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AN ACT
RELATING TO TAXATION; ALLOWING ATTORNEY FEES TO BE PAID FROM
REVENUE DISTRIBUTIONS; PREVENTING THE ACCRUAL OF INTEREST
WHEN AN EXTENSION OF TIME TO FILE A RETURN HAS BEEN GRANTED;
AMENDING ROUNDING REQUIREMENTS; CLARIFYING THAT A TAXPAYER
WHO HAS ENTERED INTO AN INSTALLMENT AGREEMENT IS NOT
CONSIDERED A DELINQUENT TAXPAYER FOR PURPOSES OF LICENSE OR
PERMIT RENEWAL; PROVIDING THAT A MINIMUM CIVIL PENALTY OF
FIVE DOLLARS (\$5.00) SHALL NOT APPLY FOR FAILURE TO PAY A TAX
LEVIED PURSUANT TO THE WITHHOLDING TAX ACT, THE OIL AND GAS
PROCEEDS AND PASS-THROUGH ENTITY WITHHOLDING TAX ACT OR THE
WORKERS' COMPENSATION FEE; AMENDING THE FILM PRODUCTION TAX
CREDIT ACT; AMENDING DEFINITIONS IN THE TECHNOLOGY JOBS AND
RESEARCH AND DEVELOPMENT TAX CREDIT ACT; CLARIFYING THE
TOBACCO PRODUCTS TAX ON CLOSED SYSTEM CARTRIDGES; ALLOWING
EXCESS PROPERTY TAX AUCTION PROCEEDS TO BE APPLIED TO
OUTSTANDING TAX DEBT; REQUIRING SPECIFIC EFFECTIVE DATES FOR
AN ORDINANCE CHANGING THE IMPOSITION OF TAX IMPOSED BY AN
INDIAN NATION, TRIBE OR PUEBLO AND COLLECTED BY THE TAXATION
AND REVENUE DEPARTMENT PURSUANT TO A TRIBAL COOPERATIVE
AGREEMENT; AMENDING WITH WHOM THE SECRETARY OF TAXATION AND
REVENUE MAY ENTER INTO TRIBAL COOPERATIVE AGREEMENTS.

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

SECTION 1. Section 7-1-6 NMSA 1978 (being Laws 1978,

1 Chapter 55, Section 1, as amended) is amended to read:

2 "7-1-6. RECEIPTS--DISBURSEMENTS--FUNDS CREATED.--

3 A. All money received by the department with
4 respect to laws administered pursuant to the provisions of
5 the Tax Administration Act shall be deposited with the state
6 treasurer before the close of the next succeeding business
7 day after receipt of the money, except that money received
8 with respect to the Income Tax Act and the Corporate Income
9 and Franchise Tax Act during the period starting with the
10 fifth day prior to the due date for payment of the taxes for
11 the year and ending on the tenth day following that due date
12 shall be deposited before the close of the tenth business day
13 after receipt of the money.

14 B. Money received or disbursed by the department
15 shall be accounted for by the department as required by law
16 or rule of the secretary of finance and administration.

17 C. Disbursements for tax credits, tax rebates,
18 refunds, the payment of interest, the payment of fees charged
19 by attorneys or collection agencies for collection of
20 accounts as agent for the department, attorney fees and costs
21 awarded by a court or hearing officer, the payment of credit
22 card service charges on payments of taxes by use of credit
23 cards, distributions and transfers shall be made by the
24 department of finance and administration upon request and
25 certification of their appropriateness by the secretary or

1 the secretary's delegate.

2 D. There are hereby created in the state treasury
3 the "tax administration suspense fund", the "extraction taxes
4 suspense fund" and the "workers' compensation collections
5 suspense fund" for the purpose of making the disbursements
6 authorized by the Tax Administration Act.

7 E. All revenues collected or received by the
8 department pursuant to the provisions of the taxes and tax
9 acts set forth in Subsection A of Section 7-1-2 NMSA 1978
10 shall be credited to the tax administration suspense fund and
11 are appropriated for the purpose of making the disbursements
12 authorized in this section or otherwise authorized or
13 required by law to be made from the tax administration
14 suspense fund.

15 F. All revenues collected or received by the
16 department pursuant to the taxes or tax acts set forth in
17 Subsection B of Section 7-1-2 NMSA 1978 shall be credited to
18 the extraction taxes suspense fund and are appropriated for
19 the purpose of making the disbursements authorized in this
20 section or otherwise authorized or required by law to be made
21 from the extraction taxes suspense fund.

22 G. All revenues collected or received by the
23 department pursuant to the taxes or tax acts set forth in
24 Subsection C of Section 7-1-2 NMSA 1978 may be credited to
25 the tax administration suspense fund, unless otherwise

1 directed by law to be credited to another fund or agency, and
2 are appropriated for the purpose of making disbursements
3 authorized in this section or otherwise authorized or
4 required by law.

5 H. All revenues collected or received by the
6 department pursuant to the provisions of Section 52-5-19 NMSA
7 1978 shall be credited to the workers' compensation
8 collections suspense fund and are appropriated for the
9 purpose of making the disbursements authorized in this
10 section or otherwise authorized or required by law to be made
11 from the workers' compensation collections suspense fund.

12 I. Disbursements to cover expenditures of the
13 department shall be made only upon approval of the secretary
14 or the secretary's delegate.

15 J. Miscellaneous receipts from charges made by the
16 department to defray expenses pursuant to the provisions of
17 Section 9-11-6.1 NMSA 1978 and similar charges are
18 appropriated to the department for its use.

19 K. From the tax administration suspense fund,
20 there may be disbursed each month amounts approved by the
21 secretary or the secretary's delegate necessary to maintain a
22 fund hereby created and to be known as the "income tax
23 suspense fund". The income tax suspense fund shall be used
24 for the payment of income tax refunds."

25 SECTION 2. Section 7-1-13 NMSA 1978 (being Laws 1965,

1 Chapter 248, Section 18, as amended) is amended to read:

2 "7-1-13. TAXPAYER RETURNS--PAYMENT OF TAXES--EXTENSION
3 OF TIME.--

4 A. Taxpayers are liable for tax at the time of and
5 after the transaction or incident giving rise to tax until
6 payment is made. Taxes are due on and after the date on
7 which their payment is required until payment is made.

8 B. Every taxpayer shall, on or before the date on
9 which payment of any tax is due, complete and file a tax
10 return in a form prescribed and according to the regulations
11 issued by the secretary. Except as provided in Section
12 7-1-13.1 NMSA 1978 or by regulation, ruling, order or
13 instruction of the secretary, the payment of any tax or the
14 filing of any return may be accomplished by mail. When the
15 filing of a tax return or payment of a tax is accomplished by
16 mail, the date of the postmark shall be considered the date
17 of submission of the return or payment.

18 C. Payment of the total amount of all taxes that
19 are due from the taxpayer shall precede or accompany the
20 return. Delivery to the department of a check or electronic
21 check that is not paid upon presentment does not constitute
22 payment.

23 D. The secretary or the secretary's delegate may,
24 for good cause, extend in favor of a taxpayer or a class of
25 taxpayers, for no more than a total of twelve months, the

1 date on which payment of any tax is required or on which any
2 return required by provision of the Tax Administration Act
3 shall be filed. When an extension of time for income tax has
4 been granted a taxpayer pursuant to the Internal Revenue
5 Code, the extension shall serve to extend the time for filing
6 New Mexico income tax; provided that a copy of the approved
7 federal extension of time is attached to the taxpayer's New
8 Mexico income tax return. The secretary by regulation may
9 also provide for the automatic extension for no more than six
10 months of the date upon which payment of any New Mexico
11 income tax or the filing of any New Mexico income tax return
12 is required. If the secretary or the secretary's delegate
13 believes it necessary to ensure the collection of the tax,
14 the secretary or the secretary's delegate may require, as a
15 condition of granting any extension, that the taxpayer
16 furnish security in accordance with the provisions of Section
17 7-1-54 NMSA 1978.

18 E. Except as provided in Subsection F of this
19 section, no later than one hundred eighty days after the
20 final determination date, a taxpayer shall file a federal
21 adjustments report with the department and pay any state tax
22 due with respect to final net-positive federal adjustments
23 arising from:

24 (1) an audit or other action by the internal
25 revenue service; or

1 (2) a timely filed amended federal income
2 tax return, including a return or other similar information
3 filed pursuant to Section 6225(c)(2) of the Internal Revenue
4 Code.

5 F. Except for federal adjustments that are
6 required to be reported pursuant to Subsection E of this
7 section, partnerships and partners shall report final
8 net-positive federal adjustments arising from a partnership
9 level audit or an administrative adjustment request and make
10 payments as follows:

11 (1) except for where the partnership or
12 tiered partner makes an election pursuant to Subsection G of
13 this section, the partnership or tiered partner shall:

14 (a) file: 1) a completed federal
15 adjustments report and notify each of its direct partners of
16 their distributive share of the final federal adjustments,
17 including information necessary for reporting state tax due
18 as required by the department; and 2) an amended withholding
19 return for the reviewed year if such return was filed, or
20 would have been required pursuant to the Withholding Tax Act;

21 (b) in the case of an audited
22 partnership, file the returns required by this paragraph no
23 later than ninety days after the final determination date;
24 and

25 (c) in the case of a tiered partner of

1 an audited partnership, file the returns required by this
2 paragraph no later than ninety days after the time for the
3 audited partnership's filing and furnishing statements to
4 tiered partnerships and their partners as established
5 pursuant to Section 6226 of the Internal Revenue Code and the
6 regulations thereunder; and

7 (2) a partner of a partnership or a tiered
8 partner subject to tax pursuant to Section 7-2-3 or 7-2A-3
9 NMSA 1978 on adjustments to which Paragraph (1) of this
10 subsection applies shall file a federal adjustments report
11 reporting the partner's distributive share of the adjustments
12 and shall pay the additional amount of state tax due, plus
13 any penalty and interest due and less any credit for related
14 amounts paid or withheld and remitted on behalf of the
15 partner pursuant to Paragraph (1) of this subsection as
16 follows:

17 (a) for taxable direct partners of the
18 audited partnership, no later than one hundred eighty days
19 after the final determination date; or

20 (b) for taxable indirect partners of
21 the audited partnership, no later than one hundred eighty
22 days after the time for the audited partnership's filing and
23 furnishing statements to tiered partnerships and their
24 partners as established pursuant to Section 6226 of the
25 Internal Revenue Code and the regulations thereunder.

1 G. The election provided by this subsection
2 applies only to federal adjustments other than the
3 distributive share of federal adjustments that must be
4 included in the unitary business income of any direct or
5 indirect corporate partner; provided that this can be
6 reasonably determined, or federal adjustments resulting from
7 an administrative adjustment request. A partnership making
8 an election pursuant to this subsection shall:

9 (1) file a completed federal adjustments
10 report and notify the department that it is making the
11 election pursuant to this subsection; and

12 (2) pay an amount, determined as follows, in
13 lieu of taxes owed by its direct and indirect taxable
14 partners:

15 (a) exclude from the total final
16 federal adjustments the distributive share reported to a
17 direct partner that is an exempt partner unless the
18 adjustment represents unrelated business taxable income;

19 (b) include only the portion of the
20 total federal adjustment to distributive shares of partners
21 taken into account pursuant to Section 6225(b)(2) of the
22 Internal Revenue Code;

23 (c) apportion and allocate the
24 adjustments as provided by the Uniform Division of Income for
25 Tax Purposes Act as applied at the partnership level

1 following any department regulations adopted for this
2 purpose;

3 (d) multiply the resulting amount by
4 the highest tax rate provided by Section 7-2A-5 NMSA 1978;
5 and

6 (e) add to the amount calculated
7 pursuant to Subparagraph (d) of this paragraph an amount of
8 penalty and interest computed pursuant to the Tax
9 Administration Act.

10 H. In any action required or allowed to be taken
11 pursuant to the Tax Administration Act with respect to the
12 reporting of federal adjustments by a partnership, the state
13 partnership representative for the reviewed year shall have
14 the sole authority to act on behalf of the partnership, and
15 the partnership's direct partners and indirect partners shall
16 be bound by those actions. The state partnership
17 representative is the partnership's federal partnership
18 representative for the reviewed year, unless the partnership
19 designates in writing another person as its state partnership
20 representative; provided that the person meets any
21 qualifications established by the department.

22 I. Pursuant to procedures that may be adopted by
23 the department, an audited partnership or tiered partner of
24 that partnership may enter into an agreement with the
25 department to utilize an alternative reporting and payment

1 method, including applicable time requirements or any other
2 provision pursuant to Subsections E through H of this
3 section, if the audited partnership or tiered partner
4 demonstrates that the requested method will reasonably
5 provide for the reporting and payment of taxes, penalties and
6 interest due pursuant to Subsections E through H of this
7 section. Application for approval of an alternative
8 reporting and payment method must be made by the audited
9 partnership or tiered partner within the time for election as
10 provided in Subsection G of this section, as appropriate.

11 J. An election made pursuant to Subsection G or I
12 of this section is irrevocable, unless the department, in its
13 discretion, determines otherwise. If properly reported and
14 paid by the audited partnership or tiered partner, the amount
15 determined in Paragraph (2) of Subsection G of this section,
16 or similarly under an optional election pursuant to
17 Subsection I of this section, will be treated as paid in lieu
18 of taxes owed by its direct and indirect partners on the same
19 final federal adjustments. The direct or indirect partners
20 of the partnership that pays this in lieu of amount may not
21 claim any deduction, credit or refund with respect to that
22 amount.

23 K. A taxpayer may make estimated payments of state
24 tax expected to result from a pending audit by the internal
25 revenue service prior to the final determination date,

1 following the process prescribed by the department, and such
2 payments will limit the accrual of further statutory interest
3 on that amount.

4 L. A taxpayer may claim an amount of state tax
5 resulting from final net-negative federal adjustments as
6 provided in Section 7-1-26 NMSA 1978.

7 M. Nothing in Subsections E through L of this
8 section shall prevent the department from assessing direct
9 partners or indirect partners for taxes they owe, using the
10 best information available, in the event that a partnership
11 or tiered partner fails to timely make any report or payment
12 required for any reason.

13 N. As used in this section:

14 (1) "administrative adjustment request"
15 means an administrative adjustment request filed by a
16 partnership pursuant to Section 6227 of the Internal Revenue
17 Code;

18 (2) "audited partnership" means a
19 partnership subject to a partnership level audit resulting in
20 a federal adjustment;

21 (3) "corporate partner" means a partner,
22 direct or indirect, that is subject to tax pursuant to the
23 Corporate Income and Franchise Tax Act;

24 (4) "direct partner" means any partner that
25 holds an interest directly in a partnership or pass-through

1 entity;

2 (5) "exempt partner" means a partner, direct
3 or indirect, that is exempt from New Mexico income tax except
4 on unrelated business taxable income;

5 (6) "federal adjustment" means a change to
6 an item or amount determined pursuant to the Internal Revenue
7 Code that is used by a taxpayer to compute an amount of state
8 tax owed, whether that change results from action by the
9 internal revenue service, including a partnership level
10 audit, or the filing of an amended federal return, federal
11 refund claim or an administrative adjustment request by a
12 partnership;

13 (7) "federal adjustments report" includes
14 the methods or forms required by the department for use by a
15 taxpayer to report final federal adjustments, including an
16 amended tax return, information return or a uniform
17 multistate report;

18 (8) "final determination date" means:

19 (a) except as provided in Subparagraphs
20 (b), (c) and (d) of this paragraph, if a federal adjustment
21 arises from an audit or other action by the internal revenue
22 service, the final determination date is the first day on
23 which no federal adjustments arising from that audit or other
24 action remain to be finally determined, whether by a decision
25 of the internal revenue service with respect to which all

1 rights of appeal have been waived or exhausted, by agreement,
2 or, if appealed or contested, by a final decision with
3 respect to which all rights of appeal have been waived or
4 exhausted. For agreements required to be signed by the
5 internal revenue service and the taxpayer, the final
6 determination date is the date on which the last party signed
7 the agreement;

8 (b) for federal adjustments arising
9 from an internal revenue service audit or other action by the
10 internal revenue service, if the taxpayer filed as a member
11 of a filing group pursuant to the Corporate Income and
12 Franchise Tax Act, the final determination date means the
13 first day on which no related federal adjustments arising
14 from that audit remain to be finally determined, as described
15 in Subparagraph (a) of this paragraph, for the entire group;

16 (c) except as provided in Subparagraph
17 (d) of this paragraph, if the federal adjustment results from
18 filing an amended federal return, a federal refund claim or
19 an administrative adjustment request, or if it is a federal
20 adjustment reported on an amended federal return or other
21 similar report filed pursuant to Section 6225(c) of the
22 Internal Revenue Code, the final determination date means the
23 day on which the amended return, refund claim, administrative
24 adjustment request or other similar report was filed; and

25 (d) for adjustments resulting from a

1 partnership level audit or an administrative adjustment
2 request for which the final determination date pursuant to
3 Subparagraph (a) or (c) of this paragraph is determined to be
4 a date occurring prior to June 18, 2021, the final
5 determination date shall be July 1, 2021;

6 (9) "final federal adjustments" means
7 adjustments for which the final determination date has
8 passed, including final net-positive federal adjustments and
9 final net-negative federal adjustments;

10 (10) "indirect partner" means a partner in a
11 partnership or pass-through entity in which the partner holds
12 an interest directly, or through another indirect partner, in
13 a partnership or pass-through entity;

14 (11) "net-negative federal adjustments"
15 means federal adjustments relating to the same tax period,
16 whether made by the taxpayer or the internal revenue service,
17 the net effect of which is to decrease state tax due as
18 compared to tax originally reported for that period;

19 (12) "net-positive federal adjustments"
20 means federal adjustments relating to the same tax period,
21 whether made by the taxpayer or the internal revenue service,
22 the net effect of which is to increase state tax due as
23 compared to tax originally reported for that period;

24 (13) "partner" means a person that holds an
25 interest directly or indirectly in a partnership or other

1 pass-through entity;

2 (14) "partnership" means an entity subject
3 to taxation pursuant to Subchapter K of the Internal Revenue
4 Code;

5 (15) "partnership level audit" means an
6 examination by the internal revenue service at the
7 partnership level pursuant to Subchapter C or Subtitle F,
8 Chapter 63 of the Internal Revenue Code that results in
9 federal adjustments;

10 (16) "pass-through entity" means an entity,
11 other than a partnership, that is not subject to tax pursuant
12 to the Corporate Income and Franchise Tax Act;

13 (17) "reviewed year" means the taxable year
14 of a partnership that is subject to a partnership level audit
15 from which federal adjustments arise;

16 (18) "taxpayer" means a taxpayer, including
17 a partnership subject to a partnership level audit or a
18 partnership that has made an administrative adjustment
19 request, as well as a tiered partner of that partnership,
20 unless the context indicates otherwise;

21 (19) "tiered partner" means any partner that
22 is a partnership or pass-through entity; and

23 (20) "unrelated business taxable income"
24 means "unrelated business taxable income" as used in Section
25 512 of the Internal Revenue Code."

1 SECTION 3. Section 7-1-15.1 NMSA 1978 (being Laws 1987,
2 Chapter 169, Section 4) is amended to read:

3 "7-1-15.1. SECRETARY MAY PERMIT OR REQUIRE ROUNDING.--
4 By regulation or instruction, the secretary may permit or
5 require rounding to the nearest whole dollar of an amount due
6 pursuant to the Income Tax Act or the Corporate Income and
7 Franchise Tax Act, and to the nearest five cents (\$.05) of an
8 amount due pursuant to all other taxes administered by the
9 department pursuant to Section 7-1-2 NMSA 1978."

10 SECTION 4. Section 7-1-16 NMSA 1978 (being Laws 1965,
11 Chapter 248, Section 19, as amended) is amended to read:

12 "7-1-16. DELINQUENT TAXPAYER.--

13 A. Except as provided in Subsections D and E of
14 this section, any taxpayer to whom taxes have been assessed
15 as provided in Section 7-1-17 NMSA 1978 or upon whom demand
16 for payment has been made as provided in Section 7-1-63 NMSA
17 1978 who does not within ninety days after the date of
18 assessment or demand for payment make payment of the
19 undisputed amount, protest the assessment or demand for
20 payment as provided by Section 7-1-24 NMSA 1978 or furnish
21 security for payment as provided by Section 7-1-54 NMSA 1978
22 becomes a delinquent taxpayer and remains such until:

23 (1) payment of the total amount of all such
24 taxes is made;

25 (2) security is furnished for payment; or

1 (3) no part of the assessment remains
2 unabated.

3 B. Any taxpayer who fails to provide security as
4 required by Subsection D of Section 7-1-54 NMSA 1978 shall be
5 deemed to be a delinquent taxpayer.

6 C. If a taxpayer files a protest as provided in
7 Section 7-1-24 NMSA 1978, the taxpayer nevertheless becomes a
8 delinquent taxpayer upon failure of the taxpayer to appear,
9 in person or by authorized representative, at the hearing set
10 or upon failure to perfect an appeal from any decision or
11 part thereof adverse to the taxpayer to the next higher
12 appellate level, as provided in that section, unless the
13 taxpayer makes payment of the total amount of all taxes
14 assessed and remaining unabated or furnishes security for
15 payment.

16 D. A taxpayer does not become a delinquent
17 taxpayer if the taxpayer has been issued an assessment as a
18 result of a managed audit but is still within the allowed
19 time period to pay the tax due as specified in Paragraph (4)
20 of Subsection A of Section 7-1-67 NMSA 1978.

21 E. For the purposes of license or permit renewal,
22 a taxpayer shall not be considered a delinquent taxpayer if
23 the taxpayer has entered into an installment agreement
24 pursuant to Section 7-1-21 NMSA 1978 that is in good standing
25 with the department and the taxpayer has not failed to meet

1 the conditions of the installment agreement with the
2 department during the five calendar years immediately
3 preceding the current calendar year. If an installment
4 agreement is relied on for purposes of license or permit
5 renewal, it shall be secured with a payment of a minimum of
6 twenty percent of the taxpayer's delinquent tax amount for
7 the tax programs required for renewal."

8 SECTION 5. Section 7-1-69 NMSA 1978 (being Laws 1965,
9 Chapter 248, Section 70, as amended) is amended to read:

10 "7-1-69. CIVIL PENALTY FOR FAILURE TO PAY TAX OR FILE A
11 RETURN.--

12 A. Except as provided in Subsection C of this
13 section, in the case of failure due to negligence or
14 disregard of department rules and regulations, but without
15 intent to evade or defeat a tax, to pay when due the amount
16 of tax required to be paid, to pay in accordance with the
17 provisions of Section 7-1-13.1 NMSA 1978 when required to do
18 so or to file by the date required a return regardless of
19 whether a tax is due, there shall be added to the amount
20 assessed a penalty in an amount equal to the greater of:

21 (1) two percent per month or any fraction of
22 a month from the date the tax was due multiplied by the
23 amount of tax due but not paid, not to exceed twenty percent
24 of the tax due but not paid;

25 (2) two percent per month or any fraction of

1 a month from the date the return was required to be filed
2 multiplied by the tax liability established in the late
3 return, not to exceed twenty percent of the tax liability
4 established in the late return; or

5 (3) a minimum of five dollars (\$5.00), but
6 the five-dollar (\$5.00) minimum penalty shall not apply to
7 taxes levied under the Income Tax Act, Corporate Income and
8 Franchise Tax Act, Withholding Tax Act, Oil and Gas Proceeds
9 and Pass-Through Entity Withholding Tax Act, workers'
10 compensation fee authorized by Section 52-5-19 NMSA 1978 or
11 taxes administered by the department pursuant to Subsection B
12 of Section 7-1-2 NMSA 1978.

13 B. No penalty shall be assessed against a taxpayer
14 if the failure to pay an amount of tax when due results from
15 a mistake of law made in good faith and on reasonable
16 grounds.

17 C. If a different penalty is specified in a
18 compact or other interstate agreement to which New Mexico is
19 a party, the penalty provided in the compact or other
20 interstate agreement shall be applied to amounts due under
21 the compact or other interstate agreement at the rate and in
22 the manner prescribed by the compact or other interstate
23 agreement.

24 D. In the case of failure, with willful intent to
25 evade or defeat a tax, to pay when due the amount of tax

1 required to be paid, there shall be added to the amount fifty
2 percent of the tax or a minimum of twenty-five dollars
3 (\$25.00), whichever is greater, as penalty.

4 E. If demand is made for payment of a tax,
5 including penalty imposed pursuant to this section, and if
6 the tax is paid within ten days after the date of such
7 demand, no penalty shall be imposed for the period after the
8 date of the demand with respect to the amount paid.

9 F. If a taxpayer makes electronic payment of a tax
10 but the payment does not include all of the information
11 required by the department pursuant to the provisions of
12 Section 7-1-13.1 NMSA 1978 and if the department does not
13 receive the required information within five business days
14 from the later of the date a request by the department for
15 that information is received by the taxpayer or the due date,
16 the taxpayer shall be subject to a penalty of two percent per
17 month or any fraction of a month from the fifth day following
18 the date the request is received. If a penalty is imposed
19 under Subsection A of this section with respect to the same
20 transaction for the same period, no penalty shall be imposed
21 under this subsection.

22 G. No penalty shall be imposed on:

23 (1) tax due in excess of tax paid in
24 accordance with an approved estimated basis pursuant to
25 Section 7-1-10 NMSA 1978;

1 (2) tax due as the result of a managed
2 audit; or

3 (3) tax that is deemed paid by crediting
4 overpayments found in an audit or managed audit of multiple
5 periods pursuant to Section 7-1-29 NMSA 1978."

6 SECTION 6. Section 7-2F-2 NMSA 1978 (being Laws 2003,
7 Chapter 127, Section 2, as amended) is amended to read:

8 "7-2F-2. DEFINITIONS.--As used in the Film Production
9 Tax Credit Act:

10 A. "affiliated person" means a person who directly
11 or indirectly owns or controls, is owned or controlled by or
12 is under common ownership or control with another person
13 through ownership of voting securities or other ownership
14 interests representing a majority of the total voting power
15 of the entity;

16 B. "background artist" means a person who is not a
17 performing artist but is a person of atmospheric business
18 whose work includes atmospheric noise, normal actions,
19 gestures and facial expressions of that person's assignment;
20 or a person of atmospheric business whose work includes
21 special abilities that are not stunts; or a substitute for
22 another actor, whether photographed as a double or acting as
23 a stand-in;

24 C. "below-the-line crew" means a person in a
25 position that is off-camera and who provides technical

1 services during the physical production of a film. "Below-
2 the-line crew" does not include a person who is a writer,
3 director, producer or background artist or performing artist
4 for the film;

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

7 E. "direct production expenditure" means a
8 transaction that is subject to taxation in New Mexico and is
9 certified pursuant to Subsection A of Section 7-2F-12 NMSA
10 1978:

11 (1) including an expenditure for:

12 (a) payment of wages, fringe benefits
13 or fees for talent, management or labor to a person who is a
14 New Mexico resident;

15 (b) payment for standard industry craft
16 inventory when provided by a below-the-line crew that is a
17 New Mexico resident in addition to its below-the-line crew
18 services;

19 (c) payment for wages and per diem for
20 a performing artist who is not a New Mexico resident and who
21 is directly employed by the film production company; provided
22 that the film production company deducts and remits, or
23 causes to be deducted and remitted, income tax from the first
24 day of services rendered in New Mexico at the maximum rate
25 pursuant to the Withholding Tax Act;

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

14 (e) any of the following provided by a
15 vendor: 1) the story and scenario to be used for a film; 2)
16 set construction and operations, wardrobe, accessories and
17 related services; 3) photography, sound synchronization,
18 lighting and related services; 4) editing and related
19 services; 5) rental of facilities and equipment; 6) the first
20 one hundred fifty dollars (\$150) of the daily expense of
21 leasing of vehicles, not including the chartering of aircraft
22 for out-of-state transportation; however, New Mexico-based
23 chartered aircraft for in-state transportation directly
24 attributable to the production shall be considered a direct
25 production expenditure; 7) food; 8) the first three hundred

1 dollars (\$300) of lodging per individual, per day; 9)
2 commercial airfare if purchased through a New Mexico-based
3 travel agency or travel company for travel to and from New
4 Mexico or within New Mexico that is directly attributable to
5 the production; 10) insurance coverage and bonding if
6 purchased through a New Mexico-based insurance agent, broker
7 or bonding agent; 11) subcontracted goods and services from
8 businesses; provided that the ordinary course of business of
9 the vendor procuring the goods and services from the
10 subcontractor directly relates to standard film industry
11 goods and services; and 12) other direct costs of producing a
12 film in accordance with generally accepted entertainment
13 industry practice; and

14 (2) does not include an expenditure for:

15 (a) a gift with a value greater than
16 one hundred dollars (\$100);

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

22 (c) entertainment, amusement or
23 recreation;

24 (d) subcontracted goods or services
25 provided by a vendor when the subcontractors providing those

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

9 (e) subcontracted services provided by
10 a vendor when the subcontracted services are provided by a
11 person who is below-the-line crew and is not a New Mexico
12 resident;

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

19 (g) wages for a person who is not a New
20 Mexico resident and who falsely claims to be a New Mexico
21 resident. The wages of such person shall not be considered
22 an eligible expense for two years from the date in which the
23 person is determined by the taxation and revenue department
24 as having made a false claim, regardless of whether the
25 person becomes a New Mexico resident within that time frame;

1 or

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

4 F. "division" means the New Mexico film division
5 of the economic development department;

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

9 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
15 delivery medium;

16 (2) can be viewed or reproduced;

17 (3) is not intended to and does not violate
18 a 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 commercial audiovisual products
23 or any part of a film or commercial audiovisual product;

24 J. "fiscal year" means the state fiscal year
25 beginning on July 1;

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

6 L. "New Mexico film partner production" means a
7 film or commercial audiovisual product in New Mexico for
8 which a New Mexico film partner:

9 (1) owns at least fifty percent of the
10 production for which the budget is certified pursuant to
11 Subsection A of Section 7-2F-12 NMSA 1978 for at least one
12 year from the date of the last direct production expenditure
13 or postproduction expenditure in New Mexico;

14 (2) owns or controls underlying intellectual
15 property resulting from the production for at least five
16 years from the date of the last direct production expenditure
17 or postproduction expenditure in New Mexico; or

18 (3) has funded at least fifty percent of the
19 production budget certified pursuant to Subsection A of
20 Section 7-2F-12 NMSA 1978;

21 M. "New Mexico resident" means an individual who
22 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

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

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

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

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

24 Q. "postproduction expenditure" means an
25 expenditure, certified pursuant to Subsection A of Section

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

9 R. "principal photography" means the production of
10 a film during which the main visual elements are created;

11 S. "qualified production facility" means a
12 building, or complex of buildings, building improvements and
13 associated back-lot facilities in which films are or are
14 intended to be regularly produced and that contain at least
15 one:

16 (1) sound stage with contiguous floor space
17 of at least seven thousand square feet and a ceiling height
18 of no less than eighteen feet; or

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

24 T. "vendor" means a person who sells or leases
25 goods or services that are related to standard industry craft

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

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

12 "7-2F-12. CREDIT CLAIMS--CERTIFICATION OF DIRECT
13 PRODUCTION AND POSTPRODUCTION EXPENDITURES--AGGREGATE AMOUNT
14 OF CLAIMS ALLOWED--EXCEPTION.--

15 A. The division shall certify a film production
16 company's budget for direct production expenditures and
17 postproduction expenditures during a preproduction meeting
18 with the division; provided that the division is prohibited
19 from certifying a film production company's budget if the
20 total expected claims in excess of the aggregate amount of
21 claims that may be authorized for payment pursuant to
22 Subsection B of this section would exceed one hundred million
23 dollars (\$100,000,000) in any fiscal year; and provided
24 further that the limitation in this subsection shall not
25 apply to certification of a budget for a New Mexico film

1 partner production.

2 B. The aggregate amount of claims for a credit
3 provided by the Film Production Tax Credit Act that may be
4 authorized in any fiscal year with respect to the direct
5 production expenditures or postproduction expenditures made
6 on film or commercial audiovisual products shall be in the
7 following amounts; provided that direct production
8 expenditures and postproduction expenditures made for a New
9 Mexico film partner production shall not be subject to the
10 aggregate amount of claims provided by this subsection:

11 (1) prior to fiscal year 2024, one hundred
12 ten million dollars (\$110,000,000);

13 (2) from fiscal year 2024 through fiscal
14 year 2028, the amount provided in Paragraph (1) of this
15 subsection shall be increased by ten million dollars
16 (\$10,000,000) in each of those fiscal years; and

17 (3) for fiscal year 2029 and subsequent
18 fiscal years, one hundred sixty million dollars
19 (\$160,000,000).

20 C. If a film production company submits a claim to
21 the taxation and revenue department for a credit pursuant to
22 the Film Production Tax Credit Act and the aggregate amount
23 of claims pursuant to Subsection B of this section has been
24 met for the fiscal year, the claim shall be placed at the
25 front of a queue for payment in a subsequent fiscal year.

1 Claims shall be placed in order of the date on which the
2 completed return in which the credit is claimed is filed.
3 Claims authorized for payment shall be paid pursuant to the
4 Tax Administration Act.

5 D. To provide guidance to film production
6 companies regarding the amount of credit capacity remaining
7 in the fiscal year, the taxation and revenue department shall
8 post monthly on that department's website the aggregate
9 amount of credits claimed and paid for the fiscal year. In
10 addition, the division shall post monthly on the division's
11 website the aggregate amount of claims certified pursuant to
12 Subsection A of this section for the fiscal year or any
13 subsequent fiscal year."

14 SECTION 8. Section 7-2F-13 NMSA 1978 (being Laws 2019,
15 Chapter 87, Section 7, as amended) is amended to read:

16 "7-2F-13. NEW FILM PRODUCTION TAX CREDIT.--

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

19 B. A film production company that meets the
20 requirements of the Film Production Tax Credit Act may apply
21 for, and the taxation and revenue department may allow, a tax
22 credit in an amount equal to twenty-five percent of:

23 (1) direct production expenditures made in
24 New Mexico that:

25 (a) are directly attributable to the

1 production in New Mexico of a film or commercial audiovisual
2 product;

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

5 (c) exclude direct production
6 expenditures for which another taxpayer claims the new film
7 production tax credit; and

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

15 (2) postproduction expenditures made in New
16 Mexico that:

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

19 (b) are for services performed in New
20 Mexico;

21 (c) are subject to taxation by the
22 state of New Mexico;

23 (d) exclude postproduction expenditures
24 for which another taxpayer claims the new film production tax
25 credit; and

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

8 C. With respect to expenditures attributable to a
9 production for which the film production company receives a
10 tax credit pursuant to the federal new markets tax credit
11 program, the percentage to be applied in calculating the
12 amount of credit allowed pursuant to the Film Production Tax
13 Credit Act is twenty percent.

14 D. A claim for new film production tax credits
15 shall be filed as part of a return filed pursuant to the
16 Income Tax Act or the Corporate Income and Franchise Tax Act.
17 A credit that has been assigned pursuant to Section 7-2F-5
18 NMSA 1978 shall not be authorized for payment unless the
19 assignee files a return pursuant to the Income Tax Act or the
20 Corporate Income and Franchise Tax Act. If the assignee is a
21 pass-through entity with no New-Mexico-sourced income, the
22 taxation and revenue department may allow a credit to be
23 claimed on a pass-through entity return. The date a complete
24 credit claim is received by the taxation and revenue
25 department shall determine the order that a credit claim is

1 authorized for payment by the department. The film
2 production company may apply all or a portion of the new film
3 production tax credit granted against personal income tax
4 liability or corporate income tax liability. If the amount
5 of the credit claimed exceeds the film production company's
6 tax liability for the taxable year in which the credit is
7 being claimed, the excess shall be refunded.

8 E. A taxpayer may be allocated the right to claim
9 a new film production tax credit in proportion to the
10 taxpayer's ownership interest if the taxpayer owns an
11 interest in a business entity that is taxed for federal
12 income tax purposes as a partnership and that business entity
13 has met all of the requirements to be eligible for the
14 credit. The total credit claimed by all members of that
15 entity shall not exceed the allowable credit pursuant to this
16 section.

17 F. A credit claim shall only be considered
18 received by the taxation and revenue department if the credit
19 claim is made on a complete return filed after the close of
20 the taxable year. A credit shall be claimed on the return
21 for the taxable year in which the direct production
22 expenditures or postproduction expenditures were incurred.
23 If a certificate of eligibility includes expenditures that
24 cross multiple taxable years, the taxpayer may elect to claim
25 the entire credit on the return for either taxable year. A

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

3 G. 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
8 affiliated persons.

9 H. 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 or
13 alternative evidence pursuant to Section 7-9-43 NMSA 1978.

14 I. A production for which the new film production
15 tax credit is claimed pursuant to Paragraph (1) of Subsection
16 B of this section shall contain an acknowledgment to the
17 state of New Mexico. Unless otherwise agreed upon in writing
18 by the film production company and the division, the
19 acknowledgment shall be in the end screen credits that the
20 production was filmed in New Mexico and a three-second static
21 or animated state logo provided by the division shall be
22 included and embedded in the following:

23 (1) end screen credits before the below-the-
24 line crew crawl for the life of the project of long-form
25 narrative film productions; and

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

3 (a) in the opening sequence;

4 (b) as a bumper into or out of a
5 commercial break; or

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

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

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

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

23 (a) contains production company
24 information, including the name of the production and contact
25 information that includes a working phone number and email

1 address for both the local production office and the
2 permanent production office to notify the public of the need
3 to file creditor claims against the film production company;
4 and

5 (b) remains posted on the website until
6 all financial obligations incurred in the state by the film
7 production company have been paid;

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

10 (4) to delay filing of a claim for the new
11 film production tax credit until the division delivers
12 written notification to the taxation and revenue department
13 that the film production company has fulfilled all
14 requirements for the credit; and

15 (5) to submit a completed application for
16 the new film production tax credit and supporting
17 documentation to the division within one year of incurring
18 the final qualified expenditures in New Mexico for the
19 registered project and that are included in the credit claim.

20 K. The division, in consultation with the taxation
21 and revenue department, shall determine the eligibility of
22 the film production company and shall report this information
23 to the taxation and revenue department in a manner and at
24 times the economic development department and the taxation
25 and revenue department shall agree upon. The division shall

1 also post on its website all information provided by the film
2 production company that does not reveal revenue, income or
3 other information that may jeopardize the confidentiality of
4 income tax returns.

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

1 providing the amount of the credit that the taxpayer may
2 claim.

3 M. Except as provided in Subsection N of this
4 section, that amount of a new film production tax credit for
5 total payments as applied to direct production expenditures
6 for the services of performing artists shall not exceed five
7 million dollars (\$5,000,000) for services rendered by
8 nonresident performing artists in a production. This
9 limitation shall not apply to the services of background
10 artists or resident performing artists cast in industry
11 standard feature performing roles.

12 N. In addition to the amount of payments allowed
13 pursuant to Subsection M of this section, that amount of a
14 new film production tax credit for total payments as applied
15 to direct production expenditures made for a New Mexico film
16 partner production for the services of nonresident performing
17 artists, directors, producers, screenwriters and editors
18 shall not exceed ten million dollars (\$10,000,000) for
19 services rendered for each production; provided that the
20 total payments allowed pursuant to this subsection shall not
21 exceed an annual aggregate maximum of forty million dollars
22 (\$40,000,000) for all productions in a fiscal year. If the
23 aggregate amount of payments made in a fiscal year is less
24 than the annual aggregate maximum, then the difference in
25 that fiscal year shall be added to the annual aggregate

1 maximum allowed in the following fiscal year."

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

4 "7-2F-15. NONRESIDENT BELOW-THE-LINE CREW CREDIT.--A
5 film production company may apply for, and the taxation and
6 revenue department may allow, a tax credit, which may be
7 referred to as the "nonresident below-the-line crew credit",
8 in an amount equal to fifteen percent of the payment of wages
9 for below-the-line crew who are not New Mexico residents,
10 that are directly attributable to the production in New
11 Mexico of a film or commercial audiovisual product for which
12 the film production company is claiming a new film production
13 tax credit; provided that:

14 A. the service for which payment is made is
15 rendered in New Mexico;

16 B. the payment of wages excludes payments:

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

20 (2) made to a personal services business;

21 C. prior to July 1, 2028, for a New Mexico film
22 partner production, the total amount of wages applied toward
23 the additional credit allowed pursuant to this section may be
24 up to one hundred percent of the amount of wages of resident
25 below-the-line wages claimed; provided that the film

1 production company provides a seventy-two-hour notice of the
2 opportunity to be hired to resident below-the-line crew,
3 which may be through a collective bargaining unit that
4 represents resident below-the-line crew; and

5 D. for a film or commercial audiovisual product
6 that is not a New Mexico film partner production and,
7 beginning July 1, 2028, for a New Mexico film partner
8 production:

9 (1) the total eligible wages for below-the-
10 line crew who are not New Mexico residents are not more than
11 fifteen percent of the production's total New Mexico budget
12 for below-the-line crew wages; and

13 (2) the film production company may claim
14 the nonresident below-the-line crew credit for employing up
15 to the following numbers of nonresident below-the-line crew
16 in New Mexico and shall be as calculated by the division upon
17 application for certification pursuant to Subsection A of
18 Section 7-2F-12 NMSA 1978; provided that the total number
19 shall not exceed twenty positions:

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

23 (b) ten positions if the production's
24 final New Mexico budget is greater than two million seven
25 hundred fifty thousand dollars (\$2,750,000) and up to seven

1 million five hundred thousand dollars (\$7,500,000);

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

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

11 (e) five positions in addition to the
12 number of positions provided in Subparagraphs (a) through (d)
13 of this paragraph for a television pilot episode that has
14 been ordered to series; provided that the film production
15 company certifies to the division that the series is intended
16 to be produced in New Mexico."

17 SECTION 10. Section 7-9-40 NMSA 1978 (being Laws 1970,
18 Chapter 60, Section 2, as amended) is amended to read:

19 "7-9-40. EXEMPTION--GROSS RECEIPTS TAX--PURSES AND
20 JOCKEY REMUNERATION AT NEW MEXICO RACETRACKS--RECEIPTS FROM
21 GROSS AMOUNTS WAGERED.--

22 A. Exempted from the gross receipts tax are the
23 receipts of horsemen, jockeys and trainers from race purses
24 at New Mexico horse racetracks subject to the jurisdiction of
25 the state racing commission.

1 B. Exempted from the gross receipts tax are the
2 receipts of a racetrack from the commissions and other
3 amounts authorized by Section 60-1A-19 NMSA 1978 to be
4 retained by a racetrack conducting horse races under the
5 authority of a license from the state racing commission."

6 **SECTION 11.** Section 7-9F-3 NMSA 1978 (being Laws 2000
7 (2nd S.S.), Chapter 22, Section 3, as amended by Laws 2019,
8 Chapter 270, Section 38 and by Laws 2019, Chapter 274,
9 Section 12) is amended to read:

10 "7-9F-3. DEFINITIONS.--As used in the Technology Jobs
11 and Research and Development Tax Credit Act:

12 A. "affiliate" means a person who directly or
13 indirectly owns or controls, is owned or controlled by or is
14 under common ownership or control with another person through
15 ownership of voting securities or other ownership interests
16 representing a majority of the total voting power of the
17 entity;

18 B. "annual payroll expense" means the wages paid
19 or payable to employees in the state by the taxpayer in the
20 taxable year for which the taxpayer applies for an additional
21 credit pursuant to the Technology Jobs and Research and
22 Development Tax Credit Act;

23 C. "base payroll expense" means the wages paid or
24 payable by the taxpayer in the taxable year prior to the
25 taxable year for which the taxpayer applies for an additional

1 credit pursuant to the Technology Jobs and Research and
2 Development Tax Credit Act, adjusted for any increase from
3 the preceding taxable year in the consumer price index for
4 the United States for all items as published by the United
5 States department of labor in the taxable year for which the
6 additional credit is claimed. In a taxable year during which
7 a taxpayer has been part of a business merger or acquisition
8 or other change in business organization, the taxpayer's base
9 payroll expense shall include the payroll expense of all
10 entities included in the reorganization for all positions
11 that are included in the business entity resulting from the
12 reorganization;

13 D. "department" means the taxation and revenue
14 department, the secretary of taxation and revenue or any
15 employee of the department exercising authority lawfully
16 delegated to that employee by the secretary;

17 E. "facility" means a factory, mill, plant,
18 refinery, warehouse, dairy, feedlot, building or complex of
19 buildings located within the state, including the land on
20 which it is located and all machinery, equipment and other
21 real and tangible personal property located at or within it
22 and used in connection with its operation;

23 F. "local option gross receipts tax" means a tax
24 authorized to be imposed by a county or municipality upon a
25 taxpayer's gross receipts, as that term is defined in the

1 Gross Receipts and Compensating Tax Act, and required to be
2 collected by the department at the same time and in the same
3 manner as the gross receipts tax;

4 G. "qualified expenditure" means an expenditure or
5 an allocated portion of an expenditure by a taxpayer in
6 direct connection with qualified research, essential for
7 conducting qualified research at a qualified facility,
8 including expenditures for depletable land and rent paid or
9 incurred for land, improvements, the allowable amount paid or
10 incurred to operate or maintain a facility, buildings,
11 equipment, computer software, computer software upgrades,
12 consultants and contractors performing work in New Mexico,
13 wages paid for employees conducting qualified research in New
14 Mexico at a qualified facility, technical books and manuals
15 and test materials, but not including any expenditure on
16 property that is owned by a municipality or county in
17 connection with an industrial revenue bond project, property
18 for which the taxpayer has received any credit pursuant to
19 the Investment Credit Act, property that was owned by the
20 taxpayer or an affiliate before July 3, 2000 or research and
21 development expenditures reimbursed by a person who is not an
22 affiliate of the taxpayer. If a "qualified expenditure" is
23 an allocation of an expenditure, the cost accounting
24 methodology used for the allocation of the expenditure shall
25 be the same cost accounting methodology used by the taxpayer

1 in its other business activities;

2 H. "qualified facility" means a facility in New
3 Mexico at which qualified research is conducted other than a
4 facility operated by a taxpayer for the United States or any
5 agency, department or instrumentality thereof;

6 I. "qualified research" means research:

7 (1) that is undertaken for the purpose of
8 discovering information:

9 (a) that is technological in nature;
10 and

11 (b) the application of which is
12 intended to be useful in the development of a new or improved
13 business component of the taxpayer; and

14 (2) substantially all of the activities of
15 which constitute elements of a process of experimentation
16 related to a new or improved function, performance,
17 reliability or quality, but not related to style, taste or
18 cosmetic or seasonal design factors;

19 J. "qualified research and development small
20 business" means a taxpayer that:

21 (1) employed no more than fifty employees as
22 determined by the number of employees for which the taxpayer
23 was liable for unemployment insurance coverage in the taxable
24 year for which an additional credit is claimed;

25 (2) had total qualified expenditures of no

1 more than five million dollars (\$5,000,000) in the taxable
2 year for which an additional credit is claimed; and

3 (3) did not have more than fifty percent of
4 its voting securities or other equity interest with the right
5 to designate or elect the board of directors or other
6 governing body of the business owned directly or indirectly
7 by another business;

8 K. "rural area" means any area of the state other
9 than the state fairgrounds, an incorporated municipality with
10 a population of thirty thousand or more according to the most
11 recent federal decennial census and any area within three
12 miles of the external boundaries of an incorporated
13 municipality with a population of thirty thousand or more
14 according to the most recent federal decennial census;

15 L. "taxpayer" means any of the following persons,
16 other than a federal, state or other governmental unit or
17 subdivision or an agency, department, institution or
18 instrumentality thereof:

19 (1) a person liable for payment of any tax;

20 (2) a person responsible for withholding and
21 payment or collection and payment of any tax;

22 (3) a person to whom an assessment has been
23 made if the assessment remains unabated or the assessed
24 amount has not been paid; or

25 (4) for purposes of the additional credit

1 against the taxpayer's income tax pursuant to the Technology
2 Jobs and Research and Development Tax Credit Act and to the
3 extent of their respective interest in that entity, the
4 shareholders, members, partners or other owners of:

5 (a) a small business corporation that
6 has elected to be treated as an S corporation for federal
7 income tax purposes; or

8 (b) an entity treated as a partnership
9 or disregarded entity for federal income tax purposes; and

10 M. "wages" means remuneration for services
11 performed by an employee in New Mexico for an employer, not
12 to exceed a maximum annual wage of five hundred thousand
13 dollars (\$500,000) per employee."

14 SECTION 12. Section 7-12A-2 NMSA 1978 (being Laws 1986,
15 Chapter 112, Section 3, as amended) is amended to read:

16 "7-12A-2. DEFINITIONS.--As used in the Tobacco Products
17 Tax Act:

18 A. "department" means the taxation and revenue
19 department, the secretary or any employee of the department
20 exercising authority lawfully delegated to that employee by
21 the secretary;

22 B. "cigar" means a roll for smoking made wholly or
23 in part of tobacco and weighing greater than four and one-
24 half pounds per thousand;

25 C. "distribute" means to sell or to give;

1 D. "closed system cartridge" means a single-use,
2 pre-filled disposable cartridge containing e-liquid for use
3 in an e-cigarette;

4 E. "e-cigarette" means any electronic oral device,
5 whether composed of a heating element and battery or an
6 electronic circuit, that provides a vapor of nicotine or any
7 other substance the use or inhalation of which simulates
8 smoking and includes any such device, or any part thereof,
9 whether manufactured, distributed, marketed or sold as an
10 e-cigarette, e-cigar, e-pipe or any other product, name or
11 descriptor. "E-cigarette" does not include any product
12 regulated as a drug or device by the United States food and
13 drug administration under the Federal Food, Drug, and
14 Cosmetic Act;

15 F. "e-liquid" means liquid or other substance
16 intended for use in an e-cigarette, not including any
17 substance containing cannabis or oil derived from cannabis;

18 G. "engaging in business" means carrying on or
19 causing to be carried on any activity with the purpose of
20 direct or indirect benefit;

21 H. "first purchaser" means a person engaging in
22 business in New Mexico that manufactures tobacco products or
23 that purchases or receives on consignment tobacco products
24 from any person outside of New Mexico, which tobacco products
25 are to be distributed in New Mexico in the ordinary course of

1 business;

2 I. "little cigar" means a roll for smoking made
3 wholly or in part of tobacco, using an integrated cellulose
4 acetate or other similar filter, and weighing not more than
5 four and one-half pounds per thousand;

6 J. "person" means any individual, estate, trust,
7 receiver, cooperative association, club, corporation,
8 company, firm, partnership, joint venture, syndicate, limited
9 liability company, limited liability partnership, other
10 association or gas, water or electric utility owned or
11 operated by a county or municipality or other entity of the
12 state; "person" also means, to the extent permitted by law, a
13 federal, state or other governmental unit or subdivision or
14 an agency, department or instrumentality;

15 K. "product value" means the amount paid, net of
16 any discounts taken and allowed, for tobacco products or, in
17 the case of tobacco products received on consignment, the
18 value of the tobacco products received or, in the case of
19 tobacco products manufactured and sold in New Mexico, the
20 proceeds from the sale by the manufacturer of the tobacco
21 products; and

22 L. "tobacco product" means:

23 (1) any product, other than cigarettes,
24 cigars and little cigars, made from or containing tobacco;

25 (2) e-liquid;

1 (3) e-cigarettes; and

2 (4) closed system cartridges."

3 SECTION 13. Section 7-12A-3 NMSA 1978 (being Laws 1986,
4 Chapter 112, Section 4, as amended) is amended to read:

5 "7-12A-3. IMPOSITION AND RATES OF TAX--REDUCTION OF
6 RATE FOR CERTAIN TOBACCO PRODUCTS--DENOMINATION AS "TOBACCO
7 PRODUCTS TAX"--DATE PAYMENT OF TAX DUE.--

8 A. For the manufacture or acquisition of tobacco
9 products in New Mexico, not including cigars, little cigars,
10 e-liquid, e-cigarettes or closed system cartridges, to be
11 distributed in the ordinary course of business and for the
12 consumption of tobacco products in New Mexico, there is
13 imposed an excise tax at the rate of twenty-five percent of
14 the product value of the tobacco products.

15 B. For the manufacture or acquisition of cigars in
16 New Mexico to be distributed in the ordinary course of
17 business and for the consumption of cigars in New Mexico,
18 there is imposed an excise tax at a rate equal to twenty-five
19 percent of the product value of the cigar, not to exceed
20 fifty cents (\$.50) per cigar.

21 C. For the manufacture or acquisition of little
22 cigars in New Mexico to be distributed in the ordinary course
23 of business and for the consumption of little cigars in New
24 Mexico, there is imposed an excise tax at a rate equal to the
25 rate imposed on cigarettes pursuant to Section 7-12-3 NMSA

1 1978 per package of little cigars.

2 D. For the manufacture or acquisition of e-liquid
3 or closed system cartridges containing more than five
4 milliliters of e-liquid in New Mexico to be distributed in
5 the ordinary course of business and for the consumption of e-
6 liquid in New Mexico, there is imposed an excise tax at a
7 rate equal to twelve and one-half percent of the product
8 value of the e-liquid.

9 E. For the manufacture or acquisition of closed
10 system cartridges containing five milliliters or less of e-
11 liquid in New Mexico to be distributed in the ordinary course
12 of business, there is imposed an excise tax at a rate of
13 fifty cents (\$.50) per closed system cartridge.

14 F. The taxes imposed by this section may be
15 referred to as the "tobacco products tax".

16 G. The tobacco products tax shall be paid by the
17 first purchaser on or before the twenty-fifth day of the
18 month following the month in which the taxable event occurs."

19 **SECTION 14.** Section 7-38-38 NMSA 1978 (being Laws 1973,
20 Chapter 258, Section 78, as amended) is amended to read:

21 "7-38-38. PAYMENT OF PROPERTY TAXES--INSTALLMENT DUE
22 DATES--REFUND IN CASES OF OVERPAYMENTS--ROUNDING.--

23 A. Unless otherwise provided in the Property Tax
24 Code, property taxes in the amount of ten dollars (\$10.00) or
25 over are payable to the county treasurer in two equal

1 installments due on November 10 of the year in which the tax
2 bill was prepared and mailed and on April 10 of the following
3 year. A board of county commissioners may, by ordinance,
4 provide that property taxes under ten dollars (\$10.00) are
5 due and payable in a single payment on November 10 of the
6 year in which the tax bill was prepared and mailed. No
7 demand for payment of property taxes is necessary.

8 B. If a taxpayer remits an amount in payment of
9 the taxpayer's property taxes that exceeds the total property
10 tax liability shown on the property tax bill, together with
11 any applicable penalty and interest computed to the date
12 payment is received by the county treasurer, a refund of the
13 amount in excess shall be made to the taxpayer if either of
14 the following conditions are met:

15 (1) a written request for the refund is made
16 by the taxpayer and received by the county treasurer within
17 sixty days of the date the excess payment is received by the
18 county treasurer; or

19 (2) the county treasurer on the county
20 treasurer's own initiative determines by June 30 of the year
21 following the year for which taxes are imposed that an excess
22 payment has been made.

23 C. The secretary may by rule permit or require
24 rounding to the nearest five cents (\$.05) of any amount due
25 pursuant to the Property Tax Code."

1 SECTION 15. Section 7-38-71 NMSA 1978 (being Laws 1973,
2 Chapter 258, Section 111, as amended) is amended to read:

3 "7-38-71. DISTRIBUTION OF AMOUNTS RECEIVED FROM SALE OF
4 PROPERTY.--

5 A. Money received by the department from the sale
6 of real or personal property for delinquent property taxes
7 shall be deposited in a suspense fund and distributed as
8 follows in the order provided:

9 (1) first, that portion equal to the costs
10 shall be retained by the department for use, subject to
11 appropriation by the legislature, in administration of the
12 Property Tax Code;

13 (2) second, that portion equal to the
14 penalties and interest due shall be retained by the
15 department for use, subject to appropriation by the
16 legislature, by the department in administration of the
17 Property Tax Code;

18 (3) third, that portion equal to the
19 delinquent taxes due shall be remitted by the department to
20 the appropriate county treasurer for distribution by the
21 treasurer to the governmental units in accordance with the
22 law and the regulations of the department of finance and
23 administration;

24 (4) fourth, if the former owner of the
25 property sold is a delinquent taxpayer pursuant to Section

1 7-1-16 NMSA 1978, that portion equal to any delinquent amount
2 for any tax program administered by the department pursuant
3 to Section 7-1-2 NMSA 1978 shall be retained by the
4 department to satisfy the delinquent amount; and

5 (5) fifth, the balance shall be paid to the
6 former owner of the property sold or to any other person
7 designated by order directed to the department by a court of
8 competent jurisdiction, provided that the department may
9 first apply all or any portion of the balance to be paid
10 against the amount of any property tax, including any penalty
11 and interest related thereto, owed by the person to whom the
12 balance would otherwise be paid.

13 B. As a condition precedent to payment of the
14 balance of the sale amount received to the former owner of
15 the property, the department may require any person claiming
16 to be entitled to that payment to present sufficient evidence
17 of proof of former ownership of the property to the
18 department. The department shall adopt regulations providing
19 for the procedures to be followed by persons claiming sale
20 proceeds as former owners in those instances where
21 conflicting claims exist or the department requires proof of
22 ownership.

23 C. If no person claims the balance of sale
24 proceeds as the former owner of the property within two years
25 of the date of the sale and after a reasonable search to

1 determine the former owner is made by the department and no
2 former owner is found, the balance of the sale proceeds shall
3 be considered abandoned property and deposited in accordance
4 with the provisions of the Uniform Unclaimed Property Act
5 (1995).

6 D. If the balance of proceeds from the sale after
7 paying a higher priority claim under Subsection A of this
8 section is insufficient to pay all of the next priority
9 claim, then the complete balance shall be applied to that
10 next priority claim as partial payment."

11 SECTION 16. Section 9-11-12.1 NMSA 1978 (being Laws
12 1997, Chapter 64, Section 1, as amended) is amended to read:

13 "9-11-12.1. TRIBAL COOPERATIVE AGREEMENTS.--

14 A. The secretary may enter into cooperative
15 agreements with the Pueblos of Acoma, Cochiti, Jemez, Isleta,
16 Laguna, Nambe, Ohkay Owingeh, Picuris, Pojoaque, Sandia, San
17 Felipe, San Ildefonso, Santa Ana, Santa Clara, Santo Domingo,
18 Taos, Tesuque, Zia and Zuni; the Jicarilla Apache Nation; the
19 Navajo Nation; the Mescalero Apache Tribe; and the nineteen
20 pueblos acting collectively for the exchange of information
21 and the reciprocal, joint or common enforcement,
22 administration, collection, remittance and audit of gross
23 receipts tax and cannabis excise tax revenues of the party
24 jurisdictions.

25 B. Money collected by the department on behalf of

1 a tribe in accordance with an agreement entered into pursuant
2 to this section is not money of this state and shall be
3 collected and disbursed in accordance with the terms of the
4 agreement, notwithstanding any other provision of law.

5 C. The secretary is empowered to promulgate such
6 rules and to establish such procedures as the secretary deems
7 appropriate for the collection and disbursement of funds due
8 a tribe and for the receipt of money collected by a tribe for
9 the account of this state under the terms of a cooperative
10 agreement entered into under the authority of this section,
11 including procedures for identification of taxpayers or
12 transactions that are subject only to the taxing authority of
13 the tribe, of this state and of both party jurisdictions.

14 D. Nothing in an agreement entered into pursuant
15 to this section shall be construed as authorizing this state
16 or a tribe to tax a person or transaction that federal law
17 prohibits that government from taxing, authorizing a state or
18 tribal court to assert jurisdiction over a person who is not
19 otherwise subject to that court's jurisdiction or affecting
20 any issue of the respective civil or criminal jurisdictions
21 of this state or the tribe. Nothing in an agreement entered
22 into pursuant to this section shall be construed as an
23 assertion or an admission by either this state or a tribe
24 that the taxes of one have precedence over the taxes of the
25 other when a person or transaction is subject to the taxing

1 authority of both governments. An agreement entered into
2 pursuant to this section shall be construed solely as an
3 agreement between the two party governments and shall not
4 alter or affect the government-to-government relations
5 between this state and any other tribe.

6 E. Except as provided in Subsection F of this
7 section, any ordinance of a tribe imposing, amending or
8 repealing a tax administered by the department pursuant to
9 this section shall include an effective date of the first
10 July 1 after the expiration of at least three months from the
11 date that the adopted ordinance is mailed or delivered to the
12 secretary.

13 F. If the governor of New Mexico declares a state
14 of emergency, or if there is an unforeseen occurrence that
15 would cause an undue hardship for a tribe, an ordinance
16 changing the imposition of a tax shall become effective on
17 the first January 1 after the expiration of at least three
18 months after such a declaration or event and notification to
19 the department.

20 G. As used in this section:

21 (1) "tribal" means of or pertaining to a
22 tribe; and

23 (2) "tribe" means an Indian nation, tribe or
24 pueblo located entirely in New Mexico or the Navajo Nation."

25 SECTION 17. A new section of the Motor Vehicle Code,

1 Section 66-2-19 NMSA 1978, is enacted to read:

2 "66-2-19. ROUNDING.--The secretary may by rule permit
3 or require rounding to the nearest five cents (\$.05) of any
4 amount due pursuant to the Motor Vehicle Code."

5 SECTION 18. APPLICABILITY.--The provisions of Sections
6 6 through 9 of this act apply to taxable years beginning on
7 or after January 1, 2027.

8 SECTION 19. EFFECTIVE DATE.--

9 A. The effective date of the provisions of
10 Sections 1 through 5 and 10 through 17 of this act is July 1,
11 2026.

12 B. The effective date of the provisions of
13 Sections 6 through 9 of this act is January 1, 2027.=====

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