

HOUSE BUSINESS AND INDUSTRY COMMITTEE SUBSTITUTE FOR  
HOUSE BILL 641

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

AN ACT

RELATING TO THE PUBLIC PEACE, HEALTH, SAFETY AND WELFARE;  
INCREASING THE FILM PRODUCTION TAX CREDIT FOR CERTAIN DIRECT  
PRODUCTION EXPENDITURES; ALLOWING A MAXIMUM OF TEN MILLION  
DOLLARS (\$10,000,000) OF UNCLAIMED FILM PRODUCTION TAX CREDITS  
TO BE CARRIED FORWARD FOR THREE FISCAL YEARS; PROVIDING FOR  
ACCELERATED PAYMENTS OF FUTURE SCHEDULED PAYMENTS OF FILM  
PRODUCTION TAX CREDITS; PROVIDING FOR ADDITIONAL ELIGIBILITY  
REQUIREMENTS; CHANGING THE SCOPE OF DIRECT PRODUCTION  
EXPENDITURES FOR WHICH FILM PRODUCTION TAX CREDITS MAY BE  
CLAIMED; RECONCILING MULTIPLE AMENDMENTS TO SECTIONS OF LAW IN  
LAWS 2011; RECONCILING CONFLICTING AMENDMENTS TO THE SAME  
SECTION OF LAW BY REPEALING LAWS 2011, CHAPTER 165, SECTION 3;  
DECLARING AN EMERGENCY.

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

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

5           "7-2F-1. FILM PRODUCTION TAX CREDIT.--

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

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

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

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

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

22                           (d) do not exceed the usual and  
23 customary cost of the goods or services acquired when purchased  
24 by unrelated parties. The secretary of taxation and revenue  
25 may determine the value of the goods or services for purposes

1 of this section when the buyer and seller are affiliated  
 2 persons or the sale or purchase is not an arm's length  
 3 transaction; and

4 (2) postproduction expenditures made in New  
 5 Mexico that:

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

8 (b) are for services performed in New  
 9 Mexico;

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

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

15 (e) 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.

22 B. Except as otherwise provided in [~~Subsections C~~  
 23 ~~and P of~~] this section, the percentage to be applied in  
 24 calculating the amount of the film production tax credit is  
 25 twenty-five percent.

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1           C. In addition to the percentage applied pursuant  
2 to Subsection B of this section, another five percent shall be  
3 applied in calculating the amount of the film production tax  
4 credit to direct production expenditures:

5                   (1) on series television productions intended  
6 for commercial distribution with an order for at least six  
7 episodes in a single season; provided that the budget per  
8 episode is fifty thousand dollars (\$50,000) or more; or

9                   (2) that are directly attributable to the  
10 wages and fringe benefits paid to a New Mexico resident  
11 directly employed in an industry crew position, excluding a  
12 performing artist, on a production with a total budget of:

13                           (a) not more than thirty million dollars  
14 (\$30,000,000) that shoots at least ten principal photography  
15 days at a qualified production facility in New Mexico; or

16                           (b) thirty million dollars (\$30,000,000)  
17 or more that shoots at least fifteen principal photography days  
18 at a qualified production facility in New Mexico.

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

24           ~~[D.]~~ E. A claim for film production tax credits  
25 shall be filed as part of a return filed pursuant to the Income

1 Tax Act or the Corporate Income and Franchise Tax Act or an  
2 information return filed by a pass-through entity. The date a  
3 credit claim is received by the department shall determine the  
4 order that a credit claim is authorized for payment by the  
5 department. Except as otherwise provided in this section, the  
6 aggregate amount of the film production tax credit claims that  
7 may be authorized for payment in any fiscal year is fifty  
8 million dollars (\$50,000,000) with respect to the direct  
9 production expenditures or postproduction expenditures made on  
10 film or commercial audiovisual products. A film production  
11 company that submits a claim for a film production tax credit  
12 that is unable to receive the tax credit because the claims for  
13 the fiscal year exceed the limitation in this subsection shall  
14 be placed for the subsequent fiscal year at the front of a  
15 queue of film production tax credit claimants submitting claims  
16 in the subsequent fiscal year in the order of the date on which  
17 the credit was authorized for payment.

18 F. If, in fiscal years 2013 through 2015, the  
19 aggregate amount in each fiscal year of the film production tax  
20 credit claims authorized for payment is less than fifty million  
21 dollars (\$50,000,000), then the difference in that fiscal year  
22 or ten million dollars (\$10,000,000), whichever is less, shall  
23 be added to the aggregate amount of the film production tax  
24 credit claims that may be authorized for payment pursuant to  
25 Subsection E of this section in the immediately following

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1 fiscal year.

2 ~~[E-]~~ G. Except as otherwise provided in this  
3 section, credit claims authorized for payment pursuant to the  
4 Film Production Tax Credit Act shall be paid pursuant to  
5 provisions of the Tax Administration Act to the taxpayer as  
6 follows:

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

10 (2) a credit claim amount of two million  
11 dollars (\$2,000,000) or more but less than five million dollars  
12 (\$5,000,000) per taxable year shall be divided into two equal  
13 payments, with the first payment to be made immediately upon  
14 authorization of the payment of the credit claim and the second  
15 payment to be made twelve months following the date of the  
16 first payment; and

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

24 H. For a fiscal year in which the amount of total  
25 credit claims authorized for payment is less than the aggregate

1 amount of the film production tax credit claims that may be  
 2 authorized for payment pursuant to this section, the next  
 3 scheduled payments for credit claims authorized for payment  
 4 pursuant to Subsection G of this section shall be accelerated  
 5 for payment for that fiscal year and shall be paid to a  
 6 taxpayer pursuant to the Tax Administration Act and in the  
 7 order in which outstanding payments are scheduled in the queue  
 8 established pursuant to Subsections E and G of this section;  
 9 provided that the total credit claims authorized for payment  
 10 shall not exceed the aggregate amount of the film production  
 11 tax credit claims that may be authorized for payment pursuant  
 12 to this section. If a partial payment is made pursuant to this  
 13 subsection, the difference owed shall retain its original  
 14 position in the queue.

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

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

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1 a film production company shall be submitted as part of the  
2 same income tax return and paid pursuant to this section. A  
3 credit claim shall not be divided and submitted with multiple  
4 returns or in multiple years.

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

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

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

25 ~~[K.]~~ N. To be eligible for the film production tax



1 credit, a film production company shall submit to the division  
2 information required by the division to demonstrate conformity  
3 with the requirements of the Film Production Tax Credit Act,  
4 including detailed information on each direct production  
5 expenditure and each postproduction expenditure. A film  
6 production company shall make reasonable efforts, as determined  
7 by the division, to contract with a vendor that provides goods,  
8 inventory or services directly related to that vendor's  
9 ordinary course of business. A film production company shall  
10 provide to the division a projection of the film production tax  
11 credit claim the film production company plans to submit in the  
12 fiscal year. In addition, the film production company shall  
13 agree in writing:

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

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

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

25 (b) remains posted on the web site until

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1 all financial obligations incurred in the state by the film  
2 production company have been paid;

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

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

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

14 ~~[E.]~~ O. The division shall determine the  
15 eligibility of the company and shall report this information to  
16 the taxation and revenue department in a manner and at times  
17 the economic development department and the taxation and  
18 revenue department shall agree upon. The division shall also  
19 post on its web site all information provided by the film  
20 production company that does not reveal revenue, income or  
21 other information that may jeopardize the confidentiality of  
22 income tax returns, including that the division shall report  
23 monthly the projected amount of credit claims for the fiscal  
24 year.

25 ~~[M.]~~ P. To provide guidance to film production

1 companies regarding the amount of credit capacity remaining in  
2 the fiscal year, the taxation and revenue department shall post  
3 monthly on that department's web site the aggregate amount of  
4 credits claimed and processed for the fiscal year.

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

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1 credit.

2           ~~[0-]~~ R. The film production company may apply all  
3 or a portion of the film production tax credit granted against  
4 personal income tax liability or corporate income tax  
5 liability. If the amount of the film production tax credit  
6 claimed exceeds the film production company's tax liability for  
7 the taxable year in which the credit is being claimed, the  
8 excess shall be refunded.

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

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

19           "7-2F-2. DEFINITIONS.--As used in the Film Production Tax  
20 Credit Act:

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

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1 entity;

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

4 C. "direct production expenditure":

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

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

11 (b) payment for services by a performing  
12 artist who is not a New Mexico resident and who is directly  
13 employed by the film production company; provided that the film  
14 production company deducts and remits, or causes to be deducted  
15 and remitted, income tax in New Mexico pursuant to the  
16 Withholding Tax Act;

17 [~~(b)~~] (c) payment to a personal services  
18 business for the services of a performing artist who is not a  
19 New Mexico resident if: 1) the personal services business [~~(1)~~]  
20 pays gross receipts tax in New Mexico on the portion of those  
21 payments qualifying for the tax credit; and 2) [~~deducts and~~  
22 remits withheld income tax pursuant to Subsection I of Section  
23 7-3A-3 NMSA 1978] the film production company deducts and  
24 remits, or causes to be deducted and remitted, income tax at  
25 the maximum rate in New Mexico pursuant to Subsection H of

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1 Section 7-3A-3 NMSA 1978 on the portion of those payments  
2 qualifying for the tax credit paid to a personal services  
3 business where the performing artist is a full or part owner of  
4 that business or subcontracts with a personal services business  
5 where the performing artist is a full or part owner of that  
6 business; and

7 [~~e~~] (d) any of the following provided  
8 by a vendor: 1) the story and scenario to be used for a film;  
9 2) set construction and operations, wardrobe, accessories and  
10 related services; 3) photography, sound synchronization,  
11 lighting and related services; 4) editing and related services;  
12 5) rental of facilities and equipment; 6) leasing of vehicles,  
13 not including the chartering of aircraft for out-of-state  
14 transportation; however, New Mexico-based chartered aircraft  
15 for in-state transportation directly attributable to the  
16 production shall be considered a direct production expenditure;  
17 provided that only the first one hundred dollars (\$100) of the  
18 daily expense of leasing a vehicle for passenger transportation  
19 on roadways in the state may be claimed as a direct production  
20 expenditure; 7) food or lodging; provided that only the first  
21 one hundred fifty dollars (\$150) of lodging per individual per  
22 day is eligible to be claimed as a direct production  
23 expenditure; 8) commercial airfare if purchased through a New  
24 Mexico-based travel agency or travel company for travel to and  
25 from New Mexico or within New Mexico that is directly

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1 attributable to the production; 9) insurance coverage and  
 2 bonding if purchased through a New Mexico-based insurance  
 3 agent, broker or bonding agent; and 10) other direct costs of  
 4 producing a film in accordance with generally accepted  
 5 entertainment industry practice; and

6 (2) does not include an expenditure for:

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

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

14 (c) entertainment, amusement or  
 15 recreation;

16 (d) subcontracted goods or services  
 17 provided by a vendor when subcontractors are not subject to  
 18 state taxation, such as equipment and locations provided by the  
 19 military, government and religious organizations; or

20 (e) a service provided by a person who  
 21 is not a New Mexico resident and employed in an industry crew  
 22 position, excluding a performing artist, where it is the  
 23 standard entertainment industry practice for the film  
 24 production company to employ a person for that industry crew  
 25 position, except when the person who is not a New Mexico

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1 resident is hired or subcontracted by a vendor; and when the  
2 film production company, as determined by the division and when  
3 applicable in consultation with industry, provides: 1)  
4 reasonable efforts to hire resident crew; and 2) financial or  
5 in-kind contributions toward education or work force  
6 development efforts in New Mexico, including at least one of  
7 the following: a pre-approved workshop; on-set shadowing per  
8 each approved position; or ten percent of the portion of the  
9 tax credit attributable to the payment for services provided by  
10 nonresidents employed by the vendor in the approved positions,  
11 which equates to two-and-one-half percent of the respective  
12 total direct production expenditure and which is allocated to  
13 New Mexico public education institutions that administer at  
14 least one industry-recognized film or multimedia program;

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

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

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

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



1 (2) can be viewed or reproduced;

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

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

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

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

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

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

25 K. "physical presence" means a physical address in

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

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

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

23 [~~M.~~] N. "vendor" means a person selling goods or  
24 services that has a physical presence in New Mexico and is  
25 subject to gross receipts tax pursuant to the Gross Receipts

1 and Compensating Tax Act and income tax pursuant to the Income  
 2 Tax Act or corporate income tax pursuant to the Corporate  
 3 Income and Franchise Tax Act but excludes services provided by  
 4 nonresidents hired or subcontracted if the tasks and  
 5 responsibilities are associated with:

6 (1) the standard industry job position of:

7 (a) a director;

8 (b) a writer;

9 (c) a producer;

10 (d) an associate producer;

11 (e) a co-producer;

12 (f) an executive producer;

13 (g) a production supervisor;

14 (h) a director of photography;

15 (i) a motion picture driver whose sole  
 16 responsibility is driving;

17 (j) a production or personal assistant;

18 (k) a designer;

19 (l) a still photographer; or

20 (m) a carpenter and utility technician  
 21 at an entry level; and

22 (2) nonstandard industry job positions and  
 23 personal support services."

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

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1           **SECTION 4. APPLICABILITY.**--The provisions of:

2                   A. Section 1; Subsections A, B and D through N of  
3 Section 2; and Paragraph (1) and Subparagraphs (a) through (d)  
4 of Paragraph (2) of Subsection C of Section 2 of this act apply  
5 to direct production expenditures and postproduction  
6 expenditures made on or after April 15, 2013; and

7                   B. Subparagraph (e) of Paragraph (2) of Subsection  
8 C of Section 2 of this act applies to productions starting  
9 principal photography on or after January 1, 2014.

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