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SENATE BILL 2

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

INTRODUCED BY

Nancy Rodriguez

AN ACT

RELATING TO TAXATION; AMENDING THE FILM PRODUCTION TAX CREDIT ACT; ELIMINATING CERTAIN ADDITIONAL CREDITS; ELIMINATING THE AGGREGATE CAP; INCREASING THE AMOUNT OF CREDIT THAT MAY BE CLAIMED PER TAXABLE YEAR; AMENDING DEFINITIONS IN THE ACT; REPEALING SECTIONS OF THE ACT.

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

24 ~~(2) on a production with a total New Mexico~~
25 ~~budget of the following amounts; provided that the expenditures~~

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

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

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

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1 ~~of the facility for a minimum of eight hours within a twenty-~~
2 ~~four-hour period].~~

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

8 E. A claim for film production tax credits shall be
9 filed as part of a return filed pursuant to the Income Tax Act
10 or the Corporate Income and Franchise Tax Act or an information
11 return filed by ~~[a pass-through]~~ an entity assigned payment of
12 an authorized credit pursuant to Section 7-2F-5 NMSA 1978. The
13 date a credit claim is received by the taxation and revenue
14 department shall determine the order that a credit claim is
15 authorized for payment by the department. ~~[Except as otherwise~~
16 ~~provided in this section, the aggregate amount of claims for a~~
17 ~~credit provided by the Film Production Tax Credit Act that may~~
18 ~~be authorized for payment in any fiscal year is fifty million~~
19 ~~dollars (\$50,000,000) with respect to the direct production~~
20 ~~expenditures or postproduction expenditures made on film or~~
21 ~~commercial audiovisual products. A film production company~~
22 ~~that submits a claim for a film production tax credit that is~~
23 ~~unable to receive the tax credit because the claims for the~~
24 ~~fiscal year exceed the limitation in this subsection shall be~~
25 ~~placed for the subsequent fiscal year at the front of a queue~~

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1 of credit claimants submitting claims in the subsequent fiscal
2 year in the order of the date on which the credit was
3 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,
14 credit claims authorized for payment pursuant to the Film
15 Production Tax Credit Act shall be paid pursuant to provisions
16 of the Tax Administration Act to the taxpayer as follows:

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

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

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1 ~~first payment; and~~

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

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

24 ~~I. Any amount of a credit claim that is carried~~
25 ~~forward pursuant to Subsection G of this section shall be~~

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

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

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

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

25 ~~M.~~ I. Unless otherwise agreed upon in writing by

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

8 (1) end screen credits before the below-the-
9 line crew crawl for the life of the project of long-form
10 narrative film productions; and [~~television episodes, unless~~
11 ~~otherwise agreed upon in writing by the film production company~~
12 ~~and the division~~]

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

15 (a) in the opening sequence;

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

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

21 [~~N.~~] J. To be eligible for the film production tax
22 credit, a film production company shall submit to the division
23 information required by the division to demonstrate conformity
24 with the requirements of the Film Production Tax Credit Act,
25 including [~~detailed information on each direct production~~

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1 ~~expenditure and each postproduction expenditure. A film~~
2 ~~production company shall make reasonable efforts as determined~~
3 ~~by the division to contract with a specialized vendor that~~
4 ~~provides goods and services, inventory or services directly~~
5 ~~related to that vendor's ordinary course of business. A film~~
6 ~~production company shall provide to the division] production~~
7 data deemed necessary by the division and the economic
8 development department to determine the effectiveness of the
9 credit, and a projection of the film production tax credit
10 claim the film production company plans to submit in the fiscal
11 year. In addition, the film production company shall agree in
12 writing:

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

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

18 (a) contains production company
19 information, including the name of the production [~~the address~~
20 ~~of the production company~~] and contact information that
21 includes a working phone number [~~fax number~~] and email address
22 for both the local production office and the permanent
23 production office to notify the public of the need to file
24 creditor claims against the film production company; and

25 (b) remains posted on the [~~web site~~]

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1 website until all financial obligations incurred in the state
2 by the film production company have been paid;

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

5 (4) to delay filing of a claim for the film
6 production tax credit until the division delivers written
7 notification to the taxation and revenue department that the
8 film production company has fulfilled all requirements for the
9 credit; and

10 (5) to submit a completed application for the
11 film production tax credit and supporting documentation to the
12 division within one year of making the final expenditures in
13 New Mexico that were incurred for the registered project and
14 that are included in the credit claim.

15 [Ø-] K. The division, in consultation with the
16 taxation and revenue department, shall determine the
17 eligibility of the company and shall report this information to
18 the taxation and revenue department in a manner and at times
19 the economic development department and the taxation and
20 revenue department shall agree upon. [~~The division shall also~~
21 ~~post on its web site all information provided by the film~~
22 ~~production company that does not reveal revenue, income or~~
23 ~~other information that may jeopardize the confidentiality of~~
24 ~~income tax returns, including that the division shall report~~
25 ~~quarterly the projected amount of credit claims for the fiscal~~

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1 year.

2 P. ~~To provide guidance to film production companies~~
3 ~~regarding the amount of credit capacity remaining in the fiscal~~
4 ~~year, the taxation and revenue department shall post monthly on~~
5 ~~that department's web site the aggregate amount of credits~~
6 ~~claimed and processed for the fiscal year.~~

7 Q.] L. To receive a film production tax credit, a
8 film production company shall apply to the taxation and revenue
9 department on forms and in the manner the department may
10 prescribe. The application shall include a certification of
11 the amount of direct production expenditures or postproduction
12 expenditures made in New Mexico with respect to the film
13 production for which the film production company is seeking the
14 film production tax credit; provided that for the film
15 production tax credit, the application shall be submitted
16 within one year of the date of the last direct production
17 expenditure in New Mexico or the last postproduction
18 expenditure in New Mexico. If the amount of the requested tax
19 credit exceeds five million dollars (\$5,000,000), the
20 application shall also include the results of an audit,
21 conducted by a certified public accountant licensed to practice
22 in New Mexico, verifying that the expenditures have been made
23 in compliance with the requirements of this section. If the
24 requirements of this section have been complied with, [subject
25 ~~to the provisions of Subsection E of this section]~~ the taxation

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1 and revenue department shall approve the film production tax
2 credit and issue a document granting the tax credit.

3 ~~[R.]~~ M. The film production company may apply all
4 or a portion of the film production tax credit granted against
5 personal income tax liability or corporate income tax
6 liability. If the amount of the film production tax credit
7 claimed exceeds the film production company's tax liability for
8 the taxable year in which the credit is being claimed, the
9 excess shall be refunded.

10 ~~[\$.]~~ N. That amount of a film production tax credit
11 for total payments as applied to direct production expenditures
12 for the services of performing artists shall not exceed five
13 million dollars (\$5,000,000) for services rendered by
14 nonresident performing artists and ~~[featured]~~ resident
15 principal performing artists in a production. This limitation
16 shall not apply to the services of background artists. ~~[and~~
17 ~~resident performing artists who are not cast in industry~~
18 ~~standard featured principal performer roles.~~

19 ~~T.~~ ~~As used in this section, "direct production~~
20 ~~expenditure":~~

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

24 ~~(a) payment of wages, fringe benefits or~~
25 ~~fees for talent, management or labor to a person who is a New~~

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1 ~~Mexico resident;~~

2 ~~(b) payment for wages and per diem for a~~
3 ~~performing artist who is not a New Mexico resident and who is~~
4 ~~directly employed by the film production company; provided that~~
5 ~~the film production company deducts and remits, or causes to be~~
6 ~~deducted and remitted, income tax from the first day of~~
7 ~~services rendered in New Mexico at the maximum rate pursuant to~~
8 ~~the Withholding Tax Act;~~

9 ~~(c) payment to a personal services~~
10 ~~business for the services of a performing artist if: 1) the~~
11 ~~personal services business pays gross receipts tax in New~~
12 ~~Mexico on the portion of those payments qualifying for the tax~~
13 ~~credit; and 2) the film production company deducts and remits,~~
14 ~~or causes to be deducted and remitted, income tax at the~~
15 ~~maximum rate in New Mexico pursuant to Subsection H of Section~~
16 ~~7-3A-3 NMSA 1978 on the portion of those payments qualifying~~
17 ~~for the tax credit paid to a personal services business where~~
18 ~~the performing artist is a full or part owner of that business~~
19 ~~or subcontracts with a personal services business where the~~
20 ~~performing artist is a full or part owner of that business; and~~

21 ~~(d) any of the following provided by a~~
22 ~~vendor: 1) the story and scenario to be used for a film; 2)~~
23 ~~set construction and operations, wardrobe, accessories and~~
24 ~~related services; 3) photography, sound synchronization,~~
25 ~~lighting and related services; 4) editing and related services;~~

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1 ~~5) rental of facilities and equipment; 6) leasing of vehicles,~~
2 ~~not including the chartering of aircraft for out-of-state~~
3 ~~transportation; however, New Mexico-based chartered aircraft~~
4 ~~for in-state transportation directly attributable to the~~
5 ~~production shall be considered a direct production expenditure;~~
6 ~~provided that only the first one hundred dollars (\$100) of the~~
7 ~~daily expense of leasing a vehicle for passenger transportation~~
8 ~~on roadways in the state may be claimed as a direct production~~
9 ~~expenditure; 7) food or lodging; provided that only the first~~
10 ~~one hundred fifty dollars (\$150) of lodging per individual per~~
11 ~~day is eligible to be claimed as a direct production~~
12 ~~expenditure; 8) commercial airfare if purchased through a New~~
13 ~~Mexico-based travel agency or travel company for travel to and~~
14 ~~from New Mexico or within New Mexico that is directly~~
15 ~~attributable to the production; 9) insurance coverage and~~
16 ~~bonding if purchased through a New Mexico-based insurance~~
17 ~~agent, broker or bonding agent; 10) services for an external~~
18 ~~audit upon submission of an application for a film production~~
19 ~~tax credit by an accounting firm that submits the application~~
20 ~~pursuant to this section; and 11) other direct costs of~~
21 ~~producing a film in accordance with generally accepted~~
22 ~~entertainment industry practice; and~~

23 ~~(2) does not include an expenditure for:~~

24 ~~(a) a gift with a value greater than~~
25 ~~twenty-five dollars (\$25.00);~~

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1 ~~(b) artwork or jewelry, except that a~~
2 ~~work of art or a piece of jewelry may be a direct production~~
3 ~~expenditure if: 1) it is used in the film production; and 2)~~
4 ~~the expenditure is less than two thousand five hundred dollars~~
5 ~~(\$2,500);~~

6 ~~(c) entertainment, amusement or~~
7 ~~recreation;~~

8 ~~(d) subcontracted goods or services~~
9 ~~provided by a vendor when subcontractors are not subject to~~
10 ~~state taxation, such as equipment and locations provided by the~~
11 ~~military, government and religious organizations; or~~

12 ~~(e) a service provided by a person who~~
13 ~~is not a New Mexico resident and employed in an industry crew~~
14 ~~position, excluding a performing artist, where it is the~~
15 ~~standard entertainment industry practice for the film~~
16 ~~production company to employ a person for that industry crew~~
17 ~~position, except when the person who is not a New Mexico~~
18 ~~resident is hired or subcontracted by a vendor; and when the~~
19 ~~film production company, as determined by the division and when~~
20 ~~applicable in consultation with industry, provides: 1)~~
21 ~~reasonable efforts to hire resident crew; and 2) financial or~~
22 ~~promotional contributions toward education or work force~~
23 ~~development efforts in New Mexico, including at least one of~~
24 ~~the following: a payment to a New Mexico public education~~
25 ~~institution that administers at least one industry-recognized~~

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1 ~~film or multimedia program, as determined by the division, in~~
2 ~~an amount equal to two and one-half percent of payments made to~~
3 ~~nonresidents in approved positions employed by the vendor;~~
4 ~~promotion of the New Mexico film industry by directors, actors~~
5 ~~or executive producers affiliated with the production company's~~
6 ~~project through social media that is managed by the state;~~
7 ~~radio interviews facilitated by the division; enhanced screen~~
8 ~~credit acknowledgments; or related events that are facilitated,~~
9 ~~conducted or sponsored by the division.~~

10 ~~U. As used in this section, "film production~~
11 ~~company" means a person that produces one or more films or any~~
12 ~~part of a film and that commences principal photography prior~~
13 ~~to January 1, 2016.~~

14 ~~V. As used in this section, "vendor" means a person~~
15 ~~who sells or leases goods or services that are related to~~
16 ~~standard industry craft inventory, who has a physical presence~~
17 ~~in New Mexico and is subject to gross receipts tax pursuant to~~
18 ~~the Gross Receipts and Compensating Tax Act and income tax~~
19 ~~pursuant to the Income Tax Act or corporate income tax pursuant~~
20 ~~to the Corporate Income and Franchise Tax Act but excludes a~~
21 ~~personal services business and services provided by~~
22 ~~nonresidents hired or subcontracted if the tasks and~~
23 ~~responsibilities are associated with:~~

24 ~~(1) the standard industry job position of:~~

25 ~~(a) a director;~~

- 1 ~~(b) a writer;~~
- 2 ~~(c) a producer;~~
- 3 ~~(d) an associate producer;~~
- 4 ~~(e) a co-producer;~~
- 5 ~~(f) an executive producer;~~
- 6 ~~(g) a production supervisor;~~
- 7 ~~(h) a director of photography;~~
- 8 ~~(i) a motion picture driver whose sole~~
- 9 ~~responsibility is driving;~~
- 10 ~~(j) a production or personal assistant;~~
- 11 ~~(k) a designer;~~
- 12 ~~(l) a still photographer; or~~
- 13 ~~(m) a carpenter and utility technician~~
- 14 ~~at an entry level; and~~
- 15 ~~(2) nonstandard industry job positions and~~
- 16 ~~personal support services.]"~~

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

19 "7-2F-2. DEFINITIONS.--As used in the Film Production Tax
20 Credit Act:

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

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1 entity;

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

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

15 [~~G.~~] D. "commercial audiovisual product" means a
16 film or a [~~videogame~~] video game intended for commercial
17 exploitation;

18 E. "direct production expenditure":

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

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

25 (b) payment for standard industry craft

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1 inventory when provided by a below-the-line crew that is a New
2 Mexico resident in addition to its below-the-line crew
3 services;

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

11 (d) payment to a personal services
12 business for the services of a performing artist if: 1) the
13 personal services business pays gross receipts tax in New
14 Mexico on the portion of those payments qualifying for the tax
15 credit; and 2) the film production company deducts and remits,
16 or causes to be deducted and remitted, income tax at the
17 maximum rate in New Mexico pursuant to Subsection H of Section
18 7-3A-3 NMSA 1978 on the portion of those payments qualifying
19 for the tax credit paid to a personal services business where
20 the performing artist is a full or part owner of that business
21 or subcontracts with a personal services business where the
22 performing artist is a full or part owner of that business; and

23 (e) any of the following provided by a
24 vendor: 1) the story and scenario to be used for a film; 2)
25 set construction and operations, wardrobe, accessories and

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1 related services; 3) photography, sound synchronization,
2 lighting and related services; 4) editing and related services;
3 5) rental of facilities and equipment; 6) leasing of vehicles,
4 not including the chartering of aircraft for out-of-state
5 transportation; however, New Mexico-based chartered aircraft
6 for in-state transportation directly attributable to the
7 production shall be considered a direct production expenditure;
8 7) food or lodging; 8) commercial airfare if purchased through
9 a New Mexico-based travel agency or travel company for travel
10 to and from New Mexico or within New Mexico that is directly
11 attributable to the production; 9) insurance coverage and
12 bonding if purchased through a New Mexico-based insurance
13 agent, broker or bonding agent; 10) subcontracted goods and
14 services from businesses; provided that the vendor's ordinary
15 course of business directly relates to standard film industry
16 goods and services; and 11) other direct costs of producing a
17 film in accordance with generally accepted entertainment
18 industry practice; and

19 (2) does not include an expenditure for:

20 (a) a gift with a value greater than one
21 hundred dollars (\$100);

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

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1 (\$2,500);

2 (c) entertainment, amusement or
3 recreation;

4 (d) subcontracted goods or services
5 provided by a vendor when subcontractors are not subject to
6 state taxation, such as equipment and locations provided by the
7 military, government and organizations that demonstrate to the
8 taxation and revenue department that they have been granted
9 exemption from the federal income tax by the United States
10 commissioner of internal revenue as organizations described in
11 Section 501(c)(3) of the United States Internal Revenue Code of
12 1986, as amended or renumbered;

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

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

21 (g) wages for a person who is not a New
22 Mexico resident and who falsely claims to be a New Mexico
23 resident. The wages of such person shall not be considered an
24 eligible expense for two years from the date in which the
25 person makes the false claim, regardless of whether the person

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1 becomes a New Mexico resident within that time frame; or
2 (h) which the film production company
3 receives funding pursuant to Section 21-19-7.1 NMSA 1978;

4 ~~[D-]~~ F. "division" means the New Mexico film
5 division of the economic development department;

6 ~~[E-]~~ G. "federal new markets tax credit program"
7 means the tax credit program codified as Section 45D of the
8 United States Internal Revenue Code of 1986, as amended;

9 ~~[F-]~~ H. "film" means a single medium or multimedia
10 program, including television programs but excluding
11 advertising messages other than national or regional
12 advertising messages intended for exhibition, that:

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

16 (2) can be viewed or reproduced;

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

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

21 I. "film production company" means a person that
22 produces one or more films or any part of a film;

23 ~~[G-]~~ J. "fiscal year" means the state fiscal year
24 beginning on July 1;

25 ~~[H. "industry crew" means a person in a position~~

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1 ~~that is off-camera and who provides technical services during~~
2 ~~the physical production of a film. "Industry crew" does not~~
3 ~~include a writer, director, producer, background artist or~~
4 ~~performing artist;~~

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

17 ~~[J.]~~ L. "performing artist" means an actor,
18 on-camera stuntperson, puppeteer, pilot who is a stuntperson or
19 actor, specialty foreground performer or narrator; and who
20 speaks a line of dialogue, is identified with the product or
21 reacts to narration as assigned. "Performing artist" does not
22 include a background artist;

23 ~~[K.]~~ M. "personal services business" means a
24 business organization, with or without physical presence, that
25 receives payments pursuant to the Film Production Tax Credit

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1 Act for the services of a performing artist;

2 [E.] N. "physical presence" means a physical
3 address in New Mexico from which a vendor conducts business,
4 stores inventory or otherwise creates, assembles or offers for
5 sale the product purchased or leased by a film production
6 company and the ~~[business owner]~~ vendor or an employee of the
7 ~~[business]~~ vendor is a resident;

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

16 [N.] P. "principal photography" means the
17 production of a film or television episode during which the
18 main visual elements are created; and

19 ~~[O.] "qualified production facility" means a~~
20 ~~building, or complex of buildings, building improvements and~~
21 ~~associated back-lot facilities in which films are or are~~
22 ~~intended to be regularly produced and that contain at least~~
23 ~~one:~~

24 ~~(1) sound stage with contiguous, clear-span~~
25 ~~floor space of at least seven thousand square feet and a~~

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1 ~~ceiling height of no less than twenty-one feet; or~~

2 ~~(2) standing set that includes at least one~~
3 ~~interior, and at least five exteriors, built or re-purposed for~~
4 ~~film production use on a continual basis and is located on at~~
5 ~~least fifty acres of contiguous space designated for film~~
6 ~~production use;]~~

7 Q. "vendor" means a person who sells or leases
8 goods or services that are related to standard industry craft
9 inventory, who has a physical presence in New Mexico and is
10 subject to gross receipts tax pursuant to the Gross Receipts
11 and Compensating Tax Act or income tax pursuant to the Income
12 Tax Act or corporate income tax pursuant to the Corporate
13 Income and Franchise Tax Act but excludes a personal services
14 business and services provided by nonresidents hired or
15 subcontracted if the tasks and responsibilities are associated
16 with the standard industry job position of director, writer or
17 producer."

18 SECTION 3. Section 7-2F-9 NMSA 1978 (being Laws 2015,
19 Chapter 143, Section 8) is amended to read:

20 "7-2F-9. ADDITIONAL CREDIT--NONRESIDENT [~~INDUSTRY~~] BELOW-
21 THE-LINE CREW.--A film production company may apply for, and
22 the taxation and revenue department may allow, subject to the
23 limitation in this section, a tax credit in an amount equal to
24 fifteen percent of the payment of wages [~~fringe benefits and~~
25 ~~per diem~~] for [~~nonresident industry~~] below-the-line crew who

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1 are not New Mexico residents; provided that:

2 A. the service for which payment is made is
3 rendered in New Mexico; and

4 ~~[B. payments for nonresident industry crew exclude~~
5 ~~payments for production designer, director of photography, line~~
6 ~~producer, costume designer, still unit photographer and driver~~
7 ~~whose sole responsibility is driving;~~

8 ~~C. the number of nonresident industry crew shall be~~
9 ~~employed by the film production company in New Mexico, and~~
10 ~~shall be, as calculated by the division upon receipt of the~~
11 ~~first application for a film production tax credit and review~~
12 ~~of the project's New Mexico budget:~~

13 ~~(1) four positions for up to two million~~
14 ~~dollars (\$2,000,000) of the final New Mexico budget;~~

15 ~~(2) one additional position for each~~
16 ~~additional one million dollars (\$1,000,000) of the project's~~
17 ~~final New Mexico budget of at least two million dollars~~
18 ~~(\$2,000,000) up to ten million dollars (\$10,000,000);~~

19 ~~(3) one additional position for each~~
20 ~~additional five million dollars (\$5,000,000) of the project's~~
21 ~~final New Mexico budget of at least ten million dollars~~
22 ~~(\$10,000,000) up to fifty million dollars (\$50,000,000);~~

23 ~~(4) one additional position for every~~
24 ~~additional ten million dollars (\$10,000,000) of the project's~~
25 ~~final New Mexico budget of at least fifty million dollars~~

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1 ~~(\$50,000,000) and thereafter;~~

2 ~~(5) eight additional positions, above the~~
3 ~~number of positions described in this subsection, for a~~
4 ~~television pilot episode that has not been ordered to series at~~
5 ~~the time of New Mexico production; provided that the film~~
6 ~~production company certifies to the division that the series is~~
7 ~~intended to be produced in New Mexico if the pilot is ordered~~
8 ~~to series; and~~

9 ~~(6) no more than thirty positions; provided~~
10 ~~that, at the discretion of the division, up to and including~~
11 ~~ten additional positions may be permitted if five other films~~
12 ~~are being produced in New Mexico at the time of the film~~
13 ~~production company's production; and~~

14 ~~D. the film production company makes financial or~~
15 ~~promotional contributions toward educational or work force~~
16 ~~development efforts in New Mexico as determined by the~~
17 ~~division, including:~~

18 ~~(1) a payment to a New Mexico educational~~
19 ~~institution that administers at least one industry-recognized~~
20 ~~film or multimedia program, as determined by the division,~~
21 ~~equal to at least two and one-half percent of the direct~~
22 ~~production expenditures for the payment of wages, fringe~~
23 ~~benefits and per diem for nonresident industry crew made by the~~
24 ~~film production company to nonresident industry crew; or~~

25 ~~(2) promotion of the New Mexico film industry~~

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1 ~~by directors, actors or producers affiliated with the film~~
2 ~~production company's project through:~~

3 ~~(a) social media that is managed by the~~
4 ~~state;~~

5 ~~(b) radio interviews facilitated by the~~
6 ~~division;~~

7 ~~(c) enhanced screen credit~~
8 ~~acknowledgments; or~~

9 ~~(d) related events that are facilitated,~~
10 ~~conducted or sponsored by the division]~~

11 B. the total eligible wages for below-the-line crew
12 who are not New Mexico residents are:

13 (1) not more than fifteen percent of the
14 production's total New Mexico budget for below-the-line crew
15 wages; or

16 (2) as determined by the division, up to
17 twenty percent of the production's total New Mexico budget for
18 below-the-line crew wages; provided that sufficient and
19 qualified below-the-line crew who are New Mexico residents are
20 not available. A film production company that is approved for
21 the additional credit by meeting the requirements of this
22 paragraph shall make a financial or promotional contribution
23 toward educational, media-related nonprofit or workforce
24 development efforts in New Mexico, as determined by the
25 division."

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1 SECTION 4. REPEAL.--Sections 7-2F-2.1, 7-2F-6 through
2 7-2F-8 and 7-2F-10 through 7-2F-12 NMSA 1978 (being Laws 2015,
3 Chapter 143, Sections 4 through 7 and 9 through 11, as amended)
4 are repealed.

5 SECTION 5. APPLICABILITY.--The provisions of this act
6 apply to film production companies that commence principal
7 photography for a film or audiovisual product on or after
8 January 1, 2019.

9 SECTION 6. EFFECTIVE DATE.--The effective date of the
10 provisions of this act is July 1, 2019.