

# NM H 547, Enacted - Line Item Vetoed

New Mexico

SUMMARY: Relates to the public peace, health, safety and welfare; amends income tax brackets pursuant to the income tax act; provides for the indexing of modified gross income for purposes of determining the amount of the low-income comprehensive tax rebate; extends the sunset date for an income tax exemption for armed forces retirement pay; amends provisions of the rural health care practitioner tax credit; increases and indexes the amount of the child income tax credit for certain taxpayers.~SAME AS:

Changes in Bill text reflected as:

~~Text Deleted~~

*Text Added*

~~Text Vetoed~~

Current Legislative Status

02/16/2023 INTRODUCED.

02/16/2023 To HOUSE Committee on RULES AND ORDER OF BUSINESS.

03/04/2023 Withdrawn from HOUSE Committee on RULES AND ORDER OF BUSINESS.

03/04/2023 To HOUSE Committee on TAXATION AND REVENUE.

03/06/2023 From HOUSE Committee on TAXATION AND REVENUE: Do pass as substituted.

03/12/2023 In HOUSE. Amended on HOUSE floor.

03/12/2023 Passed HOUSE. \*\*\*\*\*To SENATE.

03/12/2023 To SENATE Committee on TAXATION, BUSINESS AND TRANSPORTATION.

03/15/2023 From SENATE Committee on TAXATION, BUSINESS AND TRANSPORTATION:  
Do pass as amended.

03/16/2023 In SENATE. Amended on SENATE floor.

03/16/2023 Passed SENATE. \*\*\*\*\*To HOUSE for concurrence.

03/16/2023 HOUSE refused to concur in SENATE amendments.

03/16/2023 SENATE refuses to recede from amendment.

03/16/2023 \*\*\*\*\*To CONFERENCE Committee.

03/18/2023 In SENATE. CONFERENCE Committee Report adopted by SENATE.

03/18/2023 In HOUSE. CONFERENCE Committee Report adopted by HOUSE.

03/18/2023 Eligible for GOVERNOR'S desk.

03/18/2023 Eligible for GOVERNOR'S desk.

04/07/2023 Line Item Vetoed by GOVERNOR.

04/07/2023 Chaptered. Chapter No. 211

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session: New Mexico 56th Legislature - First Regular Session

cite: 2023 NM H 547

Enacted - Line Item Vetoed

April 7, 2023

Lente

Chapter No. 211

HB 547

AN ACT

RELATING TO THE PUBLIC PEACE, HEALTH, SAFETY AND WELFARE; AMENDING INCOME TAX BRACKETS PURSUANT TO THE INCOME TAX ACT; PROVIDING FOR THE INDEXING OF MODIFIED GROSS INCOME FOR PURPOSES OF DETERMINING THE AMOUNT OF THE LOW-INCOME COMPREHENSIVE TAX REBATE; EXTENDING THE SUNSET DATE FOR AN INCOME TAX EXEMPTION FOR ARMED FORCES RETIREMENT PAY AND EXTENDING THE EXEMPTION TO SURVIVING SPOUSES OF ARMED FORCES RETIREES; AMENDING PROVISIONS OF THE RURAL HEALTH CARE PRACTITIONER TAX CREDIT; INCREASING AND INDEXING THE AMOUNT OF THE CHILD INCOME TAX CREDIT FOR CERTAIN TAXPAYERS; LIMITING THE CAPITAL GAINS DEDUCTION FROM NET INCOME; PROVIDING ADDITIONAL 2021 INCOME TAX REBATES; CREATING THE ELECTRIC VEHICLE INCOME TAX CREDIT; CREATING THE ELECTRIC VEHICLE CHARGING UNIT INCOME TAX CREDIT; CREATING THE ENERGY STORAGE SYSTEM INCOME TAX CREDIT; CREATING A FLAT CORPORATE INCOME TAX RATE; REDUCING THE RATES OF THE GROSS RECEIPTS TAX AND THE COMPENSATING TAX; CREATING GROSS RECEIPTS TAX DEDUCTIONS FOR THE SALE OF CHILD CARE ASSISTANCE THROUGH A LICENSED CHILD CARE ASSISTANCE PROGRAM AND PRE-KINDERGARTEN SERVICES BY FOR-PROFIT PRE-KINDERGARTEN PROVIDERS; CREATING A GROSS RECEIPTS TAX DEDUCTION FOR ENVIRONMENTAL MODIFICATION SERVICES MADE TO THE HOMES OF MEDICAID RECIPIENTS; AMENDING THE INDUSTRIAL REVENUE BOND ACT AND THE COUNTY INDUSTRIAL REVENUE BOND ACT TO INCLUDE CERTAIN ELECTRIC ENERGY STORAGE FACILITIES AS ELIGIBLE PROJECTS; REQUIRING MUNICIPALITIES AND COUNTIES THAT ACQUIRE ENERGY STORAGE FACILITY PROJECTS TO PROVIDE PAYMENT-IN-LIEU-OF TAXES PAYMENTS TO SCHOOL DISTRICTS; AMENDING DISTRIBUTIONS OF THE MOTOR VEHICLE EXCISE TAX; INCREASING THE LIQUOR EXCISE TAX RATE ON CERTAIN ALCOHOLIC BEVERAGES; DISTRIBUTING A PORTION OF THE REVENUE FROM THE LIQUOR EXCISE TAX TO A NEW ALCOHOL HARMS ALLEVIATION FUND; PROVIDING FOR THE INDEXING OF ADJUSTED GROSS INCOME FOR A SOCIAL SECURITY INCOME TAX EXEMPTION PURSUANT TO THE INCOME TAX ACT; INCREASING THE AMOUNT OF THE SPECIAL NEEDS ADOPTED CHILD TAX CREDIT; PROVIDING AN INCOME TAX DEDUCTION FOR SCHOOL SUPPLIES PURCHASED BY A PUBLIC SCHOOL TEACHER; CREATING THE GEOTHERMAL ELECTRICITY GENERATION INCOME TAX CREDIT, THE GEOTHERMAL ELECTRICITY GENERATION CORPORATE INCOME TAX CREDIT AND GROSS RECEIPTS TAX AND COMPENSATING TAX DEDUCTIONS FOR GEOTHERMAL ELECTRICITY GENERATION FACILITY CONSTRUCTION COSTS; EXTENDING THE GEOTHERMAL GROUND-COUPLED HEAT PUMP TAX CREDITS PURSUANT TO THE INCOME TAX ACT AND THE CORPORATE INCOME AND FRANCHISE TAX ACT; INCREASING THE ANNUAL AGGREGATE CAPS OF THE CREDITS, MAKING THE CREDIT PURSUANT TO THE INCOME TAX ACT REFUNDABLE AND AMENDING THE DEFINITION OF "GEOTHERMAL GROUND-COUPLED HEAT PUMP" FOR THE CREDIT PURSUANT TO THE CORPORATE INCOME AND FRANCHISE TAX ACT; INCREASING THE ANNUAL AGGREGATE CAP AND ADDITIONAL AMOUNTS OF TAX CREDITS PURSUANT TO THE FILM PRODUCTION TAX CREDIT ACT; AMENDING CERTAIN REQUIREMENTS TO BE ELIGIBLE FOR THE CREDITS; EXPANDING A GROSS RECEIPTS TAX DEDUCTION FOR HEALTH CARE PRACTITIONERS AND ASSOCIATIONS OF HEALTH CARE PRACTITIONERS TO INCLUDE RECEIPTS FOR THE PAYMENT OF COPAYMENTS AND DEDUCTIBLES; PROVIDING GROSS RECEIPTS AND COMPENSATING TAX DEDUCTIONS FOR DYED DIESEL USED FOR AGRICULTURAL PURPOSES; INCREASING THE RATE OF TAX ON TOBACCO PRODUCTS ON CIGARS, AMENDING DEFINITIONS IN THE TOBACCO PRODUCTS TAX ACT AND DISTRIBUTING A PORTION OF THE TAX TO THE TOBACCO SETTLEMENT PERMANENT FUND; REQUIRING THE BUSINESS INCOME OF MOST CORPORATIONS TO BE APPORTIONED TO THIS STATE BY THE SALES FACTOR BUT PROVIDING A TEMPORARY EXCEPTION.

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

**\*\*\*TEXT OMITTED, DOES NOT PERTAIN TO FILM\*\*\***

**SECTION 31.** Section 7-2F-2 NMSA 1978 (being Laws 2003, Chapter 127, Section 2, as amended) is amended to read:

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

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

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

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

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

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

(1) including an expenditure for:

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

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

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

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

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

film industry goods and services; and 12) other direct costs of producing a film in accordance with generally accepted entertainment industry practice; and

(2) does not include an expenditure for:

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

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

(c) entertainment, amusement or recreation;

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

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

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

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

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

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

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

H. "film" means a single medium or multimedia program, including television programs but excluding advertising messages other than national or regional advertising messages intended for exhibition, that:

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

(2) can be viewed or reproduced;

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

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

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

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

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

L. "New Mexico resident" means an individual who is domiciled in this state during any part of the taxable year or an individual who is physically present in this state for one hundred eighty-five days or more during the taxable year; but any individual, other than someone who was physically present in the state for one hundred eighty-five days or more during the taxable year and who, on or before the last day of the taxable year, changed the individual's place of abode to a place without this state with the bona fide intention of continuing actually to abide permanently

without this state is not a resident for the purposes of the Film Production Tax Credit Act for periods after that change of abode;

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

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

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

P. "postproduction expenditure" means an expenditure, certified pursuant to Subsection A of Section 7-2F-12 NMSA 1978, for editing, Foley recording, automatic dialogue replacement, sound editing, special effects, including computer-generated imagery or other effects, scoring and music editing, beginning and end credits, negative cutting, soundtrack production, dubbing, subtitling or addition of sound or visual effects; but not including an expenditure for advertising, marketing, distribution or expense payments;

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

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

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

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

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

**SECTION 32.** Section 7-2F-12 NMSA 1978 (being Laws 2019, Chapter 87, Section 6) is amended to read:

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

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

B. Except as provided in Laws 2019, Chapter 87, Section 10, the aggregate amount of claims for a credit provided by the Film Production Tax Credit Act that may be authorized in any fiscal year with respect to the direct production expenditures or postproduction expenditures made on film or commercial audiovisual products shall be in the following amounts; provided that direct

production expenditures and postproduction expenditures made by a New Mexico film partner shall not be subject to the aggregate amount of claims provided by this subsection:

- (1) prior to fiscal year 2024, one hundred ten million dollars (\$110,000,000);
- (2) from fiscal year 2024 through fiscal year 2028, the amount provided in Paragraph (1) of this subsection shall be increased by ten million dollars (\$10,000,000) in each of those fiscal years; and
- (3) for fiscal year 2029 and subsequent fiscal years, one hundred sixty million dollars (\$160,000,000).

C. If a film production company submits a claim for a credit pursuant to the Film Production Tax Credit Act and the aggregate amount of claims pursuant to Subsection B of this section has been met for the fiscal year, the claim shall be placed at the front of a queue for payment in a subsequent fiscal year. Claims shall be placed in order of the date on which the completed return in which the credit is claimed is filed. Claims authorized for payment shall be paid pursuant to the Tax Administration Act.

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

**SECTION 33.** Section 7-2F-13 NMSA 1978 (being Laws 2019, Chapter 87, Section 7) is amended to read:

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

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

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

- (1) direct production expenditures made in New Mexico that:
  - (a) are directly attributable to the production in New Mexico of a film or commercial audiovisual product;
  - (b) are subject to taxation by the state of New Mexico;
  - (c) exclude direct production expenditures for which another taxpayer claims the new film production tax credit; and
  - (d) do not exceed the usual and customary cost of the goods or services acquired when purchased by unrelated parties. The secretary of taxation and revenue may determine the value of the goods or services for purposes of this section when the buyer and seller are affiliated persons or the sale or purchase is not an arm's length transaction; and
- (2) postproduction expenditures made in New Mexico that:
  - (a) are directly attributable to the production of a commercial film or audiovisual product;
  - (b) are for services performed in New Mexico;
  - (c) are subject to taxation by the state of New Mexico;
  - (d) exclude postproduction expenditures for which another taxpayer claims the new film production tax credit; and
  - (e) do not exceed the usual and customary cost of the goods or services acquired when purchased by unrelated parties. The secretary of taxation and revenue may determine the value of the goods or services for purposes of this section when the buyer and seller are affiliated persons or the sale or purchase is not an arm's length transaction.

C. With respect to expenditures attributable to a production for which the film production company receives a tax credit pursuant to the federal new markets tax credit program, the

percentage to be applied in calculating the amount of credit allowed pursuant to the Film Production Tax Credit Act is twenty percent.

D. A claim for new film production tax credits shall be filed as part of a return filed pursuant to the Income Tax Act or the Corporate Income and Franchise Tax Act or an information return filed by an entity assigned payment of an authorized credit pursuant to Section 7-2F-5 NMSA 1978.

The date a complete credit claim is received by the taxation and revenue department shall determine the order that a credit claim is authorized for payment by the department.

The film production company may apply all or a portion of the new film production tax credit granted against personal income tax liability or corporate income tax liability. If the amount of the credit claimed exceeds the film production company's tax liability for the taxable year in which the credit is being claimed, the excess shall be refunded.

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

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

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

H. A production for which the new film production tax credit is claimed pursuant to Paragraph (1) of Subsection

B of this section shall contain an acknowledgment to the state of New Mexico. Unless otherwise agreed upon in writing by the film production company and the division, the acknowledgment shall be in the end screen credits that the production was filmed in New Mexico and a three-second static or animated state logo provided by the division shall be included and embedded in the following:

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

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

(a) in the opening sequence;

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

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

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

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

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

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

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

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

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

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

J. The division, in consultation with the taxation and revenue department, shall determine the eligibility of the film production company and shall report this information to the taxation and revenue department in a manner and at times the economic development department and the taxation and revenue department shall agree upon. The division shall also post on its website all information provided by the film production company that does not reveal revenue, income or other information that may jeopardize the confidentiality of income tax returns.

K. To receive a new film production tax credit, a film production company shall apply to the taxation and revenue department on forms and in the manner the department may prescribe. The application shall include a certification of the amount of direct production expenditures or postproduction expenditures made in New Mexico with respect to the film production for which the film production company is seeking the credit; provided that for the credit, the application shall be submitted within one year of the date of the last direct production expenditure in New Mexico or the last postproduction expenditure in New Mexico. If the amount of the requested tax credit exceeds five million dollars (\$5,000,000), the application shall also include the results of an audit, conducted by a certified public accountant licensed to practice in New Mexico, verifying that the expenditures have been made in compliance with the requirements of this section. If the requirements of this section have been complied with, the taxation and revenue department shall approve the credit and issue a document granting the credit.

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

M. In addition to the amount of payments allowed pursuant to Subsection L of this section, that amount of a new film production tax credit for total payments as applied to direct production expenditures made by a New Mexico film partner for the services of nonresident performing artists, directors, producers, screenwriters and editors shall not exceed ten million dollars (\$10,000,000) for services rendered for each production; provided that the total payments allowed pursuant to this subsection shall not exceed an annual aggregate maximum of forty million dollars

(\$40,000,000) for all productions in a fiscal year. If the aggregate amount of payments made in a fiscal year is less than the annual aggregate maximum, then the difference in that fiscal year shall be added to the annual aggregate maximum allowed in the following fiscal year."

**SECTION 34.** Section 7-2F-14 NMSA 1978 (being Laws 2019, Chapter 87, Section 8) is amended to read:

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

A. In addition to the percentage of direct production expenditures and postproduction expenditures calculated pursuant to Section 7-2F-13 NMSA 1978, an additional percentage shall be applied for payments for direct production expenditures and postproduction expenditures, as follows:

(1) ten percent for work, services or items provided on location for a production of a film or commercial audiovisual product that is located in New Mexico at least sixty miles from the city hall of the county seat of certain counties; and

(2) five percent for either of the following:

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

(b) on a production in a qualified production facility.

B. As used in this section, "certain counties" means class A counties with a net taxable value of property for property taxation purposes of greater than seven billion five hundred million dollars (\$7,500,000,000)."

**SECTION 35.** Section 7-2F-15 NMSA 1978 (being Laws 2019, Chapter 87, Section 9) is amended to read:

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

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

B. the payment of wages excludes payments:

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

(2) made to a personal services business;

C. prior to July 1, 2028, for a film production company that is a New Mexico film partner, the total amount of wages applied toward the additional credit allowed pursuant to this section may be up to one hundred percent of the amount of wages of resident below-the-line wages claimed; provided that the film production company provides a seventy-two-hour notice of the opportunity to be hired to resident below-the-line crew, which may be through a collective bargaining unit that represents resident below-the-line crew; and

D. for a film production company that is not a New Mexico film partner and, beginning July 1, 2028, for a film production company that is a New Mexico film partner:

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

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

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

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

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

(d) one position in addition to the number of positions provided in Subparagraph (c) of this paragraph for every ten million dollars (\$10,000,000) over eleven million dollars (\$11,000,000)

of the production's final New Mexico budget; and

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

**\*\*\*TEXT OMITTED, DOES NOT PERTAIN TO FILM\*\*\***

**SECTION 43. APPLICABILITY.--**

A. The provisions of Sections 5, 7 through 9, 12 through 14, 23 through 27, 29 and 30 of this act apply to taxable years beginning on or after January 1, 2023.

B. The provisions of Sections 31 through 35 of this act apply to film production companies that commence principal photography for a film or commercial audiovisual product on or after July 1, 2023.

C. The provisions of Sections 6, 10, 15 and 42 of this act apply to taxable years beginning on or after January 1, 2024.

**SECTION 44. EFFECTIVE DATE.--**

A. The effective date of the provisions of Section 11 of this act is April 1, 2023.

B. The effective date of the provisions of Sections 1 through 4, 16 through 19, 28 and 36 through 41 of this act is July 1, 2023.

C. The effective date of the provisions of Sections 6, 10, 15, 20 through 22 and 42 of this act is January 1, 2024.