

**New Mexico Taxation & Revenue Department
Film Production Tax Credit
Certified Public Accountant Audit Agreed Upon Procedures**

Introduction

The purpose of the certified public accountant (CPA) audit is to ensure and verify the qualified expenditures incurred when producing qualified motion pictures in New Mexico and has complied with the requirements that became effective July 1, 2019.

The tax credit is refundable and can be used to offset either New Mexico personal or corporate income taxes and/or other taxes.

The following audit agreed upon procedures is a helpful guideline relate to the requirements as stated in Section 7-2F-13 (K) NMSA 1978 states: "...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"

Guideline for Production Company

Selection of the Certified Public Accountant (CPA).

The audit **must** be performed by a CPA licensed to practice in New Mexico (NM).

The audit **must** include a copy of the CPA's license to practice in NM and a notarized statement confirming the CPA is independent from any other activities related to the film project for which is being audited. Prior approval of CPA selection is not required from the New Mexico Taxation and Revenue Department (TRD).

The following Report and Workpapers submitted by the CPA must include the following information:

1. The CPA's name, address, and telephone number.
2. The name of the Production Company and project name.
3. The date that the agreed upon procedures were completed.
4. The production company's cost information must be presented in U.S. dollars.

The expenditure for a required external audit by CPA licensed to practice in NM is eligible if the CPA has physical presence and services are rendered in-state. Accrued amounts (e.g. a flat fee) or hourly invoices are both acceptable forms of payment. The principal photography would have had to commence on or before July 1, 2019 for the CPA expenditures to qualify.

Credit Review Procedures

Sampling

1. For efficiency, the New Mexico Tax & Revenue Department (TRD) utilizes the 2011 version of the Multi-State Tax Commission (MTC) sampling software to randomly select a minimum of 75 items of interest per strata from the data provided for the qualifying period.
2. All samples are selected randomly using the MTC software random number generator using a seed number. The 9-digit seed number is provided by the MTC software. The seed number is documented to allow the expansion or regeneration of the sample if necessary.

3. The population (items of interest) may be divided, by amount, into several strata and could also include items to be individually reviewed (e.g. if the item is over \$500.00). This is to reduce the overall variation of the sample. The procedure for determining the exact number of sampled stratum and stratum breaks will be determined mathematically according to a procedure explained in the sampling plan. The sample size will be approximately 75 items of interest per strata plus the detail items to be individually reviewed. A minimum of three errors per strata is necessary for extrapolation to strata population for a percentage of error (POE).

There are three rules used for extrapolating:

1. The numerator should be the sample representation of what the auditor is trying to determine about the population (or strata).
2. The denominator should be the sample representation of the population (or strata).
3. The population should be complete and should not include items that do not represent the population as defined by the test.

Expenditures (excluding payroll)

1. The CPA will ensure compliance with the requirements of the Film Production Tax Credit and follow the guidelines for submission as set forth by TRD and the New Mexico Film Office.
2. Verification procedures are to be followed for accounts payable, petty cash, journal entries, credit card and fuel card expenditures as identified.
3. For each expenditure item selected in sample, perform the following procedures:
 - a. Inspect invoices and cancelled checks, receipts or other equivalent documentation. Verify that the expenditure is taxable in NM and the amount is correct, incurred and paid for services rendered and/or goods used in NM.
 - b. Verify that the expenditure is an allowable cost (refer to statute, regulations and the NM Chart of Accounts).
 - c. Ensure vendor's name and FEIN, SSN, or NM CRS number is identified and information in note column on the worksheet.
 - d. Inspect vendors and ensure that physical presence is met in NM by working with auditor assigned.
 - e. Verify shipping expenditures originate in NM.
 - f. Verify internet purchases are shipped to a NM Vendor and is taxable.

Example: Staples purchased on line and shipped to an NM location. Receipt will have NM location and gross receipts tax.

- g. Verify insurance coverage and bonding is purchased through a NM based Insurance Agent or Broker.
- h. Inspect invoices and cancelled checks, receipts or other equivalent documentation on the high dollar expenditure's **(detailed transactions not included in the sample)** that are taxable and the amount is correct, incurred and paid for services rendered and/or goods used in NM.
- i. Verify commercial airline flights are purchased through a NM based travel agent or Travel Company for travel to and from New Mexico or within New Mexico that is directly attributable to production.

Example: Overseas to NY to Albuquerque. If the individual stays a couple of days in NY, the flight from NY to Albuquerque would **only** be eligible for the incentive.

- j. Verify payments to a NM travel agent for baggage fee on airline flight, transportation from a NM airport and/or other services that are provided and/or preformed in NM.
 - k. Limitation on car rentals/leasing, gifts, artwork or jewelry on set, and hotels (refer to statute and regulations, and FYI).
 - l. Verify that the expenditure was recorded net of any refunds, discounts, rebates, invoicing errors, and purchase returns, as recorded in the general ledgers.
 - m. Verify that the expenditures were recorded net of proceeds from any item of production sales.
 - n. Verify and disallow expenditures on Native American entities on Indian reservations, non-profit entities, out of state vendors with no physical presence in NM (refer to statute and regulations), government entities and entertainment (events, wrap parties, etc.). The auditor assigned is available if entity or transaction is questionable.
4. Obtain a listing from the production company of assets which were not destroyed in the process of the making of the production and that are being held for future productions or other purposes and have a purchase price over \$1,000.00.

Submit the Schedule of Retained Assets based on the list provided by the Production Company and documentation (picture) of assets that were destroyed in the film production process as an attachment to the AUP Report.

For all fixed assets on the listing perform the following procedures:

- a. Verify the cost of the item if the cost is greater the item would then be amortized post-production or effects equipment, including but not limited to computers, hardware and relevant components, printers and copiers being held for future productions or use were included as a qualified expenditure, (and were identified as such in the GL reports).
- b. For all other assets, all sales on qualified expenditures, (such as props, customs, etc.) are to be subtracted from the assets.
- c. Verify invoice for any asset that is destroyed during production and included documentation (picture) identifying what happened to the asset after the production wrapped.

Payroll

1. The CPA is to verify payroll reports to confirm and document that Crew and Performing Artists qualify.
2. **NM Resident Crew:** Once TRD auditor has verified NM resident crew, CPA is to verify the following: Salaries, wages, kit rentals, per-diem, pension, health & welfare, vacation, holiday, meal or living allowance, handling fee (if payroll is processed by vendor in NM) and workers' compensation insurance (for individuals worked in NM if insurance is purchased from a NM agent or broker).
3. **Non-Resident Below the Line Crew:** Verify non-resident below the line crew, is a person in a position that is off-camera and who provides technical services during the physical production of

a film. "Below-the-line crew" does not include a person who is a writer, director, producer or background artist or performing artist for the film.

- 15% credit allowed for the payment of wages for below-the-line (BTL) crew who are not New Mexico Residents. The services must be rendered in New Mexico.
- As determined by the division up to 20% credit may be allowed by meeting the requirements in §7-2F-15.

Example Credit Amount with a \$1,000,000.00 Total NM BTL Crew Budget:

	Total NM BTL Budget		Budget %		BTL Crew Wages		Credit Max
15% Credit up to \$22,500.00	\$ 1,000,000.00	X	15%	X	15%	=	\$ 22,500.00
20% Credit up to \$30,000.00	\$ 1,000,000.00	X	20%	X	15%	=	\$ 30,000.00

4. **Non-Resident Performing Artists:** Payment for wages and per diem for a performing artist who is not a New Mexico resident and who is directly employed by the film production company; provided that the film production company deducts and remits, or causes to be deducted and remitted, income tax from the first day of services rendered in New Mexico at the maximum rate pursuant to the Withholding Tax Act.
5. **Loan Outs:** Payment to a personal services business for the services of a performing artist if: 1) the personal services business pays gross receipts tax in New Mexico on the portion of those payments qualifying for the tax credit; and 2) the film production company deducts and remits, or causes to be deducted and remitted, income tax at the maximum rate in New Mexico pursuant to Subsection H of Section 7-3A-3 NMSA 1978 on the portion of those payments qualifying for the tax credit paid to a personal services business where the performing artist is a full or part owner of that business or subcontracts with a personal services business where the performing artist is a full or part owner of that business.

Post Production

1. Verify expenditures are for the following: 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.
2. Verify postproduction expenditures made in New Mexico are as follows:
 - (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.

Submission of the Audit

1. Once the CPA has finalized the audit for the production company, the application for Film Credit along with the CPA audit findings and supporting documentation for the expenditure will be submitted to TRD for the beginning of the 180-Day Credit review process.
2. The audit **must** include a copy of the CPA's license to practice in NM and

3. A notarized statement confirming the CPA is independent from any other activities related to the film project for which is being audited.

Questions

For any questions regarding the Applications for Film Production Tax Credit, and/or expenditure qualifications, please email: TRD-FilmCredit@state.nm.us Or Call 505-795-1735.