

## 2015 NM S 565 , Enacted - Final

New Mexico

SUMMARY: Relates to the film production tax credit act; provides that the film production tax credit only applies to film production companies that commence principal photography by a specified date; creates new credits and definitions for film production companies; provides that all credits are subject to the same aggregate cap; limits the types of direct production expenditures that may be eligible for additional credit; provides for certain limitations.~SAME AS:

Legislative History and Analysis

Changes in Bill text reflected as:

~~Text Deleted~~

*Text Added*

~~Text Vetoed~~

Current Legislative Status

02/16/2015 INTRODUCED.

02/16/2015 To SENATE Committee on CORPORATIONS AND TRANSPORTATION.

02/16/2015 To SENATE Committee on FINANCE.

03/03/2015 From SENATE Committee on CORPORATIONS AND TRANSPORTATION: Do pass as substituted.

03/12/2015 From SENATE Committee on FINANCE: Do pass.

03/14/2015 Passed SENATE. \*\*\*\*\*To HOUSE.

03/14/2015 To HOUSE Committee on BUSINESS AND EMPLOYMENT.

03/17/2015 From HOUSE Committee on BUSINESS AND EMPLOYMENT: Do pass.

03/18/2015 Passed HOUSE.

03/18/2015 Eligible for GOVERNOR'S desk.

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session: New Mexico 52nd Legislature - First Regular Session

cite: 2015 NM S 565

Enacted - Final

April 10, 2015

Payne

Chapter No. 143

SCORC/SB 565

AN ACT

RELATING TO THE FILM PRODUCTION TAX CREDIT ACT; PROVIDING THAT THE FILM PRODUCTION TAX CREDIT ONLY APPLIES TO FILM PRODUCTION COMPANIES THAT COMMENCE PRINCIPAL PHOTOGRAPHY PRIOR TO JANUARY 1, 2016; CREATING NEW CREDITS AND DEFINITIONS FOR FILM PRODUCTION COMPANIES THAT COMMENCE PRINCIPAL PHOTOGRAPHY ON AND AFTER JANUARY 1, 2016; PROVIDING THAT ALL CREDITS PROVIDED BY THE FILM PRODUCTION TAX CREDIT ACT ARE SUBJECT TO THE SAME AGGREGATE CAP; LIMITING THE TYPES OF DIRECT PRODUCTION EXPENDITURES THAT MAY BE ELIGIBLE FOR ADDITIONAL CREDIT; EXCLUDING PAYMENTS TO CERTAIN ARTISTS FROM THE LIMITATION OF DIRECT PRODUCTION EXPENDITURES; AMENDING AND CREATING DEFINITIONS USED IN THE FILM PRODUCTION TAX CREDIT ACT; LIMITING THE TYPES OF DIRECT PRODUCTION

EXPENDITURES PAID TO A NONRESIDENT PERFORMING ARTIST THAT ARE ELIGIBLE FOR THE CREDIT.

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

A. The tax credit created by this section may be referred to as the "film production tax credit".  
B. Except as otherwise provided in this section, an eligible film production company may apply for, and the taxation and revenue department may allow, subject to the limitation in this section, 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 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 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. In addition to the percentage applied pursuant to Subsection B of this section, another five percent shall be applied in calculating the amount of the film production tax credit to direct production expenditures:

(1) 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

(2) on a production with a total New Mexico budget of the following amounts; provided that the expenditures are directly attributable and paid to a New Mexico resident who is hired as industry crew, or who is hired as a producer, writer or director working directly with the physical production and has filed a New Mexico income tax return as a resident in the two previous taxable years:

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

twenty-four-hour period; or

(b) thirty million dollars (\$30,000,000) or more that shoots at least fifteen principal photography days in New Mexico at a qualified production facility; provided that a film production company in principal photography on or after April 10, 2015 shall: 1) shoot at least ten of those days at a sound stage that is a qualified production facility and the remaining number of required days, if any, at a standing set that is a qualified production facility; and 2) for each day of the fifteen days, include industry crew working on the premises of the facility for a minimum of eight hours within a twenty-four-hour period.

D. 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 film production tax credit is twenty percent.

E. A claim for 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 a pass-through entity. The date a credit claim is received by the department shall determine the order that a credit claim is authorized for payment by the department. Except as otherwise provided in this section, the aggregate amount of claims for a credit provided by the Film Production Tax Credit Act that may be authorized for payment in any fiscal year is fifty million dollars (\$50,000,000) with respect to the direct production expenditures or postproduction expenditures made on film or commercial audiovisual products. A film production company that submits a claim for a film production tax credit that is unable to receive the tax credit because the claims for the fiscal year exceed the limitation in this subsection shall be placed for the subsequent fiscal year at the front of a queue of credit claimants submitting claims in the subsequent fiscal year in the order of the date on which the credit was authorized for payment.

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

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

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

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

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

H. For a fiscal year in which the amount of total credit claims authorized for payment is less than the aggregate amount of credit claims that may be authorized for payment pursuant to this section, the next scheduled payments for credit claims authorized for payment pursuant to Subsection G of this section shall be accelerated for payment for that fiscal year and shall be paid to a taxpayer pursuant to the Tax Administration Act and in the order in which outstanding payments are scheduled in the queue established pursuant to Subsections E and G of this section; provided that the total credit claims authorized for payment shall not exceed the aggregate amount of credit claims that may be authorized for payment pursuant to this section. If a partial payment is made pursuant to this subsection, the difference owed shall retain its original position in the queue.

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

J. A credit claim shall only be considered received by the 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.

K. 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.

L. The 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.

M. A production for which the 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 in the end screen credits that the production was filmed in New Mexico, and a state logo provided by the division shall be included and embedded in the end screen credits of long-form narrative film productions and television episodes, unless otherwise agreed upon in writing by the film production company and the division.

N. To be eligible for the 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 detailed information on each direct production expenditure and each postproduction expenditure. A film production company shall make reasonable efforts, as determined by the division, to contract with a specialized vendor that provides goods and services, inventory or services directly related to that vendor's ordinary course of business. A film production company shall provide to the division a projection of the film production tax credit claim the film production company plans to submit in the fiscal year. 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 web site of the division that:

(a) contains production company information, including the name of the production, the address of the production company and contact information that includes a working phone number, fax 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 web site 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 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 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.

O. The division shall determine the eligibility of the 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 web site 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, including that the division shall report quarterly the projected amount of credit claims for the fiscal year.

P. 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 web site the aggregate amount of credits claimed and processed for the fiscal year.

Q. To receive a 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 film production tax credit; provided that for the film production tax 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, subject to the provisions of Subsection E of this section, the taxation and revenue department shall approve the film production tax credit and issue a document granting the tax credit.

R. The film production company may apply all or a portion of the film production tax credit granted against personal income tax liability or corporate income tax liability. If the amount of the film production tax 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.

S. That amount of a 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 and featured resident principal performing artists in a production. This limitation shall not apply to the services of background artists and resident performing artists who are not cast in industry standard featured principal performer roles.

T. As used in this section, "direct production expenditure":

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

(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 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;

(c) 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

(d) 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) 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; provided that only the first one hundred dollars (\$100) of the daily expense of leasing a vehicle for passenger transportation on roadways in the state may be claimed as a direct production expenditure; 7) food or lodging; provided that only the first one hundred fifty dollars (\$150) of lodging per individual per day is eligible to be claimed as a direct production expenditure; 8) 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; 9) insurance coverage and bonding if purchased through a New Mexico-based insurance agent, broker or bonding agent; 10) services for an external audit upon submission of an application for a film production tax credit by an accounting firm that submits the application pursuant to this section; and 11) 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 twenty-five dollars (\$25.00);

(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 subcontractors are not subject to state taxation, such as equipment and locations provided by the military, government and religious organizations; or

(e) a service provided by a person who is not a New Mexico resident and employed in an industry crew position, excluding a performing artist, where it is the standard entertainment industry practice for the film production company to employ a person for that industry crew position, except when the person who is not a New Mexico resident is hired or subcontracted by a vendor; and when the film production company, as determined by the division and when applicable in consultation with industry, provides: 1) reasonable efforts to hire resident crew; and 2) financial or promotional contributions toward education or work force development efforts in New Mexico, including at least one of the following: a payment to a New Mexico public education institution that administers at least one industry-recognized film or multimedia program, as determined by the division, in an amount equal to two and one-half percent of payments made to nonresidents in approved positions employed by the vendor; promotion of the New Mexico film industry by directors, actors or executive producers affiliated with the production company's project through social media that is managed by the state; radio interviews facilitated by the division; enhanced screen credit acknowledgments; or related events that are facilitated, conducted or sponsored by the division.

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

V. As used in this section, "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 and 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:

(1) the standard industry job position of:

(a) a director;

(b) a writer;

(c) a producer;

(d) an associate producer;

(e) a co-producer;

- (f) an executive producer;
- (g) a production supervisor;
- (h) a director of photography;
- (i) a motion picture driver whose sole responsibility is driving;
- (j) a production or personal assistant;
- (k) a designer;
- (l) a still photographer; or
- (m) a carpenter and utility technician at an entry level; and
- (2) nonstandard industry job positions and personal support services.”

SECTION 2. 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. “commercial audiovisual product“ means a film or a videogame intended for commercial exploitation;

D. “division“ means the New Mexico film division of the economic development department;

E. “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;

F. “film“ means a single medium or multimedia program, 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;

G. “fiscal year“ means the state fiscal year beginning on July 1;

H. “industry crew“ means a person in a position that is off-camera and who provides technical services during the physical production of a film. “Industry crew“ does not include a writer, director, producer, background artist or performing artist;

I. “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;

J. “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;

K. "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;

L. "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 business owner or an employee of the business is a resident;

M. "postproduction expenditure" means an expenditure 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;

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

O. "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, clear-span floor space of at least seven thousand square feet and a ceiling height of no less than twenty-one 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."

SECTION 3. Section 7-2F-4 NMSA 1978 (being Laws 2011, Chapter 165, Section 5) is amended to read:

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

A. The economic development department shall:

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

(2) track the direct expenditures for the credits;

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

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

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

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

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

(2) the number of New Mexico residents employed;

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

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



- (5) the total expenditures made in New Mexico that do not qualify for the credit;
- (6) the aggregate wages paid to the members of the nonresident crew while working in New Mexico; and
- (7) other information deemed necessary by the division and economic development department to determine the effectiveness of the credit.

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

SECTION 4. A new section of the Film Production Tax Credit Act is enacted to read:

“ADDITIONAL DEFINITIONS.--As used in Sections 5 through 11 of this 2015 act:

A. "direct production expenditure“:

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

(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 resident industry crew in addition to its industry 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 a 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 on the wages and per diem paid to a performing artist of the personal services business 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) 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; provided that only the first one hundred dollars (\$100) of the daily expense of leasing a vehicle for passenger transportation on roadways in the state may be claimed as a direct production expenditure; 7) food or lodging; provided that only the first one hundred fifty dollars (\$150) of lodging per individual per day is eligible to be claimed as a direct production expenditure; 8) 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; 9) insurance coverage and bonding if purchased through a New Mexico-based insurance agent, broker or bonding agent; 10) services for an external audit upon submission of an application for a film production tax credit by an accounting firm that submits the application pursuant to Subsection I of Section 5 of this 2015 act; and 11) 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 twenty-five dollars (\$25.00);

(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; or

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

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

C. "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 and 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."

SECTION 5. A new section of the Film Production Tax Credit Act is enacted to read:

"FILM AND TELEVISION TAX CREDIT--FILM PRODUCTION COMPANIES THAT COMMENCE PRINCIPAL PHOTOGRAPHY ON OR AFTER JANUARY 1, 2016.--

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

B. An eligible film production company may apply for, and the taxation and revenue department may allow, subject to the limitation in Section 11 of this 2015 act, 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 film and television 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 postproduction 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 film and television 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 film and television tax credit is twenty percent.

D. The film and television 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.

E. A production for which the film and television tax credit is claimed pursuant to Paragraph (1) of

Subsection B of this section shall contain an acknowledgment to the state of New Mexico in the end screen credits that the production was filmed in New Mexico, and a state logo provided by the division shall be included and embedded in the end screen credits of long-form narrative film productions and television episodes, unless otherwise agreed upon in writing by the film production company and the division.

F. To be eligible for the film and television 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 detailed information on each direct production expenditure and each postproduction expenditure. film production company shall provide to the division a projection of the film and television tax credit claim the film production company plans to submit in the fiscal year. 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 web site of the division that:
  - (a) contains production company information, including the name of the production, the address of the production company and contact information that includes a working phone number, fax 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 web site 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 film and television 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 film and television tax credit and supporting documentation to the division within one year of the close of the film production company's taxable year in which the expenditures in New Mexico were incurred for the registered project and that are included in the credit claim.

G. The division shall determine the eligibility of the 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 web site 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, including that the division shall report quarterly the projected amount of credit claims for the fiscal year.

H. 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 web site the aggregate amount of credits claimed and processed for the fiscal year.

I. To receive a film and television 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 film and television tax credit; provided that for the film and television tax 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 incurred within the film production company's taxable year. 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, subject to the provisions of Section 11 of this 2015 act, the taxation and revenue department shall approve the film and television tax credit and issue a document granting the tax credit.

J. The film production company may apply all or a portion of the film and television tax credit granted against personal income tax liability or corporate income tax liability. If the amount of the film and television tax 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."

SECTION 6. A new section of the Film Production Tax Credit Act is enacted to read:

"ADDITIONAL CREDIT--TELEVISION PILOTS AND SERIES.--

A. In addition to the credit provided by Section 5 f this 2015 act, an additional five percent shall be applied in calculating the amount of the film and television tax credit to direct production expenditures, except as provided in Subsections C and D of this section, on:

- (1) a standalone pilot intended for series television in New Mexico; and
- (2) 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.

B. A film production company applying for an additional credit pursuant to this section shall not be eligible for the additional credit pursuant to Section 7 of this 2015 act.

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

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

- (1) a television series completes at least one season of the scheduled episodes for that series in New Mexico;
- (2) the film production company certifies the intention to produce a subsequent season to the series described in Paragraph (1) of this subsection in New Mexico; and
- (3) the film production company, or its parent company, produces or begins production of an additional eligible television series in New Mexico during the same film production company's taxable year as the television series. Payments to a nonresident performing artist for the additional television series may also be eligible for the additional credit pursuant to this section."

SECTION 7. A new section of the Film Production Tax Credit Act is enacted to read:

"ADDITIONAL CREDIT--QUALIFIED PRODUCTION FACILITIES.--

A. In addition to the credit provided by Section 5 f this 2015 act, an additional five percent shall be applied in calculating the amount of the film and television tax credit to direct production expenditures that are directly attributable and paid to a New Mexico resident who is hired as industry crew, or who is hired as a producer, writer or director working directly with the physical production and has filed a New Mexico income tax return as a resident in the two previous taxable years. The direct production expenditures shall be on a production with a total new budget of:

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

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

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

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

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

and

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

B. A film production company that receives an additional credit pursuant to Section 6 of this 2015 act shall not be eligible for the additional credit pursuant to this section.”

SECTION 8. A new section of the Film Production Tax Credit Act is enacted to read:

“ADDITIONAL CREDIT--NONRESIDENT INDUSTRY CREW.--A film production company may apply for, and the taxation and revenue department may allow, subject to the limitation in this section, a tax credit in an amount equal to fifteen percent of the payment of wages, fringe benefits and per diem for nonresident industry crew; provided that:

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

B. payments for nonresident industry crew exclude payments for production designer, director of photography, line producer, costume designer, still unit photographer and driver whose sole responsibility is driving;

C. the number of nonresident industry crew shall be employed by the film production company in New Mexico, and shall be, as calculated by the division upon receipt of the first application for a film production tax credit and review of the project's New Mexico budget:

(1) four positions for up to two million dollars (\$2,000,000) of the final New Mexico budget;

(2) one additional position for each additional one million dollars (\$1,000,000) of the project's final New Mexico budget of at least two million dollars (\$2,000,000) up to ten million dollars (\$10,000,000);

(3) one additional position for each additional five million dollars (\$5,000,000) of the project's final New Mexico budget of at least ten million dollars (\$10,000,000) up to fifty million dollars (\$50,000,000);

(4) one additional position for every additional ten million dollars (\$10,000,000) of the project's final New Mexico budget of at least fifty million dollars (\$50,000,000) and thereafter;

(5) eight additional positions, above the number of positions described in this subsection, for a television pilot episode that has not been ordered to series at the time of New Mexico production; provided that the film production company certifies to the division that the series is intended to be produced in New Mexico if the pilot is ordered to series; and

(6) no more than thirty positions; provided that, at the discretion of the division, up to and including ten additional positions may be permitted if five other films are being produced in New Mexico at the time of the film production company's production; and

D. the film production company makes financial or promotional contributions toward educational or work force development efforts in New Mexico as determined by the division, including:

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

(2) promotion of the New Mexico film industry by directors, actors or producers affiliated with the film production company's project through:

(a) social media that is managed by the state;

(b) radio interviews facilitated by the division;

(c) enhanced screen credit acknowledgments; or

(d) related events that are facilitated, conducted or sponsored by the division.”

SECTION 9. A new section of the Film Production Tax Credit Act is enacted to read:

“PAYMENTS FOR PERFORMING ARTISTS--CREDIT LIMITATION.-- That amount of a film and

television tax credit for the total payments of 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 and featured resident principal performing artists in a production. This limitation shall not apply to the services of background artists and resident performing artists who are not cast in industry standard featured principal performer roles.”

SECTION 10. A new section of the Film Production Tax Credit Act is enacted to read:

“REQUIREMENTS TO CONTRACT WITH CERTAIN VENDORS.--

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

- (1) provides services;
- (2) provides inventory, for sale or lease, that is maintained in New Mexico and represented by the specialized vendor; or
- (3) subcontracts similar standard industry craft inventory from other businesses with or without physical presence.

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

SECTION 11. A new section of the Film Production Tax Credit Act is enacted to read:

“CREDIT CLAIMS--AGGREGATE AMOUNT OF CLAIMS ALLOWED.--

A. A claim for a film and television tax credit 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 a pass-through entity. The date a credit claim is received by the department shall determine the order that a credit claim is authorized for payment by the department. The aggregate amount of claims for a credit provided by the Film Production Tax Credit Act that may be authorized for payment in any fiscal year is fifty million dollars (\$50,000,000) with respect to the direct production expenditures or postproduction expenditures made on film or commercial audiovisual products. A film production company that submits a claim for a film and television tax credit that is unable to receive the tax credit because the claims for the fiscal year exceed the limitation in this subsection shall be placed for the subsequent fiscal year at the front of a queue of credit claimants submitting claims in the subsequent fiscal year in the order of the date on which the credit was authorized for payment.

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

- (1) a credit claim amount of less than two million dollars (\$2,000,000) per taxable year shall be paid immediately upon authorization for payment of the credit claim;
- (2) a credit claim amount of two million dollars (\$2,000,000) or more but less than five million dollars (\$5,000,000) per taxable year shall be divided into two equal payments, with the first payment to be made immediately upon authorization of the payment of the credit claim and the second payment to be made twelve months following the date of the first payment; and
- (3) a credit claim amount of five million dollars (\$5,000,000) or more per taxable year shall be divided into three equal payments, with the first payment to be made immediately upon authorization of payment of the credit claim, the second payment to be made twelve months following the date of the first payment and the third payment to be made twenty-four months following the date of the first payment.

C. For a fiscal year in which the amount of total credit claims authorized for payment is less than the aggregate amount of credit claims that may be authorized for payment pursuant to this

section, the next scheduled payments for credit claims authorized for payment pursuant to Subsection B of this section shall be accelerated for payment for that fiscal year and shall be paid to a taxpayer pursuant to the Tax Administration Act and in the order in which outstanding payments are scheduled in the queue established pursuant to Subsections A and B of this section; provided that the total credit claims authorized for payment shall not exceed the aggregate amount of credit claims that may be authorized for payment pursuant to this section. If a partial payment is made pursuant to this subsection, the difference owed shall retain its original position in the queue.

D. Any amount of a credit claim that is carried forward pursuant to Subsection B of this section shall be subject to the limit on the aggregate amount of credit claims that may be authorized for payment pursuant to Subsection A of this section in the fiscal year in which that amount is paid.

E. A credit claim shall only be considered received by the 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.”