

HOUSE BUSINESS AND INDUSTRY COMMITTEE SUBSTITUTE FOR
HOUSE BILL 85

50TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2012

AN ACT

RELATING TO TAXATION; EXCLUDING QUALIFIED TELEVISION SERIES PRODUCTIONS FROM THE CAP ON THE FILM PRODUCTION TAX CREDIT; DEFINING TERMS; RECONCILING MULTIPLE AMENDMENTS TO THE SAME SECTION OF LAW IN LAWS 2011; RECONCILING CONFLICTING AMENDMENTS TO THE SAME SECTION OF LAW IN LAWS 2011 BY REPEALING LAWS 2011, CHAPTER 165, SECTION 3.

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 provided in Subsections C and P of
16 this section, the percentage to be applied in calculating the
17 amount of the film production tax credit is twenty-five
18 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. A claim for film production tax credits shall be
25 filed as part of a return filed pursuant to the Income Tax Act

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1 or the Corporate Income and Franchise Tax Act. The date a
2 credit claim is received by the department shall determine the
3 order that a credit claim is authorized for payment by the
4 department. The aggregate amount of the film production tax
5 credit claims that may be authorized for payment in any fiscal
6 year is fifty million dollars (\$50,000,000) with respect to the
7 direct production expenditures or postproduction expenditures
8 made on film or commercial audiovisual products, except that
9 credit claims from qualified television series productions
10 shall not be subject to the limitation set forth in this
11 section. A film production company that submits a claim for a
12 film production tax credit that is unable to receive the tax
13 credit because the claims for the fiscal year exceed the
14 limitation in this subsection shall be placed for the
15 subsequent fiscal year at the front of a queue of film
16 production tax credit claimants submitting claims in the
17 subsequent fiscal year in the order of the date on which the
18 credit was authorized for payment.

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

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

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

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

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

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

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

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

19 K. 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

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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

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

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

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

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

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

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

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1 artists in a production for which the film production tax
2 credit is claimed."

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

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

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

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

17 C. "direct production expenditure":

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

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

24 (b) payment to a personal services
25 business for the services of a performing artist if the

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

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

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1 agent, broker or bonding agent; and 10) other direct costs of
2 producing a film in accordance with generally accepted
3 entertainment industry practice; and

4 (2) does not include an expenditure for:

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

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

12 (c) entertainment, amusement or
13 recreation;

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

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

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

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

25 (2) can be viewed or reproduced;

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

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

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

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

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

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

24 K. "physical presence" means a physical address in
25 New Mexico, but does not include a post office box or other

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1 mail drop enterprise unless the physical presence is for a
2 business and the business is providing mail services to a film
3 production company from which a vendor conducts business,
4 stores inventory or otherwise creates, assembles or offers for
5 sale the product purchased or leased by a film production
6 company;

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

15 M. "qualified television series production" means a
16 production created for television to run multiple production
17 seasons and having an estimated order of at least seven
18 episodes per season and direct production expenditures of at
19 least six hundred twenty-five thousand dollars (\$625,000) per
20 episode; and

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

1 Income and Franchise Tax Act."

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

4 SECTION 4. EFFECTIVE DATE.--The effective date of the
5 provisions of this act is July 1, 2012.