

HOUSE TAXATION AND REVENUE COMMITTEE SUBSTITUTE FOR
HOUSE BILL 379

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

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; DECLARING AN EMERGENCY.

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

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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;

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

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1 percent credit shall be applied to qualified direct New Mexico
2 production expenditures:

3 (1) on series television production intended
4 for commercial distribution with an order for at least six
5 episodes in a single season; or

6 (2) on a production with a total budget of
7 less than thirty million dollars (\$30,000,000) that shoots at
8 least ten principal photography days at a qualified production
9 facility in New Mexico, or on a production with a total budget
10 of more than thirty million dollars (\$30,000,000) that shoots
11 at least fifteen principal photography days at a qualified
12 production facility in New Mexico; provided that this
13 additional credit shall only apply to New Mexico resident crew
14 expenses.

15 ~~[D-]~~ E. A claim for film production tax credits
16 shall be filed as part of a return filed pursuant to the Income
17 Tax Act or the Corporate Income and Franchise Tax Act. ~~[The~~
18 ~~date a credit claim is received by the department shall~~
19 ~~determine the order that a credit claim is authorized for~~
20 ~~payment by the department.]~~ The aggregate amount of the film
21 production tax credit claims that may be authorized for payment
22 in any fiscal year is fifty million dollars (\$50,000,000) with
23 respect to the direct production expenditures or postproduction
24 expenditures made on film or commercial audiovisual products.
25 In a fiscal year in which the amount of total credit claims

1 authorized for payment is less than fifty million dollars
2 (\$50,000,000), credit claims authorized for payment pursuant to
3 Subsection E of this section in the subsequent twelve or
4 twenty-four months from the date of first payment may be paid
5 pursuant to the Tax Administration Act and the Film Production
6 Tax Credit Act to a taxpayer pursuant to the provisions of the
7 Film Production Tax Credit Act; provided that the aggregate
8 amount of authorized payments in any one fiscal year shall not
9 exceed fifty million dollars (\$50,000,000). Any amounts
10 unexpended in any fiscal year under the fifty-million-dollar
11 (\$50,000,000) annual limit shall be carried forward for
12 expenditure against film production tax credit claims in
13 subsequent fiscal years; provided that the amounts carried
14 forward shall not count against subsequent years' fifty-
15 million-dollar (\$50,000,000) annual limitation. A film
16 production company that submits a claim for a film production
17 tax credit that is unable to receive the tax credit because the
18 claims for the fiscal year exceed the limitation in this
19 subsection shall be placed for the subsequent fiscal year at
20 the front of a queue of film production tax credit claimants
21 submitting claims in the subsequent fiscal year in the order of
22 the date on which the credit was authorized for payment.

23 ~~[E.]~~ F. Credit claims authorized for payment
24 pursuant to the Film Production Tax Credit Act shall be paid
25 pursuant to provisions of the Tax Administration Act to the

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1 taxpayer as follows:

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

5 (2) a credit claim amount of two million
6 dollars (\$2,000,000) or more but less than five million dollars
7 (\$5,000,000) per taxable year shall be divided into two equal
8 payments, with the first payment to be made immediately upon
9 authorization of the payment of the credit claim and the second
10 payment to be made twelve months following the date of the
11 first payment; and

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

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

25 ~~[G.]~~ H. A credit claim shall only be considered

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

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

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

20 ~~[J. A long-form narrative film]~~ K. A production
 21 for which the film production tax credit is claimed pursuant to
 22 Paragraph (1) of Subsection A of this section shall contain an
 23 acknowledgment that the production was filmed in New Mexico in
 24 the end screen credits, and a state logo provided by the
 25 division shall be included in the end screen credits of

1 long-form narrative film productions, unless otherwise agreed
2 upon in writing by the film production company and the
3 division.

4 ~~[K-]~~ L. To be eligible for the film production tax
5 credit, a film production company shall submit to the division
6 information required by the division to demonstrate conformity
7 with the requirements of the Film Production Tax Credit Act,
8 including detailed information on each direct production
9 expenditure and each postproduction expenditure. A film
10 production company shall make reasonable efforts, as determined
11 by the division, to contract with vendors that have a physical
12 presence in New Mexico and that provide goods, inventory or
13 services directly related to that vendor's ordinary course of
14 business. A film production company shall provide to the
15 division a projection of the film production tax credit claim
16 the film production company plans to submit in the fiscal year.
17 In addition, the film production company shall agree in
18 writing:

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

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

23 (a) contains production company
24 information, including the name of the production, the address
25 of the production company and contact information that includes

1 a working phone number, fax number and email address for both
2 the local production office and the permanent production office
3 to notify the public of the need to file creditor claims
4 against the film production company; and

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

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

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

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

19 [~~L.~~] M. The division shall determine the
20 eligibility of the company and shall report this information to
21 the taxation and revenue department in a manner and at times
22 the economic development department and the taxation and
23 revenue department shall agree upon. The division shall also
24 post on its web site all information provided by the film
25 production company that does not reveal revenue, income or

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1 other information that may jeopardize the confidentiality of
2 income tax returns, including that the division shall report
3 monthly the projected amount of credit claims for the fiscal
4 year.

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

10 ~~[N.]~~ O. To receive a film production tax credit, a
11 film production company shall apply to the taxation and revenue
12 department on forms and in the manner the department may
13 prescribe. The application shall include a certification of
14 the amount of direct production expenditures or postproduction
15 expenditures made in New Mexico with respect to the film
16 production for which the film production company is seeking the
17 film production tax credit; provided that for the film
18 production tax credit, the application shall be submitted
19 within one year of the date of the last direct production
20 expenditure in New Mexico or the last postproduction
21 expenditure in New Mexico. If the amount of the requested tax
22 credit exceeds five million dollars (\$5,000,000), the
23 application shall also include the results of an audit,
24 conducted by a certified public accountant licensed to practice
25 in New Mexico, verifying that the expenditures have been made

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1 in compliance with the requirements of this section. If the
 2 requirements of this section have been complied with, subject
 3 to the provisions of Subsection [D] E of this section, the
 4 taxation and revenue department shall approve the film
 5 production tax credit and issue a document granting the tax
 6 credit.

7 ~~[O.]~~ P. The film production company may apply all
 8 or a portion of the film production tax credit granted against
 9 personal income tax liability or corporate income tax
 10 liability. If the amount of the film production tax credit
 11 claimed exceeds the film production company's tax liability for
 12 the taxable year in which the credit is being claimed, the
 13 excess shall be refunded. Upon application to the taxation and
 14 revenue department, the film production company may assign all
 15 of the refunds due under this section to an assignee on a one-
 16 time basis that may not be further assigned. The film
 17 production company shall identify the assignee, and the
 18 assignee shall sign the application to claim the refund.

19 ~~[P.]~~ Q. As applied to direct production
 20 expenditures for the services of performing artists, the film
 21 production tax credit authorized by this section shall not
 22 exceed five million dollars (\$5,000,000) for services rendered
 23 by all performing artists in a production for which the film
 24 production tax credit is claimed."

25 **SECTION 2.** Section 7-2F-2 NMSA 1978 (being Laws 2003,

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1 Chapter 127, Section 2, as amended by Laws 2011, Chapter 165,
2 Section 3 and by Laws 2011, Chapter 177, Section 4) is amended
3 to read:

4 "7-2F-2. DEFINITIONS.--As used in the Film Production Tax
5 Credit Act:

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

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

14 C. "direct production expenditure":

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

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

21 (b) payment to a personal services
22 business or the direct hire of a performing artist, for the
23 services of a performing artist if: 1) the personal services
24 business ~~[1)]~~ or that performing artist pays gross receipts tax
25 in New Mexico on the portion of those payments qualifying for

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1 the tax credit; and 2) [~~deducts and remits withheld income tax~~
2 ~~pursuant to Subsection I of Section 7-3A-3 NMSA 1978~~] the film
3 production company deducts and remits, or causes to be deducted
4 and remitted, income tax at the maximum rate in New Mexico
5 pursuant to Subsection I of Section 7-3A-3 NMSA 1978 on the
6 portion of those payments qualifying for the tax credit paid to
7 a personal services business where the performing artist is a
8 full or part owner of that business or subcontracts with a
9 personal services business where the performing artist is a
10 full or part owner of that business; and

11 (c) any of the following provided by a
12 vendor: 1) the story and scenario to be used for a film; 2)
13 set construction and operations, wardrobe, accessories and
14 related services; 3) photography, sound synchronization,
15 lighting and related services; 4) editing and related services;
16 5) rental of facilities and equipment; 6) leasing of vehicles,
17 not including the chartering of aircraft for out-of-state
18 transportation; however, New Mexico-based chartered aircraft
19 for in-state transportation directly attributable to the
20 production shall be considered a direct production expenditure;
21 provided that only the first one hundred dollars (\$100) of the
22 daily expense of leasing a vehicle for passenger transportation
23 on roadways in the state may be claimed as a direct production
24 expenditure; 7) food or lodging; provided that only the first
25 one hundred fifty dollars (\$150) of lodging per individual per

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1 day is eligible to be claimed as a direct production
2 expenditure; 8) commercial airfare if purchased through a New
3 Mexico-based travel agency or travel company for travel to and
4 from New Mexico or within New Mexico that is directly
5 attributable to the production; 9) insurance coverage and
6 bonding if purchased through a New Mexico-based insurance
7 agent, broker or bonding agent; and 10) other direct costs of
8 producing a film in accordance with generally accepted
9 entertainment industry practice; and

10 (2) does not include an expenditure for:

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

13 (b) artwork or jewelry, except that a
14 work of art or a piece of jewelry may be a direct production
15 expenditure if: 1) it is used in the film production; and 2)
16 the expenditure is less than two thousand five hundred dollars
17 (\$2,500); [~~or~~]

18 (c) entertainment, amusement or
19 recreation;

20 (d) subcontracted goods or services
21 provided by a vendor with a physical presence in New Mexico
22 when subcontractors are not subject to state taxation, such as
23 equipment and locations provided by the military, government
24 and religious organizations; or

25 (e) nonresidents providing services and

1 responsibilities related to off-camera industry job positions
2 where it is the standard entertainment industry practice for
3 the film production company to employ these individuals, except
4 when a nonresident is hired or subcontracted by a vendor with a
5 physical presence in New Mexico and the film production
6 company, as determined by the division and when applicable in
7 consultation with industry, provides: 1) reasonable efforts to
8 hire resident crew; and 2) financial or in-kind contributions
9 toward education or work force development efforts that shall
10 include at least one of the following: a pre-approved
11 workshop; on-set shadowing per each approved position; or ten
12 percent of the portion of the tax credit calculated from the
13 payment of services to the nonresidents by the vendor in the
14 approved positions, which equates to two-and-one-half percent
15 of the respective total direct production expenditure, and
16 allocated to New Mexico public education institutions that
17 administer at least one industry-recognized film or multimedia
18 program;

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

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

24 F. "film" means a single medium or multimedia
25 program, excluding advertising messages other than national or

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1 regional advertising messages intended for exhibition, that:

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

5 (2) can be viewed or reproduced;

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

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

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

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

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

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

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

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

20 M. "qualified production facility" means a building
21 or complex of buildings and their improvements and associated
22 back-lot facilities in which films are or are intended to be
23 regularly produced and that contain at least one sound stage
24 with contiguous, clear-span floor space of at least seven
25 thousand square feet and a ceiling height of no less than

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1 twenty-one feet; and

2 ~~[M-]~~ N. "vendor" means a person selling goods or
3 services that has a physical presence in New Mexico and is
4 subject to gross receipts tax pursuant to the Gross Receipts
5 and Compensating Tax Act and income tax pursuant to the Income
6 Tax Act or corporate income tax pursuant to the Corporate
7 Income and Franchise Tax Act, but excludes services provided by
8 nonresidents hired or subcontracted if:

9 (1) the tasks and responsibilities are
10 associated with the standard industry job position of:

- 11 (a) a director;
- 12 (b) a writer;
- 13 (c) a producer;
- 14 (d) an associate producer;
- 15 (e) a co-producer;
- 16 (f) an executive producer;
- 17 (g) a production supervisor;
- 18 (h) a director of photography;
- 19 (i) a motion picture driver whose sole
20 responsibility is driving;

21 (j) a production or personal assistant;

22 or

23 (k) a carpenter and utility technician
24 at an entry level; and

25 (2) tasks and responsibilities are associated

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1 with nonstandard industry job positions and personal support
2 services."

3 SECTION 3. REPEAL.--Laws 2011, Chapter 165, Section 3 is
4 repealed.

5 SECTION 4. APPLICABILITY.--The provisions of Subsection E
6 of Section 7-2F-1 NMSA 1978 apply to fiscal year 2013 and
7 subsequent fiscal years.

8 SECTION 5. EMERGENCY.--It is necessary for the public
9 peace, health and safety that this act take effect immediately.

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