

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

HOUSE BILL 379

**51ST LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2013**

INTRODUCED BY

Antonio "Moe" Maestas

AN ACT

RELATING TO TAXATION; AMENDING SECTIONS OF THE FILM PRODUCTION TAX CREDIT ACT TO PROVIDE FOR AN INCREASED FILM PRODUCTION TAX CREDIT; PROVIDING FOR THE CARRYFORWARD OF FILM PRODUCTION TAX CREDITS TO FUTURE YEARS; PROVIDING FOR THE TRANSFER OF FILM PRODUCTION TAX CREDITS; RECONCILING MULTIPLE AMENDMENTS TO SECTIONS OF LAW IN LAWS 2011.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. Section 7-2F-1 NMSA 1978 (being Laws 2002, Chapter 36, Section 1, as amended by Laws 2011, Chapter 165, Section 1 and by Laws 2011, Chapter 177, Section 2) is amended to read:

"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

.191745.5

underscoring material = new  
~~[bracketed material] = delete~~

underscored material = new  
[bracketed material] = delete

1 film production company may apply for, and the taxation and  
2 revenue department may allow, subject to the limitation in  
3 [~~Subsection D of~~] this section, a tax credit in an amount equal  
4 to the percentage specified in Subsection B of this section of:

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

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

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

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

15 (d) do not exceed the usual and  
16 customary cost of the goods or services acquired when purchased  
17 by unrelated parties. The secretary of taxation and revenue  
18 may determine the value of the goods or services for purposes  
19 of this section when the buyer and seller are affiliated  
20 persons or the sale or purchase is not an arm's length  
21 transaction; and

22 (2) postproduction expenditures made in New  
23 Mexico that:

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

.191745.5

underscored material = new  
[bracketed material] = delete

1 (b) are for services performed in New  
2 Mexico;

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

5 (d) exclude postproduction expenditures  
6 for which another taxpayer claims the film production tax  
7 credit; and

8 (e) do not exceed the usual and  
9 customary cost of the goods or services acquired when purchased  
10 by unrelated parties. The secretary of taxation and revenue  
11 may determine the value of the goods or services for purposes  
12 of this section when the buyer and seller are affiliated  
13 persons or the sale or purchase is not an arm's length  
14 transaction.

15 B. Except as otherwise provided in [~~Subsections G~~  
16 ~~and P of~~] this section, the percentage to be applied in  
17 calculating the amount of the film production tax credit is  
18 twenty-five percent.

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

24 D. In addition to the twenty-five percent credit  
25 stipulated in Subsection B of this section, another five

.191745.5

underscored material = new  
[bracketed material] = delete

1 percent credit shall be applied to qualified direct New Mexico  
2 production expenditures on series television production  
3 intended for commercial distribution with an order for at least  
4 six episodes in a single season or on a production that spends  
5 at least five hundred thousand dollars (\$500,000) on building,  
6 rigging and lighting of at least one set in New Mexico.

7           ~~[D.]~~ E. A claim for film production tax credits  
8 shall be filed as part of a return filed pursuant to the Income  
9 Tax Act or the Corporate Income and Franchise Tax Act. ~~[The~~  
10 ~~date a credit claim is received by the department shall~~  
11 ~~determine the order that a credit claim is authorized for~~  
12 ~~payment by the department.]~~ Applications for a film production  
13 tax credit shall be assigned queue numbers on a first-come,  
14 first-served basis as determined by the date the applications  
15 are received by the department. In the event that more than  
16 one application is received on any one date, a random selection  
17 process shall determine the order of all applications, if  
18 received by 3:00 p.m. on the same date. Principal photography  
19 shall commence within sixty days of the date that a production  
20 agreement is signed by the department. The department may  
21 extend this period at its discretion by no more than thirty  
22 days. If a production does not commence principal photography  
23 within the time appointed pursuant to this subsection, the  
24 production shall forfeit its position in the queue. The  
25 aggregate amount of the film production tax credit claims that

.191745.5

underscored material = new  
[bracketed material] = delete

1 may be authorized for payment in any fiscal year is fifty  
2 million dollars (\$50,000,000) with respect to the direct  
3 production expenditures or postproduction expenditures made on  
4 film or commercial audiovisual products. Any amounts  
5 unexpended in any fiscal year under the fifty-million-dollar  
6 (\$50,000,000) annual limit may be carried forward for  
7 expenditure against film production tax credit claims in  
8 subsequent fiscal years; provided that the amounts carried  
9 forward shall not count against subsequent years' fifty-  
10 million-dollar (\$50,000,000) annual limitation. A film  
11 production company that submits a claim for a film production  
12 tax credit that is unable to receive the tax credit because the  
13 claims for the fiscal year exceed the limitation in this  
14 subsection shall be placed for the subsequent fiscal year at  
15 the front of a queue of film production tax credit claimants  
16 submitting claims in the subsequent fiscal year in the order of  
17 the date on which the credit was authorized for payment.

18 ~~[E.]~~ F. Credit claims authorized for payment  
19 pursuant to the Film Production Tax Credit Act shall be paid  
20 pursuant to provisions of the Tax Administration Act to the  
21 taxpayer as follows:

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

25 (2) a credit claim amount of two million

.191745.5

underscored material = new  
[bracketed material] = delete

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

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

14 [~~F.~~] G. Any amount of a credit claim that is  
15 carried forward pursuant to [~~Subsection E of~~] this section  
16 shall be subject to the limit on the aggregate amount of credit  
17 claims that may be authorized for payment pursuant to  
18 Subsection [~~D~~] E of this section in the fiscal year in which  
19 that amount is paid.

20 [~~G.~~] H. A credit claim shall only be considered  
21 received by the department if the credit claim is made on a  
22 complete tax return filed timely after the close of the taxable  
23 year. All direct production expenditures and postproduction  
24 expenditures incurred during the taxable year by a film  
25 production company shall be submitted as part of the same

.191745.5

underscoring material = new  
~~[bracketed material] = delete~~

1 income tax return and paid pursuant to this section. A credit  
2 claim shall not be divided and submitted with multiple returns  
3 or in multiple years.

4 ~~[H.]~~ I. For purposes of determining the payment of  
5 credit claims pursuant to ~~[Subsection E of]~~ this section, the  
6 secretary of taxation and revenue may require that credit  
7 claims of affiliated persons be combined into one claim if  
8 necessary to accurately reflect closely integrated activities  
9 of affiliated persons.

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

15 ~~[J.]~~ K. A long-form narrative film production for  
16 which the film production tax credit is claimed pursuant to  
17 Paragraph (1) of Subsection A of this section shall contain an  
18 acknowledgment that the production was filmed in New Mexico.

19 ~~[K.]~~ L. To be eligible for the film production tax  
20 credit, a film production company shall submit to the division  
21 information required by the division to demonstrate conformity  
22 with the requirements of the Film Production Tax Credit Act,  
23 including detailed information on each direct production  
24 expenditure and each postproduction expenditure. A film  
25 production company shall provide to the division a projection

.191745.5

underscoring material = new  
~~[bracketed material] = delete~~

1 of the film production tax credit claim the film production  
2 company plans to submit in the fiscal year. In addition, the  
3 film production company shall agree in writing:

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

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

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

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

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

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

25 (5) to submit a completed application for the

.191745.5



underscored material = new  
[bracketed material] = delete

1 film production tax credit and supporting documentation to the  
2 division within one year of making the final expenditures in  
3 New Mexico that are included in the credit claim.

4 ~~[H.]~~ M. The division shall determine the  
5 eligibility of the company and shall report this information to  
6 the taxation and revenue department in a manner and at times  
7 the economic development department and the taxation and  
8 revenue department shall agree upon. The division shall also  
9 post on its web site all information provided by the film  
10 production company that does not reveal revenue, income or  
11 other information that may jeopardize the confidentiality of  
12 income tax returns, including that the division shall report  
13 monthly the projected amount of credit claims for the fiscal  
14 year.

15 ~~[M.]~~ N. To provide guidance to film production  
16 companies regarding the amount of credit capacity remaining in  
17 the fiscal year, the taxation and revenue department shall post  
18 monthly on that department's web site the aggregate amount of  
19 credits claimed and processed for the fiscal year.

20 ~~[N.]~~ O. To receive a film production tax credit, a  
21 film production company shall apply to the taxation and revenue  
22 department on forms and in the manner the department may  
23 prescribe. The application shall include a certification of  
24 the amount of direct production expenditures or postproduction  
25 expenditures made in New Mexico with respect to the film

.191745.5

underscored material = new  
[bracketed material] = delete

1 production for which the film production company is seeking the  
2 film production tax credit; provided that for the film  
3 production tax credit, the application shall be submitted  
4 within one year of the date of the last direct production  
5 expenditure in New Mexico or the last postproduction  
6 expenditure in New Mexico. If the amount of the requested tax  
7 credit exceeds five million dollars (\$5,000,000), the  
8 application shall also include the results of an audit,  
9 conducted by a certified public accountant licensed to practice  
10 in New Mexico, verifying that the expenditures have been made  
11 in compliance with the requirements of this section. If the  
12 requirements of this section have been complied with, subject  
13 to the provisions of Subsection [D] E of this section, the  
14 taxation and revenue department shall approve the film  
15 production tax credit and issue a document granting the tax  
16 credit.

17 ~~[D-]~~ P. The film production company may apply all  
18 or a portion of the film production tax credit granted against  
19 personal income tax liability or corporate income tax  
20 liability. If the amount of the film production tax credit  
21 claimed exceeds the film production company's tax liability for  
22 the taxable year in which the credit is being claimed, the  
23 excess shall be refunded. Upon application to the taxation and  
24 revenue department, the film production company may sell,  
25 transfer or assign all or a portion of the refunds due under

.191745.5

underscored material = new  
[bracketed material] = delete

1 this section to another entity on a one-time basis; they may  
2 not be further sold, transferred or assigned. The film  
3 production company must identify the buyer company or  
4 individual, and the buyer must sign the application to sell the  
5 refund.

6 [P-] Q. As applied to direct production  
7 expenditures for the services of performing artists, the film  
8 production tax credit authorized by this section shall not  
9 exceed five million dollars (\$5,000,000) for services rendered  
10 by all performing artists in a production for which the film  
11 production tax credit is claimed."

12 SECTION 2. Section 7-2F-2 NMSA 1978 (being Laws 2003,  
13 Chapter 127, Section 2, as amended by Laws 2011, Chapter 165,  
14 Section 3 and by Laws 2011, Chapter 177, Section 4) is amended  
15 to read:

16 "7-2F-2. DEFINITIONS.--As used in the Film Production Tax  
17 Credit Act:

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

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

.191745.5

underscored material = new  
[bracketed material] = delete

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

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 or the direct hire of a performing artist, for the services of a performing artist, if the personal services business or that performing artist: 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

.191745.5

underscoring material = new  
[bracketed material] = delete

1 daily expense of leasing a vehicle for passenger transportation  
2 on roadways in the state may be claimed as a direct production  
3 expenditure; 7) food or lodging; provided that only the first  
4 one hundred fifty dollars (\$150) of lodging per individual per  
5 day is eligible to be claimed as a direct production  
6 expenditure; 8) commercial airfare if purchased through a New  
7 Mexico-based travel agency or travel company for travel to and  
8 from New Mexico or within New Mexico that is directly  
9 attributable to the production; 9) insurance coverage and  
10 bonding if purchased through a New Mexico-based insurance  
11 agent, broker or bonding agent; and 10) other direct costs of  
12 producing a film in accordance with generally accepted  
13 entertainment industry practice; and

14 (2) does not include an expenditure for:

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

17 (b) artwork or jewelry, except that a  
18 work of art or a piece of jewelry may be a direct production  
19 expenditure if: 1) it is used in the film production; and 2)  
20 the expenditure is less than two thousand five hundred dollars  
21 (\$2,500); or

22 (c) entertainment, amusement or  
23 recreation;

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

.191745.5

underscoring material = new  
~~[bracketed material] = delete~~

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

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

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

10                   (2) can be viewed or reproduced;

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

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

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

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

19           I. "New Mexico resident" means an individual who is  
20 domiciled in this state during any part of the taxable year or  
21 an individual who is physically present in this state for one  
22 hundred eighty-five days or more during the taxable year; but  
23 any individual, other than someone who was physically present  
24 in the state for one hundred eighty-five days or more during  
25 the taxable year and who, on or before the last day of the

.191745.5

underscoring material = new  
[bracketed material] = delete

1 taxable year, changed the individual's place of abode to a  
2 place without this state with the bona fide intention of  
3 continuing actually to abide permanently without this state is  
4 not a resident for the purposes of the Film Production Tax  
5 Credit Act for periods after that change of abode;

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

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

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

25 M. "vendor" means a person selling goods or

.191745.5

underscored material = new  
~~[bracketed material] = delete~~

1 services that has a physical presence in New Mexico and is  
2 subject to gross receipts tax pursuant to the Gross Receipts  
3 and Compensating Tax Act and income tax pursuant to the Income  
4 Tax Act or corporate income tax pursuant to the Corporate  
5 Income and Franchise Tax Act."

6 - 16 -  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

.191745.5