

HOUSE BILL 291

57TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2026

## INTRODUCED BY

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10 | AN ACT

11 RELATING TO TAXATION; ALLOWING ATTORNEY FEES TO BE PAID FROM  
12 REVENUE DISTRIBUTIONS; PREVENTING THE ACCRUAL OF INTEREST WHEN  
13 AN EXTENSION OF TIME TO FILE A RETURN HAS BEEN GRANTED;  
14 AMENDING ROUNDING REQUIREMENTS; CLARIFYING THAT A TAXPAYER WHO  
15 HAS ENTERED INTO AN INSTALLMENT AGREEMENT IS NOT CONSIDERED A  
16 DELINQUENT TAXPAYER FOR PURPOSES OF LICENSE OR PERMIT RENEWAL;  
17 PROVIDING THAT A MINIMUM CIVIL PENALTY OF FIVE DOLLARS (\$5.00)  
18 SHALL NOT APPLY FOR FAILURE TO PAY A TAX LEVIED PURSUANT TO THE  
19 WITHHOLDING TAX ACT, THE OIL AND GAS PROCEEDS AND PASS-THROUGH  
20 ENTITY WITHHOLDING TAX ACT OR THE WORKERS' COMPENSATION FEE;  
21 AMENDING THE FILM PRODUCTION TAX CREDIT ACT; AMENDING  
22 DEFINITIONS IN THE TECHNOLOGY JOBS AND RESEARCH AND DEVELOPMENT  
23 TAX CREDIT ACT; CLARIFYING THE TOBACCO PRODUCTS TAX ON CLOSED  
24 SYSTEM CARTRIDGES; ALLOWING EXCESS PROPERTY TAX AUCTION  
25 PROCEEDS TO BE APPLIED TO OUTSTANDING TAX DEBT; REQUIRING

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1           SPECIFIC EFFECTIVE DATES FOR AN ORDINANCE CHANGING THE  
2           IMPOSITION OF TAX IMPOSED BY AN INDIAN NATION, TRIBE OR PUEBLO  
3           AND COLLECTED BY THE TAXATION AND REVENUE DEPARTMENT PURSUANT  
4           TO A TRIBAL COOPERATIVE AGREEMENT; AMENDING WITH WHOM THE  
5           SECRETARY OF TAXATION AND REVENUE MAY ENTER INTO TRIBAL  
6           COOPERATIVE AGREEMENTS.

7  
8           BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

9           SECTION 1. Section 7-1-6 NMSA 1978 (being Laws 1978,  
10          Chapter 55, Section 1, as amended) is amended to read:

11          "7-1-6. RECEIPTS--DISBURSEMENTS--FUNDS CREATED.--

12           A. All money received by the department with  
13           respect to laws administered pursuant to the provisions of the  
14           Tax Administration Act shall be deposited with the state  
15           treasurer before the close of the next succeeding business day  
16           after receipt of the money, except that money received with  
17           respect to the Income Tax Act and the Corporate Income and  
18           Franchise Tax Act during the period starting with the fifth day  
19           prior to the due date for payment of the taxes for the year and  
20           ending on the tenth day following that due date shall be  
21           deposited before the close of the tenth business day after  
22           receipt of the money.

23           B. Money received or disbursed by the department  
24           shall be accounted for by the department as required by law or  
25           rule of the secretary of finance and administration.

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C. Disbursements for tax credits, tax rebates, refunds, the payment of interest, the payment of fees charged by attorneys or collection agencies for collection of accounts as agent for the department, attorney fees and costs awarded by a court or hearing officer, ~~[as the result of oil and gas litigation]~~ the payment of credit card service charges on payments of taxes by use of credit cards, distributions and transfers shall be made by the department of finance and administration upon request and certification of their appropriateness by the secretary or the secretary's delegate.

D. There are hereby created in the state treasury the "tax administration suspense fund", the "extraction taxes suspense fund" and the "workers' compensation collections suspense fund" for the purpose of making the disbursements authorized by the Tax Administration Act.

E. All revenues collected or received by the department pursuant to the provisions of the taxes and tax acts set forth in Subsection A of Section 7-1-2 NMSA 1978 shall be credited to the tax administration suspense fund and are appropriated for the purpose of making the disbursements authorized in this section or otherwise authorized or required by law to be made from the tax administration suspense fund.

F. All revenues collected or received by the department pursuant to the taxes or tax acts set forth in Subsection B of Section 7-1-2 NMSA 1978 shall be credited to

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1 the extraction taxes suspense fund and are appropriated for the  
2 purpose of making the disbursements authorized in this section  
3 or otherwise authorized or required by law to be made from the  
4 extraction taxes suspense fund.

5 G. All revenues collected or received by the  
6 department pursuant to the taxes or tax acts set forth in  
7 Subsection C of Section 7-1-2 NMSA 1978 may be credited to the  
8 tax administration suspense fund, unless otherwise directed by  
9 law to be credited to another fund or agency, and are  
10 appropriated for the purpose of making disbursements authorized  
11 in this section or otherwise authorized or required by law.

12 H. All revenues collected or received by the  
13 department pursuant to the provisions of Section 52-5-19 NMSA  
14 1978 shall be credited to the workers' compensation collections  
15 suspense fund and are appropriated for the purpose of making  
16 the disbursements authorized in this section or otherwise  
17 authorized or required by law to be made from the workers'  
18 compensation collections suspense fund.

19 I. Disbursements to cover expenditures of the  
20 department shall be made only upon approval of the secretary or  
21 the secretary's delegate.

22 J. Miscellaneous receipts from charges made by the  
23 department to defray expenses pursuant to the provisions of  
24 Section 9-11-6.1 NMSA 1978 and similar charges are appropriated  
25 to the department for its use.

1                   K. From the tax administration suspense fund, there  
2 may be disbursed each month amounts approved by the secretary  
3 or the secretary's delegate necessary to maintain a fund hereby  
4 created and to be known as the "income tax suspense fund". The  
5 income tax suspense fund shall be used for the payment of  
6 income tax refunds."

7                   SECTION 2. Section 7-1-13 NMSA 1978 (being Laws 1965,  
8 Chapter 248, Section 18, as amended) is amended to read:

9                   "7-1-13. TAXPAYER RETURNS--PAYMENT OF TAXES--EXTENSION OF  
10 TIME.--

11                  A. Taxpayers are liable for tax at the time of and  
12 after the transaction or incident giving rise to tax until  
13 payment is made. Taxes are due on and after the date on which  
14 their payment is required until payment is made.

15                  B. Every taxpayer shall, on or before the date on  
16 which payment of any tax is due, complete and file a tax return  
17 in a form prescribed and according to the regulations issued by  
18 the secretary. Except as provided in Section 7-1-13.1 NMSA  
19 1978 or by regulation, ruling, order or instruction of the  
20 secretary, the payment of any tax or the filing of any return  
21 may be accomplished by mail. When the filing of a tax return  
22 or payment of a tax is accomplished by mail, the date of the  
23 postmark shall be considered the date of submission of the  
24 return or payment.

25                  C. Payment of the total amount of all taxes that

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1 are due from the taxpayer shall precede or accompany the  
2 return. Delivery to the department of a check or electronic  
3 check that is not paid upon presentment does not constitute  
4 payment.

5                   D. The secretary or the secretary's delegate may,  
6 for good cause, extend in favor of a taxpayer or a class of  
7 taxpayers, for no more than a total of twelve months, the date  
8 on which payment of any tax is required or on which any return  
9 required by provision of the Tax Administration Act shall be  
10 filed ~~[but no extension shall prevent the accrual of interest  
as otherwise provided by law]~~. When an extension of time for  
11 income tax has been granted a taxpayer pursuant to the Internal  
12 Revenue Code, the extension shall serve to extend the time for  
13 filing New Mexico income tax; provided that a copy of the  
14 approved federal extension of time is attached to the  
15 taxpayer's New Mexico income tax return. The secretary by  
16 regulation may also provide for the automatic extension for no  
17 more than six months of the date upon which payment of any New  
18 Mexico income tax or the filing of any New Mexico income tax  
19 return is required. If the secretary or the secretary's  
20 delegate believes it necessary to ensure the collection of the  
21 tax, the secretary or the secretary's delegate may require, as  
22 a condition of granting any extension, that the taxpayer  
23 furnish security in accordance with the provisions of Section  
24 7-1-54 NMSA 1978.

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E. Except as provided in Subsection F of this section, no later than one hundred eighty days after the final determination date, a taxpayer shall file a federal adjustments report with the department and pay any state tax due with respect to final net-positive federal adjustments arising from:

(1) an audit or other action by the internal revenue service; or

(2) a timely filed amended federal income tax return, including a return or other similar information filed pursuant to Section 6225(c)(2) of the Internal Revenue Code.

F. Except for federal adjustments that are required to be reported pursuant to Subsection E of this section, partnerships and partners shall report final net-positive federal adjustments arising from a partnership level audit or an administrative adjustment request and make payments as follows:

(1) except for where the partnership or tiered partner makes an election pursuant to Subsection G of this section, the partnership or tiered partner shall:

(a) file: 1) a completed federal adjustments report and notify each of its direct partners of their distributive share of the final federal adjustments, including information necessary for reporting state tax due as required by the department; and 2) an amended withholding return for the reviewed year if such return was filed, or would

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have been required pursuant to the Withholding Tax Act;

(b) in the case of an audited partnership, file the returns required by this paragraph no later than ninety days after the final determination date; and

(c) in the case of a tiered partner of an audited partnership, file the returns required by this paragraph no later than ninety days after the time for the audited partnership's filing and furnishing statements to tiered partnerships and their partners as established pursuant to Section 6226 of the Internal Revenue Code and the regulations thereunder; and

(2) a partner of a partnership or a tiered partner subject to tax pursuant to Section 7-2-3 or 7-2A-3 NMSA 1978 on adjustments to which Paragraph (1) of this subsection applies shall file a federal adjustments report reporting the partner's distributive share of the adjustments and shall pay the additional amount of state tax due, plus any penalty and interest due and less any credit for related amounts paid or withheld and remitted on behalf of the partner pursuant to Paragraph (1) of this subsection as follows:

(a) for taxable direct partners of the audited partnership, no later than one hundred eighty days after the final determination date; or

(b) for taxable indirect partners of the audited partnership, no later than one hundred eighty days

1       after the time for the audited partnership's filing and  
2       furnishing statements to tiered partnerships and their partners  
3       as established pursuant to Section 6226 of the Internal Revenue  
4       Code and the regulations thereunder.

5                   G. The election provided by this subsection applies  
6       only to federal adjustments other than the distributive share  
7       of federal adjustments that must be included in the unitary  
8       business income of any direct or indirect corporate partner;  
9       provided that this can be reasonably determined, or federal  
10      adjustments resulting from an administrative adjustment  
11      request. A partnership making an election pursuant to this  
12      subsection shall:

13                   (1) file a completed federal adjustments  
14      report and notify the department that it is making the election  
15      pursuant to this subsection; and

16                   (2) pay an amount, determined as follows, in  
17      lieu of taxes owed by its direct and indirect taxable partners:

18                   (a) exclude from the total final federal  
19      adjustments the distributive share reported to a direct partner  
20      that is an exempt partner unless the adjustment represents  
21      unrelated business taxable income;

22                   (b) include only the portion of the  
23      total federal adjustment to distributive shares of partners  
24      taken into account pursuant to Section 6225(b)(2) of the  
25      Internal Revenue Code;

(c) apportion and allocate the adjustments as provided by the Uniform Division of Income for Tax Purposes Act as applied at the partnership level following any department regulations adopted for this purpose;

(d) multiply the resulting amount by the highest tax rate provided by Section 7-2A-5 NMSA 1978; and

(e) add to the amount calculated pursuant to Subparagraph (d) of this paragraph an amount of penalty and interest computed pursuant to the Tax Administration Act.

H. In any action required or allowed to be taken pursuant to the Tax Administration Act with respect to the reporting of federal adjustments by a partnership, the state partnership representative for the reviewed year shall have the sole authority to act on behalf of the partnership, and the partnership's direct partners and indirect partners shall be bound by those actions. The state partnership representative is the partnership's federal partnership representative for the reviewed year, unless the partnership designates in writing another person as its state partnership representative; provided that the person meets any qualifications established by the department.

I. Pursuant to procedures that may be adopted by the department, an audited partnership or tiered partner of that partnership may enter into an agreement with the

1       department to utilize an alternative reporting and payment  
2       method, including applicable time requirements or any other  
3       provision pursuant to Subsections E through H of this section,  
4       if the audited partnership or tiered partner demonstrates that  
5       the requested method will reasonably provide for the reporting  
6       and payment of taxes, penalties and interest due pursuant to  
7       Subsections E through H of this section. Application for  
8       approval of an alternative reporting and payment method must be  
9       made by the audited partnership or tiered partner within the  
10      time for election as provided in Subsection G of this section,  
11      as appropriate.

12                   J. An election made pursuant to Subsection G or I  
13      of this section is irrevocable, unless the department, in its  
14      discretion, determines otherwise. If properly reported and  
15      paid by the audited partnership or tiered partner, the amount  
16      determined in Paragraph (2) of Subsection G of this section, or  
17      similarly under an optional election pursuant to Subsection I  
18      of this section, will be treated as paid in lieu of taxes owed  
19      by its direct and indirect partners on the same final federal  
20      adjustments. The direct or indirect partners of the  
21      partnership that pays this in lieu of amount may not claim any  
22      deduction, credit or refund with respect to that amount.

23                   K. A taxpayer may make estimated payments of state  
24      tax expected to result from a pending audit by the internal  
25      revenue service prior to the final determination date,

1 following the process prescribed by the department, and such  
2 payments will limit the accrual of further statutory interest  
3 on that amount.

4                   L. A taxpayer may claim an amount of state tax  
5 resulting from final net-negative federal adjustments as  
6 provided in Section 7-1-26 NMSA 1978.

7                   M. Nothing in Subsections E through L of this  
8 section shall prevent the department from assessing direct  
9 partners or indirect partners for taxes they owe, using the  
10 best information available, in the event that a partnership or  
11 tiered partner fails to timely make any report or payment  
12 required for any reason.

13                   N. As used in this section:

14                   (1) "administrative adjustment request" means  
15 an administrative adjustment request filed by a partnership  
16 pursuant to Section 6227 of the Internal Revenue Code;

17                   (2) "audited partnership" means a partnership  
18 subject to a partnership level audit resulting in a federal  
19 adjustment;

20                   (3) "corporate partner" means a partner,  
21 direct or indirect, that is subject to tax pursuant to the  
22 Corporate Income and Franchise Tax Act;

23                   (4) "direct partner" means any partner that  
24 holds an interest directly in a partnership or pass-through  
25 entity;

(5) "exempt partner" means a partner, direct or indirect, that is exempt from New Mexico income tax except on unrelated business taxable income;

(6) "federal adjustment" means a change to an item or amount determined pursuant to the Internal Revenue Code that is used by a taxpayer to compute an amount of state tax owed, whether that change results from action by the internal revenue service, including a partnership level audit, or the filing of an amended federal return, federal refund claim or an administrative adjustment request by a partnership;

(7) "federal adjustments report" includes the methods or forms required by the department for use by a taxpayer to report final federal adjustments, including an amended tax return, information return or a uniform multistate report;

(8) "final determination date" means:

(a) except as provided in Subparagraphs (b), (c) and (d) of this paragraph, if a federal adjustment arises from an audit or other action by the internal revenue service, the final determination date is the first day on which no federal adjustments arising from that audit or other action remain to be finally determined, whether by a decision of the internal revenue service with respect to which all rights of appeal have been waived or exhausted, by agreement, or, if appealed or contested, by a final decision with respect to

which all rights of appeal have been waived or exhausted. For agreements required to be signed by the internal revenue service and the taxpayer, the final determination date is the date on which the last party signed the agreement;

(b) for federal adjustments arising from an internal revenue service audit or other action by the internal revenue service, if the taxpayer filed as a member of a filing group pursuant to the Corporate Income and Franchise Tax Act, the final determination date means the first day on which no related federal adjustments arising from that audit remain to be finally determined, as described in Subparagraph (a) of this paragraph, for the entire group;

(c) except as provided in Subparagraph (d) of this paragraph, if the federal adjustment results from filing an amended federal return, a federal refund claim or an administrative adjustment request, or if it is a federal adjustment reported on an amended federal return or other similar report filed pursuant to Section 6225(c) of the Internal Revenue Code, the final determination date means the day on which the amended return, refund claim, administrative adjustment request or other similar report was filed; and

(d) for adjustments resulting from a partnership level audit or an administrative adjustment request for which the final determination date pursuant to Subparagraph (a) or (c) of this paragraph is determined to be a date

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1 occurring prior to ~~the effective date of this 2021 act~~ June  
2 18, 2021, the final determination date shall be July 1, 2021;

3 (9) "final federal adjustments" means  
4 adjustments for which the final determination date has passed,  
5 including final net-positive federal adjustments and final net-  
6 negative federal adjustments;

7 (10) "indirect partner" means a partner in a  
8 partnership or pass-through entity in which the partner holds  
9 an interest directly, or through another indirect partner, in a  
10 partnership or pass-through entity;

11 (11) "net-negative federal adjustments" means  
12 federal adjustments relating to the same tax period, whether  
13 made by the taxpayer or the internal revenue service, the net  
14 effect of which is to decrease state tax due as compared to tax  
15 originally reported for that period;

16 (12) "net-positive federal adjustments" means  
17 federal adjustments relating to the same tax period, whether  
18 made by the taxpayer or the internal revenue service, the net  
19 effect of which is to increase state tax due as compared to tax  
20 originally reported for that period;

21 (13) "partner" means a person that holds an  
22 interest directly or indirectly in a partnership or other  
23 pass-through entity;

24 (14) "partnership" means an entity subject to  
25 taxation pursuant to Subchapter K of the Internal Revenue Code;

(15) "partnership level audit" means an examination by the internal revenue service at the partnership level pursuant to Subchapter C or Subtitle F, Chapter 63 of the Internal Revenue Code [which] that results in federal adjustments;

(16) "pass-through entity" means an entity, other than a partnership, that is not subject to tax pursuant to the Corporate Income and Franchise Tax Act;

(17) "reviewed year" means the taxable year of a partnership that is subject to a partnership level audit from which federal adjustments arise;

(18) "taxpayer" means a taxpayer, including a partnership subject to a partnership level audit or a partnership that has made an administrative adjustment request, as well as a tiered partner of that partnership, unless the context indicates otherwise;

(19) "tiered partner" means any partner that is a partnership or pass-through entity; and

(20) "unrelated business taxable income" means "unrelated business taxable income" as used in Section 512 of the Internal Revenue Code."

SECTION 3. Section 7-1-15.1 NMSA 1978 (being Laws 1987, Chapter 169, Section 4) is amended to read:

"7-1-15.1. SECRETARY MAY PERMIT OR REQUIRE ROUNDING.--By regulation or instruction, the secretary may permit or require

232915 5SA

1 rounding to the nearest whole dollar of [tax due; provided that  
2 for any tax or tax act the revenues from which are required by  
3 the provisions of the Tax Administration Act to be distributed  
4 or transferred partly to local governments and partly to state  
5 funds, the gain or loss due to rounding shall be attributed to  
6 the state funds] an amount due pursuant to the Income Tax Act  
7 or the Corporate Income and Franchise Tax Act, and to the  
8 nearest five cents (\$.05) of an amount due pursuant to all  
9 other taxes administered by the department pursuant to Section  
10 7-1-2 NMSA 1978."

11 SECTION 4. Section 7-1-16 NMSA 1978 (being Laws 1965,  
12 Chapter 248, Section 19, as amended) is amended to read:

13 "7-1-16. DELINQUENT TAXPAYER.--

14 A. Except as provided in [Subsection] Subsections D  
15 and E of this section, any taxpayer to whom taxes have been  
16 assessed as provided in Section 7-1-17 NMSA 1978 or upon whom  
17 demand for payment has been made as provided in Section 7-1-63  
18 NMSA 1978 who does not within ninety days after the date of  
19 assessment or demand for payment make payment of the undisputed  
20 amount, protest the assessment or demand for payment as  
21 provided by Section 7-1-24 NMSA 1978 or furnish security for  
22 payment as provided by Section 7-1-54 NMSA 1978 becomes a  
23 delinquent taxpayer and remains such until:

24 (1) payment of the total amount of all such  
25 taxes is made;

.232915.5SA

- (2) security is furnished for payment; or
- (3) no part of the assessment remains unabated.

B. Any taxpayer who fails to provide security as required by Subsection D of Section 7-1-54 NMSA 1978 shall be deemed to be a delinquent taxpayer.

C. If a taxpayer files a protest as provided in Section 7-1-24 NMSA 1978, the taxpayer nevertheless becomes a delinquent taxpayer upon failure of the taxpayer to appear, in person or by authorized representative, at the hearing set or upon failure to perfect an appeal from any decision or part thereof adverse to the taxpayer to the next higher appellate level, as provided in that section, unless the taxpayer makes payment of the total amount of all taxes assessed and remaining unabated or furnishes security for payment.

D. A taxpayer does not become a delinquent taxpayer if the taxpayer has been issued an assessment as a result of a managed audit but is still within the allowed time period to pay the tax due as specified in Paragraph (4) of Subsection A of Section 7-1-67 NMSA 1978.

E. For the purposes of license or permit renewal, a taxpayer shall not be considered a delinquent taxpayer if the taxpayer has entered into an installment agreement pursuant to Section 7-1-21 NMSA 1978 that is in good standing with the department and the taxpayer has not failed to meet the

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1       conditions of the installment agreement with the department  
2       during the five calendar years immediately preceding the  
3       current calendar year. If an installment agreement is relied  
4       on for purposes of license or permit renewal, it shall be  
5       secured with a payment of a minimum of twenty percent of the  
6       taxpayer's delinquent tax amount for the tax programs required  
7       for renewal."

8           SECTION 5. Section 7-1-69 NMSA 1978 (being Laws 1965,  
9       Chapter 248, Section 70, as amended) is amended to read:

10       "7-1-69. CIVIL PENALTY FOR FAILURE TO PAY TAX OR FILE A  
11       RETURN.--

12           A. Except as provided in Subsection C of this  
13       section, in the case of failure due to negligence or disregard  
14       of department rules and regulations, but without intent to  
15       evade or defeat a tax, to pay when due the amount of tax  
16       required to be paid, to pay in accordance with the provisions  
17       of Section 7-1-13.1 NMSA 1978 when required to do so or to file  
18       by the date required a return regardless of whether a tax is  
19       due, there shall be added to the amount assessed a penalty in  
20       an amount equal to the greater of:

21           (1) two percent per month or any fraction of a  
22       month from the date the tax was due multiplied by the amount of  
23       tax due but not paid, not to exceed twenty percent of the tax  
24       due but not paid;

25           (2) two percent per month or any fraction of a

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1 month from the date the return was required to be filed  
2 multiplied by the tax liability established in the late return,  
3 not to exceed twenty percent of the tax liability established  
4 in the late return; or

5 (3) a minimum of five dollars (\$5.00), but the  
6 five-dollar (\$5.00) minimum penalty shall not apply to taxes  
7 levied under the Income Tax Act, Corporate Income and Franchise  
8 Tax Act, Withholding Tax Act, Oil and Gas Proceeds and Pass-  
9 Through Entity Withholding Tax Act, workers' compensation fee  
10 authorized by Section 52-5-19 NMSA 1978 or taxes administered  
11 by the department pursuant to Subsection B of Section 7-1-2  
12 NMSA 1978.

13 B. No penalty shall be assessed against a taxpayer  
14 if the failure to pay an amount of tax when due results from a  
15 mistake of law made in good faith and on reasonable grounds.

16 C. If a different penalty is specified in a compact  
17 or other interstate agreement to which New Mexico is a party,  
18 the penalty provided in the compact or other interstate  
19 agreement shall be applied to amounts due under the compact or  
20 other interstate agreement at the rate and in the manner  
21 prescribed by the compact or other interstate agreement.

22 D. In the case of failure, with willful intent to  
23 evade or defeat a tax, to pay when due the amount of tax  
24 required to be paid, there shall be added to the amount fifty  
25 percent of the tax or a minimum of twenty-five dollars

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1                   (\$25.00), whichever is greater, as penalty.

2                   E. If demand is made for payment of a tax,  
3 including penalty imposed pursuant to this section, and if the  
4 tax is paid within ten days after the date of such demand, no  
5 penalty shall be imposed for the period after the date of the  
6 demand with respect to the amount paid.

7                   F. If a taxpayer makes electronic payment of a tax  
8 but the payment does not include all of the information  
9 required by the department pursuant to the provisions of  
10 Section 7-1-13.1 NMSA 1978 and if the department does not  
11 receive the required information within five business days from  
12 the later of the date a request by the department for that  
13 information is received by the taxpayer or the due date, the  
14 taxpayer shall be subject to a penalty of two percent per month  
15 or any fraction of a month from the fifth day following the  
16 date the request is received. If a penalty is imposed under  
17 Subsection A of this section with respect to the same  
18 transaction for the same period, no penalty shall be imposed  
19 under this subsection.

20                   G. No penalty shall be imposed on:

21                   (1) tax due in excess of tax paid in  
22 accordance with an approved estimated basis pursuant to Section  
23 7-1-10 NMSA 1978;

24                   (2) tax due as the result of a managed audit;  
25 or

.232915.5SA

(3) tax that is deemed paid by crediting overpayments found in an audit or managed audit of multiple periods pursuant to Section 7-1-29 NMSA 1978."

SECTION 6. Section 7-2F-2 NMSA 1978 (being Laws 2003, Chapter 127, Section 2, as amended) is amended to read:

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

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

B. "background artist" means a person who is not a performing artist but is a person of atmospheric business whose work includes atmospheric noise, normal actions, gestures and facial expressions of that person's assignment; or a person of atmospheric business whose work includes special abilities that are not stunts; or a substitute for another actor, whether photographed as a double or acting as a stand-in;

C. "below-the-line crew" means a person in a position that is off-camera and who provides technical services during the physical production of a film. "Below-the-line crew" does not include a person who is a writer, director, producer or background artist or performing artist for the

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1       film;

2               D. "commercial audiovisual product" means a film or  
3       a video game intended for commercial exploitation;

4               E. "direct production expenditure" means a  
5       transaction that is subject to taxation in New Mexico, except  
6       as provided in Subparagraph (f) of Paragraph (1) of this  
7       subsection, and is certified pursuant to Subsection A of  
8       Section 7-2F-12 NMSA 1978:

9                       (1) including an expenditure for:

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

13                               (b) payment for standard industry craft  
14       inventory when provided by a below-the-line crew that is a New  
15       Mexico resident in addition to its below-the-line crew  
16       services;

17                               (c) payment for wages and per diem for a  
18       performing artist who is not a New Mexico resident and who is  
19       directly employed by the film production company; provided that  
20       the film production company deducts and remits, or causes to be  
21       deducted and remitted, income tax from the first day of  
22       services rendered in New Mexico at the maximum rate pursuant to  
23       the Withholding Tax Act;

24                               (d) payment to a personal services  
25       business for the services of a performing artist if: 1) the

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

12 (e) any of the following provided by a  
13 vendor: 1) the story and scenario to be used for a film; 2)  
14 set construction and operations, wardrobe, accessories and  
15 related services; 3) photography, sound synchronization,  
16 lighting and related services; 4) editing and related services;  
17 5) rental of facilities and equipment; 6) the first one hundred  
18 fifty dollars (\$150) of the daily expense of leasing of  
19 vehicles, not including the chartering of aircraft for out-of-  
20 state transportation; however, New Mexico-based chartered  
21 aircraft for in-state transportation directly attributable to  
22 the production shall be considered a direct production  
23 expenditure; 7) food; 8) the first three hundred dollars (\$300)  
24 of lodging per individual, per day; 9) commercial airfare if  
25 purchased through a New Mexico-based travel agency or travel

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1 company for travel to and from New Mexico or within New Mexico  
2 that is directly attributable to the production; 10) insurance  
3 coverage and bonding if purchased through a New Mexico-based  
4 insurance agent, broker or bonding agent; 11) subcontracted  
5 goods and services from businesses; provided that the ordinary  
6 course of business of the vendor procuring the goods and  
7 services from the subcontractor directly relates to standard  
8 film industry goods and services; and 12) other direct costs of  
9 producing a film in accordance with generally accepted  
10 entertainment industry practice; and

11 (f) payments for the lease or rental of  
12 facilities and equipment located on, or purchases from  
13 businesses located on, a federally recognized Indian nation,  
14 tribe or pueblo located in New Mexico and those payments and  
15 purchases are exempt from taxation in New Mexico; and

16 (2) does not include an expenditure for:

17 (a) a gift with a value greater than one  
18 hundred dollars (\$100);

19 (b) artwork or jewelry, except that a  
20 work of art or a piece of jewelry may be a direct production  
21 expenditure if: 1) it is used in the film production; and 2)  
22 the expenditure is less than two thousand five hundred dollars  
23 (\$2,500);

24 (c) entertainment, amusement or  
25 recreation;

(d) subcontracted goods or services provided by a vendor when the subcontractors providing those goods or services to the vendor are not subject to state taxation, such as equipment and locations provided by the military, government and organizations that demonstrate to the taxation and revenue department that they have been granted exemption from the federal income tax by the United States commissioner of internal revenue as organizations described in Section 501(c)(3) of the United States Internal Revenue Code of 1986, as amended or renumbered;

(e) subcontracted services provided by a vendor when the subcontracted services are provided by a person who is below-the-line crew and is not a New Mexico resident;

(f) hidden or other indirect service fees, costs, commissions or other remuneration received by third parties and that are not directly paid by the film production company or expressly enumerated on a film production company's filing to claim a new film production tax credit;

(g) wages for a person who is not a New Mexico resident and who falsely claims to be a New Mexico resident. The wages of such person shall not be considered an eligible expense for two years from the date in which the person is determined by the taxation and revenue department as having made a false claim, regardless of whether the person becomes a New Mexico resident within that time frame; or

(h) which the film production company receives funding pursuant to Section 21-19-7.1 NMSA 1978;

F. "division" means the New Mexico film division of the economic development department;

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

H. "film" means a single medium or multimedia program, including television programs but excluding advertising messages other than national or regional advertising messages intended for exhibition, that:

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

(2) can be viewed or reproduced;

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

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

I. "film production company" means a person that produces one or more films or commercial audiovisual products or any part of a film or commercial audiovisual product;

J. "fiscal year" means the state fiscal year beginning on July 1;

K. "New Mexico film partner" means a film

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1 production company that has made a commitment to produce films  
2 or commercial audiovisual products in New Mexico and has  
3 purchased or executed a ten-year contract to lease a qualified  
4 production facility;

5                   L. "New Mexico film partner production" means a  
6                   film or commercial audiovisual product in New Mexico for which  
7                   a New Mexico film partner:

8                   (1)   owns at least fifty percent of the  
9                   production for which the budget is certified pursuant to  
10                  Subsection A of Section 7-2F-12 NMSA 1978 for at least one year  
11                  from the date of the last direct production expenditure or  
12                  postproduction expenditure in New Mexico;

13                  (2)   owns or controls underlying intellectual  
14                  property resulting from the production for at least five years  
15                  from the date of the last direct production expenditure or  
16                  postproduction expenditure in New Mexico; or

17                  (3)   has funded at least fifty percent of the  
18                  production budget certified pursuant to Subsection A of Section  
19                  7-2F-12 NMSA 1978;

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

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

7                [M.] N. "performing artist" means an actor, on-  
8       camera stuntperson, puppeteer, pilot who is a stuntperson or  
9       actor, specialty foreground performer or narrator; and who  
10      speaks a line of dialogue, is identified with the product or  
11      reacts to narration as assigned. "Performing artist" does not  
12      include a background artist;

13                [N.] O. "personal services business" means a  
14       business organization, with or without physical presence, that  
15       receives payments pursuant to the Film Production Tax Credit  
16       Act for the services of a performing artist;

17                [O.] P. "physical presence" means a physical  
18       address in New Mexico from which a vendor conducts business,  
19       stores inventory or otherwise creates, assembles or offers for  
20       sale the product purchased or leased by a film production  
21       company and the vendor or an employee of the vendor is a  
22       resident;

23                [P.] Q. "postproduction expenditure" means an  
24       expenditure, certified pursuant to Subsection A of Section  
25       7-2F-12 NMSA 1978, for editing, Foley recording, automatic

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1 dialogue replacement, sound editing, special effects, including  
2 computer-generated imagery or other effects, scoring and music  
3 editing, beginning and end credits, negative cutting,  
4 soundtrack production, dubbing, subtitling or addition of sound  
5 or visual effects; but not including an expenditure for  
6 advertising, marketing, distribution or expense payments;

7 [Q.] R. "principal photography" means the  
8 production of a film during which the main visual elements are  
9 created;

10 [R.] S. "qualified production facility" means a  
11 building, or complex of buildings, building improvements and  
12 associated back-lot facilities in which films are or are  
13 intended to be regularly produced and that contain at least  
14 one:

15 (1) sound stage with contiguous floor space of  
16 at least seven thousand square feet and a ceiling height of no  
17 less than eighteen feet; or

18 (2) standing set that includes at least one  
19 interior, and at least five exteriors, built or re-purposed for  
20 film production use on a continual basis and is located on at  
21 least fifty acres of contiguous space designated for film  
22 production use; and

23 [S.] T. "vendor" means a person who sells or leases  
24 goods or services that are related to standard industry craft  
25 inventory, who has a physical presence in New Mexico and is

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1       subject to gross receipts tax pursuant to the Gross Receipts  
2       and Compensating Tax Act or income tax pursuant to the Income  
3       Tax Act or corporate income tax pursuant to the Corporate  
4       Income and Franchise Tax Act but excludes a personal services  
5       business and services provided by nonresidents hired or  
6       subcontracted if the tasks and responsibilities are associated  
7       with the standard industry job position of director, writer or  
8       producer."

9                    SECTION 7. Section 7-2F-12 NMSA 1978 (being Laws 2019,  
10          Chapter 87, Section 6, as amended) is amended to read:

11                  "7-2F-12. CREDIT CLAIMS--CERTIFICATION OF DIRECT  
12          PRODUCTION AND POSTPRODUCTION EXPENDITURES--AGGREGATE AMOUNT OF  
13          CLAIMS ALLOWED--EXCEPTION.--

14                  A. The division shall certify a film production  
15          company's budget for direct production expenditures and  
16          postproduction expenditures during a preproduction meeting with  
17          the division; provided that the division is prohibited from  
18          certifying a film production company's budget if the total  
19          expected claims in excess of the aggregate amount of claims  
20          that may be authorized for payment pursuant to Subsection B of  
21          this section would exceed one hundred million dollars  
22          (\$100,000,000) in any fiscal year; and provided further that  
23          the limitation in this subsection shall not apply to  
24          certification of a budget for a New Mexico film partner  
25          production.

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~~B. [Except as provided in Laws 2019, Chapter 87,~~

~~Section 10] The aggregate amount of claims for a credit provided by the Film Production Tax Credit Act that may be authorized in any fiscal year with respect to the direct production expenditures or postproduction expenditures made on film or commercial audiovisual products shall be in the following amounts; provided that direct production expenditures and postproduction expenditures made [by] for a New Mexico film partner production shall not be subject to the aggregate amount of claims provided by this subsection:~~

(1) prior to fiscal year 2024, one hundred ten million dollars (\$110,000,000);

(2) from fiscal year 2024 through fiscal year 2028, the amount provided in Paragraph (1) of this subsection shall be increased by ten million dollars (\$10,000,000) in each of those fiscal years; and

(3) for fiscal year 2029 and subsequent fiscal years, one hundred sixty million dollars (\$160,000,000).

C. If a film production company submits a claim to the taxation and revenue department for a credit pursuant to the Film Production Tax Credit Act and the aggregate amount of claims pursuant to Subsection B of this section has been met for the fiscal year, the claim shall be placed at the front of a queue for payment in a subsequent fiscal year. Claims shall be placed in order of the date on which the completed return in

1       which the credit is claimed is filed. Claims authorized for  
2       payment shall be paid pursuant to the Tax Administration Act.

3               D. To provide guidance to film production companies  
4       regarding the amount of credit capacity remaining in the fiscal  
5       year, the taxation and revenue department shall post monthly on  
6       that department's website the aggregate amount of credits  
7       claimed and paid for the fiscal year. In addition, the  
8       division shall post monthly on the division's website the  
9       aggregate amount of claims certified pursuant to Subsection A  
10      of this section for the fiscal year or any subsequent fiscal  
11      year."

12               **SECTION 8.** Section 7-2F-13 NMSA 1978 (being Laws 2019,  
13       Chapter 87, Section 7, as amended) is amended to read:

14               **"7-2F-13. NEW FILM PRODUCTION TAX CREDIT.--**

15               A. The tax credit created by this section may be  
16       referred to as the "new film production tax credit".

17               B. A film production company that meets the  
18       requirements of the Film Production Tax Credit Act may apply  
19       for, and the taxation and revenue department may allow, a tax  
20       credit in an amount equal to twenty-five percent of:

21                       (1) direct production expenditures made in New  
22       Mexico that:

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

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(b) are: 1) subject to taxation by the state of New Mexico; or 2) payments for the lease or rental of facilities and equipment located on, or purchases from businesses located on, a federally recognized Indian nation, tribe or pueblo located in New Mexico, and those payments and purchases are subject to taxation by that Indian nation, tribe or pueblo;

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

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

(2) postproduction expenditures made in New Mexico that:

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

(b) are for services performed in New Mexico;

(c) are: 1) subject to taxation by the state of New Mexico; or 2) for services performed by businesses

located on a federally recognized Indian nation, tribe or  
pueblo located in New Mexico, and those services are subject to  
taxation by that Indian nation, tribe or pueblo;

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

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

C. With respect to expenditures attributable to a production for which the film production company receives a tax credit pursuant to the federal new markets tax credit program, the percentage to be applied in calculating the amount of credit allowed pursuant to the Film Production Tax Credit Act is twenty percent.

D. A claim for new film production tax credits shall be filed as part of a return filed pursuant to the Income Tax Act or the Corporate Income and Franchise Tax Act [or an information return filed by an entity assigned payment of an authorized credit pursuant to Section 7-2F-5 NMSA 1978]. A credit that has been assigned pursuant to Section 7-2F-5 NMSA

1       1978 shall not be authorized for payment unless the assignee  
2       files a return pursuant to the Income Tax Act or the Corporate  
3       Income and Franchise Tax Act. If the assignee is a pass-  
4       through entity with no New-Mexico-sourced income, the taxation  
5       and revenue department may allow a credit to be claimed on a  
6       pass-through entity return. The date a complete credit claim  
7       is received by the taxation and revenue department shall  
8       determine the order that a credit claim is authorized for  
9       payment by the department. The film production company may  
10      apply all or a portion of the new film production tax credit  
11      granted against personal income tax liability or corporate  
12      income tax liability. If the amount of the credit claimed  
13      exceeds the film production company's tax liability for the  
14      taxable year in which the credit is being claimed, the excess  
15      shall be refunded.

16       E. A taxpayer may be allocated the right to claim a  
17       new film production tax credit in proportion to the taxpayer's  
18       ownership interest if the taxpayer owns an interest in a  
19       business entity that is taxed for federal income tax purposes  
20       as a partnership and that business entity has met all of the  
21       requirements to be eligible for the credit. The total credit  
22       claimed by all members of that entity shall not exceed the  
23       allowable credit pursuant to this section.

24       [E.] F. A credit claim shall only be considered  
25       received by the taxation and revenue department if the credit

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1 claim is made on a complete return filed after the close of the  
2 ~~taxable year. [All direct production expenditures and~~  
3 ~~postproduction expenditures incurred during the taxable year by~~  
4 ~~a film production company shall be submitted as part of the~~  
5 ~~same income tax return and paid pursuant to this section]~~ A  
6 credit shall be claimed on the return for the taxable year in  
7 which the direct production expenditures or postproduction  
8 expenditures were incurred. If a certificate of eligibility  
9 includes expenditures that cross multiple taxable years, the  
10 taxpayer may elect to claim the entire credit on the return for  
11 either taxable year. A credit claim shall not be divided and  
12 submitted with multiple returns or in multiple years.

13 [F.] G. For purposes of determining the payment of  
14 credit claims pursuant to this section, the secretary of  
15 taxation and revenue may require that credit claims of  
16 affiliated persons be combined into one claim if necessary to  
17 accurately reflect closely integrated activities of affiliated  
18 persons.

19 [G.] H. The new film production tax credit shall  
20 not be claimed with respect to direct production expenditures  
21 or postproduction expenditures for which the film production  
22 company has delivered a nontaxable transaction certificate  
23 [pursuant to Section 7-9-86 NMSA 1978] or alternative evidence  
24 pursuant to Section 7-9-43 NMSA 1978.

25 [H.] I. A production for which the new film

1 production tax credit is claimed pursuant to Paragraph (1) of  
2 Subsection B of this section shall contain an acknowledgment to  
3 the state of New Mexico. Unless otherwise agreed upon in  
4 writing by the film production company and the division, the  
5 acknowledgment shall be in the end screen credits that the  
6 production was filmed in New Mexico and a three-second static  
7 or animated state logo provided by the division shall be  
8 included and embedded in the following:

9 (1) end screen credits before the below-the-  
10 line crew crawl for the life of the project of long-form  
11 narrative film productions; and

12 (2) body of the program for the life of  
13 television episodes, the placement of which shall be:

14 (a) in the opening sequence;

15 (b) as a bumper into or out of a  
16 commercial break; or

17 (c) in a prominent position in each  
18 single project's end credits with no less than a half screen  
19 exposure, but not covering content.

20 [I.] J. To be eligible for the new film production  
21 tax credit, a film production company shall submit to the  
22 division information required by the division to demonstrate  
23 conformity with the requirements of the Film Production Tax  
24 Credit Act, including production data deemed necessary by the  
25 division and the economic development department to determine

1 the effectiveness of the credit, and a projection of the new  
2 film production tax credit claim the film production company  
3 plans to submit. In addition, the film production company  
4 shall agree in writing:

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

7 (2) to post a notice at completion of  
8 principal photography on the website of the division that:

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

15 (b) remains posted on the website 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 new  
21 film 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 new film production tax credit and supporting documentation to  
2 the division within one year of ~~making~~ incurring the final  
3 qualified expenditures in New Mexico ~~that were incurred~~ for  
4 the registered project and that are included in the credit  
5 claim.

6 [J.] K. The division, in consultation with the  
7 taxation and revenue department, shall determine the  
8 eligibility of the film production company and shall report  
9 this information to the taxation and revenue department in a  
10 manner and at times the economic development department and the  
11 taxation and revenue department shall agree upon. The division  
12 shall also post on its website all information provided by the  
13 film production company that does not reveal revenue, income or  
14 other information that may jeopardize the confidentiality of  
15 income tax returns.

16 [K.] L. To receive a new film production tax  
17 credit, a film production company shall apply to the taxation  
18 and revenue department on forms and in the manner the taxation  
19 and revenue department may prescribe. The application shall  
20 include a certification of the amount of direct production  
21 expenditures or postproduction expenditures made in New Mexico  
22 with respect to the film production for which the film  
23 production company is seeking the credit; provided that ~~[for]~~  
24 to receive the credit, the application shall be submitted to  
25 the division within one year of the date of the last direct

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1 production expenditure in New Mexico or that the last  
2 postproduction expenditure in New Mexico was incurred. If the  
3 amount of the requested tax credit exceeds five million dollars  
4 (\$5,000,000), the application shall also include the results of  
5 an audit, conducted by a certified public accountant licensed  
6 or otherwise eligible to practice in New Mexico, verifying that  
7 the expenditures have been made in compliance with the  
8 requirements of this section. If the requirements of this  
9 section have been complied with, the taxation and revenue  
10 department shall approve the credit and issue a [document  
11 granting the credit] dated certificate of eligibility to the  
12 taxpayer providing the amount of the credit that the taxpayer  
13 may claim.

14 [L.] M. Except as provided in Subsection [M] N of  
15 this section, that amount of a new film production tax credit  
16 for total payments as applied to direct production expenditures  
17 for the services of performing artists shall not exceed five  
18 million dollars (\$5,000,000) for services rendered by  
19 nonresident performing artists in a production. This  
20 limitation shall not apply to the services of background  
21 artists or resident performing artists cast in industry  
22 standard feature performing roles.

23 [M.] N. In addition to the amount of payments  
24 allowed pursuant to Subsection [L] M of this section, that  
25 amount of a new film production tax credit for total payments

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1 as applied to direct production expenditures made [by] for a  
2 New Mexico film partner production for the services of  
3 nonresident performing artists, directors, producers,  
4 screenwriters and editors shall not exceed ten million dollars  
5 (\$10,000,000) for services rendered for each production;  
6 provided that the total payments allowed pursuant to this  
7 subsection shall not exceed an annual aggregate maximum of  
8 forty million dollars (\$40,000,000) for all productions in a  
9 fiscal year. If the aggregate amount of payments made in a  
10 fiscal year is less than the annual aggregate maximum, then the  
11 difference in that fiscal year shall be added to the annual  
12 aggregate maximum allowed in the following fiscal year."

13 **SECTION 9.** Section 7-2F-15 NMSA 1978 (being Laws 2019,  
14 Chapter 87, Section 9, as amended) is amended to read:

15 "7-2F-15. NONRESIDENT BELOW-THE-LINE CREW CREDIT.--A film  
16 production company may apply for, and the taxation and revenue  
17 department may allow, a tax credit, which may be referred to as  
18 the "nonresident below-the-line crew credit", in an amount  
19 equal to fifteen percent of the payment of wages for below-the-  
20 line crew who are not New Mexico residents, that are directly  
21 attributable to the production in New Mexico of a film or  
22 commercial audiovisual product for which the film production  
23 company is claiming a new film production tax credit; provided  
24 that:

25 A. the service for which payment is made is

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1 rendered in New Mexico;

2                   B. the payment of wages excludes payments:

3                   (1) for below-the-line crew who are producers,  
4 directors, screenwriters, cast and production assistants; and

5                   (2) made to a personal services business;

6                   C. prior to July 1, 2028, for ~~a film production~~  
7 ~~company that is~~ a New Mexico film partner production, the  
8 total amount of wages applied toward the additional credit  
9 allowed pursuant to this section may be up to one hundred  
10 percent of the amount of wages of resident below-the-line wages  
11 claimed; provided that the film production company provides a  
12 seventy-two-hour notice of the opportunity to be hired to  
13 resident below-the-line crew, which may be through a collective  
14 bargaining unit that represents resident below-the-line crew;  
15 and

16                   D. for a film ~~production company~~ or commercial  
17 audiovisual product that is not a New Mexico film partner  
18 production and, beginning July 1, 2028, for ~~a film production~~  
19 ~~company that is~~ a New Mexico film partner production:

20                   (1) the total eligible wages for below-the-  
21 line crew who are not New Mexico residents are not more than  
22 fifteen percent of the production's total New Mexico budget for  
23 below-the-line crew wages; and

24                   (2) the film production company may claim the  
25 nonresident below-the-line crew credit for employing up to the

following numbers of nonresident below-the-line crew in New Mexico and shall be as calculated by the division upon application for certification pursuant to Subsection A of Section 7-2F-12 NMSA 1978; provided that the total number shall not exceed twenty positions:

(a) five positions if the production's final New Mexico budget is up to two million seven hundred fifty thousand dollars (\$2,750,000);

(b) ten positions if the production's final New Mexico budget is greater than two million seven hundred fifty thousand dollars (\$2,750,000) and up to seven million five hundred thousand dollars (\$7,500,000);

(c) fifteen positions if the production's final New Mexico budget is greater than seven million five hundred thousand dollars (\$7,500,000) and up to eleven million dollars (\$11,000,000);

(d) one position in addition to the number of positions provided in Subparagraph (c) of this paragraph for every ten million dollars (\$10,000,000) over eleven million dollars (\$11,000,000) of the production's final New Mexico budget; and

(e) five positions in addition to the number of positions provided in Subparagraphs (a) through (d) of this paragraph for a television pilot episode that has been ordered to series; provided that the film production company

certifies to the division that the series is intended to be produced in New Mexico."

**SECTION 10.** Section 7-9-40 NMSA 1978 (being Laws 1970, Chapter 60, Section 2, as amended) is amended to read:

"7-9-40. EXEMPTION--GROSS RECEIPTS TAX--PURSES AND JOCKEY REMUNERATION AT NEW MEXICO RACETRACKS--RECEIPTS FROM GROSS AMOUNTS WAGERED.--

A. Exempted from the gross receipts tax are the receipts of horsemen, jockeys and trainers from race purses at New Mexico horse racetracks subject to the jurisdiction of the state racing commission.

B. Exempted from the gross receipts tax are the receipts of a racetrack from the commissions and other amounts authorized by Section [60-1-10] 60-1A-19 NMSA 1978 to be retained by a racetrack conducting horse races under the authority of a license from the state racing commission."

**SECTION 11.** Section 7-9F-3 NMSA 1978 (being Laws 2000 (2nd S.S.), Chapter 22, Section 3, as amended by Laws 2019, Chapter 270, Section 38 and by Laws 2019, Chapter 274, Section 12) is amended to read:

"7-9F-3. DEFINITIONS.--As used in the Technology Jobs and Research and Development Tax Credit Act:

A. "affiliate" means a person who directly or indirectly owns or controls, is owned or controlled by or is under common ownership or control with another person through

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1 ownership of voting securities or other ownership interests  
2 representing a majority of the total voting power of the  
3 entity;

4                   B. "annual payroll expense" means the wages paid or  
5 payable to employees in the state by the taxpayer in the  
6 taxable year for which the taxpayer applies for an additional  
7 credit pursuant to the Technology Jobs and Research and  
8 Development Tax Credit Act;

9                   C. "base payroll expense" means the wages paid or  
10 payable by the taxpayer in the taxable year prior to the  
11 taxable year for which the taxpayer applies for an additional  
12 credit pursuant to the Technology Jobs and Research and  
13 Development Tax Credit Act, adjusted for any increase from the  
14 preceding taxable year in the consumer price index for the  
15 United States for all items as published by the United States  
16 department of labor in the taxable year for which the  
17 additional credit is claimed. In a taxable year during which a  
18 taxpayer has been part of a business merger or acquisition or  
19 other change in business organization, the taxpayer's base  
20 payroll expense shall include the payroll expense of all  
21 entities included in the reorganization for all positions that  
22 are included in the business entity resulting from the  
23 reorganization;

24                   D. "department" means the taxation and revenue  
25 department, the secretary of taxation and revenue or any

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1 employee of the department exercising authority lawfully  
2 delegated to that employee by the secretary;

3                   E. "facility" means a factory, mill, plant,  
4 refinery, warehouse, dairy, feedlot, building or complex of  
5 buildings located within the state, including the land on which  
6 it is located and all machinery, equipment and other real and  
7 tangible personal property located at or within it and used in  
8 connection with its operation;

9                   F. "local option gross receipts tax" means a tax  
10 authorized to be imposed by a county or municipality upon a  
11 taxpayer's gross receipts, as that term is defined in the Gross  
12 Receipts and Compensating Tax Act, and required to be collected  
13 by the department at the same time and in the same manner as  
14 the gross receipts tax;

15                   G. "qualified expenditure" means an expenditure or  
16 an allocated portion of an expenditure by a taxpayer in direct  
17 connection with qualified research, essential for conducting  
18 qualified research at a qualified facility, including  
19 expenditures for depletable land and rent paid or incurred for  
20 land, improvements, the allowable amount paid or incurred to  
21 operate or maintain a facility, buildings, equipment, computer  
22 software, computer software upgrades, consultants and  
23 contractors performing work in New Mexico, [payroll] wages paid  
24 for employees conducting qualified research in New Mexico at a  
25 qualified facility, technical books and manuals and test

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1 materials, but not including any expenditure on property that  
2 is owned by a municipality or county in connection with an  
3 industrial revenue bond project, property for which the  
4 taxpayer has received any credit pursuant to the Investment  
5 Credit Act, property that was owned by the taxpayer or an  
6 affiliate before July 3, 2000 or research and development  
7 expenditures reimbursed by a person who is not an affiliate of  
8 the taxpayer. If a "qualified expenditure" is an allocation of  
9 an expenditure, the cost accounting methodology used for the  
10 allocation of the expenditure shall be the same cost accounting  
11 methodology used by the taxpayer in its other business  
12 activities;

13 H. "qualified facility" means a facility in New  
14 Mexico at which qualified research is conducted other than a  
15 facility operated by a taxpayer for the United States or any  
16 agency, department or instrumentality thereof;

17 I. "qualified research" means "qualified research"  
18 ~~(1) that is undertaken for the purpose of discovering~~  
19 ~~information:~~

20 ~~(a) that is technological in nature; and~~  
21 ~~(b) the application of which is intended~~  
22 ~~to be useful in the development of a new or improved business~~  
23 ~~component of the taxpayer; and~~

24 ~~(2) substantially all of the activities of~~  
25 ~~which constitute elements of a process of experimentation~~

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1       ~~related to a new or improved function, performance, reliability~~  
2       ~~or quality, but not related to style, taste or cosmetic or~~  
3       ~~seasonal design factors] as defined by Section 41(d) of the~~  
4       United States Internal Revenue Code of 1986;

5               J. "qualified research and development small  
6       business" means a taxpayer that:

7                       (1) employed no more than fifty employees as  
8       determined by the number of employees for which the taxpayer  
9       was liable for unemployment insurance coverage in the taxable  
10      year for which an additional credit is claimed;

11                       (2) had total qualified expenditures of no  
12      more than five million dollars (\$5,000,000) in the taxable year  
13      for which an additional credit is claimed; and

14                       (3) did not have more than fifty percent of  
15      its voting securities or other equity interest with the right  
16      to designate or elect the board of directors or other governing  
17      body of the business owned directly or indirectly by another  
18      business;

19               K. "rural area" means any area of the state other  
20      than the state fairgrounds, an incorporated municipality with a  
21      population of thirty thousand or more according to the most  
22      recent federal decennial census and any area within three miles  
23      of the external boundaries of an incorporated municipality with  
24      a population of thirty thousand or more according to the most  
25      recent federal decennial census;

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1                   L. "taxpayer" means any of the following persons,  
2 other than a federal, state or other governmental unit or  
3 subdivision or an agency, department, institution or  
4 instrumentality thereof:

5                   (1) a person liable for payment of any tax;  
6                   (2) a person responsible for withholding and  
7 payment or collection and payment of any tax;

8                   (3) a person to whom an assessment has been  
9 made if the assessment remains unabated or the assessed amount  
10 has not been paid; or

11                  (4) for purposes of the additional credit  
12 against the taxpayer's income tax pursuant to the Technology  
13 Jobs and Research and Development Tax Credit Act and to the  
14 extent of their respective interest in that entity, the  
15 shareholders, members, partners or other owners of:

16                  (a) a small business corporation that  
17 has elected to be treated as an S corporation for federal  
18 income tax purposes; or

19                  (b) an entity treated as a partnership  
20 or disregarded entity for federal income tax purposes; and

21                  M. "wages" means remuneration for services  
22 performed by an employee in New Mexico for an employer, not to  
23 exceed a maximum annual wage of five hundred thousand dollars  
24 (\$500,000) per employee."

25                  SECTION 12. Section 7-12A-2 NMSA 1978 (being Laws 1986,  
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1 Chapter 112, Section 3, as amended) is amended to read:

2 "7-12A-2. DEFINITIONS.--As used in the Tobacco Products

3 Tax Act:

4 A. "department" means the taxation and revenue  
5 department, the secretary or any employee of the department  
6 exercising authority lawfully delegated to that employee by the  
7 secretary;

8 B. "cigar" means a roll for smoking made wholly or  
9 in part of tobacco and weighing greater than four and one-half  
10 pounds per thousand;

11 C. "distribute" means to sell or to give;

12 D. "closed system cartridge" means a single-use,  
13 pre-filled disposable cartridge containing ~~[five milliliters or~~  
14 ~~less of~~] e-liquid for use in an e-cigarette;

15 E. "e-cigarette" means any electronic oral device,  
16 whether composed of a heating element and battery or an  
17 electronic circuit, that provides a vapor of nicotine or any  
18 other substance the use or inhalation of which simulates  
19 smoking and includes any such device, or any part thereof,  
20 whether manufactured, distributed, marketed or sold as an  
21 e-cigarette, e-cigar, e-pipe or any other product, name or  
22 descriptor. "E-cigarette" does not include any product  
23 regulated as a drug or device by the United States food and  
24 drug administration under the Federal Food, Drug, and Cosmetic  
25 Act;

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1                   F. "e-liquid" means liquid or other substance  
2 intended for use in an e-cigarette, not including any substance  
3 containing cannabis or oil derived from cannabis;

4                   G. "engaging in business" means carrying on or  
5 causing to be carried on any activity with the purpose of  
6 direct or indirect benefit;

7                   H. "first purchaser" means a person engaging in  
8 business in New Mexico that manufactures tobacco products or  
9 that purchases or receives on consignment tobacco products from  
10 any person outside of New Mexico, which tobacco products are to  
11 be distributed in New Mexico in the ordinary course of  
12 business;

13                  I. "little cigar" means a roll for smoking made  
14 wholly or in part of tobacco, using an integrated cellulose  
15 acetate or other similar filter, and weighing not more than  
16 four and one-half pounds per thousand;

17                  J. "person" means any individual, estate, trust,  
18 receiver, cooperative association, club, corporation, company,  
19 firm, partnership, joint venture, syndicate, limited liability  
20 company, limited liability partnership, other association or  
21 gas, water or electric utility owned or operated by a county or  
22 municipality or other entity of the state; "person" also means,  
23 to the extent permitted by law, a federal, state or other  
24 governmental unit or subdivision or an agency, department or  
25 instrumentality;

K. "product value" means the amount paid, net of any discounts taken and allowed, for tobacco products or, in the case of tobacco products received on consignment, the value of the tobacco products received or, in the case of tobacco products manufactured and sold in New Mexico, the proceeds from the sale by the manufacturer of the tobacco products; and

L. "tobacco product" means:

- (1) any product, other than cigarettes, cigars and little cigars, made from or containing tobacco;
- (2) e-liquid;
- (3) e-cigarettes; and
- (4) closed system cartridges."

**SECTION 13.** Section 7-12A-3 NMSA 1978 (being Laws 1986, Chapter 112, Section 4, as amended) is amended to read:

"7-12A-3. IMPOSITION AND RATES OF TAX--REDUCTION OF RATE FOR CERTAIN TOBACCO PRODUCTS--DENOMINATION AS "TOBACCO PRODUCTS TAX"--DATE PAYMENT OF TAX DUE.--

A. For the manufacture or acquisition of tobacco products in New Mexico, not including cigars, little cigars, e-liquid, e-cigarettes or closed system cartridges, to be distributed in the ordinary course of business and for the consumption of tobacco products in New Mexico, there is imposed an excise tax at the rate of twenty-five percent of the product value of the tobacco products.

B. For the manufacture or acquisition of cigars in

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1 New Mexico to be distributed in the ordinary course of business  
2 and for the consumption of cigars in New Mexico, there is  
3 imposed an excise tax at a rate equal to twenty-five percent of  
4 the product value of the cigar, not to exceed fifty cents  
5 (\$.50) per cigar.

6 C. For the manufacture or acquisition of little  
7 cigars in New Mexico to be distributed in the ordinary course  
8 of business and for the consumption of little cigars in New  
9 Mexico, there is imposed an excise tax at a rate equal to the  
10 rate imposed on cigarettes pursuant to Section 7-12-3 NMSA 1978  
11 per package of little cigars.

12 D. For the manufacture or acquisition of e-liquid  
13 or closed system cartridges containing more than five  
14 milliliters of e-liquid in New Mexico to be distributed in the  
15 ordinary course of business and for the consumption of e-liquid  
16 in New Mexico, there is imposed an excise tax at a rate equal  
17 to twelve and one-half percent of the product value of the  
18 e-liquid.

19 E. For the manufacture or acquisition of closed  
20 system cartridges containing five milliliters or less of e-  
21 liquid in New Mexico to be distributed in the ordinary course  
22 of business, there is imposed an excise tax at a rate of fifty  
23 cents (\$.50) per closed system cartridge.

24 [H.] F. The taxes imposed by this section may be  
25 referred to as the "tobacco products tax".

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1                   [~~I.~~] G. The tobacco products tax shall be paid by  
2 the first purchaser on or before the twenty-fifth day of the  
3 month following the month in which the taxable event occurs."

4                   SECTION 14. Section 7-38-38 NMSA 1978 (being Laws 1973,  
5 Chapter 258, Section 78, as amended) is amended to read:

6                   "7-38-38. PAYMENT OF PROPERTY TAXES--INSTALLMENT DUE  
7 DATES--REFUND IN CASES OF OVERPAYMENTS--ROUNDING.--

8                   A. Unless otherwise provided in the Property Tax  
9 Code, property taxes in the amount of ten dollars (\$10.00) or  
10 over are payable to the county treasurer in two equal  
11 installments due on November 10 of the year in which the tax  
12 bill was prepared and mailed and on April 10 of the following  
13 year. A board of county commissioners may, by ordinance,  
14 provide that property taxes under ten dollars (\$10.00) are due  
15 and payable in a single payment on November 10 of the year in  
16 which the tax bill was prepared and mailed. No demand for  
17 payment of property taxes is necessary.

18                   B. If a taxpayer remits an amount in payment of  
19 [~~his~~] the taxpayer's property taxes that exceeds the total  
20 property tax liability shown on the property tax bill, together  
21 with any applicable penalty and interest computed to the date  
22 payment is received by the county treasurer, a refund of the  
23 amount in excess shall be made to the taxpayer if either of the  
24 following conditions are met:

25                   (1) a written request for the refund is made

.232915.5SA

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1 by the taxpayer and received by the county treasurer within  
2 sixty days of the date the excess payment is received by the  
3 county treasurer; or

4 (2) the county treasurer on [his] the county  
5 treasurer's own initiative determines by June 30 of the year  
6 following the year for which taxes are imposed that an excess  
7 payment has been made.

8 C. The secretary may by rule permit or require  
9 rounding to the nearest five cents (\$.05) of any amount due  
10 pursuant to the Property Tax Code."

11 SECTION 15. Section 7-38-71 NMSA 1978 (being Laws 1973,  
12 Chapter 258, Section 111, as amended) is amended to read:

13 "7-38-71. DISTRIBUTION OF AMOUNTS RECEIVED FROM SALE OF  
14 PROPERTY.--

15 A. Money received by the department from the sale  
16 of real or personal property for delinquent property taxes  
17 shall be deposited in a suspense fund and distributed as  
18 follows in the order provided:

19 (1) first, that portion equal to the costs  
20 shall be retained by the department for use, subject to  
21 appropriation by the legislature, in administration of the  
22 Property Tax Code;

23 (2) second, that portion equal to the  
24 penalties and interest due shall be retained by the department  
25 for use, subject to appropriation by the legislature, by the

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1 department in administration of the Property Tax Code;

2 (3) third, that portion equal to the  
3 delinquent taxes due shall be remitted by the department to the  
4 appropriate county treasurer for distribution by the treasurer  
5 to the governmental units in accordance with the law and the  
6 regulations of the department of finance and administration;

7 [and]

8 (4) fourth, if the former owner of the  
9 property sold is a delinquent taxpayer pursuant to Section  
10 7-1-16 NMSA 1978, that portion equal to any delinquent amount  
11 for any tax program administered by the department pursuant to  
12 Section 7-1-2 NMSA 1978 shall be retained by the department to  
13 satisfy the delinquent amount; and

14 [(4)] (5) fifth, the balance shall be paid to  
15 the former owner of the property sold or to any other person  
16 designated by order directed to the department by a court of  
17 competent jurisdiction, provided that the department may first  
18 apply all or any portion of the balance to be paid against the  
19 amount of any property tax, including any penalty and interest  
20 related thereto, owed by the person to whom the balance would  
21 otherwise be paid.

22 B. As a condition precedent to payment of the  
23 balance of the sale amount received to the former owner of the  
24 property, the department may require any person claiming to be  
25 entitled to that payment to present sufficient evidence of

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1 proof of former ownership of the property to the department.  
2 The department shall adopt regulations providing for the  
3 procedures to be followed by persons claiming sale proceeds as  
4 former owners in those instances where conflicting claims exist  
5 or the department requires proof of ownership.

6 C. If no person claims the balance of sale proceeds  
7 ~~[whether the property was sold under the provisions of the~~  
8 ~~Property Tax Code or prior law]~~ as the former owner of the  
9 property within two years of the date of the sale and after a  
10 reasonable search to determine the former owner is made by the  
11 department and no former owner is found, the balance of the  
12 sale proceeds shall be considered abandoned property and  
13 deposited in accordance with the provisions of the Uniform  
14 Unclaimed Property Act (1995).

15 D. If the balance of proceeds from the sale after  
16 paying a higher priority claim under Subsection A of this  
17 section is insufficient to pay all of the next priority claim,  
18 then the complete balance shall be applied to that next  
19 priority claim as partial payment."

20 SECTION 16. Section 9-11-12.1 NMSA 1978 (being Laws 1997,  
21 Chapter 64, Section 1, as amended) is amended to read:

22 "9-11-12.1. TRIBAL COOPERATIVE AGREEMENTS.--

23 A. The secretary may enter into cooperative  
24 agreements with the Pueblos of Acoma, Cochiti, Jemez, Isleta,  
25 Laguna, Nambe, Ohkay Owingeh, Picuris, Pojoaque, Sandia, San

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1 Felipe, San Ildefonso, [San Juan] Santa Ana, Santa Clara, Santo  
2 Domingo, Taos, Tesuque, Zia and Zuni; the Jicarilla Apache  
3 Nation; the Navajo Nation; the Mescalero Apache Tribe; and the  
4 nineteen pueblos acting collectively for the exchange of  
5 information and the reciprocal, joint or common enforcement,  
6 administration, collection, remittance and audit of gross  
7 receipts tax and cannabis excise tax revenues of the party  
8 jurisdictions.

9                   B. Money collected by the department on behalf of a  
10 tribe in accordance with an agreement entered into pursuant to  
11 this section is not money of this state and shall be collected  
12 and disbursed in accordance with the terms of the agreement,  
13 notwithstanding any other provision of law.

14                   C. The secretary is empowered to promulgate such  
15 rules and to establish such procedures as the secretary deems  
16 appropriate for the collection and disbursement of funds due a  
17 tribe and for the receipt of money collected by a tribe for the  
18 account of this state under the terms of a cooperative  
19 agreement entered into under the authority of this section,  
20 including procedures for identification of taxpayers or  
21 transactions that are subject only to the taxing authority of  
22 the tribe, ~~[taxpayers or transactions that are subject only to~~  
23 ~~the taxing authority]~~ of this state and ~~[taxpayers or~~  
24 ~~transactions that are subject to the taxing authority]~~ of both  
25 party jurisdictions.

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1                   D. Nothing in an agreement entered into pursuant to  
2 this section shall be construed as authorizing this state or a  
3 tribe to tax a person or transaction that federal law prohibits  
4 that government from taxing, authorizing a state or tribal  
5 court to assert jurisdiction over a person who is not otherwise  
6 subject to that court's jurisdiction or affecting any issue of  
7 the respective civil or criminal jurisdictions of this state or  
8 the tribe. Nothing in an agreement entered into pursuant to  
9 this section shall be construed as an assertion or an admission  
10 by either this state or a tribe that the taxes of one have  
11 precedence over the taxes of the other when a person or  
12 transaction is subject to the taxing authority of both  
13 governments. An agreement entered into pursuant to this  
14 section shall be construed solely as an agreement between the  
15 two party governments and shall not alter or affect the  
16 government-to-government relations between this state and any  
17 other tribe.

18                   E. Except as provided in Subsection F of this  
19 section, any ordinance of a tribe imposing, amending or  
20 repealing a tax administered by the department pursuant to this  
21 section shall include an effective date of the first July 1  
22 after the expiration of at least three months from the date  
23 that the adopted ordinance is mailed or delivered to the  
24 secretary.

25                   F. If the governor of New Mexico declares a state

.232915.5SA

1       of emergency, or if there is an unforeseen occurrence that  
2       would cause an undue hardship for a tribe, an ordinance  
3       changing the imposition of a tax shall become effective on the  
4       first January 1 after the expiration of at least three months  
5       after such a declaration or event and notification to the  
6       department.

7           [~~E.~~] G. As used in this section:

8           (1) "tribal" means of or pertaining to a  
9       tribe; and

10           (2) "tribe" means an Indian nation, tribe or  
11       pueblo located entirely in New Mexico or the Navajo Nation."

12       **SECTION 17.** A new section of the Motor Vehicle Code,  
13       Section 66-2-19 NMSA 1978, is enacted to read:

14           "66-2-19. [NEW MATERIAL] ROUNDING.--The secretary may by  
15       rule permit or require rounding to the nearest five cents  
16        (\$.05) of any amount due pursuant to the Motor Vehicle Code."

17       **SECTION 18. APPLICABILITY.**--The provisions of Sections 6  
18       through 9 of this act apply to taxable years beginning on or  
19       after January 1, 2027.

20       **SECTION 19. EFFECTIVE DATE.**--

21           A. The effective date of the provisions of Sections  
22       1 through 5 and 10 through 17 of this act is July 1, 2026.

23           B. The effective date of the provisions of Sections  
24       6 through 9 of this act is January 1, 2027.