

Taxation and Revenue Department  
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**FILM PRODUCTION TAX CREDIT**  
**SECTION 7-2F-1 AND 7-2F-4 NMSA 1978**  
Revised July 2011

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\* Two versions of this statute are incorporated into this document. This is a result of the adoption of two separate pieces of legislation in the same legislative session that affect the same statute.

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**7-2F-1. FILM PRODUCTION TAX CREDIT.--**

**A. The tax credit created by this section may be referred to as the "film production tax credit". An eligible film production company may apply for, and the taxation and revenue department may allow, subject to the limitation in Subsection D of this section, a tax credit in an amount equal to the percentage specified in Subsection B of this section of:**

**(1) direct production expenditures made in New Mexico that:**

- (a) are directly attributable to the production in New Mexico of a film or commercial audiovisual product;**
- (b) are subject to taxation by the state of New Mexico;**
- (c) exclude direct production expenditures for which another taxpayer claims the film production tax credit; and**
- (d) do not exceed the usual and customary cost of the goods or services acquired when purchased by unrelated parties. The secretary of taxation and revenue may determine the value of the goods or services for purposes of this section when the buyer and seller are affiliated persons or the sale or purchase is not an arm's length transaction; and**

**(2) postproduction expenditures made in New Mexico that:**

- (a) are directly attributable to the production of a commercial film or audiovisual product;**
- (b) are for services performed in New Mexico;**
- (c) are subject to taxation by the state of New Mexico;**
- (d) exclude postproduction expenditures for which another taxpayer claims the film production tax credit; and**
- (e) do not exceed the usual and customary cost of the goods or services acquired when purchased by unrelated parties. The secretary of taxation and revenue may determine the value of the goods or services for purposes of this section when the buyer and seller are affiliated persons or the sale or purchase is not an arm's length transaction.**

**B. Except as provided in Subsections C and P of this section, the percentage to be applied in calculating the amount of the film production tax credit is twenty-five percent.**

**C. With respect to expenditures attributable to a production for which the film production company receives a tax credit pursuant to the federal new markets tax credit program, the percentage to be applied in calculating the film production tax credit is twenty percent.**

**D. A claim for film production tax credits shall be filed as part of a return filed pursuant to the Income Tax Act or the Corporate Income and Franchise Tax Act. The date a credit claim is received by the department shall determine the order that a credit claim is authorized for payment by the department. The aggregate amount of the film production tax credit claims that may be authorized for payment in any fiscal year is fifty million dollars (\$50,000,000) with respect to the direct production expenditures or postproduction expenditures made on film or commercial audiovisual products. A film production company that submits a claim for a film**

production tax credit that is unable to receive the tax credit because the claims for the fiscal year exceed the limitation in this subsection shall be placed for the subsequent fiscal year at the front of a queue of film production tax credit claimants submitting claims in the subsequent fiscal year in the order of the date on which the credit was authorized for payment.

E. Credit claims authorized for payment pursuant to the Film Production Tax Credit Act shall be paid pursuant to provisions of the Tax Administration Act to the taxpayer as follows:

(1) a credit claim amount of less than two million dollars (\$2,000,000) per taxable year shall be paid immediately upon authorization for payment of the credit claim;

(2) a credit claim amount of two million dollars (\$2,000,000) or more but less than five million dollars (\$5,000,000) per taxable year shall be divided into two equal payments, with the first payment to be made immediately upon authorization of the payment of the credit claim and the second payment to be made twelve months following the date of the first payment; and

(3) a credit claim amount of five million dollars (\$5,000,000) or more per taxable year shall be divided into three equal payments, with the first payment to be made immediately upon authorization of payment of the credit claim, the second payment to be made twelve months following the date of the first payment and the third payment to be made twenty-four months following the date of the first payment.

F. Any amount of a credit claim that is carried forward pursuant to Subsection E of this section shall be subject to the limit on the aggregate amount of credit claims that may be authorized for payment pursuant to Subsection D of this section in the fiscal year in which that amount is paid.

G. A credit claim shall only be considered received by the department if the credit claim is made on a complete tax return filed timely after the close of the taxable year. All direct production expenditures and postproduction expenditures incurred during the taxable year by a film production company shall be submitted as part of the same income tax return and paid pursuant to this section. A credit claim shall not be divided and submitted with multiple returns or in multiple years.

H. For purposes of determining the payment of credit claims pursuant to Subsection E of this section, the secretary of taxation and revenue may require that credit claims of affiliated persons be combined into one claim if necessary to accurately reflect closely integrated activities of affiliated persons.

I. The film production tax credit shall not be claimed with respect to direct production expenditures or postproduction expenditures for which the film production company has delivered a nontaxable transaction certificate pursuant to Section 7-9-86 NMSA 1978.

J. A long-form narrative film production for which the film production tax credit is claimed pursuant to Paragraph (1) of Subsection A

of this section shall contain an acknowledgment that the production was filmed in New Mexico.

**K.** To be eligible for the film production tax credit, a film production company shall submit to the division information required by the division to demonstrate conformity with the requirements of this section, including detailed information on each direct production expenditure and each postproduction expenditure. A film production company shall provide to the division a projection of the film production tax credit claim the film production company plans to submit in the fiscal year. In addition, the film production company shall agree in writing:

(1) to pay all obligations the film production company has incurred in New Mexico;

(2) to publish, at completion of principal photography, a notice at least once a week for three consecutive weeks in local newspapers in regions where filming has taken place to notify the public of the need to file creditor claims against the film production company by a specified date;

(3) that outstanding obligations are not waived should a creditor fail to file by the specified date; and

(4) to delay filing of a claim for the film production tax credit until the division delivers written notification to the taxation and revenue department that the film production company has fulfilled all requirements for the credit.

**L.** The division shall determine the eligibility of the company and shall report this information to the taxation and revenue department in a manner and at times the economic development department and the taxation and revenue department shall agree upon. The division shall also post on its web site all information provided by the film production company that does not reveal revenue, income or other information that may jeopardize the confidentiality of income tax returns, including that the division shall report monthly the projected amount of credit claims for the fiscal year.

**M.** To provide guidance to film production companies regarding the amount of credit capacity remaining in the fiscal year, the taxation and revenue department shall post monthly on that department's web site the aggregate amount of credits claimed and processed for the fiscal year.

**N.** To receive a film production tax credit, a film production company shall apply to the taxation and revenue department on forms and in the manner the department may prescribe. The application shall include a certification of the amount of direct production expenditures or postproduction expenditures made in New Mexico with respect to the film production for which the film production company is seeking the film production tax credit; provided that for the film production tax credit, the application shall be submitted within one year of the date of the last direct production expenditure in New Mexico or the last postproduction expenditure in New Mexico. If the amount of the requested tax credit exceeds five million dollars (\$5,000,000), the application shall also include the results of an audit, conducted by a certified public accountant licensed to practice in

New Mexico, verifying that the expenditures have been made in compliance with the requirements of this section. If the requirements of this section have been complied with, subject to the provisions of Subsection D of this section, the taxation and revenue department shall approve the film production tax credit and issue a document granting the tax credit.

O. The film production company may apply all or a portion of the film production tax credit granted against personal income tax liability or corporate income tax liability. If the amount of the film production tax credit claimed exceeds the film production company's tax liability for the taxable year in which the credit is being claimed, the excess shall be refunded.

P. As applied to direct production expenditures for the services of performing artists, the film production tax credit authorized by this section shall not exceed five million dollars (\$5,000,000) for services rendered by all performing artists in a production for which the film production tax credit is claimed.

(Laws 2011, Chapter 177, Section 2)

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#### **7-2F-1. FILM PRODUCTION TAX CREDIT.--**

A. The tax credit created by this section may be referred to as the "film production tax credit". An eligible film production company may apply for, and the taxation and revenue department may allow, a tax credit in an amount equal to the percentage specified in Subsection B of this section of:

(1) direct production expenditures made in New Mexico that:

(a) are directly attributable to the production in New Mexico of a film or commercial audiovisual product;

(b) are subject to taxation by the state of New Mexico;

and

(c) exclude direct production expenditures for which another taxpayer claims the film production tax credit; and

(2) postproduction expenditures made in New Mexico that:

(a) are directly attributable to the production of a commercial film or audiovisual product;

(b) are for services performed in New Mexico;

(c) are subject to taxation by the state of New Mexico;

and

(d) exclude postproduction expenditures for which another taxpayer claims the film production tax credit.

B. Except as provided in Subsections C and J of this section, the percentage to be applied in calculating the amount of the film production tax credit is twenty-five percent.

C. With respect to expenditures attributable to a production for which the film production company receives a tax credit pursuant to the

federal new markets tax credit program, the percentage to be applied in calculating the film production tax credit is twenty percent.

D. The film production tax credit shall not be claimed with respect to direct production expenditures or postproduction expenditures for which the film production company has delivered a nontaxable transaction certificate pursuant to Section 7-9-86 NMSA 1978.

E. A long-form narrative film production for which the film production tax credit is claimed pursuant to Paragraph (1) of Subsection A of this section shall contain an acknowledgment that the production was filmed in New Mexico.

F. To be eligible for the film production tax credit, a film production company shall submit to the division information required by the division to demonstrate conformity with the requirements of the Film Production Tax Credit Act and shall agree in writing:

(1) to pay all obligations the film production company has incurred in New Mexico;

(2) to post a notice at completion of principal photography on the web site of the division that:

(a) contains production company information, including the name of the production, the address of the production company and contact information that includes a working phone number, fax number and email address for both the local production office and the permanent production office to notify the public of the need to file creditor claims against the film production company; and

(b) remains posted on the web site until all financial obligations incurred in the state by the film production company have been paid;

(3) that outstanding obligations are not waived should a creditor fail to file;

(4) to delay filing of a claim for the film production tax credit until the division delivers written notification to the taxation and revenue department that the film production company has fulfilled all requirements for the credit; and

(5) to submit a completed application for the film production tax credit and supporting documentation to the division within one year of making the final expenditures in New Mexico that are included in the credit claim.

G. The division shall determine the eligibility of the company and shall report this information to the taxation and revenue department in a manner and at times the division and the taxation and revenue department shall agree upon.

H. To receive a film production tax credit, a film production company shall apply to the taxation and revenue department on forms and in the manner the department may prescribe. The application shall include a certification of the amount of direct production expenditures or postproduction expenditures made in New Mexico with respect to the film

**production for which the film production company is seeking the film production tax credit. If the requirements of this section have been complied with, the taxation and revenue department shall approve the film production tax credit and issue a document granting the tax credit.**

**I. The film production company may apply all or a portion of the film production tax credit granted against personal income tax liability or corporate income tax liability. If the amount of the film production tax credit claimed exceeds the film production company's tax liability for the taxable year in which the credit is being claimed, the excess shall be refunded.**

**J. As applied to direct production expenditures for the services of performing artists, the film production tax credit authorized by this section shall not exceed five million dollars (\$5,000,000) for services rendered by all performing artists in a production for which the film production tax credit is claimed.**

**(Laws 2011, Chapter 165, Section 1)**

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**7-2F-1.1. SHORT TITLE.--Chapter 7, Article 2F NMSA 1978 may be cited as the "Film Production Tax Credit Act".  
(Laws 2011, Chapter 177, Section 3; Laws 2011, Chapter 165, Section 2)**

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**7-2F-2. DEFINITIONS.--As used in the Film Production Tax Credit Act:**

**A. "affiliated person" means a person who directly or indirectly owns or controls, is owned or controlled by or is under common ownership or control with another person through ownership of voting securities or other ownership interests representing a majority of the total voting power of the entity;**

**B. "commercial audiovisual product" means a film or a videogame intended for commercial exploitation;**

**C. "direct production expenditure":**

**(1) except as provided in Paragraph (2) of this subsection, means a transaction that is subject to taxation in New Mexico, including:**

**(a) payment of wages, fringe benefits or fees for talent, management or labor to a person who is a New Mexico resident;**

**(b) payment to a personal services business for the services of a performing artist if the personal services business: 1) pays gross receipts tax in New Mexico on the portion of those payments qualifying for the tax credit; and; 2) deducts and remits withheld income tax pursuant to Subsection I of Section 7-3A-3 NMSA 1978; and**

**(c) any of the following provided by a vendor: 1) the story and scenario to be used for a film; 2) set construction and operations, wardrobe, accessories and related services; 3) photography, sound synchronization, lighting and related services; 4) editing and related services; 5) rental of facilities and equipment; 6) leasing of vehicles, not including the chartering of aircraft for out-of-state transportation; however, New Mexico-based chartered aircraft for in-state transportation directly attributable to the production shall be considered a direct production expenditure; provided that only the first one hundred dollars (\$100) of the daily expense of leasing a vehicle for passenger transportation on roadways in the state may be claimed as a direct production expenditure; 7) food or lodging; provided that only the first one hundred fifty dollars (\$150) of lodging per individual per day is eligible to be claimed as a direct production expenditure; 8) commercial airfare if purchased through a New Mexico-based travel agency or travel company for travel to and from New Mexico or within New Mexico that is directly attributable to the production; 9) insurance coverage and bonding if purchased through a New Mexico-based insurance agent, broker or bonding agent; and 10) other direct costs of producing a film in accordance with generally accepted entertainment industry practice; and**

**(2) does not include an expenditure for:**

**(a) a gift with a value greater than twenty-five dollars (\$25.00);**

**(b) artwork or jewelry, except that a work of art or a piece of jewelry may be a direct production expenditure if: 1) it is used in the film production; and 2) the expenditure is less than two thousand five hundred dollars (\$2,500); or**

**(c) entertainment, amusement or recreation;**

**D. "division" means the New Mexico film division of the economic development department;**

**E. "federal new markets tax credit program" means the tax credit program codified as Section 45D of the United States Internal Revenue Code of 1986, as amended;**

**F. "film" means a single medium or multimedia program, excluding advertising messages other than national or regional advertising messages intended for exhibition, that:**

**(1) is fixed on film, digital medium, videotape, computer disc, laser disc or other similar delivery medium;**

**(2) can be viewed or reproduced;**

**(3) is not intended to and does not violate a provision of Chapter 30, Article 37 NMSA 1978; and**

**(4) is intended for reasonable commercial exploitation for the delivery medium used;**

**G. "film production company" means a person that produces one or more films or any part of a film;**

**H. "fiscal year" means the state fiscal year beginning on July 1;**

**I. "New Mexico resident" means an individual who is domiciled in this state during any part of the taxable year or an individual who is physically present in this state for one hundred eighty-five days or more during the taxable year; but any individual, other than someone who was physically present in the state for one hundred eighty-five days or more during the taxable year and who, on or before the last day of the taxable year, changed the individual's place of abode to a place without this state with the bona fide intention of continuing actually to abide permanently without this state is not a resident for the purposes of the Film Production Tax Credit Act for periods after that change of abode;**

**J. "personal services business" means a business organization that receives payments for the services of a performing artist;**

**K. "physical presence" means a physical address in New Mexico, but does not include a post office box or other mail drop enterprise unless the physical presence is for a business and the business is providing mail services to a film production company from which a vendor conducts business, stores inventory or otherwise creates, assembles or offers for sale the product purchased or leased by a film production company;**

**L. "postproduction expenditure" means an expenditure for editing, Foley recording, automatic dialogue replacement, sound editing, special effects, including computer-generated imagery or other effects, scoring and music editing, beginning and end credits, negative cutting, soundtrack production, dubbing, subtitling or addition of sound or visual effects; but not including an expenditure for advertising, marketing, distribution or expense payments; and**

**M. "vendor" means a person selling goods or services that has a physical presence in New Mexico and is subject to gross receipts tax pursuant to the Gross Receipts and Compensating Tax Act and income tax pursuant to**

**the Income Tax Act or corporate income tax pursuant to the Corporate Income and Franchise Tax Act.  
(Laws 2011, Chapter 177, Section 4)**

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**7-2F-2. DEFINITIONS.--As used in the Film Production Tax Credit Act:**

**A. "commercial audiovisual product" means a film or a videogame intended for commercial exploitation;**

**B. "direct production expenditure" means a transaction that is subject to taxation in New Mexico, including:**

**(1) payment of wages, fringe benefits or fees for talent, management or labor to a person who is a New Mexico resident for purposes of the Income Tax Act;**

**(2) payment to a personal services corporation for the services of a performing artist if:**

**(a) the personal services corporation pays gross receipts tax in New Mexico on the portion of those payments qualifying for the tax credit; and**

**(b) the film production company deducts and remits or causes to be deducted and remitted income tax at the maximum rate in New Mexico on the portion of those payments qualifying for the tax credit; and**

**(3) any of the following provided by a vendor that has a physical presence in New Mexico at which the laborers employed by the vendor include New Mexico residents as that term is defined in the Income Tax Act:**

**(a) the story and scenario to be used for a film;**

**(b) set construction and operations, wardrobe, accessories and related services;**

**(c) photography, sound synchronization, lighting and related services;**

**(d) editing and related services;**

**(e) rental of facilities and equipment;**

**(f) leasing of vehicles, not including the chartering of aircraft for out-of-state transportation; however, New Mexico-based chartered aircraft for in-state transportation directly attributable to the production shall be considered a direct production expenditure;**

**(g) food or lodging;**

**(h) commercial airfare if purchased through a New Mexico-based travel agency or travel company for travel to and from New Mexico or within New Mexico that is directly attributable to the production;**

**(i) insurance coverage and bonding if purchased through a New Mexico-based insurance agent, broker or bonding agent;**

**(j) other direct costs of producing a film in accordance with generally accepted entertainment industry practice; and**

**(k) related digital content;**

C. "division" means the New Mexico film division of the economic development department;

D. "federal new markets tax credit program" means the tax credit program codified as Section 45D of the United States Internal Revenue Code of 1986, as amended;

E. "film" means a single medium or multimedia program, excluding advertising messages other than national or regional advertising messages intended for exhibition, that:

(1) is fixed on film, digital medium, videotape, computer disc, laser disc or other similar delivery medium;

(2) can be viewed or reproduced;

(3) is not intended to and does not violate a provision of Chapter 30, Article 37 NMSA 1978; and

(4) is intended for reasonable commercial exploitation for the delivery medium used;

F. "film production company" means a person that produces one or more films or any part of a film;

G. "physical presence" means a physical address in New Mexico, not a post office box or other mail drop enterprise unless the business is providing mail services to a film production company, from which a vendor conducts business, stores inventory or otherwise creates, assembles or offers for sale the product purchased or leased by a film production company; and

H. "postproduction expenditure" means an expenditure for editing, Foley recording, automatic dialogue replacement, sound editing, special effects, including computer-generated imagery or other effects, scoring and music editing, beginning and end credits, negative cutting, soundtrack production, dubbing, subtitling or addition of sound or visual effects, but not including an expenditure for advertising, marketing, distribution or expense payments.

(Laws 2011, Chapter 165, Section 3)

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**3.13.9.7 - DEFINITIONS:** The terms defined in 3.13.9.7 NMAC apply to the implementation of the film production tax credit.

A. "Direct production expenditures" as defined in Subsection B of Section 7-2F-2 NMSA 1978 includes only those expenditures directly incurred and paid by the qualified production company to the vendor of the services or property and does not include expenditures incurred and paid by a third party even if incurred on behalf of the qualified production company.

B. "Performing artist" as used in Paragraph 2 of Subsection B of Section 7-2F-2 NMSA 1978 includes "stunt coordinators" when the stunt coordinator contracts with the production company under a standard stunt performer's contract.

[3.13.9.7 NMAC - N, 9/30/10]

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**7-2F-3. PURPOSES--GOALS.--The purposes and goals of the film production tax credit are to:**

**A. establish the film industry as a permanent component of the economic base of New Mexico;**

**B. develop a pool of trained professionals and businesses in New Mexico to supply and support the film industry in the state;**

**C. increase employment of New Mexico residents;**

**D. improve the economic success of existing businesses in New Mexico; and**

**E. develop the infrastructure in the state necessary for a thriving film industry.**

**(Laws 2011, Chapter 165, Section 4)**

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**7-2F-4. REPORTING--ACCOUNTABILITY.--**

**A. The economic development department shall:**

(1) collect data to be used in an econometric tool that objectively assesses the effectiveness of the film production tax credit;

(2) track the direct expenditures for the film production tax credit;

(3) with the support and assistance of the legislative finance committee staff and the taxation and revenue department, review and assess the analysis developed in Paragraph (1) of this subsection and create a report for presentation to the revenue stabilization and tax policy committee and the legislative finance committee that provides an objective assessment of the effectiveness of the film production tax credit; and

(4) report annually to the revenue stabilization and tax policy committee and the legislative finance committee on aggregate approved tax credits made pursuant to the Film Production Tax Credit Act.

**B. The division shall develop a form on which the taxpayer claiming a film production tax credit pursuant to the Film Production Tax Credit Act shall submit a report to accompany the taxpayer's application for that credit.**

**C. With respect to the film on which the application for a film production tax credit is based, the film production company shall report to the division at a minimum the following information:**

(1) the total aggregate wages of the members of the New Mexico resident crew;

(2) the number of New Mexico residents employed;

(3) the total amount of gross receipts taxes paid;

(4) the total number of hours worked by New Mexico residents;

(5) the total expenditures made in New Mexico that do not qualify for the film production tax credit;

(6) the aggregate wages paid to the members of the nonresident crew while working in New Mexico; and

(7) other information deemed necessary by the division and economic development department to determine the effectiveness of the film production tax credit.

**D. For purposes of assessing the effectiveness of the film production tax credit, the inability of the economic development department to aggregate data due to sample size shall not relieve the department of the requirement to report all relevant data to the legislature. The division shall provide notice to a film production company applying for the film production tax credit that information provided to the division may be revealed by the department in reports to the legislature.**

**(Laws 2011, Chapter 165, Section 5)**

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