

**Gerson/Preston/Klein  
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**PennState Law**

## **PERSPECTIVES ON MINORITY BUSINESS DEVELOPMENT**

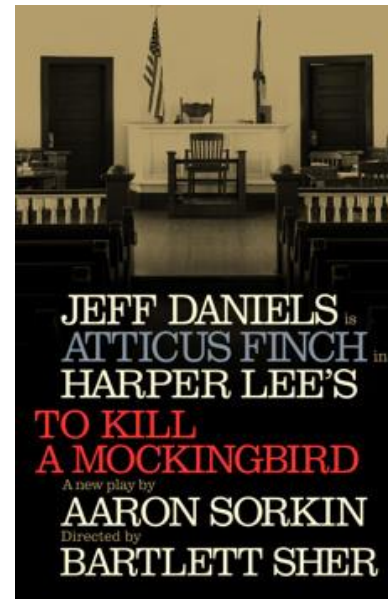
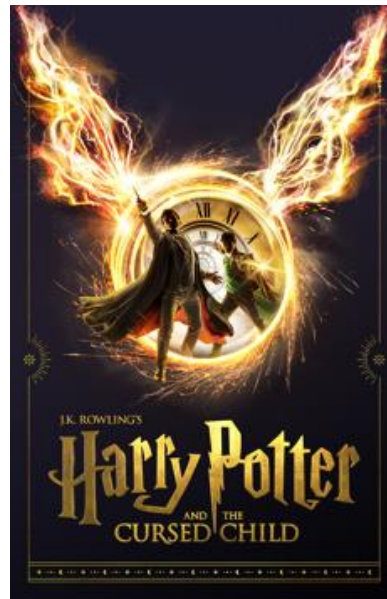
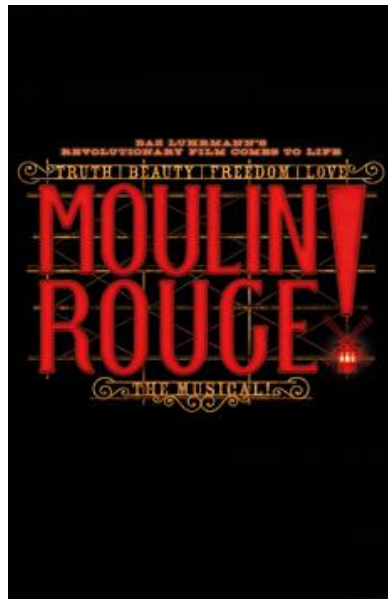
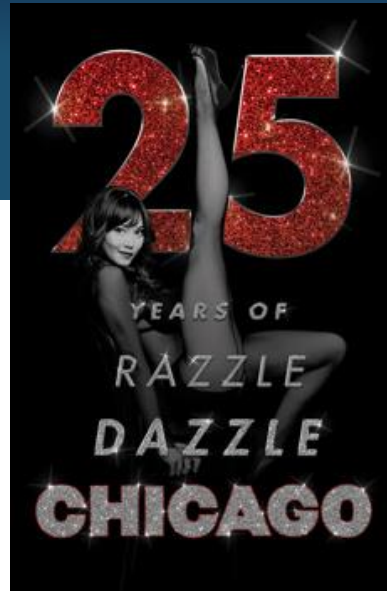
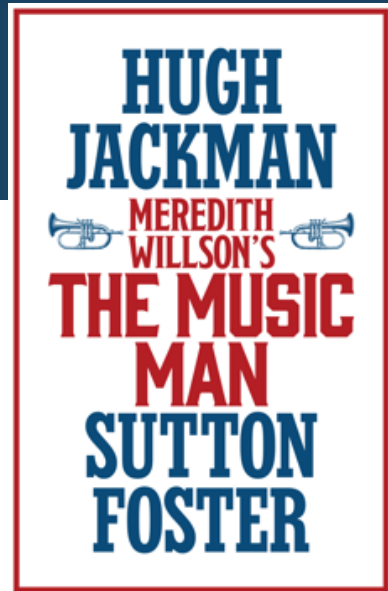
### **SESSION 2: DISCUSSION OF POTENTIAL MINORITY BUSINESS DEVELOPMENT SOLUTIONS TO “THE PROBLEM”**

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# NEW YORK CITY MUSICAL AND THEATRICAL PRODUCTION TAX CREDIT

- New York State's \$100M Tax Credit is a 2-year program to boost the entertainment industry and tourism
- The Program offsets costs for producing a show after the COVID-19 pandemic
- Shows can receive tax credits of 25% of qualified production expenditures
  - 1<sup>st</sup> time shows during the first program year can receive up to \$3M per production
  - Productions must occur in a qualified production facility in New York City
- Shows must implement a **New York State-approved diversity and arts jobs training plan** and increase access to productions for low-income residents
- Successful productions (revenues 2x production costs after tax credit) are required to contribute to the **NYS Council for The Arts Cultural Program Fund**, up to 50% of the tax credit
- Credits available for tax years from January 1, 2021 but before January 1, 2024





# NEW YORK CITY MUSICAL AND THEATRICAL PRODUCTION TAX CREDIT -HOW TO QUALIFY:

- A Musical and Theatrical Production must be a live, scripted, with one or multiple performers that is performed in a qualified production facility in New York City
- Ballet, stand up comedy, musical solo acts, etc. are not qualified
- Eligible expenditures for qualified productions include:
  - Production costs for sets, costumes, wardrobes, makeup, sound, lighting, staging, etc.
  - Salaries, wages, fees including benefits for services performed not to exceed \$200,000 per week
  - Technical and crew production costs
  - Up to 50% of the advertising and marketing costs incurred and paid in New York State
- The credit period begins on the production start date and ends on the earliest of: credit cap reached, production closing, or March 31, 2023

# NEW YORK CITY MUSICAL AND THEATRICAL PRODUCTION TAX CREDIT -HOW TO APPLY:

- Applications must be submitted prior to the first paid performance, ideally no later than 10 days prior
- The initial application consists of:
  - Project Summary
  - Production and operating budgets
  - Weekly Payroll Report
  - **A diversity and arts job training program plan** outlining methods of participating in a New York state diversity and arts job training program
  - **A public access and availability plan** outlining the ways the applicant will ensure that their production is available and accessible for low-or no-cost to low income New Yorkers
  - The applicant must agree to contribute to the **New York State Council on the Arts Cultural Program Fund** if ongoing revenues are more than two times ongoing production costs after receiving a tax credit

**EXAMPLE:**

- PRODUCTION COSTS  
~\$15,000,000
- TAX CREDIT CAPPED AT 25%  
OR \$3,000,000
- INCOME TAX DUE: \$1,500,000
- REFUNDABLE TAX CREDIT:  
\$1,500,000
- IF REVENUE = 2x  
(PRODUCTION COST – TAX  
CREDIT)
  - CONTRIBUTION UP TO  
50% OF TAX CREDIT TO:
  - **NYS COUNCIL FOR  
THE ARTS CULTURAL  
PROGRAM FUND**

ACCT#	Project	CATEGORY TITLE	NEW YORK			TOTAL
	Acct#		FACILITY	LABOR	TRANSPORTATION	
101-00		WRITING, STORY & RIGHTS	\$550,000	\$0	\$0	\$550,000
102-00		PRODUCER & STAFF	\$0	\$490,000	\$0	\$490,000
103-00		DIRECTOR & STAFF	\$0	\$400,000	\$0	\$400,000
104-00		MANAGEMENT & STAFF	\$0	\$290,000	\$0	\$290,000
105-00		TALENT	\$0	\$2,470,000	\$50,000	\$2,520,000
106-00		TRAVEL, HOUSING & PER DIEM	\$0	\$0	\$65,000	\$65,000
107-00		PHYSICAL PRODUCTION	\$1,500,000	\$0	\$0	\$1,500,000
108-00		LIGHTING & SOUND	\$1,200,000	\$0	\$0	\$1,200,000
109-00		WARDROBE, HAIR & MAKEUP	\$800,000	\$0	\$0	\$800,000
110-00		SPECIAL EFFECTS	\$700,000	\$0	\$0	\$700,000
111-00		CHOREOGRAPHY & DANCE	\$0	\$700,000	\$0	\$700,000
112-00		MUSIC	\$0	\$800,000	\$0	\$800,000
113-00		STAGE MANAGEMENT	\$0	\$300,000	\$0	\$300,000
114-00		THEATER STAFF & CREW	\$0	\$1,000,000	\$0	\$1,000,000
115-00		THEATER EXPENSES	\$600,000	\$0	\$0	\$600,000
116-00		TRANSPORTATION	\$0	\$0	\$1,200,000	\$1,200,000
117-00		GENERAL & ADMINISTRATIVE	\$1,000,000	\$0	\$0	\$1,000,000
118-00		MARKETING & PUBLICITY/OTHER	\$0	\$800,000	\$0	\$800,000
<b>GRAND TOTAL</b>			<b>\$6,350,000</b>	<b>\$7,250,000</b>	<b>\$1,315,000</b>	<b>\$14,915,000</b>
<b>NY Spend</b>		<b>Amount</b>	<b>25% OR \$3M CAP</b>		<b>INCOME TAX DUE</b>	<b>REFUNDABLE TAX CREDIT</b>
<b>TOTAL NY Spend</b>		\$14,915,000	\$3,000,000		\$1,500,000	\$3,000,000
<b>DONATION TO NYS COUNCIL FOR THE ARTS</b>		<b>COST - CREDIT</b>	<b>REVENUE</b>	<b>REVENUE = 2x COST - CREDIT</b>	<b>50% CONTRIBUTION TO PROGRAM FUND</b>	
		\$13,415,000	\$28,171,500	YES	\$1,500,000	

# REQUIREMENTS FOR NEW YORK STATE DIVERSITY AND ARTS JOB TRAINING PROGRAMS

- Applicants submit a **diversity and arts job training program plan** outlining proposed methods of participating in a New York State-approved diversity and arts job training program
- Participating in an existing fellowship program may satisfy the requirement and applicants should explain their fellowship plans in their program plan. The following fellowships are pre-approved:
  - **The Theatre Leadership Project**
  - **Black Theatre Coalition**
- A production company working on multiple productions, must have multiple fellowship/training programs
- Fellowship programs may be submitted to New York State for approval by the Empire State Development (ESD)

# FELLOWSHIP APPROVAL CRITERIA

- May be part of an existing industry fellowship program or self-operated by the production company/producer
- Minimum of six-month fellowship with the production company/producer
- Shorter fellowships are possible for limited-run shows or applicants applying for credits of less than \$1M
- Full-time (at least 35 hours a week) employment in the workforce of the production, the lead producer's office, or with the general manager's office or company management team
- Placement may be with a technical department, stage management, general or company management, marketing or any other department directly involved in the production or the theatrical business
- Minimum annual salary shall be at least \$42,250
- Participants should be from underrepresented communities within the theatre industry, to ensure reflection of New York State's diversity
- Recruitment area shall include New York state, SUNY theatrical programs outside of NYC, and all fellows shall reside in New York state during duration of fellowship



# THE FELLOWSHIP EXPERIENCE

- The fellowship shall have:
  - Clear outlined on-boarding/mentorship/training program with a specific mentor,
  - Exposure to senior members of the production/creative team
  - Regular education opportunities about the industry
  - Ability to offer networking opportunities within the theatre community, including invitations to industry events, affinity groups and specific networking events
- Fellowships can be existing positions with a principal purpose of achieving the goals of increasing diversity and retention across the theatre industry's workforce and mentoring diverse talent

# REQUIREMENTS FOR PUBLIC ACCESS AND AVAILABILITY FOR LOW-OR NO-COST TO LOW INCOME NEW YORKERS

- The production shall provide distribution networks approved by New York State, an amount equal to or greater the theatre capacity, per 6-month performances
  - If a theatre has 1,000 seats, 1,000 tickets per 6-month period for distribution to no-cost or low income New Yorkers
- If the grant is decreased in the second year, the ticket minimums shall be reduced by 25 percent
- If a production closes within any 6-month performance period, the obligation shall be pro-rated by the number of performance weeks in the period
- At least 50 percent of tickets at cost of no more than \$20, and the remainder at a cost of no more than \$40, to low-income residents of New York State. Any fees related to tickets shall not exceed \$4 per ticket
- Productions will enter into agreements with a list of **community-based organizations serving low income residents in the area** to distribute the tickets to low income residents served by those organizations
- Productions may satisfy this requirement by partnering with the **Theater Development Fund (TDF)** which is partnering with **community-based organizations serving low-income residents of New York State**



## QUESTIONS/COMMENTS?

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