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SENATE BILL 211

52ND LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2016

INTRODUCED BY

John C. Ryan

AN ACT

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

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

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

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

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

- (1) Income Tax Act;
- (2) Withholding Tax Act;
- (3) Venture Capital Investment Act;

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- 1 (4) Gross Receipts and Compensating Tax Act
2 and any state gross receipts tax;
- 3 (5) Liquor Excise Tax Act;
- 4 (6) Local Liquor Excise Tax Act;
- 5 (7) any municipal local option gross receipts
6 tax;
- 7 (8) any county local option gross receipts
8 tax;
- 9 (9) Special Fuels Supplier Tax Act;
- 10 (10) Gasoline Tax Act;
- 11 (11) petroleum products loading fee, which fee
12 shall be considered a tax for the purpose of the Tax
13 Administration Act;
- 14 (12) Alternative Fuel Tax Act;
- 15 (13) Cigarette Tax Act;
- 16 (14) Estate Tax Act;
- 17 (15) Railroad Car Company Tax Act;
- 18 (16) Investment Credit Act, rural job tax
19 credit, Laboratory Partnership with Small Business Tax Credit
20 Act, Technology Jobs and Research and Development Tax Credit
21 Act, [~~film production tax credit, New Mexico filmmaker tax~~
22 ~~credit~~] Film Production Tax Credit Act, Affordable Housing Tax
23 Credit Act and high-wage jobs tax credit [~~and Research and~~
24 ~~Development Small Business Tax Credit Act~~];
- 25 (17) Corporate Income and Franchise Tax Act;

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- 1 (18) Uniform Division of Income for Tax
- 2 Purposes Act;
- 3 (19) Multistate Tax Compact;
- 4 (20) Tobacco Products Tax Act; and
- 5 (21) the telecommunications relay service
- 6 surcharge imposed by Section 63-9F-11 NMSA 1978, which
- 7 surcharge shall be considered a tax for the purposes of the Tax
- 8 Administration Act;

9 B. the administration and enforcement of the

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

11 they now exist or may hereafter be amended:

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

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1 Administration Act;

2 (12) Enhanced Oil Recovery Act;

3 (13) Natural Gas and Crude Oil Production

4 Incentive Act; and

5 (14) intergovernmental production tax credit
6 and intergovernmental production equipment tax credit;

7 C. the administration and enforcement of the
8 following taxes, surcharges, fees or acts as they now exist or
9 may hereafter be amended:

10 (1) Weight Distance Tax Act;

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

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

15 (4) 911 emergency surcharge and the network
16 and database surcharge, which surcharges shall be considered
17 taxes for purposes of the Tax Administration Act;

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

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

24 (7) the gaming tax imposed pursuant to the
25 Gaming Control Act; and

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1 D. the administration and enforcement of all other
2 laws, with respect to which the department is charged with
3 responsibilities pursuant to the Tax Administration Act, but
4 only to the extent that the other laws do not conflict with the
5 Tax Administration Act."

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

8 "7-2F-2.1. ADDITIONAL DEFINITIONS.--As used in Sections
9 [~~5 through 11 of this 2015 act~~] 7-2F-6 through 7-2F-12 NMSA
10 1978:

11 A. "direct production expenditure":

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

15 (a) payment of wages, fringe benefits or
16 fees for talent, management or labor to a person who is a New
17 Mexico resident;

18 (b) payment for standard industry craft
19 inventory when provided by a resident industry crew in addition
20 to its industry crew services;

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

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1 services rendered in New Mexico at the maximum rate pursuant to
2 the Withholding Tax Act;

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

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

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1 provided that only the first one hundred dollars (\$100) of the
2 daily expense of leasing a vehicle for passenger transportation
3 on roadways in the state may be claimed as a direct production
4 expenditure; 7) food or lodging; provided that only the first
5 one hundred fifty dollars (\$150) of lodging per individual per
6 day is eligible to be claimed as a direct production
7 expenditure; 8) commercial airfare if purchased through a New
8 Mexico-based travel agency or travel company for travel to and
9 from New Mexico or within New Mexico that is directly
10 attributable to the production; 9) insurance coverage and
11 bonding if purchased through a New Mexico-based insurance
12 agent, broker or bonding agent; 10) services for an external
13 audit upon submission of an application for a film production
14 tax credit by an accounting firm that submits the application
15 pursuant to Subsection I of Section [~~5 of this 2015 act~~] 7-2F-6
16 NMSA 1978; and 11) other direct costs of producing a film in
17 accordance with generally accepted entertainment industry
18 practice; and

19 (2) does not include an expenditure for:

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

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

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1 (\$2,500);

2 (c) entertainment, amusement or
3 recreation; or

4 (d) subcontracted goods or services
5 provided by a vendor when subcontractors are not subject to
6 state taxation, such as equipment and locations provided by the
7 military, government and religious organizations;

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

12 C. "vendor" means a person who sells or leases
13 goods or services that are related to standard industry craft
14 inventory, who has a physical presence in New Mexico and is
15 subject to gross receipts tax pursuant to the Gross Receipts
16 and Compensating Tax Act and income tax pursuant to the Income
17 Tax Act or corporate income tax pursuant to the Corporate
18 Income and Franchise Tax Act but excludes a personal services
19 business."

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

22 "7-2F-3. PURPOSES--GOALS.--The purposes and goals of the
23 Film Production Tax Credit Act are to:

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

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1 B. develop a pool of trained professionals and
2 businesses in New Mexico to supply and support the film
3 industry in the state;

4 C. increase employment of New Mexico residents;

5 D. improve the economic success of existing
6 businesses in New Mexico; and

7 E. develop the infrastructure in the state
8 necessary for a thriving film industry."

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

11 "7-2F-4. REPORTING--ACCOUNTABILITY.--

12 A. The economic development department shall:

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

16 (2) track the direct expenditures for the
17 credits;

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

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1 (4) report annually to the revenue
2 stabilization and tax policy committee and the legislative
3 finance committee on aggregate approved tax credits made
4 pursuant to the Film Production Tax Credit Act.

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

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

13 (1) the total aggregate wages of the members
14 of the New Mexico resident crew;

15 (2) the number of New Mexico residents
16 employed;

17 (3) the total amount of gross receipts taxes
18 paid;

19 (4) the total number of hours worked by New
20 Mexico residents;

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

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

25 (7) other information deemed necessary by the

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1 division and economic development department to determine the
2 effectiveness of the credit.

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

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

13 "7-2F-5. ASSIGNMENT.--

14 A. A film production company that is eligible to
15 receive a [~~film production tax~~] credit pursuant to the Film
16 Production Tax Credit Act may assign the payment of an
17 authorized film production tax credit or a film and television
18 tax credit to a third-party financial institution, or to an
19 authorized third party, one time in a full or partial amount.
20 If the parties to the assignment have complied with the
21 procedures established by the taxation and revenue department
22 for the assignment of a film production tax credit payment, the
23 department shall remit to the institution that amount of tax
24 credit approved by the department that would otherwise be
25 remitted to the company.

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1 B. For the purposes of this section:

2 (1) "authorized third party" means an entity
3 that:

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

6 (b) initiates that film's production;
7 and

8 (2) "financial institution" means:

9 (a) a fund purposely created to produce
10 a film; or

11 (b) a bank, savings institution or
12 credit union that is organized or chartered pursuant to the
13 laws of New Mexico or the United States and that files a New
14 Mexico income tax return."

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

17 "7-2F-6. FILM AND TELEVISION TAX CREDIT--FILM PRODUCTION
18 COMPANIES THAT COMMENCE PRINCIPAL PHOTOGRAPHY ON OR AFTER
19 JANUARY 1, 2016.--

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

22 B. An eligible film production company may apply
23 for, and the taxation and revenue department may allow, subject
24 to the limitation in Section [~~11 of this 2015 act~~] 7-2F-12 NMSA
25 1978, a tax credit in an amount equal to twenty-five percent

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1 of:

2 (1) direct production expenditures made in New
3 Mexico that:

4 (a) are directly attributable to the
5 production in New Mexico of a film or commercial audiovisual
6 product;

7 (b) are subject to taxation by the state
8 of New Mexico;

9 (c) exclude direct production
10 expenditures for which another taxpayer claims the film and
11 television tax credit; and

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

19 (2) postproduction expenditures made in
20 New Mexico that:

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

23 (b) are for postproduction services
24 performed in New Mexico;

25 (c) are subject to taxation by the state

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1 of New Mexico;

2 (d) exclude postproduction expenditures
3 for which another taxpayer claims the film and television tax
4 credit; and

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

12 C. With respect to expenditures attributable to a
13 production for which the film production company receives a tax
14 credit pursuant to the federal new markets tax credit program,
15 the percentage to be applied in calculating the film and
16 television tax credit is twenty percent.

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

22 E. A production for which the film and television
23 tax credit is claimed pursuant to Paragraph (1) of Subsection B
24 of this section shall contain an acknowledgment to the state of
25 New Mexico in the end screen credits that the production was

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1 filmed in New Mexico, and a state logo provided by the division
2 shall be included and embedded in the end screen credits of
3 long-form narrative film productions and television episodes,
4 unless otherwise agreed upon in writing by the film production
5 company and the division.

6 F. To be eligible for the film and television tax
7 credit, a film production company shall submit to the division
8 information required by the division to demonstrate conformity
9 with the requirements of the Film Production Tax Credit Act,
10 including detailed information on each direct production
11 expenditure and each postproduction expenditure. A film
12 production company shall provide to the division a projection
13 of the film and television tax credit claim the film production
14 company plans to submit in the fiscal year. In addition, the
15 film production company shall agree in writing:

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

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

21 (a) contains production company
22 information, including the name of the production, the address
23 of the production company and contact information that includes
24 a working phone number, fax number and email address for both
25 the local production office and the permanent production office

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1 to notify the public of the need to file creditor claims
2 against the film production company; and

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

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

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

13 (5) to submit a completed application for the
14 film and television tax credit and supporting documentation to
15 the division within one year of the close of the film
16 production company's taxable year in which the expenditures in
17 New Mexico were incurred for the registered project and that
18 are included in the credit claim.

19 G. The division shall determine the eligibility of
20 the company and shall report this information to the taxation
21 and revenue department in a manner and at times the economic
22 development department and the taxation and revenue department
23 shall agree upon. The division shall also post on its [~~web~~
24 ~~site~~] website all information provided by the film production
25 company that does not reveal revenue, income or other

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1 information that may jeopardize the confidentiality of income
2 tax returns, including that the division shall report quarterly
3 the projected amount of credit claims for the fiscal year.

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

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

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1 in compliance with the requirements of this section. If the
2 requirements of this section have been complied with, subject
3 to the provisions of Section [~~11 of this 2015 act~~] 7-2F-12 NMSA
4 1978, the taxation and revenue department shall approve the
5 film and television tax credit and issue a document granting
6 the tax credit.

7 J. The film production company may apply all or a
8 portion of the film and television tax credit granted against
9 personal income tax liability or corporate income tax
10 liability. If the amount of the film and television tax credit
11 claimed exceeds the film production company's tax liability for
12 the taxable year in which the credit is being claimed, the
13 excess shall be refunded."

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

16 "7-2F-7. ADDITIONAL CREDIT--TELEVISION PILOTS AND
17 SERIES.--

18 A. In addition to the credit provided by Section [~~5~~
19 ~~of this 2015 act~~] 7-2F-6 NMSA 1978, an additional five percent
20 shall be applied in calculating the amount of the film and
21 television tax credit to direct production expenditures, except
22 as provided in Subsections C and D of this section, on:

23 (1) a standalone pilot intended for series
24 television in New Mexico; and

25 (2) series television productions intended for

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1 commercial distribution with an order for at least six episodes
2 in a single season; provided that the New Mexico budget for
3 each of those six episodes is fifty thousand dollars (\$50,000)
4 or more.

5 B. A film production company applying for an
6 additional credit pursuant to this section shall not be
7 eligible for the additional credit pursuant to Section [~~7 of~~
8 ~~this 2015 act~~] 7-2F-8 NMSA 1978.

9 C. Direct production expenditures that are payments
10 to a nonresident performing artist in a standalone pilot shall
11 not be eligible for the additional credit pursuant to this
12 section.

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

16 (1) a television series completes at least one
17 season of the scheduled episodes for that series in
18 New Mexico;

19 (2) the film production company certifies the
20 intention to produce a subsequent season to the series
21 described in Paragraph (1) of this subsection in New Mexico;
22 and

23 (3) the film production company, or its parent
24 company, produces or begins production of an additional
25 eligible television series in New Mexico during the same film

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1 production company's taxable year as the television series.
2 Payments to a nonresident performing artist for the additional
3 television series may also be eligible for the additional
4 credit pursuant to this section."

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

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

9 A. In addition to the credit provided by Section [5
10 ~~of this 2015 act~~] 7-2F-6 NMSA 1978, an additional five percent
11 shall be applied in calculating the amount of the film and
12 television tax credit to direct production expenditures that
13 are directly attributable and paid to a New Mexico resident who
14 is hired as industry crew, or who is hired as a producer,
15 writer or director working directly with the physical
16 production and has filed a New Mexico income tax return as a
17 resident in the two previous taxable years. The direct
18 production expenditures shall be on a production with a total
19 new budget of:

20 (1) not more than thirty million dollars
21 (\$30,000,000) that shoots at least ten principal photography
22 days in New Mexico at a qualified production facility; provided
23 that a film production company shall:

24 (a) shoot at least seven of those days
25 at a sound stage that is a qualified production facility and

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1 the remaining number of required days, if any, at a standing
2 set that is a qualified production facility; and

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

6 (2) thirty million dollars (\$30,000,000) or
7 more that shoots at least fifteen principal photography days in
8 New Mexico at a qualified production facility; provided that a
9 film production company shall:

10 (a) shoot at least ten of those days at
11 a sound stage that is a qualified production facility and the
12 remaining number of required days, if any, at a standing set
13 that is a qualified production facility; and

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

17 B. A film production company that receives an
18 additional credit pursuant to Section [~~6 of this 2015 act~~]
19 7-2F-7 NMSA 1978 shall not be eligible for the additional
20 credit pursuant to this section."