

New Mexico State Film Office

Summary of the Refundable Film Production Tax Credit

A qualifying production company and its project are eligible to receive a refundable tax credit on direct and post-production expenditures subject to state taxation. Services must be rendered and equipment must be utilized in-state. After production and the last qualifying expenditure has been made, the tax application and backup documentation are submitted to the Film Office. The New Mexico Taxation and Revenue Department then conducts an internal review of the qualifying expenditures to determine the project's approved claim amount. The company files their state tax (or informational) return after the close of their taxable year to receive a check. The credit is not transferable or assignable. For projects that cross taxable years, a claim is submitted for each year in which expenditures occurred. New Mexico has a deferred payment process for tax credits of \$2 million or more. Up to \$50 million may be expended each fiscal year on authorized credit claims.

2013 Summary of Changes to Credit

- ✦ For television series with an order of at least six episodes and where each episode has a minimum New Mexico budget of \$50k, a 30% refund will apply to qualifying direct production expenditures. The episode requirement may include the pilot if it is "picked up" and if the credit for that pilot has not yet been processed.
- ✦ For other types of productions, if a project utilizes a qualifying production facility* (e.g. sizeable soundstage), an additional 5% may apply to resident crew wages and fringes for the entirety of the production in New Mexico when: (1) the total New Mexico project budget is \$30 million or less and at least 10 days of principal photography are shot on the premises of the facility; or, (2) the total New Mexico project budget is greater than \$30 million and at least 15 days of principal photography are shot at the facility.
**This does not include standing sets, warehouses or other facilities that do not fit the definition.*
- ✦ A project filing as an LLC may have the option to submit an "Information Return for Pass-through Entities (PTE)" to receive the credit. This means that an LLC taxed as a partnership will no longer be considered a "disregarded entity" for the purposes of this incentive.
- ✦ If there are any unexpended funds (under \$50 million) in a given fiscal year, a project with deferred payments that has already filed their state return is eligible to have their next payment authorized before July. Order is based on first-in, first-out of filed returns.
- ✦ Up to \$10 million of unexpended funds from a given fiscal year will be applied to the next fiscal year or be "rolled over." The ability to "roll-over" funds will only occur in fiscal years 2013, 2014 and 2015.
- ✦ In addition to an acknowledgment that a project was shot in New Mexico in the screen credits, a state logo is required to appear in the scroll of long-form narratives (a.k.a. full-length features).

- Production companies must deduct and remit, or cause to be deducted and remitted, withholding for nonresident performing artists. Performing artists directly employed by the production company qualify – this streamlines the incentive process when applied to day-players and those that do not have a management company. Withholding occurs from day one of the services whether provided by talent who are directly employed or who are contracted by the production. (The \$20 million cap still applies to all performing artists.)
- Productions must make reasonable efforts to contract New Mexico businesses (that meet physical presence requirements) for services, products, rentals, etc. that relate to the ordinary course of that business. For example, a specialty camera may be rented through a local camera house when they do not have that camera in their inventory. Wolves may be “cast” through a local animal wrangler or sanctuary.
- A vendor that meets physical presence requirements for New Mexico and that has the ability to act as a production company (provide producing services) may be contracted by the production company to assist in finding production-related resources not available in New Mexico. The vendor must assume all liability of subcontractors and employees.
- A vendor cannot subcontract a non-profit company and include those expenses on an invoice that will be submitted by production for the credit. For instance, filming locations, where the contracted vendor does not own the property and that property is not subject to taxation, will not qualify.
- When a qualifying vendor is contracted to provide standard industry crew services, in order for the expenses for those services to qualify for the incentive: (1) the crew member must provide specialty services and they are not available at the time of production in New Mexico; (2) the crew position must be approved by the New Mexico Film Office; and (3) the crew member must be employed (or contracted) by that local vendor. Certain positions will not qualify when filled by nonresidents regardless of their employer: the majority of ATL positions, entry levels, drivers, designers, DPs, and personal support service positions. (Contact the NMFO for complete guidelines.)
- For projects starting principal photography on or after January 1, 2014, the production company will have to provide approved training that relates to the crew positions filled by (nonresident) crew members employed or subcontracted by the qualifying, local vendor.

