

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

HOUSE BILL 654

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

INTRODUCED BY

Antonio "Moe" Maestas and Jim R. Trujillo

AN ACT

RELATING TO TAXATION; AMENDING THE FILM PRODUCTION TAX CREDIT ACT; ELIMINATING CERTAIN ADDITIONAL CREDITS; ELIMINATING THE AGGREGATE CAP; INCREASING THE AMOUNT OF CREDIT THAT MAY BE CLAIMED PER TAXABLE YEAR; REDUCING THE AMOUNT OF PAYMENTS FOR NONRESIDENT PERFORMING ARTISTS ELIGIBLE FOR THE CREDIT; ELIMINATING PAYMENTS FOR WAGES AND PER DIEM FOR A NONRESIDENT PERFORMING ARTIST ELIGIBLE FOR THE CREDIT; REDUCING THE ELIGIBLE VALUE OF CERTAIN JEWELRY USED IN FILM PRODUCTIONS ELIGIBLE FOR THE CREDIT; AMENDING AND REPEALING SECTIONS OF THE ACT.

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

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

"7-2F-1. FILM PRODUCTION TAX CREDIT [~~FILM PRODUCTION~~

.211466.3

underscoring material = new  
~~[bracketed material] = delete~~

underscored material = new  
[bracketed material] = delete

1 ~~COMPANIES THAT COMMENCE PRINCIPAL PHOTOGRAPHY PRIOR TO JANUARY~~  
2 ~~1, 2016].--~~

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

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

10 (1) direct production expenditures made in New  
11 Mexico that:

12 (a) are directly attributable to the  
13 production in New Mexico of a film or commercial audiovisual  
14 product;

15 (b) are subject to taxation by the state  
16 of New Mexico;

17 (c) exclude direct production  
18 expenditures for which another taxpayer claims the film  
19 production tax credit; and

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

.211466.3

underscoring material = new  
~~[bracketed material] = delete~~

1 transaction; and  
2 (2) postproduction expenditures made in  
3 New Mexico that:  
4 (a) are directly attributable to the  
5 production of a commercial film or audiovisual product;  
6 (b) are for services performed in New  
7 Mexico;  
8 (c) are subject to taxation by the state  
9 of New Mexico;  
10 (d) exclude postproduction expenditures  
11 for which another taxpayer claims the film production tax  
12 credit; and  
13 (e) do not exceed the usual and  
14 customary cost of the goods or services acquired when purchased  
15 by unrelated parties. The secretary of taxation and revenue  
16 may determine the value of the goods or services for purposes  
17 of this section when the buyer and seller are affiliated  
18 persons or the sale or purchase is not an arm's length  
19 transaction.  
20 C. In addition to the percentage applied pursuant  
21 to Subsection B of this section, another five percent shall be  
22 applied in calculating the amount of the film production tax  
23 credit to direct production expenditures [~~(1)~~] on a standalone  
24 pilot intended for series television in New Mexico or on series  
25 television productions intended for commercial distribution

.211466.3

underscored material = new  
[bracketed material] = delete

1 with an order for at least ~~[six]~~ twelve episodes ~~[in a single~~  
2 ~~season]~~; provided that the New Mexico budget for each of those  
3 six episodes is fifty thousand dollars (\$50,000) or more ~~[or~~  
4 ~~(2) on a production with a total New Mexico~~  
5 ~~budget of the following amounts; provided that the expenditures~~  
6 ~~are directly attributable and paid to a New Mexico resident who~~  
7 ~~is hired as industry crew, or who is hired as a producer,~~  
8 ~~writer or director working directly with the physical~~  
9 ~~production and has filed a New Mexico income tax return as a~~  
10 ~~resident in the two previous taxable years:~~

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

22 ~~(b) thirty million dollars (\$30,000,000)~~  
23 ~~or more that shoots at least fifteen principal photography days~~  
24 ~~in New Mexico at a qualified production facility; provided that~~  
25 ~~a film production company in principal photography on or after~~

.211466.3

underscored material = new  
[bracketed material] = delete

1 ~~April 10, 2015 shall: 1) shoot at least ten of those days at a~~  
2 ~~sound stage that is a qualified production facility and the~~  
3 ~~remaining number of required days, if any, at a standing set~~  
4 ~~that is a qualified production facility; and 2) for each day of~~  
5 ~~the fifteen days, include industry crew working on the premises~~  
6 ~~of the facility for a minimum of eight hours within a twenty-~~  
7 ~~four-hour period].~~

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

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

.211466.3

underscored material = new  
[bracketed material] = delete

1 ~~commercial audiovisual products. A film production company~~  
2 ~~that submits a claim for a film production tax credit that is~~  
3 ~~unable to receive the tax credit because the claims for the~~  
4 ~~fiscal year exceed the limitation in this subsection shall be~~  
5 ~~placed for the subsequent fiscal year at the front of a queue~~  
6 ~~of credit claimants submitting claims in the subsequent fiscal~~  
7 ~~year in the order of the date on which the credit was~~  
8 ~~authorized for payment.~~

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

18 ~~G. Except as otherwise provided in this section,~~  
19 ~~credit claims authorized for payment pursuant to the Film~~  
20 ~~Production Tax Credit Act shall be paid pursuant to provisions~~  
21 ~~of the Tax Administration Act to the taxpayer as follows:~~

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

25 ~~(2) a credit claim amount of two million~~

underscored material = new  
[bracketed material] = delete

1 dollars (~~\$2,000,000~~) or more but less than five million dollars  
2 (~~\$5,000,000~~) per taxable year shall be divided into two equal  
3 payments, with the first payment to be made immediately upon  
4 authorization of the payment of the credit claim and the second  
5 payment to be made twelve months following the date of the  
6 first payment; and

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

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

.211466.3

underscored material = new  
[bracketed material] = delete

1 ~~payment pursuant to this section. If a partial payment is made~~  
2 ~~pursuant to this subsection, the difference owed shall retain~~  
3 ~~its original position in the queue.~~

4 ~~I. Any amount of a credit claim that is carried~~  
5 ~~forward pursuant to Subsection G of this section shall be~~  
6 ~~subject to the limit on the aggregate amount of credit claims~~  
7 ~~that may be authorized for payment pursuant to Subsections E~~  
8 ~~and F of this section in the fiscal year in which that amount~~  
9 ~~is paid.~~

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

19 ~~[K.]~~ G. For purposes of determining the payment of  
20 credit claims pursuant to this section, the secretary of  
21 taxation and revenue may require that credit claims of  
22 affiliated persons be combined into one claim if necessary to  
23 accurately reflect closely integrated activities of affiliated  
24 persons.

25 ~~[L.]~~ H. The film production tax credit shall not be

underscored material = new  
[bracketed material] = delete

1 claimed with respect to direct production expenditures or  
2 postproduction expenditures for which the film production  
3 company has delivered a nontaxable transaction certificate  
4 pursuant to Section 7-9-86 NMSA 1978.

5 ~~[M.]~~ I. Unless otherwise agreed upon in writing by  
6 the film production company and the division, a production for  
7 which the film production tax credit is claimed pursuant to  
8 Paragraph (1) of Subsection B of this section shall contain an  
9 acknowledgment to the state of New Mexico in the end screen  
10 credits that the production was filmed in New Mexico and a  
11 three-second static or animated state logo provided by the  
12 division shall be included and embedded in the:

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

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

20 (a) in the opening sequence;

21 (b) as a bumper into or out of a  
22 commercial break; or

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

.211466.3

underscoring material = new  
[bracketed material] = delete

1           ~~[N.]~~ J. To be eligible for the film production tax  
2 credit, a film production company shall submit to the division  
3 information required by the division to demonstrate conformity  
4 with the requirements of the Film Production Tax Credit Act,  
5 including ~~[detailed information on each direct production~~  
6 ~~expenditure and each postproduction expenditure. A film~~  
7 ~~production company shall make reasonable efforts as determined~~  
8 ~~by the division to contract with a specialized vendor that~~  
9 ~~provides goods and services, inventory or services directly~~  
10 ~~related to that vendor's ordinary course of business. A film~~  
11 ~~production company shall provide to the division]~~ production  
12 data deemed necessary by the division and the economic  
13 development department to determine the effectiveness of the  
14 credit, and a projection of the film production tax credit  
15 claim the film production company plans to submit in the fiscal  
16 year. In addition, the film production company shall agree in  
17 writing:

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

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

23                           (a) contains production company  
24 information, including the name of the production ~~[the address~~  
25 ~~of the production company]~~ and contact information that

.211466.3

underscored material = new  
[bracketed material] = delete

1 includes a working phone number [~~fax number~~] and email address  
2 for both the local production office and the permanent  
3 production office to notify the public of the need to file  
4 creditor claims against the film production company; and

5 (b) remains posted on the [~~web site~~]  
6 website until all financial obligations incurred in the state  
7 by the film 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 film  
11 production tax credit until the division delivers written  
12 notification to the taxation and revenue department that the  
13 film production company has fulfilled all requirements for the  
14 credit; and

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

20 [~~0-~~] K. The division, in consultation with the  
21 taxation and revenue department, shall determine the  
22 eligibility of the company and shall report this information to  
23 the taxation and revenue department in a manner and at times  
24 the economic development department and the taxation and  
25 revenue department shall agree upon. [~~The division shall also~~

.211466.3

underscored material = new  
[bracketed material] = delete

1 ~~post on its web site 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, including that the division shall report~~  
5 ~~quarterly the projected amount of credit claims for the fiscal~~  
6 ~~year.~~

7 ~~P. To provide guidance to film production companies~~  
8 ~~regarding the amount of credit capacity remaining in the fiscal~~  
9 ~~year, the taxation and revenue department shall post monthly on~~  
10 ~~that department's web site the aggregate amount of credits~~  
11 ~~claimed and processed for the fiscal year.~~

12 ~~Q.]~~ L. To receive a film production tax credit, a  
13 film production company shall apply to the taxation and revenue  
14 department on forms and in the manner the department may  
15 prescribe. The application shall include a certification of  
16 the amount of direct production expenditures or postproduction  
17 expenditures made in New Mexico with respect to the film  
18 production for which the film production company is seeking the  
19 film production tax credit; provided that for the film  
20 production tax credit, the application shall be submitted  
21 within one year of the date of the last direct production  
22 expenditure in New Mexico or the last postproduction  
23 expenditure in New Mexico. If the amount of the requested tax  
24 credit exceeds five million dollars (\$5,000,000), the  
25 application shall also include the results of an audit,

.211466.3

underscored material = new  
[bracketed material] = delete

1 conducted by a certified public accountant licensed to practice  
2 in New Mexico, verifying that the expenditures have been made  
3 in compliance with the requirements of this section. If the  
4 requirements of this section have been complied with, [~~subject~~  
5 ~~to the provisions of Subsection E of this section~~] the taxation  
6 and revenue department shall approve the film production tax  
7 credit and issue a document granting the tax credit.

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

15 [S-] N. That amount of a film production tax credit  
16 for total payments as applied to direct production expenditures  
17 for the services of performing artists shall not exceed [~~five~~  
18 ~~million dollars (\$5,000,000)~~] one million dollars (\$1,000,000)  
19 for services rendered by nonresident performing artists and  
20 [~~featured~~] resident principal performing artists in a  
21 production. This limitation shall not apply to the services of  
22 background artists. [~~and resident performing artists who are~~  
23 ~~not cast in industry standard featured principal performer~~  
24 ~~roles.~~

25 ~~F. As used in this section, "direct production~~

.211466.3

underscored material = new  
[bracketed material] = delete

1 expenditure":

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

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

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

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

.211466.3

underscored material = new  
[bracketed material] = delete

1 ~~performing artist is a full or part owner of that business; and~~

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

.211466.3

underscoring material = new  
[bracketed material] = delete

1 ~~pursuant to this section; and 11) other direct costs of~~  
2 ~~producing a film in accordance with generally accepted~~  
3 ~~entertainment industry practice; and~~

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

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

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

12 ~~(c) entertainment, amusement or~~  
13 ~~recreation;~~

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

18 ~~(e) a service provided by a person who~~  
19 ~~is not a New Mexico resident and employed in an industry crew~~  
20 ~~position, excluding a performing artist, where it is the~~  
21 ~~standard entertainment industry practice for the film~~  
22 ~~production company to employ a person for that industry crew~~  
23 ~~position, except when the person who is not a New Mexico~~  
24 ~~resident is hired or subcontracted by a vendor; and when the~~  
25 ~~film production company, as determined by the division and when~~

.211466.3

underscoring material = new  
[bracketed material] = delete

1 ~~applicable in consultation with industry, provides: 1)~~  
2 ~~reasonable efforts to hire resident crew; and 2) financial or~~  
3 ~~promotional contributions toward education or work force~~  
4 ~~development efforts in New Mexico, including at least one of~~  
5 ~~the following: a payment to a New Mexico public education~~  
6 ~~institution that administers at least one industry-recognized~~  
7 ~~film or multimedia program, as determined by the division, in~~  
8 ~~an amount equal to two and one-half percent of payments made to~~  
9 ~~nonresidents in approved positions employed by the vendor;~~  
10 ~~promotion of the New Mexico film industry by directors, actors~~  
11 ~~or executive producers affiliated with the production company's~~  
12 ~~project through social media that is managed by the state;~~  
13 ~~radio interviews facilitated by the division; enhanced screen~~  
14 ~~credit acknowledgments; or related events that are facilitated,~~  
15 ~~conducted or sponsored by the division.~~

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

20 V. ~~As used in this section, "vendor" means a person~~  
21 ~~who sells or leases goods or services that are related to~~  
22 ~~standard industry craft inventory, who has a physical presence~~  
23 ~~in New Mexico and is subject to gross receipts tax pursuant to~~  
24 ~~the Gross Receipts and Compensating Tax Act and income tax~~  
25 ~~pursuant to the Income Tax Act or corporate income tax pursuant~~

.211466.3

underscored material = new  
[bracketed material] = delete

1 to the Corporate Income and Franchise Tax Act but excludes a  
2 personal services business and services provided by  
3 nonresidents hired or subcontracted if the tasks and  
4 responsibilities are associated with:

5 (1) the standard industry job position of:

6 (a) a director;

7 (b) a writer;

8 (c) a producer;

9 (d) an associate producer;

10 (e) a co-producer;

11 (f) an executive producer;

12 (g) a production supervisor;

13 (h) a director of photography;

14 (i) a motion picture driver whose sole  
15 responsibility is driving;

16 (j) a production or personal assistant;

17 (k) a designer;

18 (l) a still photographer; or

19 (m) a carpenter and utility technician  
20 at an entry level; and

21 (2) nonstandard industry job positions and  
22 personal support services.]"

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

25 "7-2F-2. DEFINITIONS.--As used in the Film Production Tax

underscored material = new  
[bracketed material] = delete

1 Credit Act:

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

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

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

21 [~~G.~~] D. "commercial audiovisual product" means a  
22 film or a [~~videogame~~] video game intended for commercial  
23 exploitation;

24 E. "direct production expenditure":

25 (1) except as provided in Paragraph (2) of

underscoring material = new  
[bracketed material] = delete

1 this subsection, means a transaction that is subject to  
2 taxation in New Mexico, including:

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

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

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

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

.211466.3

underscoring material = new  
[bracketed material] = delete

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

18 (2) does not include an expenditure for:

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

21 (b) artwork or jewelry, except that a  
22 work of art or a piece of jewelry may be a direct production  
23 expenditure if: 1) it is used in the film production; and 2)  
24 the expenditure is less than one thousand dollars (\$1,000);

25 (c) entertainment, amusement or

.211466.3

underscored material = new  
[bracketed material] = delete

1 recreation;

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

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

14 (f) hidden or other indirect service  
15 fees, costs, commissions or other remuneration received by  
16 third parties and that are not directly paid by the production  
17 company or expressly enumerated on a production company's  
18 filing to claim a film production 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 an  
22 eligible expense for two years from the date in which the  
23 person makes the false claim, regardless of whether the person  
24 becomes a New Mexico resident within that time frame; or

25 (h) which the film production company

.211466.3

underscored material = new  
[bracketed material] = delete

1 receives funding pursuant to Section 21-19-7.1 NMSA 1978;

2 [D-] F. "division" means the New Mexico film  
3 division of the economic development department;

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

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

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

14 (2) can be viewed or reproduced;

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

17 (4) is intended for reasonable commercial  
18 exploitation for the delivery medium used;

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

21 [G-] J. "fiscal year" means the state fiscal year  
22 beginning on July 1;

23 [~~H.~~ "~~industry crew~~" means a person in a position  
24 that is off-camera and who provides technical services during  
25 the physical production of a film. "~~Industry crew~~" does not

underscored material = new  
[bracketed material] = delete

1 ~~include a writer, director, producer, background artist or~~  
2 ~~performing artist;~~

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

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

21 ~~[K.]~~ M. "personal services business" means a  
22 business organization, with ~~[or without]~~ physical presence,  
23 that receives payments pursuant to the Film Production Tax  
24 Credit Act for the services of a performing artist;

25 ~~[L.]~~ N. "physical presence" means a physical

underscored material = new  
[bracketed material] = delete

1 [address] location in New Mexico from which a vendor conducts  
2 business, stores inventory or otherwise creates, assembles or  
3 offers for sale the product purchased or leased by a film  
4 production company and the ~~[business owner]~~ vendor or an  
5 employee of the ~~[business]~~ vendor is a New Mexico resident;

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

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

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

22 ~~(1) sound stage with contiguous, clear-span~~  
23 ~~floor space of at least seven thousand square feet and a~~  
24 ~~ceiling height of no less than twenty-one feet; or~~

25 ~~(2) standing set that includes at least one~~

.211466.3

underscored material = new  
[bracketed material] = delete

1 ~~interior, and at least five exteriors, built or re-purposed for~~  
2 ~~film production use on a continual basis and is located on at~~  
3 ~~least fifty acres of contiguous space designated for film~~  
4 ~~production use;]~~

5 Q. "vendor" means a person, excluding a personal  
6 services business, who:

7 (1) sells or leases goods or services that are  
8 related to standard industry craft inventory;

9 (2) has a physical presence in New Mexico and  
10 is subject to gross receipts tax pursuant to the Gross Receipts  
11 and Compensating Tax Act and:

12 (a) income tax pursuant to the Income  
13 Tax Act; or

14 (b) corporate income tax pursuant to the  
15 Corporate Income and Franchise Tax Act; provided that if the  
16 vendor is part of a group of corporations that are integrated,  
17 the vendor files a combined return pursuant to Section 7-2A-8.3  
18 NMSA 1978; and

19 (3) employed at least three employees who  
20 worked at least thirty-two hours per week for at least forty-  
21 eight weeks in the calendar year for which a credit pursuant to  
22 the Film Production Tax Credit Act is claimed by an eligible  
23 film production company that includes payments to a vendor in  
24 calculating a credit pursuant to that act."

25 SECTION 3. REPEAL.--Sections 7-2F-2.1 and 7-2F-6 through

.211466.3

underscoring material = new  
~~[bracketed material] = delete~~

1 7-2F-12 NMSA 1978 (being Laws 2015, Chapter 143, Sections 4  
2 through 11, as amended) are repealed.

3 SECTION 4. APPLICABILITY.--The provisions of this act  
4 apply to film production companies that commence principal  
5 photography for a film or audiovisual product on or after  
6 January 1, 2019.

7 SECTION 5. EFFECTIVE DATE.--The effective date of the  
8 provisions of this act is July 1, 2019.