

# FYI-370

## New Mexico Taxation and Revenue Department

### FOR YOUR INFORMATION

Tax Information/Policy Office ♦ P.O. Box 630 ♦ Santa Fe, New Mexico 87504-0630

## INFORMATION REGARDING FILM PRODUCTION TAX CREDITS

This publication is an overview of the credits allowed in the Film Production Tax Credit Act. It briefly covers the credit available for on or after January 1, 2016, through prior to July 1, 2019. The remainder of this publication covers the credit that is available on or after July 1, 2019.

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## Film and Television Tax Credit: Principal Photography on or after January 1, 2016 but prior to July 1, 2019

- ◆ **Statutory Reference:** Film Production Tax Credit Act, Sections 7-2F-1.1 through 7-2F-12 NMSA 1978.
- ◆ **Applicable Tax Programs:** CIT and PIT
- ◆ PTE owners can claim the credit (see below for specifics)
- ◆ Refundable
- ◆ Taxation and Revenue Department (TRD) Forms:
  - **RPD-41381**, *Application for Film and Television Tax Credit (Productions prior to July 1, 2019)*
  - **RPD-41271**, *Film Production Tax Credit Declaration of Residency*
  - **RPD-41380**, *Notice of Assignment of Film Production Tax Credit*
  - **RPD-41228**, *Film-Related Tax Credit Claim Form*

For film production companies that commence principal photography on or after January 1, 2016, but prior to July 1, 2019, a credit against personal or corporate income tax is available for 25% of direct production and postproduction expenditures as specified in Section 7-2F-2.1 NMSA 1978 made in New Mexico that are subject to taxation by the state of New Mexico and directly attributable to the production of a film or commercial audiovisual product. The credit covers postproduction expenditures directly attributable only to services performed in New Mexico and subject to taxation by the state of New Mexico, excluded from the credit are costs for which the film production company has already delivered nontaxable transaction certificates under Section 7-9-86 NMSA 1978 and expenditures for which another taxpayer claims the film and television tax credit.

- An additional 5% credit is available for standalone pilots intended for series television in New Mexico and series television productions intended for commercial distribution with an order for at least six episodes in a single season. Section 7-2F-7 NMSA 1978.
- An additional 5% credit is available if certain criteria are met regarding the use of qualified production facilities. Section 7-2F-8 NMSA 1978.
- A credit is available in an amount equal to 15% of the payment of wages, fringe benefits and per diem for nonresident industry crew when certain criteria are met. Section 7-2F-9 NMSA 1978.

The aggregate total amount of credits authorized for payment under the Film Production Tax Credit Act in any fiscal year is limited to \$50 million.

Note: The New Mexico Film Office (NMFO) of the Economic Development Department (EDD) approves film production companies for eligibility. TRD determines whether the film production company's expenses are eligible. For additional qualifying information, please look at TRD's application and claim form listed above.

## **New Film and Television Tax Credit: Principal Photography on or after July 1, 2019**

- ◆ **Statutory Reference:** Film Production Tax Credit Act, Section 7-2F-1.1 through 7-2F-15, excluding Section 7-2F-2.1 and 7-2F-6 through 7-2F-11 NMSA 1978.
- ◆ **Applicable Tax Programs:** CIT and PIT
- ◆ Refundable
- ◆ TRD Forms:
  - **RPD-41391**, *Application for New Film Production Tax Credit (Productions starting July 1, 2019)*
  - **RPD-41271**, *Film Production Tax Credit Declaration of Residency*
  - **RPD-41380**, *Notice of Assignment of Film Production Tax Credit*
  - **RPD-41228**, *Film-Related Tax Credit Claim Form*

For film production companies that commence principal photography on or after July 1, 2019, a credit against personal or corporate income tax is available for 25% of direct production and postproduction expenditures made in New Mexico that are subject to taxation by the state of New Mexico and directly attributable to the production of a film or commercial audiovisual product. The credit covers postproduction expenditures directly attributable only to services performed in New Mexico and subject to taxation by the state of New Mexico, excluded from the credit are costs for which the film production company has already delivered nontaxable transaction certificates under Section 7-9-86 NMSA 1978 and expenditures for which another taxpayer claims the film and television tax credit.

- An additional 5% shall be applied for payments for direct production expenditures and postproduction expenditures. For work, services or items provided on location for production of a film or commercial audiovisual product that is in New Mexico but at least 60 miles outside of the exterior boundaries of certain counties. Section 7-2F-14(A)(1) NMSA 1978.
- An additional 5% credit is available for standalone pilots intended for series television in New Mexico and series television productions intended for commercial distribution with an order for at least six episodes in a single season. Section 7-2F-14(A)(2)(a) NMSA 1978.
- An additional 5% credit is available if certain criteria are met regarding the use of qualified production facilities. Section 7-2F-14(A)(2)(b) NMSA 1978.
- A credit is available in an amount equal to 15% of the payment of wages for nonresident industry crew when certain criteria are met under Section 7-2F-15 NMSA 1978.

The aggregate total amount of credits authorized for payment under the Film Production Tax Credit Act in any fiscal year is limited to \$100 million.

Note: The NMFO of the EDD approves film production companies for eligibility. TRD determines whether the film production company's expenses are eligible. For additional qualifying information, please look at TRD's application and claim form listed above.

### **Additional 5% Credit- Certain Areas of the State (Rural)**

In addition to the percentage of direct production expenditure and postproduction expenditure an additional 5% shall be applied for work, services or items provided on location for a production that is located in New Mexico but at least 60 miles outside the exterior boundaries of Bernalillo County and Santa Fe County. Section 7-2F-14(A)(1) NMSA 1978

- All direct production expenditures and postproduction expenditures will get the additional 5% uplift for expenditures incurred in a rural area.
- Goods and Services must be provided on location in the rural area to qualify for the additional 5%.
- Rentals leased or licensed outside the rural areas will be prorated by number of days used in the rural area.
- Excludes Non-resident Below the Line Crew.
- Rural Map- <https://nmtrd.maps.arcgis.com/home/index.html>
- For the purposes of this additional credit, "certain counties" includes counties with a net taxable value of property for property taxation purposes of greater than six billion dollars.

### **Additional 5% Credit- Qualified Television Pilots and Series**

In addition to the percentage of direct production expenditure and postproduction expenditure an additional 5% shall be applied to productions that are 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. Section 7-2F-14(A)(2)(a) NMSA 1978

- If the additional 5% credit is granted for a television pilots and series, an additional 5% credit cannot be allowed for a qualified production facility.

### **Additional 5% Credit - Qualified Production Facilities**

In addition to the percentage of direct production expenditures and postproduction expenditures, an additional 5% shall be applied to productions that utilize a production facility sound stage or standing set, qualified by NMFO. Section 7-2F-14(A)(2)(b) NMSA 1978

- Only expenses incurred on a production in a qualified production facility are eligible for the additional 5%. If something is purchased at a store or another location and brought back to the qualified production facility it would not qualify.
- If the additional 5% credit is granted for a qualified production facility, an additional 5% credit cannot be allowed for a television pilots and series.

### **Non-Resident Below the Line Crew Credit (NRCE)**

Section 7-2F-15 NMSA 1978 allows for an amount equal to 15% of the payment of wages for below-the-line (BTL) 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:

- the service for which payment is made is rendered in New Mexico;
- the film production company makes financial or promotional contributions toward educational or workforce development efforts in New Mexico as determined by NMFO of EDD; **and**
- the total eligible wages for BTL crew who are not New Mexico residents are:
  - not more than 15% of the production's total New Mexico budget for BTL crew wages; **or**
  - as determined by the division, up to 20% of the production's total New Mexico budget for BTL crew wages; provided that sufficient and qualified BTL 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 NMFO of EDD.

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Per Section 7-2F-2 (C) NMSA 1978, "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;

**Example Credit Amount with a \$1,000,000.00 Total New Mexico BTL Crew Budget:**

	<b>Total NM BTL Budget</b>		<b>Budget % (as determined by NMFO of EDD)</b>		<b>BTL Crew Wages (credit 15%)</b>		<b>Credit Max</b>
15% Credit up to \$22,500	\$ 1,000,000	X	15%	X	15%	=	\$ 22,500
20% Credit up to \$30,000	\$ 1,000,000	X	20%	X	15%	=	\$ 30,000

<b>Description</b>	<b>Is it a Qualified Expenditure?</b>	<b>Requirements</b>
<b>Non-Resident Below the Line Crew (NRCE)</b>		<b>Services must be rendered in New Mexico.</b>
Wages	Yes	Per Section 7-2F-15 NMSA 1978, 15% of the total New Mexico production budget for BTL crew wages. Services must be rendered in New Mexico. See Nonresident Below the line Crew section above.
Benefits	No	Per Section 7-2F-15 NMSA 1978
Workers' Compensation	Yes	Per Section 7-2F-2 (E)(1)(e) (10) NMSA 1978, the policy must be purchased by a NM based agent or broker. Services must be rendered in NM.
Per Diem	No	Per Section 7-2F-15 NMSA 1978
Handling Fees	Yes	Per Section 7-2F-2(R) NMSA 1978, the payroll company must have physical presence in NM and payroll must be processed at NM location. Fee including gross receipts tax.
Fringes	No	Per Section 7-2F-15 NMSA 1978

**Non-Resident Crew Section 7-2F-2(E)(2)(g) NMSA 1978:**

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 a person shall not be considered an eligible expense for two years from the date in which the person is determined by the Department as having made a false claim, regardless of whether the person becomes a New Mexico resident within that time frame.

<b>Description</b>	<b>Is it a Qualified Expenditure?</b>	<b>Requirements</b>
<b>Non-Resident Crew</b>		<b>Services must be rendered in New Mexico.</b>
Workers' Compensation	Yes	Per Section 7-2F-2(E)(1)(e)(10) NMSA 1978, the policy must be purchased by a NM based agent or broker. Services must be rendered in NM.
Handling Fees	Yes	Per Section 7-2F-2(R) NMSA 1978, the payroll company must have physical presence in NM and payroll must be processed at NM location. Fee including gross receipts tax.

## DEFINITIONS

### As defined by Section 7-2F-2 NMSA 1978:

"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;

"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;

"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;

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

"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. ... **Note:** For the new film production tax credit direct production expenditures are further clarified in Section 7-2F-13 NMSA 1978.

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

"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;

"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: is fixed on film, a digital medium, videotape, computer disc, laser disc or other similar delivery medium; can be viewed or reproduced; is not intended to and does not violate a provision of Chapter 30, Article 37 NMSA 1978; and is intended for reasonable commercial exploitation for the delivery medium used;

"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;

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

"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;

"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;

"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;

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

"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;

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

"qualified production facility" means a building, or complex of buildings, building improvements and associated back-lot facilities in which films are or are intended to be regularly produced and that contain at least one: (1) sound stage with contiguous floor space of at least seven thousand square feet and a ceiling height of no less than eighteen feet; or (2) standing set that includes at least one interior, and at least five exteriors, built or re-purposed for film production use on a continual basis and is located on at least fifty acres of contiguous space designated for film production use;

"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.

## Declaration of Residency (DOR)

- A New Mexico resident must meet the definition under Section 7-2F-2(K) NMSA 1978 or as provided in the list of definitions above.
- The New Mexico resident needs to have a copy of their current New Mexico driver's license or New Mexico state issued ID **and** Form **RPD-41271, Declaration of Residency Form**.
- If the New Mexico resident is a minor and is claimed as a dependent on someone else's income tax return, the full name and social security number of the individual claiming the dependent on their personal income tax return is needed on the DOR to verify New Mexico residency.

## EXPENDITURES

### Qualifying Direct Production Expenditures

For all eligible expenses for direct production expenditures the original receipts will need to be provided with the application to be reviewed and approved or denied.

Qualifying expenses must be 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.

Section 7-2F-2 (E) NMSA 1978 defines "direct production expenditure" as "a transaction that is subject to taxation in New Mexico and is certified pursuant to Section 7-2F-12(A) NMSA 1978. For the new film production tax credit direct production expenditures are further clarified in Section 7-2F-13 NMSA 1978.

Section 7-2F-2(R) NMSA 1978 defines "vendor" as "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 7-2F-2(N) NMSA 1978 defines "physical presence" means a physical address in New Mexico from which a vendor conducts business, stores inventory or otherwise creates, assembles or offers for sale the product purchased or leased by a film production company and the vendor or an employee of the vendor is a resident.

## Unqualified Expenses

If the original receipts for the expenditure are not provided and the transaction is not supported as a direct production expenditure, as defined in Section 7-2F-2(E) NMSA 1978, TRD will have to disallow the expense as it will be considered unqualified for the purposes of the film credits.

Examples of unqualified expenses include but are not limited to:

- Anything that is not subject to New Mexico gross receipts tax or income tax.
- Anything provided by a vendor who does not have physical presence in New Mexico, including internet purchases.
- All flights booked directly through an airline.
- All flights that do not originate or do not end in New Mexico.
- If a car is booked through New Mexico Travel Agent for an out-of-state pick up, the transaction is to be disallowed.
- The expense was claimed in a previous film application.
- Expenses from out-of-state vendor(s).
- Hidden or Indirect service fees, costs, commissions, or costs not directly paid by the film production company applying for the film credits.
- Performing artist(s) hired by production company who do not have New Mexico withholding at the maximum rate.
- Loan-out performing artists who do not have New Mexico withholding at the maximum rate and New Mexico gross receipts tax paid on the invoice amount for the loan-out.
- Expenses that are for entertainment, amusement, or recreation Section 7-2F-2(E)(2)(c) NMSA 1978.
- Family Flights & Expenditures Section 7-2F-2(E)(2)(c) NMSA 1978.
- Expenditures purchased from a Non-Profit Organization(s), Tribal location purchases and Government Entities per Section 7-2F-2(E)(2)(d) NMSA 1978
- Wages for a person who is not a New Mexico resident and who falsely claims to be a New Mexico resident. NOTE: If a false claim is made in regard to the residency for the wages of such a person that will result in any eligible expenses in relation to that person for two years being disallowed regardless if that person becomes a New Mexico resident in the two following years or not.
- Expenses associated with the development training for film and multimedia production companies program by the NMFO of EDD as outlined under Section 21-19-7.1 NMSA 1978 by a film production company.

## Examples of the most common expenditures (not an exhaustive list):

### Expenses with Limits

- Passenger vehicle limits are \$150 per day per person for in-state transportation for individuals related to the production. The vehicle must be picked up at a qualifying rental company with a New Mexico location and subject to New Mexico tax.
- The first \$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
- Lodging; the first \$300 of lodging per individual, per day at a qualified New Mexico hotel, motel, or house rental.
- Gifts to crew/actors; maximum of \$100 per individual from a vendor with physical presence in New Mexico.



- Artwork or jewelry: expenditure \$2,500 or less and the item needs to be on camera. Documentation must be provided that the artwork or jewelry was used in the film production and that the purchase was made from a vendor with physical presence in New Mexico.

**Box Rentals (Standard Industry Craft) per Section 7-2F-2(E)(1)(b) NMSA 1978**

- 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.

**New Mexico Resident per Section 7-2F-2(E)(1)(a) NMSA 1978**

- Payment of wages, fringe benefits, or fees for talent, management, or labor to a person who is a New Mexico resident.

Description	Is it a Qualified Expenditure?	Requirements
<b>New Mexico Residents</b>		<b>Services must be rendered in New Mexico.</b> Declaration of Residency (DOR) and NM Identification card are required. For more information, see Declaration of Residency (DOR) on page 7
Wages	Yes	Per Section 7-2F-2 (E)(1)(a) NMSA 1978, Services must be rendered in NM.
Benefits	Yes	Per Section 7-2F-2 (E)(1)(a) NMSA 1978. This provision covers NM full-time or first-year residents. Benefits include Pension, Health, and Welfare.
Workers' Compensation	Yes	Per Section 7-2F-2 (E)(1)(e)(10) NMSA 1978, the policy must be purchased by a NM based agent or broker. Services must be rendered in NM.
Fringes	Yes	Per Section 7-2F-2 (E)(1)(a) NMSA 1978, Services must be rendered in NM. Fringes for the purposes of this credit includes per diem and allowances.
Handling Fees	Yes	Per Section 7-2F-2(R) NMSA 1978, the payroll company must have physical presence in NM and payroll must be processed at NM location.

**Extras**

Description	Is it a Qualified Expenditure?	Requirements
<b>Extras</b>		<b>Services must be rendered in New Mexico and person must be a NM Resident.</b> DORs are not required although TRD does check the payroll and internal resources to ensure eligibility.
Wages	Yes	Per Section 7-2F-2(E)(1)(a) NMSA 1978
Benefits	Yes	Per Section 7-2F-2(E)(1)(a) NMSA 1978.
Workers' Compensation	Yes	Per Section 7-2F-2(E)(1)(e) (10) NMSA 1978, the policy must be purchased by a NM based agent or broker. Services must be rendered in NM.
Fringes	Yes	Per Section 7-2F-2 (E)(1)(a) NMSA 1978. Fringes for the purposes of this credit includes per diem and allowances.
Handling Fees	Yes	Per Section 7-2F-2(R) NMSA 1978, all vendors must meet statutory requirements. Fee including gross receipts tax.

**Cap on Performing Artists Per Section 7-2F-13 (L) NMSA 1978**

- “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.”

**Direct Hire Performing Artist Section 7-2F-2(E)(1)(c) NMSA 1978**

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;

Description	Is it a Qualified Expenditure?	Requirements
<b>Direct Hire (Performing Artist)</b>		<b>Services must be rendered in New Mexico and withholding at the maximum rate.</b>
Wages	Yes	Per Section 7-2F-2 (E)(1)(c) NMSA 1978, only allowable if the production company deducts and remits NM withholding tax from the first day services are rendered in NM at the maximum rate pursuant to the Withholding Tax Act.
Per Diem	Yes	Per Section 7-2F-2 (E)(1)(c) NMSA 1978.
Workers' Compensation	Yes	Per Section 7-2F-2(E)(1)(e)(10) NMSA 1978, the policy must be purchased by a NM based agent or broker. Services must be rendered in NM.
Handling Fees	Yes	Per Section 7-2F-2(R) NMSA 1978, the payroll company must have physical presence in NM and payroll must be processed at NM location. Fee including gross receipts tax.
Benefits	No	Per Section 7-2F-2(E)(1)(c) NMSA 1978.
Fringes	No	Per Section 7-2F-2(E)(1)(c) NMSA 1978.

**Loan Out per Section 7-2F-2(E)(1)(d) NMSA 1978**

“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 Section 7-3A-3(H) 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.”

Description	Is it a Qualified Expenditure?	Requirements
<b>Super Loan Out (SLO) (Performing Artist)</b>		<b>Services must be rendered in New Mexico, GRT paid and withholding at the maximum rate.</b>
SLO Payments	Yes	Per Section 7-2F-2(E)(1)(d) NMSA 1978.

**Reimbursements, Per Diem, Allowances**

- Reimbursements are for NM residents only; reimbursement is for mileage and cell phones that a NM resident would use if they provide monthly statement and file an income tax return in NM.
- Per diem is allowed for residents, and non-resident performing artists only.
- Allowances is allowed for eligible purchases for direct production expenditures with original receipts.

**New Mexico Expenditures**

Description	Is it a Qualified Expenditure?	Requirements
<b>New Mexico Expenditures</b>		<b>Services must be rendered in New Mexico.</b>
Set construction and operations.	Yes	Per Section 7-2F-2(E)(1)(e)(2) NMSA 1978, all vendors must meet statutory requirements.
Set wardrobe	Yes	Per Section 7-2F-2(E)(1)(e)(2) NMSA 1978, all vendors must meet statutory requirements.
Set accessories	Yes	Per Section 7-2F-2(E)(1)(e)(2) NMSA 1978, all vendors must meet statutory requirements.
Set related services	Yes	Per Section 7-2F-2(E)(1)(e)(2) NMSA 1978, all vendors must meet statutory requirements.
Photography	Yes	Per Section 7-2F-2(E)(1)(e)(3) NMSA 1978, all vendors must meet statutory requirements.
Sound Synchronization	Yes	Per Section 7-2F-2(E)(1)(e)(3) NMSA 1978, all vendors must meet statutory requirements.
Lighting	Yes	Per Section 7-2F-2(E)(1)(e)(3) NMSA 1978, all vendors must meet statutory requirements.
Editing	Yes	Per Section 7-2F-2(E)(1)(e)(4) NMSA 1978, all vendors must meet statutory requirements.
Rental of facilities	Yes	Per Section 7-2F-2(E)(1)(e)(5) NMSA 1978, all vendors must meet statutory requirements.
Rental of equipment	Yes	Per Section 7-2F-2(E)(1)(e)(5) NMSA 1978, all vendors must meet statutory requirements. i.e.- production vehicles
Chartered aircraft	Yes	Per Section 7-2F-2(E)(1)(e)(6) NMSA 1978, all vendors must meet statutory requirements, and expenditures must be for in-state transportation directly attributable to the production purchased by a NM based company. Ticket needs to be issued to individuals.
Insurance coverage	Yes	Per Section 7-2F-2(E)(1)(e)(10) NMSA 1978, all vendors must meet statutory requirements.
Bonding	Yes	Per Section 7-2F-2(E)(1)(e)(10) NMSA 1978, all vendors must meet statutory requirements.
CPA Services	Yes	Per Section Per 7-2F-13(K) NMSA 1978, for a credit of 5M+, for an external audit, the CPA firm must be NM vendor. The CPA must be licensed to practice in NM.
Gifts	Yes	Per Section 7-2F-2(E)(2)(a) NMSA 1978, the limit allowed is \$100. Anything over would be disallowed.
Artwork or Jewelry	Yes	Per Section 7-2F-2(E)(2)(b) NMSA 1978, the item must be purchased through a NM-based company and 1.) used in the film production 2.) the expenditure is less than \$2,500.
Internet purchases	Yes	Per Section 7-2F-2(R) NMSA 1978, all vendors must meet statutory requirements. Internet purchases from companies who have established a physical presence in NM are allowable expenditures.

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Public Parking	Yes	The transaction must be subject to governmental gross receipts tax (GGRT)
Shipping	Yes	Per Section 7-2F-2(E)(1)(e)(12) NMSA 1978, all vendors must meet statutory requirements. Shipment must have originated from a qualified NM based company.
Out-of-State vendor	Yes	Only if purchase is done through a pass-through NM based company and gross receipts tax is paid.
Leasing of vehicles	Yes	Per Section 7-2F-2(E)(1)(e)(6) NMSA 1978, only the first \$150 of the daily expense of leasing a vehicle that is directly attributed to the production.
Food	Yes	Per Section 7-2F-2(E)(1)(e)(7) NMSA 1978.
Lodging	Yes	Per Section 7-2F-2 (E)(1)(e)(8) NMSA 1978, the first \$300 of lodging per individual, per day.
Flights	Yes	Per Section 7-2F-2 (E)(1)(e)(9) NMSA 1978, commercial airfare is allowable if purchased through a qualifying NM-based travel agent or travel company for travel to and from NM or within NM. <b>Itineraries are to be provided for review.</b>
Car Service	Yes	Per Section 7-2F-2 (E)(1)(e) (12) NMSA 1978, a car (service) can be book through the NM travel agent to be picked up at airport, rental home or hotel and take to location or airport <b>only</b> in NM.
Storage Facilities	Yes	For a continuing series.
Location Fees	Yes	Location must be in NM and subject to tax.
Inconvenience Fees	Yes	Must be to a NM resident or location.
Entertainment, Amusement or Recreation (Wrap party)	No	Per Section 7-2F-2(E)(2)(c) NMSA 1978, considered an indirect expense.
Tribal location purchases	No	Per Section 7-2F-2(E)(2)(d) NMSA 1978, purchases are not taxable on tribal locations.
Government Entities	No	Per Section 7-2F-2(E)(2)(d) NMSA 1978, government Entities are tax exempt.
Non-profit organizations	No	Per Section 7-2F-2(E)(2)(d) NMSA 1978 Non-profit organizations are generally not taxable.
Family Flights & Expenditures	No	Considered an indirect expense.
Out of State Vendor	No	Per Section 7-2F-2(R) NMSA 1978
Internet Purchases	No	Not allowed where vendor does not have NM physical presence.

**Non-Resident Vendors**

Description	Is it a Qualified Expenditure?	Comments
<b>Non-Resident Vendors</b>		
Director	No	Per Section 7-2F-2(R)NMSA 1978
Writer	No	Per Section 7-2F-2(R) NMSA 1978
Producer	No	Per Section 7-2F-2(R) NMSA 1978

**Postproduction Expenditures:**

Section 7-2F-2(O) NMSA 1978 “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.

Section 7-2F-13(B)(2) NMSA 1978:

(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.

## APPLYING FOR A FILM PRODUCTION TAX CREDIT

### Submission of Application to TRD

#### How to apply for the Film Production Tax Credit:

First, a film production company must be approved by the NMFO of the EDD. Once approval from EDD is received, the company may apply for the credit by submitting a completed Form **RPD-41391**, *Application for New Film Production Tax Credit (Productions starting July 1, 2019)*, along with the NMFO's approval, a breakout of the New Mexico costs for each line item (ledger), in excel format along with supporting documentation to TRD in accordance with Section 7-2F-13(K) NMSA 1978. The ledger totals and the amounts provided on the application should be the same.

Section 7-2F-13 (K) NMSA 1978 states “...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 ...”

To be eligible for the credit, the film production company must pay all obligations the film production company has incurred in New Mexico, provide public notification upon completion of principal photography on the website of the division that contains both local and permanent production company information, including the name, address, working phone number, fax, and email address.

**Note:** Beginning with tax year 2015, a film production company that is eligible to receive a film production tax credit may assign the payment of the credit to a third-party financial institution, or to an authorized third party, one time in a full or partial amount.

For more information on the film credit and current numbers for credits claimed see the Department's website here: <https://www.tax.newmexico.gov/tax-professionals/tax-credits-overview-forms/film-production-tax-credit/>

### Certified Public Accountant (CPA) Audits

1. Section 7-2F-13(K) states “...If the amount of the requested tax credit exceeds \$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 his section...”
2. For CPA audits, application and all supporting documentation (ledgers, invoices, etc.) are required to be turned in together. Ledgers and Application amounts should be the same. Failure to submit

the supporting documentation and the application together will result in your application being denied.

3. The audit **must** include a copy of the CPA's license to practice in NM and
4. A Tax Information Authorization form(s) (TIAs) for individuals processing the credit and for the CPA conducting the audit shall be submitted to the NMTRD with the application.

### Timeline for Credit

- NMFO has reviewed and confirmed that all obligations are met by the production company, the Application/Memo package will be submitted to New Mexico Taxation and Revenue Department.
- TRD has 180 days from the date of the approval memo/application from the NMFO to complete the credit review.
- TRD reviewer will email an additional information letter (if applicable), and TIAs to contact on application if not already provided with the application.
- TRD reviewer will request submission of the ledgers and any other required documents via a secure electronic link.
- Once TRD has completed the review; production can submit for credit refund. See below for instructions. Filing for film credit refund may only occur at the end of company's taxable year.
- Business Credit Approval or denial Letter will be sent via email to the person on the application on or before 180-day deadline.
- If approved, a NM Income Tax return will need to be filed for each year of expenditures (if there is more than one tax year) to receive the credit refund. The income tax return will need to include the necessary Schedule -CR, Form **RPD-41228**, *Film-Related Tax Credit Claim Form*, the Film Tax Credit Application, Business Credit Approval Letter, and Form **RPD-41366**, *Notice of Distribution of Film Production Tax Credit*.

For the return to be processed more quickly, it can be electronically filed using the Taxation and Revenue Department's Taxpayer Access Point (TAP): <https://tap.state.nm.us/Tap>

## Claiming the Film Production Tax Credit

### How to Claim the Film Production Tax Credit

After the film production company is determined eligible by the NMFO and approved by TRD, film-related tax credits may be claimed by attaching a completed Form **RPD-41228**, *Film-Related Tax Credit Claim Form*, including Schedule A, to the film production company's complete New Mexico Income Tax Return and filed after the close of its tax year for authorization for payment.

### Completing the Income Tax Return:

For productions that commenced prior to July 1, 2019, the credit may be claimed by filing the New Mexico Information Return for Pass-Through Entities if applicable. Thereafter, Pass-Through Entities (PTE) who are who file this form must use Form **RPD-41366**, *Notice of Distribution of Film Production Tax Credit*, to report to TRD a distribution of approved film production tax credit from a PTE to an owner, member, or partner. If the entity is disregarded for income tax purposes, the credit must be claimed on the entity parent return or personal income tax return.

Complete the income tax return based on the federal return that you are required to file.

#### If you are required to file:

Federal Form 1040  
Federal Form 1041  
Federal Form 1120  
Federal Form 1120S  
Federal Form 1065

#### File New Mexico Income Tax Return:

Personal Income Tax Return  
Fiduciary Income Tax Return  
Corporate Income and Franchise Tax Return  
Sub-Chapter S Corporate Income and Franchise Tax Return  
Information Return for Pass-Through Entities

The following documents are to be included with the completed income tax return when filing a claim for Film Credit:

1. Copy of the approval letter issued by the Taxation and Revenue Department
2. Copy of Final Film Tax Credit Application
3. Form **RPD-41228**, *Film-Related Tax Credit Claim Form*
4. Form **RPD-41380**, *Notice of Assignment of Film Production Tax Credit* (If applicable)
5. Form **RPD-41366**, *Notice of Distribution of Film Production Tax Credit* (If applicable)

Forms can be found on the following website:

<https://www.tax.newmexico.gov/forms-publications/> > Tax Credits > Film Production

You also need to complete the tax credit schedule, CIT-CR, PIT-CR, S-Corp-CR or FID-CR, with the applicable tax return. Enter the total film-related tax credit approved and the amount of the credit that you want applied to the tax liability due and refunded on the Schedule CR for business related tax credits. TRD will compare the amounts entered and determine how and when the credit will be paid.

Attach documents listed above to your e-filed income tax return or attach and mail the claim form with your completed return to:

New Mexico Taxation and Revenue Department  
Attention: Business Credit Claim Unit  
PO BOX 630  
Santa Fe, NM 87502-0630

Normal refund processing can take up to 16 weeks, depending on the amount and if the return is mailed. Subject to certain limitations, the amount of the tax credit authorized for payment may be applied to the tax due on the return. Or if the amount of the film-related tax credit exceeds the film production company's income tax liability for the tax year, the excess may be refunded. No interest will be paid on any credit amount refunded pursuant to the Film Production Tax Credit Act (Section 7-1-68 NMSA 1978).

## Notice of Distribution of Film Production Tax Credit

Use Form **RPD-41366**, *Notice of Distribution of Film Production Tax Credit*, to report to TRD a distribution of approved film production tax credit from a PTE an owner, member, or partner. If the approved film production company is required to file a New Mexico PTE return, you must complete and attach this form to that return.

## Assignment of Film Production Tax Credit

After the film production company has received approval for the total qualifying expenditures from TRD, a completed Form **RPD-41380**, *Notice of Assignment of Film Production Tax Credit*, allows TRD to honor an assignment of the film production tax credit to a third-party financial institution, or to an authorized third-party. Form RPD-41380 must be attached to the film production company's income tax return on which the credit is claimed. Please contact [businesscredit.mgr@state.nm.us](mailto:businesscredit.mgr@state.nm.us) if the credit will be assigned to a third party.

An approved film production tax credit can be assigned once and may not be further transferred or assigned.

For purposes of the Film Production Tax Credit Act

(1) an authorized third-party means an entity that:

- (a) holds the rights to a film for which a film production tax credit may be claimed; and
- (b) initiates that film's production, and

(2) a financial institution means:

- (a) a fund purposely created to produce a film; or

(b) a bank, savings institution or credit union that is organized or chartered pursuant to the laws of New Mexico or the United States and that files a New Mexico income tax return. The financial institution or authorized third-party must be verified, in advance, by the NMFO.

## Taxpayer Remedies

If any credit is denied there are remedies available to any production company that wants to dispute the denials. **FYI-402**, *Taxpayer Remedies* details the procedures to protest a denial of credit.

(<https://www.tax.newmexico.gov/forms-publications/>) Select Publication Folder, FYIs, then 400 series.

## Questions

For any question for the New Mexico Film Office in the Economic Development Department in regards to the film credit, please email:

[info@nmfilm.com](mailto:info@nmfilm.com) or Call 505-476-5600

For any questions regarding the applications or application process with the Taxation and Revenue Department for Film Production Tax Credit or the review for film credit, and/or expenditure qualifications, please email:

[TRD-FilmCredit@state.nm.us](mailto:TRD-FilmCredit@state.nm.us) Or Call 505-795-1735.

For any questions regarding the claiming of an approved credit or for filing Form **RPD-41228**, *Film-Related Tax Credit Claim Form*, Form **RPD-41380**, *Notice of Assignment of Film Production Tax Credit*, Form **RPD-41366**, *Notice of Distribution of Film Production Tax Credit*, tax returns or refund questions, please email:

[businesscredit.mgr@state.nm.us](mailto:businesscredit.mgr@state.nm.us) Or Call 505-827-0792.



## TAXPAYER INFORMATION

**General Information.** FYIs and Bulletins present general information with minimum technical language. All FYIs and Bulletins are free of charge and available through all local tax offices and on the Taxation and Revenue Department's website at <http://www.tax.newmexico.gov/forms-publications.aspx>

**Regulations.** The Department establishes regulations to interpret and exemplify the various tax acts it administers. Current statutes with regulations can be located on the Department's website for free at <http://www.tax.newmexico.gov/statutes-with-regulations.aspx>. Specific regulations are also available at the State Records Center and Archives or on its web page at <http://www.srca.nm.gov/>

The Taxation and Revenue Department regulation book is available for purchase from the New Mexico Compilation Commission. Order regulation books directly from the New Mexico Compilation Commission at <https://www.nmcompcomm.us/>

**Rulings.** Rulings signed by the Secretary and approved by the Attorney General are written statements that apply to one or a small number of taxpayers. A taxpayer may request a ruling (at no charge) to clarify its tax liability or responsibility under specific circumstances. The Department will not issue a ruling to a taxpayer who is undergoing an audit, who has an outstanding assessment, or who is involved in a protest or litigation with the Department over the subject matter of the request. The Department's rulings are compiled and available on free of charge at <http://www.tax.newmexico.gov/rulings.aspx>.

The request for a ruling must be in writing, include accurate taxpayer identification and the details about the taxpayer's situation, and be addressed to the Secretary of the Taxation and Revenue Department at P.O. Box 630, Santa Fe, NM 87504-0630. The taxpayer's representative, such as an accountant or attorney, may request a ruling on behalf of the taxpayer but must disclose the name of the taxpayer. While the Department is not required to issue a ruling when requested to do so, every request is carefully considered.

The Secretary may modify or withdraw any previously issued ruling and is required to withdraw or modify any ruling when subsequent legislation, regulations, final court decisions or other rulings invalidate a ruling or portions of a ruling.

**Public Decisions & Orders.** All public decisions and orders issued since July 1994 are compiled and available on the Department's web page free of charge at <http://www.tax.newmexico.gov/tax-decisions-orders.aspx>.

*This publication provides general information. It does not constitute a regulation, ruling, or decision issued by the Secretary of the New Mexico Taxation and Revenue Department. The Department is legally bound only by a regulation or a ruling [7-1-60, New Mexico Statutes Annotated, 1978]. In the event of a conflict between FYI and statute, regulation, case law or policy, the information in FYIs is overridden by statutes, regulations and case law. Taxpayers and preparers are responsible for being aware of New Mexico tax laws and rules. Consult the Department directly if you have questions or concerns about information provided in this FYI.*

## FOR FURTHER ASSISTANCE

Tax District Field Offices and the Department's call center can provide full service and general information about the Department's taxes, taxpayer access point, programs, classes, and forms. Information specific to your filing situation, payment plans and delinquent accounts.

### TAX DISTRICT FIELD OFFICES

#### ALBUQUERQUE

10500 Copper Pointe Avenue NE  
Albuquerque, NM 87123

#### SANTA FE

Manuel Lujan Sr. Bldg.  
1200 S. St. Francis Dr.  
Santa Fe, NM 87504

#### FARMINGTON

3501 E. Main St., Suite N  
Farmington, NM 87499

#### LAS CRUCES

2540 S. El Paseo Bldg. #2  
Las Cruces, NM 88004

#### ROSWELL

400 Pennsylvania Ave., Suite 200  
Roswell, NM 8820

For forms and instructions visit the Department's web site at <http://www.tax.newmexico.gov>

**Call Center Number:**  
**1-866-285-2996**

**If faxing something to a tax district field office, please fax to:**

**Call Center Fax Number:**  
**1-505-841-6327**

**If mailing information to a tax district field office, please mail to:**

Taxation and Revenue Department  
P.O. Box 8485  
Albuquerque, NM 87198-8485

For additional contact information please visit the Department's website at  
<http://www.tax.newmexico.gov/contact-us.aspx>

*This information is as accurate as possible as of the date specified on the publication. Subsequent legislation, new state regulations and case law may affect its accuracy. For the latest information please check the Taxation and Revenue Department's web site at [www.tax.newmexico.gov](http://www.tax.newmexico.gov).*

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