

NM S 2, Enacted

New Mexico

SUMMARY: Relates to taxation; amends the Film Production Tax Credit Act; limits certain additional credits to productions that commence principal photography prior to a date; creates the new Film Production Tax Credit for productions that commence principal photography on or after a date; increases the amount of credit that may be claimed per taxable year; allows additional amounts for television pilots and series and expenditures made in certain areas of the state; creates the nonresident below the line credit.

Legislative History and Analysis

Changes in Bill text reflected as:

~~Text Deleted~~

Text Added

~~Text Vetoed~~

Current Legislative Status

02/01/2019 INTRODUCED.

02/01/2019 To SENATE Committee on CORPORATIONS AND TRANSPORTATION.

02/01/2019 To SENATE Committee on FINANCE.

03/09/2019 From SENATE Committee on CORPORATIONS AND TRANSPORTATION: Do pass as substituted.

03/12/2019 From SENATE Committee on FINANCE: Do pass as amended.

03/12/2019 Passed SENATE. *****To HOUSE.

03/13/2019 To HOUSE Committee on COMMERCE & ECONOMIC DEVELOPMENT.

03/14/2019 From HOUSE Committee on COMMERCE & ECONOMIC DEVELOPMENT: Do pass.

03/15/2019 Passed HOUSE.

03/28/2019 Signed by GOVERNOR.

03/28/2019 Chaptered. Chapter No. 87

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session: New Mexico 54th Legislature - First Regular Session cite: 2019 NM S 2 Substituted

March 9, 2019

Rodriguez

SENATE CORPORATIONS AND TRANSPORTATION COMMITTEE SUBSTITUTE FOR

SENATE BILL 2

54th legislature - STATE OF NEW MEXICO - FIRST SESSION, 2019

AN ACT

RELATING TO TAXATION; AMENDING THE FILM PRODUCTION TAX CREDIT ACT; LIMITING CERTAIN ADDITIONAL CREDITS TO PRODUCTIONS THAT COMMENCE PRINCIPAL PHOTOGRAPHY PRIOR TO JULY 1, 2019; CREATING THE NEW FILM PRODUCTION TAX CREDIT FOR PRODUCTIONS THAT COMMENCE PRINCIPAL PHOTOGRAPHY ON OR AFTER JULY 1, 2019; INCREASING THE AMOUNT OF CREDIT THAT MAY BE CLAIMED PER TAXABLE YEAR; ALLOWING ADDITIONAL AMOUNTS FOR TELEVISION PILOTS AND SERIES AND EXPENDITURES MADE IN CERTAIN AREAS OF THE STATE; CREATING THE NONRESIDENT BELOW-THE-LINE CREW CREDIT; INCREASING THE AGGREGATE CAP; PROVIDING THAT CERTAIN EXPENDITURES BY CERTAIN FILM PRODUCTION COMPANIES SHALL NOT BE SUBJECT TO THE AGGREGATE CAP; PROHIBITING THE NEW MEXICO FILM DIVISION OF THE ECONOMIC DEVELOPMENT DEPARTMENT FROM CERTIFYING EXPENDITURE BUDGETS THAT WOULD EXCEED ONE HUNDRED MILLION DOLLARS (\$100,000,000) IN EXCESS OF THE AGGREGATE CAP; REQUIRING THE TAXATION AND REVENUE DEPARTMENT TO PAY A CERTAIN AMOUNT OF PREVIOUSLY APPROVED CREDITS; AMENDING AND ENACTING SECTIONS OF THE FILM PRODUCTION TAX CREDIT ACT; MAKING AN APPROPRIATION.

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

SECTION 1. Section 7-1-8.8 NMSA 1978 (being Laws 2009, Chapter 243, Section 10, as amended) is amended to read:

"7-1-8.8. INFORMATION THAT MAY BE REVEALED TO OTHER STATE AGENCIES.--An employee of the department may reveal to:

- A. a committee of the legislature for a valid legislative purpose, return information concerning any tax or fee imposed pursuant to the Cigarette Tax Act;
- B. the attorney general, return information acquired pursuant to the Cigarette Tax Act for purposes of Section 6-4-13 NMSA 1978 and the master settlement agreement defined in Section 6-4-12 NMSA 1978;
- C. the commissioner of public lands, return information for use in auditing that pertains to rentals, royalties, fees and other payments due the state under land sale, land lease or other land use contracts;
- D. the secretary of human services or the secretary's delegate under a written agreement with the department, the last known address with date of all names certified to the department as being absent parents of children receiving public financial assistance, but only for the purpose of enforcing the support liability of the absent parents by the child support enforcement division or any successor organizational unit;
- E. the department of information technology, by electronic media, a database updated quarterly that contains the names, addresses, county of address and taxpayer identification numbers of New Mexico personal income tax filers, but only for the purpose of producing the random jury list for the selection of petit or grand jurors for the state courts pursuant to Section 38-5-3 NMSA 1978;
- F. the state courts, the random jury lists produced by the department of information technology under Subsection E of this section;

- G. the director of the New Mexico department of agriculture or the director's authorized representative, upon request of the director or representative, the names and addresses of all gasoline or special fuel distributors, wholesalers and retailers;
- H. the public regulation commission, return information with respect to the Corporate Income and Franchise Tax Act required to enable the commission to carry out its duties;
- I. the state racing commission, return information with respect to the state, municipal and county gross receipts taxes paid by racetracks;
- J. the gaming control board, tax returns of license applicants and their affiliates as provided in Subsection E of Section 60-2E-14 NMSA 1978;
- K. the director of the workers' compensation administration or to the director's representatives authorized for this purpose, return information to facilitate the identification of taxpayers that are delinquent or noncompliant in payment of fees required by Section 52-1-9.1 or 52-5-19 NMSA 1978;
- L. the secretary of workforce solutions or the secretary's delegate, return information for use in enforcement of unemployment insurance collections pursuant to the terms of a written reciprocal agreement entered into by the department with the secretary of workforce solutions for exchange of information;
- M. the New Mexico finance authority, information with respect to the amount of municipal and county gross receipts taxes collected by municipalities and counties pursuant to any local option municipal or county gross receipts taxes imposed, and information with respect to the amount of governmental gross receipts taxes paid by every agency, institution, instrumentality or political subdivision of the state pursuant to Section 7-9-4.3 NMSA 1978; ~~and~~
- N. the secretary of human services or the secretary's delegate; provided that a person who receives the confidential return information on behalf of the human services department shall not reveal the information and shall be subject to the penalties in Section 7-1-76 NMSA 1978 if the person fails to maintain the confidentiality required:
 - (1) that return information needed for reports required to be made to the federal government concerning the use of federal funds for low-income working families; and
 - (2) the names and addresses of low-income taxpayers for the limited purpose of outreach to those taxpayers; provided that the human services department shall pay the department for expenses incurred by the department to derive the information requested by the human services department if the information requested is not readily available in reports for which the department's information systems are programmed;
- O. *the secretary of finance and administration or the secretary's delegate, aggregate return information concerning credits pursuant to the Film Production Tax Credit Act; and***
- P. *the secretary of economic development or the secretary's delegate, aggregate return information concerning a credit pursuant to the Film Production Tax Credit Act .***

SECTION 2. Section 7-1-8.8 NMSA 1978 (being Laws 2009, Chapter 243, Section 10, as amended by Section 1 of this act) is repealed and a new Section 7-1-8.8 NMSA 1978 is enacted to read:

"7-1-8.8. [NEW MATERIAL] INFORMATION THAT MAY BE REVEALED TO OTHER STATE AGENCIES.--An employee of the department may reveal to:

- A. a committee of the legislature for a valid legislative purpose, return information concerning any tax or fee imposed pursuant to the Cigarette Tax Act;
- B. the attorney general, return information acquired pursuant to the Cigarette Tax Act for purposes of Section 6-4-13 NMSA 1978 and the master settlement agreement defined in Section 6-4-12 NMSA 1978;
- C. the commissioner of public lands, return information for use in auditing that pertains to rentals, royalties, fees and other payments due the state under land sale, land lease or other land use contracts;
- D. the secretary of human services or the secretary's delegate under a written agreement with the department, the last known address with date of all names certified to the department as being absent parents of children receiving public financial assistance, but only for the purpose of enforcing the support liability of the absent parents by the child support enforcement division or any successor organizational unit;
- E. the department of information technology, by electronic media, a database updated quarterly that contains the names, addresses, county of address and taxpayer identification numbers of New Mexico personal income tax filers, but only for the purpose of producing the random jury list for the selection of petit or grand jurors for the state courts pursuant to Section 38-5-3 NMSA 1978;
- F. the state courts, the random jury lists produced by the department of information technology under Subsection E of this section;
- G. the director of the New Mexico department of agriculture or the director's authorized representative, upon request of the director or representative, the names and addresses of all gasoline or special fuel distributors, wholesalers and retailers;
- H. the public regulation commission, return information with respect to the Corporate Income and Franchise Tax Act required to enable the commission to carry out its duties;
- I. the state racing commission, return information with respect to the state, municipal and county gross receipts taxes paid by racetracks;
- J. the gaming control board, tax returns of license applicants and their affiliates as provided in Subsection E of Section 60-2E-14 NMSA 1978;
- K. the director of the workers' compensation administration or to the director's representatives authorized for this purpose, return information to facilitate the identification of taxpayers that are delinquent or noncompliant in payment of fees required by Section 52-1-9.1 or 52-5-19 NMSA 1978;
- L. the secretary of workforce solutions or the secretary's delegate, return information for use in enforcement of unemployment insurance collections pursuant to the terms of a written reciprocal agreement entered into by the department with the secretary of workforce solutions for exchange of information;
- M. the New Mexico finance authority, information with respect to the amount of municipal and county gross receipts taxes collected by municipalities and counties pursuant to any local option municipal or county gross receipts taxes imposed, and information with respect to the amount of governmental gross receipts taxes paid by every agency, institution, instrumentality or political subdivision of the state pursuant to Section 7-9-4.3 NMSA 1978;

- N. the secretary of human services or the secretary's delegate; provided that a person who receives the confidential return information on behalf of the human services department shall not reveal the information and shall be subject to the penalties in Section 7-1-76 NMSA 1978 if the person fails to maintain the confidentiality required:
- (1) that return information needed for reports required to be made to the federal government concerning the use of federal funds for low-income working families; and
 - (2) the names and addresses of low-income taxpayers for the limited purpose of outreach to those taxpayers; provided that the human services department shall pay the department for expenses incurred by the department to derive the information requested by the human services department if the information requested is not readily available in reports for which the department's information systems are programmed;
- O. the superintendent of insurance, return information with respect to the premium tax and the health insurance premium surtax;
- P. the secretary of finance and administration or the secretary's delegate, aggregate return information concerning a credit pursuant to the Film Production Tax Credit Act; and
- Q. the secretary of economic development or the secretary's delegate, aggregate return information concerning a credit pursuant to the Film Production Tax Credit Act."

SECTION 3. 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 Actor 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 **taxation and revenue** 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. **F.** Except as otherwise provided in this section *and Section 10 of this 2019 act*, 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.~~ **G.** 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 **7-2F-12 NMSA 1978**, the next scheduled payments for credit claims authorized for payment pursuant to Subsection ~~G~~ **F** 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~~ **Section 7-2F-12 NMSA 1978**; 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.~~ **H.** Any amount of a credit claim that is carried forward pursuant to Subsection ~~G~~ **F** 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~~ **Section 7-2F-12 NMSA 1978**.
- ~~J.~~ **I.** 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.

- ~~K.~~ **J.** 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.~~ **K.** 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.~~ **L.** 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.~~ **M.** 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-~~ **website** 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-~~ **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 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.~~ **N.** 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-~~ **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, including that the division shall report quarterly the projected amount of credit claims for the fiscal year.

- ~~P.~~ **O.** 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~~ **website** the aggregate amount of credits claimed and processed for the fiscal year.
- ~~Q.~~ **P.** 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.~~ **Q.** 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.~~ **R.** 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.~~ **S.** 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:

(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 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~~ **workforce** 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.~~ **T.** 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.~~ **U.** 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 4. 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;*

~~C.~~ D. *"commercial audiovisual product" means a film or a ~~videogame~~ 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 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;*

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

~~E.~~ **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;

~~F.~~ **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;

~~G. J.~~ "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.~~ **K.** "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.~~ **L.** "performing artist" means an actor, on-camera stunt person, puppeteer, pilot who is a stunt person 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.~~ **M.** "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.~~ **N.** "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~~ **vendor** or an employee of the ~~business~~ **vendor** is a resident;

~~M.~~ **O.** "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;

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

~~O.~~ **Q.** "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~~ **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**

R. "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 5. Section 7-2F-4 NMSA 1978 (being Laws 2011, Chapter 165, Section 5, as amended) 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 ***and the past performance of and current outlook for the Film Production Tax Credit Act, including:***
 - (a) the aggregate amount of credits paid subject to the aggregate amount allowed pursuant to Subsection B of Section 7-2F-12 NMSA 1978 in the prior fiscal year and the current amount of claims in the queue pursuant to Subsection C of Section 7-2F-12 NMSA 1978;***
 - (b) the aggregate amount of approved credits paid in the prior fiscal year for expenditures by certain film production companies that are not subject to the aggregate amount of claims allowed pursuant to Section 7-2F-12 NMSA 1978;***
 - (c) the number of applicants receiving the additional credit for television pilots and series pursuant to Section 7-2F-7 NMSA 1978;***
 - (d) the number of applicants receiving the additional credit for direct production expenditures made in certain areas of the state pursuant to Section 9 of this 2019 act;***

(e) the aggregate amount of direct production expenditures and post production expenditures in New Mexico during the prior fiscal year, shown by county;

(f) the total number and wages of New Mexico residents employed by film production companies in the prior fiscal year; and

(g) any other relevant information, as determined by the division.

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 production 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) the aggregate amount of direct production expenditures and postproduction expenditures in New Mexico in the prior fiscal year, shown by county; and

~~(7)~~ (8) 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 6. Section 7-2F-12 NMSA 1978 (being Laws 2015, Chapter 143, Section 11) is repealed and a new Section 7-2F-12 NMSA 1978 is enacted to read:

"7-2F-12. [NEW MATERIAL] 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.

B. Except as provided in Section 10 of this 2019 act, 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 one hundred ten million dollars (\$110,000,000) with respect to the

direct production expenditures or postproduction expenditures made on film or commercial audiovisual products; 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.

- 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. If, in fiscal years 2020 through 2022, the aggregate amount of claims authorized for payment is less than one hundred ten million dollars (\$110,000,000), excluding claims by a New Mexico film partner, then the difference in that fiscal year or twenty million dollars (\$20,000,000), whichever is less, shall be added to the aggregate amount of claims that may be authorized for payment pursuant to Subsection B of this section in the immediately following fiscal year.
- E. 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.
- F. As used in this section, "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."

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

"[NEW MATERIAL] 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. 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 and resident principal performing artists in a production. This limitation shall not apply to the services of background artists.”

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

“[NEW MATERIAL] 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 of this 2019 act, an additional five percent shall be applied for payments for direct production expenditures and postproduction expenditures:

- (1) provided that the work, services or items are provided on location for a production of a film or commercial audiovisual product that is located in New Mexico but at least sixty miles outside of the exterior boundaries of certain counties; and (2) 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“ includes counties with a net taxable value of property for property taxation purposes of greater than six billion dollars (\$6,000,000,000).”

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

“[NEW MATERIAL] NONRESIDENT BELOW-THE-LINE CREW CREDIT.--

- A. A film production company may apply for, and the taxation and revenue department may allow, a tax 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:

- (1) the service for which payment is made is rendered in New Mexico;

- (2) the total eligible wages for below-the-line crew who are not New Mexico residents are:

- (a) not more than fifteen percent of the production’s total New Mexico budget for below-the-line crew wages; or

- (b) as determined by the division, up to twenty percent of the production's total New Mexico budget for below the-line crew wages; provided that sufficient and qualified below-the-line crew who are New Mexico residents are not available. A film production company that is approved for the additional credit by meeting the requirements of this paragraph shall make a financial or promotional contribution toward educational, media-related nonprofit or workforce development efforts in New Mexico, as determined by the division; and
- (3) the film production company makes financial or promotional contributions toward educational or workforce development efforts in New Mexico as determined by the division, including:
- (a) 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
 - (b) promotion of the New Mexico film industry by directors, actors or producers affiliated with the film production company's project through: 1) social media that is managed by the state; 2) radio interviews facilitated by the division; 3) enhanced screen credit acknowledgments; or 4) related events that are facilitated, conducted or sponsored by the division.

B. The credit provided by this section may be referred to as the "nonresidential below-the-line crew credit."

SECTION 10. TEMPORARY PROVISION--AUTHORIZATION TO PAY APPROVED CREDITS PURSUANT TO THE FILM PRODUCTION TAX CREDIT ACT.--

- A. In addition to the aggregate amount of claims that may be paid pursuant to Section 7-2F-12 NMSA 1978, a claim for a tax credit approved by the taxation and revenue department pursuant to the Film Production Tax Credit Act shall be paid:
- (1) prior to July 1, 2019; provided that the aggregate amount of claims for credits that may be authorized for payment pursuant to this subsection does not exceed one hundred million dollars (\$100,000,000); and
 - (2) on or after July 1, 2019, but prior to July 1, 2020; provided that the aggregate amount of claims for credits that may be authorized for payment pursuant to this subsection does not exceed ninety-five million dollars (\$95,000,000) and that the claim meets the requirements of the Film Production Tax Credit Act; provided further that, if the fiscal year 2019 general fund revenues estimated by the consensus revenue estimating group presented to the legislative finance committee in August 2019 exceeds the fiscal year 2019 general fund revenues forecasted by the consensus revenue estimating group in February 2019 by at least thirty million dollars (\$30,000,000), then the ninety-five-million dollar (\$95,000,000) threshold shall be increased to one hundred twenty-five million dollars (\$125,000,000).

B. A claim that exceeds the authorized amounts to be paid as provided in this section shall be paid in accordance with the applicable provisions of the Film Production Tax Credit Act, as those provisions were in effect on the date the claim was approved.

SECTION 11. APPLICABILITY.--

- A. The provisions of Sections 4 and 7 through 9 of this act apply to film production companies that commence principal photography for a film or commercial audiovisual product on or after July 1, 2019.
- B. The provisions of Sections 7-2F-2.1 and 7-2F-6 through 7-2F-11 NMSA 1978 shall not apply to a film production company that commences principal photography for a film or commercial audiovisual product on or after July 1, 2019.

SECTION 12. EFFECTIVE DATE.--

- A. The effective date of the provisions of Sections 1, 4 and 5 through 9 of this act is July 1, 2019.
- B. The effective date of the provisions of Section 2 of this act is January 1, 2020.