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HOUSE BILL 594

**54TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2019**

INTRODUCED BY

Phelps Anderson

AN ACT

RELATING TO THE FILM PRODUCTION TAX CREDIT ACT; REQUIRING THE TAXATION AND REVENUE DEPARTMENT TO ACCEPT BIDS FROM CREDIT CLAIMANTS OFFERING TO ACCEPT A DISCOUNT ON AMOUNTS OWED FOR CREDITS APPROVED PURSUANT TO THE FILM PRODUCTION TAX CREDIT ACT; MAKING AN APPROPRIATION.

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

SECTION 1. Section 7-2F-1 NMSA 1978 (being Laws 2002, Chapter 36, Section 1, as amended) is amended to read:

"7-2F-1. FILM PRODUCTION TAX CREDIT--FILM PRODUCTION COMPANIES THAT COMMENCE PRINCIPAL PHOTOGRAPHY PRIOR TO JANUARY 1, 2016.--

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

B. Except as otherwise provided in this section, an  
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1 eligible film production company may apply for, and the  
2 taxation and revenue department may allow, subject to the  
3 limitation in this section, a tax credit in an amount equal to  
4 twenty-five percent of:

5 (1) direct production expenditures made in New  
6 Mexico that:

7 (a) are directly attributable to the  
8 production in New Mexico of a film or commercial audiovisual  
9 product;

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

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

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

22 (2) postproduction expenditures made in  
23 New Mexico that:

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

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1 (b) are for services performed in New  
2 Mexico;

3 (c) are subject to taxation by the state  
4 of New Mexico;

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

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

15 C. In addition to the percentage applied pursuant  
16 to Subsection B of this section, another five percent shall be  
17 applied in calculating the amount of the film production tax  
18 credit to direct production expenditures:

19 (1) on a standalone pilot intended for series  
20 television in New Mexico or on series television productions  
21 intended for commercial distribution with an order for at least  
22 six episodes in a single season; provided that the New Mexico  
23 budget for each of those six episodes is fifty thousand dollars  
24 (\$50,000) or more; or

25 (2) on a production with a total New Mexico

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1 budget of the following amounts; provided that the expenditures  
2 are directly attributable and paid to a New Mexico resident who  
3 is hired as industry crew, or who is hired as a producer,  
4 writer or director working directly with the physical  
5 production and has filed a New Mexico income tax return as a  
6 resident in the two previous taxable years:

7 (a) not more than thirty million dollars  
8 (\$30,000,000) that shoots at least ten principal photography  
9 days in New Mexico at a qualified production facility; provided  
10 that a film production company in principal photography on or  
11 after April 10, 2015 shall: 1) shoot at least seven of those  
12 days at a sound stage that is a qualified production facility  
13 and the remaining number of required days, if any, at a  
14 standing set that is a qualified production facility; and 2)  
15 for each of the ten days, include industry crew working on the  
16 premises of those facilities for a minimum of eight hours  
17 within a twenty-four-hour period; or

18 (b) thirty million dollars (\$30,000,000)  
19 or more that shoots at least fifteen principal photography days  
20 in New Mexico at a qualified production facility; provided that  
21 a film production company in principal photography on or after  
22 April 10, 2015 shall: 1) shoot at least ten of those days at a  
23 sound stage that is a qualified production facility and the  
24 remaining number of required days, if any, at a standing set  
25 that is a qualified production facility; and 2) for each day of

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1 the fifteen days, include industry crew working on the premises  
2 of the facility for a minimum of eight hours within a twenty-  
3 four-hour period.

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

9 E. A claim for film production tax credits shall be  
10 filed as part of a return filed pursuant to the Income Tax Act  
11 or the Corporate Income and Franchise Tax Act or an information  
12 return filed by a pass-through entity. The date a credit claim  
13 is received by the taxation and revenue department shall  
14 determine the order that a credit claim is authorized for  
15 payment by the department. Except as otherwise provided in  
16 this section and Section 4 of this 2019 act, the aggregate  
17 amount of claims for a credit provided by the Film Production  
18 Tax Credit Act that may be authorized for payment in any fiscal  
19 year is fifty million dollars (\$50,000,000) with respect to the  
20 direct production expenditures or postproduction expenditures  
21 made on film or commercial audiovisual products. A film  
22 production company that submits a claim for a film production  
23 tax credit that is unable to receive the tax credit because the  
24 claims for the fiscal year exceed the limitation in this  
25 subsection shall be placed for the subsequent fiscal year at

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1 the front of a queue of credit claimants submitting claims in  
2 the subsequent fiscal year in the order of the date on which  
3 the credit was authorized for payment.

4 F. If, in fiscal years 2013 through 2015, the  
5 aggregate amount in each fiscal year of the film production tax  
6 credit claims authorized for payment is less than fifty million  
7 dollars (\$50,000,000), then the difference in that fiscal year  
8 or ten million dollars (\$10,000,000), whichever is less, shall  
9 be added to the aggregate amount of the film production tax  
10 credit claims that may be authorized for payment pursuant to  
11 Subsection E of this section in the immediately following  
12 fiscal year.

13 G. Except as otherwise provided in this section and  
14 Section 4 of this 2019 act, credit claims authorized for  
15 payment pursuant to the Film Production Tax Credit Act shall be  
16 paid pursuant to provisions of the Tax Administration Act to  
17 the taxpayer as follows:

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

21 (2) a credit claim amount of two million  
22 dollars (\$2,000,000) or more but less than five million dollars  
23 (\$5,000,000) per taxable year shall be divided into two equal  
24 payments, with the first payment to be made immediately upon  
25 authorization of the payment of the credit claim and the second

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1 payment to be made twelve months following the date of the  
2 first payment; and

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

10 H. For a fiscal year in which the amount of total  
11 credit claims authorized for payment is less than the aggregate  
12 amount of credit claims that may be authorized for payment  
13 pursuant to this section, the next scheduled payments for  
14 credit claims authorized for payment pursuant to Subsection G  
15 of this section shall be accelerated for payment for that  
16 fiscal year and shall be paid to a taxpayer pursuant to the Tax  
17 Administration Act and in the order in which outstanding  
18 payments are scheduled in the queue established pursuant to  
19 Subsections E and G of this section; provided that the total  
20 credit claims authorized for payment shall not exceed the  
21 aggregate amount of credit claims that may be authorized for  
22 payment pursuant to this section. If a partial payment is made  
23 pursuant to this subsection, the difference owed shall retain  
24 its original position in the queue.

25 I. Any amount of a credit claim that is carried

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1 forward pursuant to Subsection G of this section shall be  
2 subject to the limit on the aggregate amount of credit claims  
3 that may be authorized for payment pursuant to Subsections E  
4 and F of this section in the fiscal year in which that amount  
5 is paid.

6 J. A credit claim shall only be considered received  
7 by the taxation and revenue department if the credit claim is  
8 made on a complete return filed after the close of the taxable  
9 year. All direct production expenditures and postproduction  
10 expenditures incurred during the taxable year by a film  
11 production company shall be submitted as part of the same  
12 income tax return and paid pursuant to this section. A credit  
13 claim shall not be divided and submitted with multiple returns  
14 or in multiple years.

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

21 L. The film production tax credit shall not be  
22 claimed with respect to direct production expenditures or  
23 postproduction expenditures for which the film production  
24 company has delivered a nontaxable transaction certificate  
25 pursuant to Section 7-9-86 NMSA 1978.

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1 M. A production for which the film production tax  
2 credit is claimed pursuant to Paragraph (1) of Subsection B of  
3 this section shall contain an acknowledgment to the state of  
4 New Mexico in the end screen credits that the production was  
5 filmed in New Mexico, and a state logo provided by the division  
6 shall be included and embedded in the end screen credits of  
7 long-form narrative film productions and television episodes,  
8 unless otherwise agreed upon in writing by the film production  
9 company and the division.

10 N. To be eligible for the film production tax  
11 credit, a film production company shall submit to the division  
12 information required by the division to demonstrate conformity  
13 with the requirements of the Film Production Tax Credit Act,  
14 including detailed information on each direct production  
15 expenditure and each postproduction expenditure. A film  
16 production company shall make reasonable efforts, as determined  
17 by the division, to contract with a specialized vendor that  
18 provides goods and services, inventory or services directly  
19 related to that vendor's ordinary course of business. A film  
20 production company shall provide to the division a projection  
21 of the film production tax credit claim the film production  
22 company plans to submit in the fiscal year. In addition, the  
23 film production company shall agree in writing:

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

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1 (2) to post a notice at completion of  
2 principal photography on the [~~web site~~] website of the division  
3 that:

4 (a) contains production company  
5 information, including the name of the production, the address  
6 of the production company and contact information that includes  
7 a working phone number, fax number and email address for both  
8 the local production office and the permanent production office  
9 to notify the public of the need to file creditor claims  
10 against the film production company; and

11 (b) remains posted on the [~~web site~~]  
12 website until all financial obligations incurred in the state  
13 by the film production company have been paid;

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

16 (4) to delay filing of a claim for the film  
17 production tax credit until the division delivers written  
18 notification to the taxation and revenue department that the  
19 film production company has fulfilled all requirements for the  
20 credit; and

21 (5) to submit a completed application for the  
22 film production tax credit and supporting documentation to the  
23 division within one year of making the final expenditures in  
24 New Mexico that were incurred for the registered project and  
25 that are included in the credit claim.

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

11           P. To provide guidance to film production companies  
12 regarding the amount of credit capacity remaining in the fiscal  
13 year, the taxation and revenue department shall post monthly on  
14 that department's [~~web site~~] website the aggregate amount of  
15 credits claimed and processed for the fiscal year.

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

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

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

19 S. That amount of a film production tax credit for  
20 total payments as applied to direct production expenditures for  
21 the services of performing artists shall not exceed five  
22 million dollars (\$5,000,000) for services rendered by  
23 nonresident performing artists and featured resident principal  
24 performing artists in a production. This limitation shall not  
25 apply to the services of background artists and resident

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1 performing artists who are not cast in industry standard  
2 featured principal performer roles.

3 T. As used in this section, "direct production  
4 expenditure":

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

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

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

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

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

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

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1 agent, broker or bonding agent; 10) services for an external  
2 audit upon submission of an application for a film production  
3 tax credit by an accounting firm that submits the application  
4 pursuant to this section; and 11) other direct costs of  
5 producing a film in accordance with generally accepted  
6 entertainment industry practice; and

7 (2) does not include an expenditure for:

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

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

15 (c) entertainment, amusement or  
16 recreation;

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

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

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1 position, except when the person who is not a New Mexico  
2 resident is hired or subcontracted by a vendor; and when the  
3 film production company, as determined by the division and when  
4 applicable in consultation with industry, provides: 1)  
5 reasonable efforts to hire resident crew; and 2) financial or  
6 promotional contributions toward education or [~~work-force~~  
7 workforce development efforts in New Mexico, including at least  
8 one of the following: a payment to a New Mexico public  
9 education institution that administers at least one industry-  
10 recognized film or multimedia program, as determined by the  
11 division, in an amount equal to two and one-half percent of  
12 payments made to nonresidents in approved positions employed by  
13 the vendor; promotion of the New Mexico film industry by  
14 directors, actors or executive producers affiliated with the  
15 production company's project through social media that is  
16 managed by the state; radio interviews facilitated by the  
17 division; enhanced screen credit acknowledgments; or related  
18 events that are facilitated, conducted or sponsored by the  
19 division.

20 U. As used in this section, "film production  
21 company" means a person that produces one or more films or any  
22 part of a film and that commences principal photography prior  
23 to January 1, 2016.

24 V. As used in this section, "vendor" means a person  
25 who sells or leases goods or services that are related to

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1 standard industry craft inventory, who has a physical presence  
2 in New Mexico and is subject to gross receipts tax pursuant to  
3 the Gross Receipts and Compensating Tax Act and income tax  
4 pursuant to the Income Tax Act or corporate income tax pursuant  
5 to the Corporate Income and Franchise Tax Act but excludes a  
6 personal services business and services provided by  
7 nonresidents hired or subcontracted if the tasks and  
8 responsibilities are associated with:

- 9 (1) the standard industry job position of:
- 10 (a) a director;
  - 11 (b) a writer;
  - 12 (c) a producer;
  - 13 (d) an associate producer;
  - 14 (e) a co-producer;
  - 15 (f) an executive producer;
  - 16 (g) a production supervisor;
  - 17 (h) a director of photography;
  - 18 (i) a motion picture driver whose sole  
19 responsibility is driving;
  - 20 (j) a production or personal assistant;
  - 21 (k) a designer;
  - 22 (l) a still photographer; or
  - 23 (m) a carpenter and utility technician  
24 at an entry level; and

- 25 (2) nonstandard industry job positions and

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1 personal support services."

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

4 "7-2F-6. FILM AND TELEVISION TAX CREDIT--FILM PRODUCTION  
5 COMPANIES THAT COMMENCE PRINCIPAL PHOTOGRAPHY ON OR AFTER  
6 JANUARY 1, 2016.--

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

9 B. An eligible film production company may apply  
10 for, and the taxation and revenue department may allow, subject  
11 to the limitation in Section 7-2F-12 NMSA 1978, except as  
12 provided in Section 4 of this 2019 act, a tax credit in an  
13 amount equal to twenty-five percent of:

14 (1) direct production expenditures made in New  
15 Mexico that:

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

19 (b) are subject to taxation by the state  
20 of New Mexico;

21 (c) exclude direct production  
22 expenditures for which another taxpayer claims the film and  
23 television tax credit; and

24 (d) do not exceed the usual and  
25 customary cost of the goods or services acquired when purchased

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1 by unrelated parties. The secretary of taxation and revenue  
2 may determine the value of the goods or services for purposes  
3 of this section when the buyer and seller are affiliated  
4 persons or the sale or purchase is not an arm's length  
5 transaction; and

6 (2) postproduction expenditures made in New  
7 Mexico that:

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

10 (b) are for postproduction services  
11 performed in New Mexico;

12 (c) are subject to taxation by the state  
13 of New Mexico;

14 (d) exclude postproduction expenditures  
15 for which another taxpayer claims the film and television tax  
16 credit; and

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

24 C. With respect to expenditures attributable to a  
25 production for which the film production company receives a tax

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1 credit pursuant to the federal new markets tax credit program,  
2 the percentage to be applied in calculating the film and  
3 television tax credit is twenty percent.

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

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

18 F. To be eligible for the film and television tax  
19 credit, a film production company shall submit to the division  
20 information required by the division to demonstrate conformity  
21 with the requirements of the Film Production Tax Credit Act,  
22 including detailed information on each direct production  
23 expenditure and each postproduction expenditure. A film  
24 production company shall provide to the division a projection  
25 of the film and television tax credit claim the film production

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1 company plans to submit in the fiscal year. In addition, the  
2 film production company shall agree in writing:

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

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

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

14 (b) remains posted on the website until  
15 all financial obligations incurred in the state by the film  
16 production company have been paid;

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

19 (4) to delay filing of a claim for the film  
20 and television tax credit until the division delivers written  
21 notification to the taxation and revenue department that the  
22 film production company has fulfilled all requirements for the  
23 credit; and

24 (5) to submit a completed application for the  
25 film and television tax credit and supporting documentation to

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1 the division within one year of the close of the film  
2 production company's taxable year in which the expenditures in  
3 New Mexico were incurred for the registered project and that  
4 are included in the credit claim.

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

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

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

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

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

24 SECTION 3. Section 7-2F-12 NMSA 1978 (being Laws 2015,  
25 Chapter 143, Section 11) is amended to read:

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1 "7-2F-12. CREDIT CLAIMS--AGGREGATE AMOUNT OF CLAIMS  
2 ALLOWED.--

3 A. A claim for a film and television tax credit  
4 shall be filed as part of a return filed pursuant to the Income  
5 Tax Act or the Corporate Income and Franchise Tax Act or an  
6 information return filed by a pass-through entity. The date a  
7 credit claim is received by the department shall determine the  
8 order that a credit claim is authorized for payment by the  
9 department. Except as provided in Section 4 of this 2019 act,  
10 the aggregate amount of claims for a credit provided by the  
11 Film Production Tax Credit Act that may be authorized for  
12 payment in any fiscal year is fifty million dollars  
13 (\$50,000,000) with respect to the direct production  
14 expenditures or postproduction expenditures made on film or  
15 commercial audiovisual products. A film production company  
16 that submits a claim for a film and television tax credit that  
17 is unable to receive the tax credit because the claims for the  
18 fiscal year exceed the limitation in this subsection shall be  
19 placed for the subsequent fiscal year at the front of a queue  
20 of credit claimants submitting claims in the subsequent fiscal  
21 year in the order of the date on which the credit was  
22 authorized for payment.

23 B. Except as otherwise provided in this section and  
24 Section 4 of this 2019 act, credit claims authorized for  
25 payment pursuant to the Film Production Tax Credit Act shall be

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1 paid pursuant to provisions of the Tax Administration Act to  
2 the taxpayer as follows:

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

6 (2) a credit claim amount of two million  
7 dollars (\$2,000,000) or more but less than five million dollars  
8 (\$5,000,000) per taxable year shall be divided into two equal  
9 payments, with the first payment to be made immediately upon  
10 authorization of the payment of the credit claim and the second  
11 payment to be made twelve months following the date of the  
12 first payment; and

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

20 C. For a fiscal year in which the amount of total  
21 credit claims authorized for payment is less than the aggregate  
22 amount of credit claims that may be authorized for payment  
23 pursuant to this section, the next scheduled payments for  
24 credit claims authorized for payment pursuant to Subsection B  
25 of this section shall be accelerated for payment for that

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

10 D. Any amount of a credit claim that is carried  
11 forward pursuant to Subsection B of this section shall be  
12 subject to the limit on the aggregate amount of credit claims  
13 that may be authorized for payment pursuant to Subsection A of  
14 this section in the fiscal year in which that amount is paid.

15 E. A credit claim shall only be considered received  
16 by the department if the credit claim is made on a complete  
17 return filed after the close of the taxable year. All direct  
18 production expenditures and postproduction expenditures  
19 incurred during the taxable year by a film production company  
20 shall be submitted as part of the same income tax return and  
21 paid pursuant to this section. A credit claim shall not be  
22 divided and submitted with multiple returns or in multiple  
23 years.

24 F. For purposes of determining the payment of  
25 credit claims pursuant to this section, the secretary of

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1 taxation and revenue may require that credit claims of  
2 affiliated persons be combined into one claim if necessary to  
3 accurately reflect closely integrated activities of affiliated  
4 persons."

5 SECTION 4. TEMPORARY PROVISION--AUCTION TO PAY CREDITS  
6 PURSUANT TO THE FILM PRODUCTION TAX CREDIT ACT AT A DISCOUNT.--

7 A. On or before August 1, 2019, a claimant that is  
8 owed payment for a credit that has been authorized pursuant to  
9 the Film Production Tax Credit Act may submit a bid to the  
10 taxation and revenue department with an offer to accept a  
11 discount on the amount owed. Completed bids shall include the  
12 percentage discount the claimant will accept to be applied to  
13 the amount owed and any documentation the taxation and revenue  
14 department deems necessary to determine the amount owed. A  
15 submitted bid shall be considered a final bid and shall not be  
16 subject to negotiation.

17 B. On or before August 19, 2019, the taxation and  
18 revenue department shall prioritize the bids submitted pursuant  
19 to Subsection A of this section. The bids shall be prioritized  
20 in order from highest discount to lowest discount, regardless  
21 of amount owed. The bid with the highest discount shall be  
22 approved to be first for payment. Bids shall be approved for  
23 payment until the total amount of payment reaches one hundred  
24 million dollars (\$100,000,000). Acceptance of payment pursuant  
25 to this section shall satisfy any amount owed on the credit for

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1 which the payment is attributed, and the credit shall be deemed  
2 paid in full.

3 C. The taxation and revenue department shall, as  
4 soon as is practicable, notify all claimants that submitted  
5 bids whether the claimant's bid is approved for payment. On or  
6 before September 1, 2019, the department shall submit in full  
7 payment authorized pursuant to Subsection B of this section to  
8 claimants approved for payment, in the method of payment as  
9 determined by the department. If a claimant assigned payment  
10 of a credit pursuant to Section 7-2F-5 NMSA 1978, the  
11 department shall submit the full payment to the assignee.

12 SECTION 5. APPROPRIATION.--One hundred million dollars  
13 (\$100,000,000) is appropriated from the general fund to the  
14 taxation and revenue department for expenditure in fiscal year  
15 2020 to pay credit amounts authorized for payment pursuant to  
16 Section 4 of this act. Any unexpended or unencumbered balance  
17 remaining at the end of fiscal year 2020 shall revert to the  
18 general fund.