

1 SENATE BILL 12
2 **56TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2023**

3 INTRODUCED BY
4 Nancy Rodriguez
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10 AN ACT

11 RELATING TO FILM; INCREASING THE ANNUAL AGGREGATE CAP AND
12 ADDITIONAL AMOUNTS OF TAX CREDITS PURSUANT TO THE FILM
13 PRODUCTION TAX CREDIT ACT; AMENDING CERTAIN REQUIREMENTS TO BE
14 ELIGIBLE FOR THE CREDITS; AMENDING DEFINITIONS PURSUANT TO THAT
15 ACT; PROVIDING THAT VENDORS UNDER THAT ACT SHALL BE SUBJECT TO
16 AUDIT; PROVIDING FOR THE MANAGEMENT AND USE OF ASSETS FROM
17 FILMS; REQUIRING FILM PRODUCTION COMPANIES TO REPORT ON GOALS
18 REGARDING A DIVERSE WORKFORCE AND VENDORS AND MAINTAINING
19 SUSTAINABILITY; INCREASING DISTRIBUTIONS OF DEVELOPMENT
20 TRAINING FUNDS TO PROVIDE TRAINING FOR THAT INDUSTRY; CREATING
21 THE FILM AND MEDIA FUND; AMENDING AND REPEALING SECTIONS OF THE
22 NMSA 1978; MAKING AN APPROPRIATION.

23
24 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

25 SECTION 1. Section 7-2F-2 NMSA 1978 (being Laws 2003,

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1 Chapter 127, Section 2, as amended) is amended to read:

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

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

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

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

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

25 E. "direct production expenditure" means a

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1 transaction that is subject to taxation in New Mexico and is
2 certified pursuant to Subsection A of Section 7-2F-12 NMSA
3 1978:

4 (1) including an expenditure for:

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

8 (b) payment for standard industry craft
9 inventory when provided by a below-the-line crew that is a New
10 Mexico resident in addition to its below-the-line crew
11 services;

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

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

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1 7-3A-3 NMSA 1978 on the portion of those payments qualifying
2 for the tax credit paid to a personal services business where
3 the performing artist is a full or part owner of that business
4 or subcontracts with a personal services business where the
5 performing artist is a full or part owner of that business; and

6 (e) any of the following provided by a
7 vendor: 1) the story and scenario to be used for a film; 2)
8 set construction and operations, wardrobe, accessories and
9 related services; 3) photography, sound synchronization,
10 lighting and related services; 4) editing and related services;
11 5) rental of facilities and equipment; 6) the first one hundred
12 fifty dollars (\$150) of the daily expense of leasing of
13 vehicles, not including the chartering of aircraft for out-of-
14 state transportation; however, New Mexico-based chartered
15 aircraft for in-state transportation directly attributable to
16 the production shall be considered a direct production
17 expenditure; 7) food; 8) the first three hundred dollars (\$300)
18 of lodging per individual, per day; 9) commercial airfare if
19 purchased through a New Mexico-based travel agency or travel
20 company for travel to and from New Mexico or within New Mexico
21 that is directly attributable to the production; 10) insurance
22 coverage and bonding if purchased through a New Mexico-based
23 insurance agent, broker or bonding agent; 11) subcontracted
24 goods and services from businesses; provided that the ordinary
25 course of business of the vendor procuring the goods and

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1 services from the subcontractor directly relates to standard
2 film industry goods and services; and 12) other direct costs of
3 producing a film in accordance with generally accepted
4 entertainment industry practice; and

5 (2) does not include an expenditure for:

6 (a) a gift with a value greater than one
7 hundred dollars (\$100);

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

13 (c) entertainment, amusement or
14 recreation;

15 (d) subcontracted goods or services
16 provided by a vendor when the subcontractors providing those
17 goods or services to the vendor are not subject to state
18 taxation, such as equipment and locations provided by the
19 military, government and organizations that demonstrate to the
20 taxation and revenue department that they have been granted
21 exemption from the federal income tax by the United States
22 commissioner of internal revenue as organizations described in
23 Section 501(c)(3) of the United States Internal Revenue Code of
24 1986, as amended or renumbered;

25 (e) subcontracted services provided by a

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

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

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

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

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

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

22 H. "film" means a single medium or multimedia
23 program, including television programs but excluding
24 advertising messages other than national or regional
25 advertising messages ~~[intended for exhibition]~~ airing or

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1 streaming in more than one state, that:

2 (1) is fixed on film or a digital medium
3 [~~videotape, computer disc, laser disc or other similar delivery~~
4 ~~medium~~];

5 (2) can be viewed or reproduced;

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

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

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

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

16 K. "New Mexico film partner" means a film
17 production company that has made a commitment to produce films
18 or commercial audiovisual products in New Mexico and has
19 purchased or executed a ten-year contract to lease a qualified
20 production facility;

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

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

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

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

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

24 ~~[O.]~~ P. "postproduction expenditure" means an
25 expenditure, certified pursuant to Subsection A of Section

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1 7-2F-12 NMSA 1978, for editing, Foley recording, automatic
2 dialogue replacement, sound editing, special effects, including
3 computer-generated imagery or other effects, scoring and music
4 editing, beginning and end credits, negative cutting,
5 soundtrack production, dubbing, subtitling or addition of sound
6 or visual effects; but not including an expenditure for
7 advertising, marketing, distribution or expense payments;

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

11 [Q-] R. "qualified production facility" means:

12 (1) for film production companies that
13 commence principal photography for a film or commercial
14 audiovisual product prior to January 1, 2024, a building, or
15 complex of buildings, building improvements and associated
16 back-lot facilities in which films are or are intended to be
17 regularly produced and that contain at least one:

18 [(-1)] (a) sound stage with contiguous
19 floor space of at least seven thousand square feet and a
20 ceiling height of no less than eighteen feet; or

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

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1 (2) for film production companies that
2 commence principal photography for a film or commercial
3 audiovisual product on or after January 1, 2024, a building, or
4 complex of buildings, building improvements and associated
5 back-lot facilities in which films are or are intended to be
6 regularly produced and that has been designated by the division
7 as a "qualified production facility" in accordance with rules
8 promulgated by the economic development department that shall
9 specify minimum requirements for the facility, including:

10 (a) for a sound stage: 1) minimum
11 contiguous floor space; 2) minimum required height to the
12 lowest part of the ceiling; and 3) any minimum requirements for
13 soundproofing if the sound stage is located in an area with
14 significant noise; and

15 (b) for a standing outdoor set: 1)
16 minimum amount of acreage; and 2) minimum amount of interior
17 and exterior sets; and

18 ~~[R-]~~ S. "vendor" means a person who sells or leases
19 goods or services that are related to standard industry craft
20 inventory, who has a physical presence in New Mexico and is
21 subject to gross receipts tax pursuant to the Gross Receipts
22 and Compensating Tax Act or income tax pursuant to the Income
23 Tax Act or corporate income tax pursuant to the Corporate
24 Income and Franchise Tax Act but excludes a personal services
25 business and services provided by nonresidents hired or

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1 subcontracted if the tasks and responsibilities are associated
2 with the standard industry job position of director, writer or
3 producer."

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

6 "7-2F-4. REPORTING--ACCOUNTABILITY.--

7 A. The economic development department shall:

8 (1) collect data to be used in an econometric
9 tool that objectively assesses the effectiveness of the credits
10 provided by the Film Production Tax Credit Act;

11 (2) track the direct expenditures for the
12 credits;

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

21 (4) report annually to the revenue
22 stabilization and tax policy committee and the legislative
23 finance committee on aggregate approved tax credits made
24 pursuant to the Film Production Tax Credit Act and the past
25 performance of and current outlook for the Film Production Tax

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1 Credit Act, including:

2 (a) the aggregate amount of credits paid
3 subject to the aggregate amount allowed pursuant to Subsection
4 B of Section 7-2F-12 NMSA 1978 in the prior fiscal year and the
5 current amount of claims in the queue pursuant to Subsection C
6 of Section 7-2F-12 NMSA 1978;

7 (b) the aggregate amount of approved
8 credits paid in the prior fiscal year for expenditures by
9 certain film production companies that are not subject to the
10 aggregate amount of claims allowed pursuant to Section 7-2F-12
11 NMSA 1978;

12 (c) the number of applicants receiving
13 the additional credit for television pilots and series pursuant
14 to Section 7-2F-7 NMSA 1978;

15 (d) the number of applicants receiving
16 the additional amount for expenditures made in certain areas of
17 the state pursuant to Section [~~8 of this 2019 act~~] 7-2F-14 NMSA
18 1978;

19 (e) the aggregate amount of direct
20 production expenditures and [~~post-production~~] postproduction
21 expenditures in New Mexico during the prior fiscal year, shown
22 by county;

23 (f) the total number and wages of
24 New Mexico residents employed by film production companies in
25 the prior fiscal year; and

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1 (g) any other relevant information, as
2 determined by the division.

3 B. The division shall develop a form on which the
4 taxpayer claiming a credit pursuant to the Film Production Tax
5 Credit Act shall submit a report to accompany the taxpayer's
6 application for that credit.

7 C. With respect to the production on which the
8 application for a credit is based, the film production company
9 shall report to the division at a minimum the following
10 information:

11 (1) the total aggregate wages of the members
12 of the New Mexico resident crew;

13 (2) the number of New Mexico residents
14 employed;

15 (3) the total amount of gross receipts taxes
16 paid;

17 (4) the total number of hours worked by New
18 Mexico residents;

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

21 (6) the aggregate wages paid to the members of
22 the nonresident crew while working in New Mexico;

23 (7) the aggregate amount of direct production
24 expenditures and postproduction expenditures in New Mexico in
25 the prior fiscal year, shown by county; ~~[and]~~

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1 (8) the results and final outcome of the
2 strategy, tactics and specific goals in hiring a diverse and
3 inclusive workforce, sourcing from diverse vendors and
4 maintaining sustainability, if required pursuant to Paragraph
5 (3) of Subsection A of Section 7-2F-12 NMSA 1978; and

6 ~~[(8)]~~ (9) other information deemed necessary
7 by the division and economic development department to
8 determine the effectiveness of the credit.

9 D. For purposes of assessing the effectiveness of a
10 credit, the inability of the economic development department to
11 aggregate data due to sample size shall not relieve the
12 department of the requirement to report all relevant data to
13 the legislature. The division shall provide notice to a film
14 production company applying for a credit that information
15 provided to the division may be revealed by the department in
16 reports to the legislature."

17 SECTION 3. Section 7-2F-11 NMSA 1978 (being Laws 2015,
18 Chapter 143, Section 10) is amended to read:

19 "7-2F-11. REQUIREMENTS TO CONTRACT WITH CERTAIN VENDORS--
20 VENDORS SUBJECT TO AUDIT.--

21 A. A film production company shall make reasonable
22 efforts, as determined by the division, to contract with a
23 specialized vendor whose ordinary course of business directly
24 relates to a standard industry craft inventory and that:

25 (1) provides services;

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1 (2) provides inventory, for sale or lease,
2 that is maintained in New Mexico and represented by the
3 specialized vendor; or

4 (3) subcontracts similar standard industry
5 craft inventory from other businesses with or without physical
6 presence.

7 ~~[B. If a film production company does not contract~~
8 ~~with a specialized vendor, but contracts with a vendor that~~
9 ~~provides services, does not sell or lease standard industry~~
10 ~~craft inventory and outsources inventory from out-of-state~~
11 ~~businesses for a film production company, the film production~~
12 ~~company shall provide documentation of reasonable efforts made~~
13 ~~to find a specialized vendor.]~~

14 B. A vendor:

15 (1) shall be subject to random audits and site
16 visits;

17 (2) shall provide documentation proving that
18 the vendor meets the requirements to be a vendor pursuant to
19 the Film Production Tax Credit Act; and

20 (3) may lose status under the Film Production
21 Tax Credit Act for falsifications in the documentation provided
22 pursuant to Paragraph (2) of this subsection."

23 SECTION 4. Section 7-2F-12 NMSA 1978 (being Laws 2019,
24 Chapter 87, Section 6) is amended to read:

25 "7-2F-12. CREDIT CLAIMS--CERTIFICATION OF DIRECT

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1 PRODUCTION AND POSTPRODUCTION EXPENDITURES--AGGREGATE AMOUNT OF
2 CLAIMS ALLOWED--EXCEPTION.--

3 A. The division shall certify a film production
4 company's budget for direct production expenditures and
5 postproduction expenditures during a preproduction meeting with
6 the division; provided that:

7 (1) the division is prohibited from certifying
8 a film production company's budget if the total expected claims
9 in excess of the aggregate amount of claims that may be
10 authorized for payment pursuant to Subsection B of this section
11 would exceed one hundred million dollars (\$100,000,000) in any
12 fiscal year; [~~and provided further that~~]

13 (2) the limitation provided in Paragraph (1)
14 of this subsection shall not apply to certification of a budget
15 for a New Mexico film partner;

16 (3) the division and the film production
17 company shall enter into an agreement requiring the film
18 production company to make a financial or promotional
19 contribution toward media-related education or workforce
20 development efforts in New Mexico, as determined by the
21 division, and if the contribution is not made, an application
22 for a credit pursuant to the Film Production Tax Credit Act
23 shall be not accepted; and

24 (4) for films with budgets greater than five
25 million dollars (\$5,000,000), the film production company shall

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1 provide a strategy, tactics and specific goals in hiring a
2 diverse and inclusive workforce, sourcing from diverse vendors
3 and maintaining sustainability.

4 B. Except as provided in [~~Section 10 of this 2019~~
5 ~~act~~] Laws 2019, Chapter 87, Section 10, the aggregate amount of
6 claims for a credit provided by the Film Production Tax Credit
7 Act that may be authorized [~~for payment~~] in any fiscal year [~~is~~
8 ~~one hundred ten million dollars (\$110,000,000)]~~ with respect to
9 the direct production expenditures or postproduction
10 expenditures made on film or commercial audiovisual products
11 shall be in the following amounts; provided that direct
12 production expenditures and postproduction expenditures made by
13 a New Mexico film partner shall not be subject to the aggregate
14 amount of claims provided by this subsection:

15 (1) prior to July 1, 2023, one hundred ten
16 million dollars (\$110,000,000);

17 (2) on or after July 1, 2023 but prior to July
18 1, 2033, the amount provided in Paragraph (1) of this
19 subsection shall be increased by ten million dollars
20 (\$10,000,000) in each of those fiscal years; and

21 (3) on or after July 1, 2033, two hundred ten
22 million dollars (\$210,000,000).

23 C. If a film production company submits a claim for
24 a credit pursuant to the Film Production Tax Credit Act and the
25 aggregate amount of claims pursuant to Subsection B of this

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1 section has been met for the fiscal year, the claim shall be
2 placed at the front of a queue for payment in a subsequent
3 fiscal year. Claims shall be placed in order of the date on
4 which the completed return in which the credit is claimed is
5 filed. Claims authorized for payment shall be paid pursuant to
6 the Tax Administration Act.

7 ~~[D. If, in fiscal years 2020 through 2022, the~~
8 ~~aggregate amount of claims authorized for payment is less than~~
9 ~~one hundred ten million dollars (\$110,000,000), excluding~~
10 ~~claims by a New Mexico film partner, then the difference in~~
11 ~~that fiscal year or twenty million dollars (\$20,000,000),~~
12 ~~whichever is less, shall be added to the aggregate amount of~~
13 ~~claims that may be authorized for payment pursuant to~~
14 ~~Subsection B of this section in the immediately following~~
15 ~~fiscal year.~~

16 ~~E.]~~ D. To provide guidance to film production
17 companies regarding the amount of credit capacity remaining in
18 the fiscal year, the taxation and revenue department shall post
19 monthly on that department's website the aggregate amount of
20 credits claimed and paid for the fiscal year. In addition, the
21 division shall post monthly on the division's website the
22 aggregate amount of claims certified pursuant to Subsection A
23 of this section for the fiscal year or any subsequent fiscal
24 year.

25 ~~[F. As used in this section, "New Mexico film~~

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1 ~~partner" means a film production company that has made a~~
2 ~~commitment to produce films or commercial audiovisual products~~
3 ~~in New Mexico and has purchased or executed a ten-year contract~~
4 ~~to lease a qualified production facility.]"~~

5 SECTION 5. Section 7-2F-13 NMSA 1978 (being Laws 2019,
6 Chapter 87, Section 7) is amended to read:

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

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

10 B. A film production company that meets the
11 requirements of the Film Production Tax Credit Act may apply
12 for, and the taxation and revenue department may allow, a tax
13 credit in an 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 new film
23 production 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 services performed in
11 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 new film production 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 amount of
3 credit allowed pursuant to the Film Production Tax Credit Act
4 is twenty percent.

5 D. A claim for new film production tax credits
6 shall be filed as part of a return filed pursuant to the Income
7 Tax Act or the Corporate Income and Franchise Tax Act [~~or an~~
8 ~~information return filed by an entity assigned payment of an~~
9 ~~authorized credit pursuant to Section 7-2F-5 NMSA 1978~~]. The
10 date a complete credit claim is received by the taxation and
11 revenue department shall determine the order that a credit
12 claim is authorized for payment by the department. The film
13 production company may apply all or a portion of the new film
14 production tax credit granted against personal income tax
15 liability or corporate income tax liability. If the amount of
16 the credit claimed exceeds the film production company's tax
17 liability for the taxable year in which the credit is being
18 claimed, the excess shall be refunded.

19 E. A credit claim shall only be considered received
20 by the taxation and revenue department if the credit claim is
21 made on a complete return filed after the close of the taxable
22 year. All direct production expenditures and postproduction
23 expenditures incurred during the taxable year by a film
24 production company shall be submitted as part of the same
25 income tax return and paid pursuant to this section. A credit

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1 claim shall not be divided and submitted with multiple returns
2 or in multiple years.

3 F. For purposes of determining the payment of
4 credit claims pursuant to this section, the secretary of
5 taxation and revenue may require that credit claims of
6 affiliated persons be combined into one claim if necessary to
7 accurately reflect closely integrated activities of affiliated
8 persons.

9 G. The new film production tax credit shall not be
10 claimed with respect to direct production expenditures or
11 postproduction expenditures for which the film production
12 company has delivered a nontaxable transaction certificate
13 pursuant to Section 7-9-86 NMSA 1978 or alternative evidence
14 pursuant to Section 7-9-43 NMSA 1978.

15 H. A production for which the new film production
16 tax credit is claimed pursuant to Paragraph (1) of Subsection B
17 of this section shall contain an acknowledgment to the state of
18 New Mexico and any other jurisdiction in New Mexico in which a
19 production was filmed or was permitted to film. Unless
20 otherwise agreed upon in writing by the film production company
21 and the division, the acknowledgment shall ~~[be]~~ share screen
22 space in the end screen credits ~~[that the production was filmed~~
23 ~~in New Mexico]~~ and include a three-second static or animated
24 state logo provided by the division for the state and any other
25 jurisdictions and shall be included and embedded in the

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1 following:

2 (1) end screen credits [~~before the below the~~
3 ~~line crew crawl~~] for the life of the project of long-form
4 narrative film productions; and

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

7 (a) in the opening sequence;

8 (b) as a bumper into or out of a
9 commercial break; or

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

13 I. To be eligible for the new film production tax
14 credit, a film production company shall submit to the division
15 information required by the division to demonstrate conformity
16 with the requirements of the Film Production Tax Credit Act,
17 including production data deemed necessary by the division and
18 the economic development department to determine the
19 effectiveness of the credit, and a projection of the new film
20 production tax credit claim the film production company plans
21 to submit. In addition, the film production company shall
22 agree in writing:

23 (1) [~~to pay~~] that all obligations the film
24 production company has incurred in New Mexico have been paid;

25 (2) to post a notice at completion of

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1 principal photography or the main visual elements of a
2 production on the website of the division that:

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

9 (b) remains posted on the website until
10 all financial obligations incurred in the state by the film
11 production company have been paid;

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

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

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

24 (6) within sixty days following approval by
25 the taxation and revenue department of a new film production

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1 tax credit for a production with a New Mexico budget exceeding
2 five million dollars (\$5,000,000), to submit a physical asset,
3 such as a prop, costume piece, set, script element, work of
4 art, original shooting script or other asset to the division.

5 J. For assets submitted pursuant to Paragraph (6)
6 of Subsection I of this section, the division shall manage the
7 assets and have rights to incorporate the assets, photos and
8 videos of the assets and references to the assets in marketing
9 across any communication outlet.

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

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

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

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

23 N. That amount of a new film production tax credit
24 for total payments as applied to direct production expenditures
25 made by a New Mexico film partner for the services of

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1 nonresident performing artists, directors, screenwriters and
2 editors shall not exceed fifteen million dollars (\$15,000,000)
3 for services rendered."

4 SECTION 6. Section 7-2F-14 NMSA 1978 (being Laws 2019,
5 Chapter 87, Section 8) is amended to read:

6 "7-2F-14. ADDITIONAL AMOUNTS TO BE APPLIED IN CALCULATING
7 CREDIT AMOUNTS--EXPENDITURES MADE IN CERTAIN AREAS OF THE
8 STATE--TELEVISION PILOTS AND SERIES.--

9 A. Except as provided in Subsection B of this
10 section, in addition to the percentage of direct production
11 expenditures and postproduction expenditures calculated
12 pursuant to Section [~~7 of this 2019 act~~] 7-2F-13 NMSA 1978, an
13 additional:

14 (1) five percent shall be applied for payments
15 for direct production expenditures and postproduction
16 expenditures:

17 [~~(1) for work, services or items provided on~~
18 ~~location for a production of a film or commercial audiovisual~~
19 ~~product that is located in New Mexico but at least sixty miles~~
20 ~~outside of the exterior boundaries of certain counties; and~~

21 (2) ~~for either of the following]~~

22 (a) on a standalone pilot intended for
23 series television in New Mexico or on series television
24 productions intended for commercial distribution with an order
25 for at least six episodes in a single season; provided that the

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1 New Mexico budget for each of those six episodes is fifty
2 thousand dollars (\$50,000) or more; or

3 (b) on a production in a qualified
4 production facility for the days the facility is used for
5 production; and

6 (2) ten percent shall be applied for payments
7 for direct production expenditures and postproduction
8 expenditures for work, services or items provided on location
9 for a production of a film or commercial audiovisual product
10 that is located in New Mexico but at least sixty miles outside
11 of the exterior boundaries of certain counties.

12 B. Except as provided in Subsection C of this
13 section, in addition to the percentage of direct production
14 expenditures and postproduction expenditures calculated
15 pursuant to Section 7-2F-13 NMSA 1978 and the additional
16 amounts provided in Subparagraph (b) of Paragraph (1) and
17 Paragraph (2) of Subsection A of this section, an additional
18 five percent shall be applied for payments for direct
19 production expenditures and postproduction expenditures for a
20 television series with a New Mexico budget of greater than
21 fifteen million dollars (\$15,000,000) per episode, for a
22 minimum of six episodes, or a film that is not a television
23 program with a New Mexico budget of greater than one hundred
24 million dollars (\$100,000,000); provided that the additional
25 amount provided by this subsection shall only be allowed for

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1 New Mexico film partners; and provided further that the
2 additional amount shall not be allowed in addition to the
3 amount provided in Subparagraph (a) of Paragraph (1) of
4 Subsection A of this section.

5 C. The maximum percentage of direct production
6 expenditures and postproduction expenditures calculated
7 pursuant to Section 7-2F-13 NMSA 1978 and this section shall
8 not exceed forty percent.

9 ~~[B-]~~ D. As used in this section, "certain counties"
10 includes class A counties with a net taxable value of property
11 for property taxation purposes of greater than ~~[six billion~~
12 dollars ~~(\$6,000,000,000)~~ seven billion five hundred million
13 dollars (\$7,500,000,000)."

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

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

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1 ~~[(1)]~~ A. the service for which payment is made is
2 rendered in New Mexico;

3 ~~[(2)]~~ B. the payment of wages excludes payments:

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

6 (2) made to a personal services business;

7 C. the total amount of wages applied toward the
8 additional credit allowed pursuant to this section shall not
9 exceed the amount of wages of resident below-the-line wages
10 claimed; and

11 D. for a film production company that is not a New
12 Mexico film partner:

13 (1) the total eligible wages for below-the-
14 line crew who are not New Mexico residents are ~~[(a)]~~ not more
15 than fifteen percent of the production's total New Mexico
16 budget for below-the-line crew wages ~~[or~~

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

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1 ~~division; and~~

2 ~~(3) the film production company makes~~
3 ~~financial or promotional contributions toward educational or~~
4 ~~workforce development efforts in New Mexico as determined by~~
5 ~~the division, including:~~

6 ~~(a) a payment to a New Mexico~~
7 ~~educational institution that administers at least one industry-~~
8 ~~recognized film or multimedia program, as determined by the~~
9 ~~division, equal to at least two and one-half percent of the~~
10 ~~direct production expenditures for the payment of wages, fringe~~
11 ~~benefits and per diem for nonresident industry crew made by the~~
12 ~~film production company to nonresident industry crew; or~~

13 ~~(b) promotion of the New Mexico film~~
14 ~~industry by directors, actors or producers affiliated with the~~
15 ~~film production company's project through: 1) social media~~
16 ~~that is managed by the state; 2) radio interviews facilitated~~
17 ~~by the division; 3) enhanced screen credit acknowledgments; or~~
18 ~~4) related events that are facilitated, conducted or sponsored~~
19 ~~by the division.~~

20 ~~B. The credit provided by this section may be~~
21 ~~referred to as the "nonresidential below-the-line crew credit.]~~
22 ~~; and~~

23 (2) the film production company employs the
24 following numbers of nonresident below-the-line crew in New
25 Mexico and shall be as calculated by the division upon

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1 application for certification pursuant to Subsection A of
2 Section 7-2F-12 NMSA 1978; provided that the total number shall
3 not exceed twenty positions:

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

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

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

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

20 (e) five positions in addition to the
21 number of positions provided in Subparagraphs (a) through (d)
22 of this paragraph for a television pilot episode that has been
23 ordered to series; provided that the film production company
24 certifies to the division that the series is intended to be
25 produced in New Mexico."

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1 SECTION 8. Section 21-19-13 NMSA 1978 (being Laws 2005,
2 Chapter 102, Section 3, as amended) is amended to read:

3 "21-19-13. DISTRIBUTIONS OF DEVELOPMENT TRAINING FUNDS.--

4 A. Of appropriations made in any fiscal year for
5 development training, up to two-thirds shall be expended in
6 urban communities in the state. At least one-third of the
7 appropriations made in any fiscal year for development training
8 shall be expended in nonurban communities.

9 B. Of money available in the development training
10 fund, the economic development department may use in any fiscal
11 year:

12 (1) up to fifty thousand dollars (\$50,000) to
13 generally administer the development training program; and

14 (2) in addition to the general administration
15 funding allowed in Paragraph (1) of this subsection, up to
16 fifty thousand dollars (\$50,000) to administer the provisions
17 of Section 21-19-7.1 NMSA 1978.

18 C. Up to [~~two million dollars (\$2,000,000)~~] four
19 million dollars (\$4,000,000) of development training funds may
20 be used to reimburse film and multimedia production companies
21 and to provide on-the-job and preemployment training for that
22 industry pursuant to the provisions of Section 21-19-7.1 NMSA
23 1978.

24 D. Up to one million dollars (\$1,000,000) disbursed
25 annually from the development training program may be dedicated

1 to development training in green industries.

2 E. As used in this section:

3 (1) "green industries" means industries that
4 contribute directly to preserving or enhancing environmental
5 quality by reducing waste and pollution or by producing
6 sustainable products using sustainable processes and materials.
7 Green industries provide opportunities for advancement along a
8 career track of increasing skills and wages. Green industries
9 include:

10 (a) energy system retrofits to increase
11 energy efficiency and conservation;

12 (b) production and distribution of
13 biofuels and vehicle retrofits for biofuels;

14 (c) building design and construction
15 that meet the equivalent of best available technology in energy
16 and environmental design standards;

17 (d) organic and community food
18 production;

19 (e) manufacture of products from
20 non-toxic, environmentally certified or recycled materials;

21 (f) manufacture and production of
22 sustainable technologies, including solar panels, wind turbines
23 and fuel cells;

24 (g) solar technology installation and
25 maintenance;

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1 (h) recycling, green composting and
2 large-scale reuse of construction and demolition materials and
3 debris; and

4 (i) water system retrofits to increase
5 water efficiency and conservation;

6 (2) "nonurban community" means a municipality
7 that is not an urban community or is the unincorporated area of
8 a county; and

9 (3) "urban community" means a municipality
10 with a population of forty thousand or more according to the
11 most recent federal decennial census."

12 SECTION 9. [NEW MATERIAL] FILM AND MEDIA FUND.--The
13 "film and media fund" is created as a nonreverting fund in the
14 state treasury. The fund consists of appropriations, gifts,
15 grants, donations and income from investment of the fund.
16 Money in the fund is appropriated to the economic development
17 department for the purpose of equipping, furnishing and
18 operating one or more media academies to train students and to
19 promote filmmaking across the state. Money in the fund shall
20 be disbursed on warrants of the secretary of finance and
21 administration pursuant to vouchers signed by the secretary of
22 economic development.

23 SECTION 10. REPEAL.--Section 15-3B-7.1 NMSA 1978 (being
24 Laws 2001, Chapter 196, Section 1, as amended) is repealed.

25 SECTION 11. APPLICABILITY.--The provisions of Sections 1
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1 through 7 of this act apply to film production companies that
2 commence principal photography for a film or commercial
3 audiovisual product on or after July 1, 2023.

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