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AN ACT  
RELATING TO TAXATION; AMENDING SECTIONS OF THE TAX  
ADMINISTRATION ACT AND THE FILM PRODUCTION TAX CREDIT ACT TO  
CONFORM REFERENCES IN LAW.

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

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

"7-1-2. APPLICABILITY.--The Tax Administration Act  
applies to and governs:

A. the administration and enforcement of the  
following taxes or tax acts as they now exist or may  
hereafter be amended:

- (1) Income Tax Act;
- (2) Withholding Tax Act;
- (3) Venture Capital Investment Act;
- (4) Gross Receipts and Compensating Tax Act  
and any state gross receipts tax;
- (5) Liquor Excise Tax Act;
- (6) Local Liquor Excise Tax Act;
- (7) any municipal local option gross  
receipts tax;
- (8) any county local option gross receipts  
tax;
- (9) Special Fuels Supplier Tax Act;

- 1 (10) Gasoline Tax Act;
- 2 (11) petroleum products loading fee, which
- 3 fee shall be considered a tax for the purpose of the Tax
- 4 Administration Act;
- 5 (12) Alternative Fuel Tax Act;
- 6 (13) Cigarette Tax Act;
- 7 (14) Estate Tax Act;
- 8 (15) Railroad Car Company Tax Act;
- 9 (16) Investment Credit Act, rural job tax
- 10 credit, Laboratory Partnership with Small Business Tax Credit
- 11 Act, Technology Jobs and Research and Development Tax Credit
- 12 Act, Film Production Tax Credit Act, Affordable Housing Tax
- 13 Credit Act and high-wage jobs tax credit;
- 14 (17) Corporate Income and Franchise Tax Act;
- 15 (18) Uniform Division of Income for Tax
- 16 Purposes Act;
- 17 (19) Multistate Tax Compact;
- 18 (20) Tobacco Products Tax Act; and
- 19 (21) the telecommunications relay service
- 20 surcharge imposed by Section 63-9F-11 NMSA 1978, which
- 21 surcharge shall be considered a tax for the purposes of the
- 22 Tax Administration Act;

23 B. the administration and enforcement of the

24 following taxes, surtaxes, advanced payments or tax acts as

25 they now exist or may hereafter be amended:

- 1 (1) Resources Excise Tax Act;
- 2 (2) Severance Tax Act;
- 3 (3) any severance surtax;
- 4 (4) Oil and Gas Severance Tax Act;
- 5 (5) Oil and Gas Conservation Tax Act;
- 6 (6) Oil and Gas Emergency School Tax Act;
- 7 (7) Oil and Gas Ad Valorem Production Tax
- 8 Act;
- 9 (8) Natural Gas Processors Tax Act;
- 10 (9) Oil and Gas Production Equipment Ad
- 11 Valorem Tax Act;
- 12 (10) Copper Production Ad Valorem Tax Act;
- 13 (11) any advance payment required to be made
- 14 by any act specified in this subsection, which advance
- 15 payment shall be considered a tax for the purposes of the Tax
- 16 Administration Act;
- 17 (12) Enhanced Oil Recovery Act;
- 18 (13) Natural Gas and Crude Oil Production
- 19 Incentive Act; and
- 20 (14) intergovernmental production tax credit
- 21 and intergovernmental production equipment tax credit;

22 C. the administration and enforcement of the  
23 following taxes, surcharges, fees or acts as they now exist  
24 or may hereafter be amended:

- 25 (1) Weight Distance Tax Act;

1 (2) the workers' compensation fee authorized  
2 by Section 52-5-19 NMSA 1978, which fee shall be considered a  
3 tax for purposes of the Tax Administration Act;

4 (3) Uniform Unclaimed Property Act (1995);

5 (4) 911 emergency surcharge and the network  
6 and database surcharge, which surcharges shall be considered  
7 taxes for purposes of the Tax Administration Act;

8 (5) the solid waste assessment fee  
9 authorized by the Solid Waste Act, which fee shall be  
10 considered a tax for purposes of the Tax Administration Act;

11 (6) the water conservation fee imposed by  
12 Section 74-1-13 NMSA 1978, which fee shall be considered a  
13 tax for the purposes of the Tax Administration Act; and

14 (7) the gaming tax imposed pursuant to the  
15 Gaming Control Act; and

16 D. the administration and enforcement of all other  
17 laws, with respect to which the department is charged with  
18 responsibilities pursuant to the Tax Administration Act, but  
19 only to the extent that the other laws do not conflict with  
20 the Tax Administration Act."

21 SECTION 2. Section 7-2F-2.1 NMSA 1978 (being Laws 2015,  
22 Chapter 143, Section 4) is amended to read:

23 "7-2F-2.1. ADDITIONAL DEFINITIONS.--As used in Sections  
24 7-2F-6 through 7-2F-12 NMSA 1978:

25 A. "direct production expenditure":

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

4                   (a) payment of wages, fringe benefits  
5 or fees for talent, management or labor to a person who is a  
6 New Mexico resident;

7                   (b) payment for standard industry craft  
8 inventory when provided by a resident industry crew in  
9 addition to its industry crew services;

10                   (c) payment for wages and per diem for  
11 a performing artist who is not a New Mexico resident and who  
12 is directly employed by a film production company; provided  
13 that the film production company deducts and remits, or  
14 causes to be deducted and remitted, income tax from the first  
15 day of services rendered in New Mexico at the maximum rate  
16 pursuant to the Withholding Tax Act;

17                   (d) payment to a personal services  
18 business on the wages and per diem paid to a performing  
19 artist of the personal services business if: 1) the personal  
20 services business pays gross receipts tax in New Mexico on  
21 the portion of those payments qualifying for the tax credit;  
22 and 2) the film production company deducts and remits, or  
23 causes to be deducted and remitted, income tax at the maximum  
24 rate in New Mexico pursuant to Subsection H of Section 7-3A-3  
25 NMSA 1978 on the portion of those payments qualifying for the

1 tax credit paid to a personal services business where the  
2 performing artist is a full or part owner of that business or  
3 subcontracts with a personal services business where the  
4 performing artist is a full or part owner of that business;  
5 and

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

1 to the production; 9) insurance coverage and bonding if  
2 purchased through a New Mexico-based insurance agent, broker  
3 or bonding agent; 10) services for an external audit upon  
4 submission of an application for a film production tax credit  
5 by an accounting firm that submits the application pursuant  
6 to Subsection I of Section 7-2F-6 NMSA 1978; and 11) other  
7 direct costs of producing a film in accordance with generally  
8 accepted entertainment industry practice; and

9 (2) does not include an expenditure for:

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

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

17 (c) entertainment, amusement or  
18 recreation; or

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

23 B. "film production company" means a person that  
24 produces one or more films or any part of a film and that  
25 commences principal photography on or after January 1, 2016;

1 and

2 C. "vendor" means a person who sells or leases  
3 goods or services that are related to standard industry craft  
4 inventory, who has a physical presence in New Mexico and is  
5 subject to gross receipts tax pursuant to the Gross Receipts  
6 and Compensating Tax Act and income tax pursuant to the  
7 Income Tax Act or corporate income tax pursuant to the  
8 Corporate Income and Franchise Tax Act but excludes a  
9 personal services business."

10 SECTION 3. Section 7-2F-3 NMSA 1978 (being Laws 2011,  
11 Chapter 165, Section 4) is amended to read:

12 "7-2F-3. PURPOSES--GOALS.--The purposes and goals of  
13 the Film Production Tax Credit Act are to:

14 A. establish the film industry as a permanent  
15 component of the economic base of New Mexico;

16 B. develop a pool of trained professionals and  
17 businesses in New Mexico to supply and support the film  
18 industry in the state;

19 C. increase employment of New Mexico residents;

20 D. improve the economic success of existing  
21 businesses in New Mexico; and

22 E. develop the infrastructure in the state  
23 necessary for a thriving film industry."

24 SECTION 4. Section 7-2F-4 NMSA 1978 (being Laws 2011,  
25 Chapter 165, Section 5, as amended) is amended to read:

1 "7-2F-4. REPORTING--ACCOUNTABILITY.--

2 A. The economic development department shall:

3 (1) collect data to be used in an  
4 econometric tool that objectively assesses the effectiveness  
5 of the credits provided by the Film Production Tax Credit  
6 Act;

7 (2) track the direct expenditures for the  
8 credits;

9 (3) with the support and assistance of the  
10 legislative finance committee staff and the taxation and  
11 revenue department, review and assess the analysis developed  
12 in Paragraph (1) of this subsection and create a report for  
13 presentation to the revenue stabilization and tax policy  
14 committee and the legislative finance committee that provides  
15 an objective assessment of the effectiveness of the credits;  
16 and

17 (4) report annually to the revenue  
18 stabilization and tax policy committee and the legislative  
19 finance committee on aggregate approved tax credits made  
20 pursuant to the Film Production Tax Credit Act.

21 B. The division shall develop a form on which the  
22 taxpayer claiming a credit pursuant to the Film Production  
23 Tax Credit Act shall submit a report to accompany the  
24 taxpayer's application for that credit.

25 C. With respect to the production on which the

1 application for a credit is based, the film production  
2 company shall report to the division at a minimum the  
3 following information:

4 (1) the total aggregate wages of the members  
5 of the New Mexico resident crew;

6 (2) the number of New Mexico residents  
7 employed;

8 (3) the total amount of gross receipts taxes  
9 paid;

10 (4) the total number of hours worked by  
11 New Mexico residents;

12 (5) the total expenditures made in  
13 New Mexico that do not qualify for the credit;

14 (6) the aggregate wages paid to the members  
15 of the nonresident crew while working in New Mexico; and

16 (7) other information deemed necessary by  
17 the division and economic development department to determine  
18 the effectiveness of the credit.

19 D. For purposes of assessing the effectiveness of  
20 a credit, the inability of the economic development  
21 department to aggregate data due to sample size shall not  
22 relieve the department of the requirement to report all  
23 relevant data to the legislature. The division shall provide  
24 notice to a film production company applying for a credit  
25 that information provided to the division may be revealed by

1 the department in reports to the legislature."

2 SECTION 5. Section 7-2F-5 NMSA 1978 (being Laws 2015,  
3 Chapter 62, Section 1) is amended to read:

4 "7-2F-5. ASSIGNMENT.--

5 A. A film production company that is eligible to  
6 receive a credit pursuant to the Film Production Tax Credit  
7 Act may assign the payment of an authorized film production  
8 tax credit or a film and television tax credit to a  
9 third-party financial institution, or to an authorized third  
10 party, one time in a full or partial amount. If the parties  
11 to the assignment have complied with the procedures  
12 established by the taxation and revenue department for the  
13 assignment of a film production tax credit payment, the  
14 department shall remit to the institution that amount of tax  
15 credit approved by the department that would otherwise be  
16 remitted to the company.

17 B. For the purposes of this section:

18 (1) "authorized third party" means an entity  
19 that:

20 (a) holds the rights to a film for  
21 which a film production tax credit may be claimed; and

22 (b) initiates that film's production;  
23 and

24 (2) "financial institution" means:

25 (a) a fund purposely created to produce

1 a film; or

2 (b) a bank, savings institution or  
3 credit union that is organized or chartered pursuant to the  
4 laws of New Mexico or the United States and that files a  
5 New Mexico income tax return."

6 SECTION 6. Section 7-2F-6 NMSA 1978 (being Laws 2015,  
7 Chapter 143, Section 5) is amended to read:

8 "7-2F-6. FILM AND TELEVISION TAX CREDIT--FILM  
9 PRODUCTION COMPANIES THAT COMMENCE PRINCIPAL PHOTOGRAPHY ON  
10 OR AFTER JANUARY 1, 2016.--

11 A. The tax credit created by this section may be  
12 referred to as the "film and television tax credit".

13 B. An eligible film production company may apply  
14 for, and the taxation and revenue department may allow,  
15 subject to the limitation in Section 7-2F-12 NMSA 1978, a tax  
16 credit in an amount equal to twenty-five percent of:

17 (1) direct production expenditures made in  
18 New Mexico that:

19 (a) are directly attributable to the  
20 production in New Mexico of a film or commercial audiovisual  
21 product;

22 (b) are subject to taxation by the  
23 state of New Mexico;

24 (c) exclude direct production  
25 expenditures for which another taxpayer claims the film and

1 television tax credit; and

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

9 (2) postproduction expenditures made in  
10 New Mexico that:

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

13 (b) are for postproduction services  
14 performed in New Mexico;

15 (c) are subject to taxation by the  
16 state of New Mexico;

17 (d) exclude postproduction expenditures  
18 for which another taxpayer claims the film and television tax  
19 credit; and

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

1 length transaction.

2 C. With respect to expenditures attributable to a  
3 production for which the film production company receives a  
4 tax credit pursuant to the federal new markets tax credit  
5 program, the percentage to be applied in calculating the film  
6 and television tax credit is twenty percent.

7 D. The film and television tax credit shall not be  
8 claimed with respect to direct production expenditures or  
9 postproduction expenditures for which the film production  
10 company has delivered a nontaxable transaction certificate  
11 pursuant to Section 7-9-86 NMSA 1978.

12 E. A production for which the film and television  
13 tax credit is claimed pursuant to Paragraph (1) of Subsection  
14 B of this section shall contain an acknowledgment to the  
15 state of New Mexico in the end screen credits that the  
16 production was filmed in New Mexico, and a state logo  
17 provided by the division shall be included and embedded in  
18 the end screen credits of long-form narrative film  
19 productions and television episodes, unless otherwise agreed  
20 upon in writing by the film production company and the  
21 division.

22 F. To be eligible for the film and television tax  
23 credit, a film production company shall submit to the  
24 division information required by the division to demonstrate  
25 conformity with the requirements of the Film Production Tax

1 Credit Act, including detailed information on each direct  
2 production expenditure and each postproduction expenditure.

3 A film production company shall provide to the division a  
4 projection of the film and television tax credit claim the  
5 film production company plans to submit in the fiscal year.

6 In addition, the film production company shall agree in  
7 writing:

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

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

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

20 (b) remains posted on the website until  
21 all financial obligations incurred in the state by the film  
22 production company have been paid;

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

25 (4) to delay filing of a claim for the film

1 and television tax credit until the division delivers written  
2 notification to the taxation and revenue department that the  
3 film production company has fulfilled all requirements for  
4 the credit; and

5 (5) to submit a completed application for  
6 the film and television tax credit and supporting  
7 documentation to the division within one year of the close of  
8 the film production company's taxable year in which the  
9 expenditures in New Mexico were incurred for the registered  
10 project and that are included in the credit claim.

11 G. The division shall determine the eligibility of  
12 the company and shall report this information to the taxation  
13 and revenue department in a manner and at times the economic  
14 development department and the taxation and revenue  
15 department shall agree upon. The division shall also post on  
16 its website all information provided by the film production  
17 company that does not reveal revenue, income or other  
18 information that may jeopardize the confidentiality of income  
19 tax returns, including that the division shall report  
20 quarterly the projected amount of credit claims for the  
21 fiscal year.

22 H. To provide guidance to film production  
23 companies regarding the amount of credit capacity remaining  
24 in the fiscal year, the taxation and revenue department shall  
25 post monthly on that department's website the aggregate

1 amount of credits claimed and processed for the fiscal year.

2 I. To receive a film and television tax credit, a  
3 film production company shall apply to the taxation and  
4 revenue department on forms and in the manner the department  
5 may prescribe. The application shall include a certification  
6 of the amount of direct production expenditures or  
7 postproduction expenditures made in New Mexico with respect  
8 to the film production for which the film production company  
9 is seeking the film and television tax credit; provided that  
10 for the film and television tax credit, the application shall  
11 be submitted within one year of the date of the last direct  
12 production expenditure in New Mexico or the last  
13 postproduction expenditure in New Mexico incurred within the  
14 film production company's taxable year. If the amount of the  
15 requested tax credit exceeds five million dollars  
16 (\$5,000,000), the application shall also include the results  
17 of an audit, conducted by a certified public accountant  
18 licensed to practice in New Mexico, verifying that the  
19 expenditures have been made in compliance with the  
20 requirements of this section. If the requirements of this  
21 section have been complied with, subject to the provisions of  
22 Section 7-2F-12 NMSA 1978, the taxation and revenue  
23 department shall approve the film and television tax credit  
24 and issue a document granting the tax credit.

25 J. The film production company may apply all or a

1 portion of the film and television tax credit granted against  
2 personal income tax liability or corporate income tax  
3 liability. If the amount of the film and television tax  
4 credit claimed exceeds the film production company's tax  
5 liability for the taxable year in which the credit is being  
6 claimed, the excess shall be refunded."

7 SECTION 7. Section 7-2F-7 NMSA 1978 (being Laws 2015,  
8 Chapter 143, Section 6) is amended to read:

9 "7-2F-7. ADDITIONAL CREDIT--TELEVISION PILOTS AND  
10 SERIES.--

11 A. In addition to the credit provided by Section  
12 7-2F-6 NMSA 1978, an additional five percent shall be applied  
13 in calculating the amount of the film and television tax  
14 credit to direct production expenditures, except as provided  
15 in Subsections C and D of this section, on:

16 (1) a standalone pilot intended for series  
17 television in New Mexico; and

18 (2) series television productions intended  
19 for commercial distribution with an order for at least six  
20 episodes in a single season; provided that the New Mexico  
21 budget for each of those six episodes is fifty thousand  
22 dollars (\$50,000) or more.

23 B. A film production company applying for an  
24 additional credit pursuant to this section shall not be  
25 eligible for the additional credit pursuant to Section 7-2F-8

1 NMSA 1978.

2 C. Direct production expenditures that are  
3 payments to a nonresident performing artist in a standalone  
4 pilot shall not be eligible for the additional credit  
5 pursuant to this section.

6 D. Payments to a nonresident performing artist for  
7 a television series may be eligible for the additional credit  
8 pursuant to this section; provided that:

9 (1) a television series completes at least  
10 one season of the scheduled episodes for that series in  
11 New Mexico;

12 (2) the film production company certifies  
13 the intention to produce a subsequent season to the series  
14 described in Paragraph (1) of this subsection in New Mexico;  
15 and

16 (3) the film production company, or its  
17 parent company, produces or begins production of an  
18 additional eligible television series in New Mexico during  
19 the same film production company's taxable year as the  
20 television series. Payments to a nonresident performing  
21 artist for the additional television series may also be  
22 eligible for the additional credit pursuant to this section."

23 SECTION 8. Section 7-2F-8 NMSA 1978 (being Laws 2015,  
24 Chapter 143, Section 7) is amended to read:

25 "7-2F-8. ADDITIONAL CREDIT--QUALIFIED PRODUCTION

1 FACILITIES.--

2 A. In addition to the credit provided by Section  
3 7-2F-6 NMSA 1978, an additional five percent shall be applied  
4 in calculating the amount of the film and television tax  
5 credit to direct production expenditures that are directly  
6 attributable and paid to a New Mexico resident who is hired  
7 as industry crew, or who is hired as a producer, writer or  
8 director working directly with the physical production and  
9 has filed a New Mexico income tax return as a resident in the  
10 two previous taxable years. The direct production  
11 expenditures shall be on a production with a total new budget  
12 of:

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

17 (a) shoot at least seven of those days  
18 at a sound stage that is a qualified production facility and  
19 the remaining number of required days, if any, at a standing  
20 set that is a qualified production facility; and

21 (b) for each of the ten days, include  
22 industry crew working on the premises of those facilities for  
23 a minimum of eight hours within a twenty-four-hour period; or

24 (2) thirty million dollars (\$30,000,000) or  
25 more that shoots at least fifteen principal photography days

1 in New Mexico at a qualified production facility; provided  
2 that a film production company shall:

3 (a) shoot at least ten of those days at  
4 a sound stage that is a qualified production facility and the  
5 remaining number of required days, if any, at a standing set  
6 that is a qualified production facility; and

7 (b) for each day of the fifteen days,  
8 include industry crew working on the premises of the facility  
9 for a minimum of eight hours within a twenty-four-hour  
10 period.

11 B. A film production company that receives an  
12 additional credit pursuant to Section 7-2F-7 NMSA 1978 shall  
13 not be eligible for the additional credit pursuant to this  
14 section." \_\_\_\_\_

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