theatrical productions in which it has invested which are required by this Part. However, the Attorney General may require as a condition of granting such exemption that the producer comply with sections 51.2 through 51.5, herein. Such application must be made no later than the date upon which the initial report required under this Part is due to be filed.

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