

Application for Film and Television Tax Credit Instructions

These instruction and definitions reflect the laws applicable for film projects that begin principal photography on or after January 1, 2016, but before July 1, 2019. For film production companies that commence principal photography before January 1, 2016, use Form RPD-41229, *Application for Film Production Tax Credit*, to apply for the tax credit.

ABOUT THIS CREDIT: The film and television production tax credit provides a tax credit for an eligible film production company and its corresponding project. The amount of the credit is equal to 25% of eligible direct production and post-production expenditures made in New Mexico. See **Important Definitions** for the definitions of direct production and postproduction expenditures.

Additional Credits Allowed

- **An Additional 5% Allowed For Television Pilots and Series**
- **An Additional 5% Allowed for Qualified Production Facilities**
- **An Additional 15% Allowed for Nonresident Industry Crew**

The additional credits allowed are described in the instructions that follow.

For taxpayers who receive a new markets tax credit from the federal government for expenditures that also qualify for the New Mexico film and television tax credit, the percentage used for calculating the New Mexico credit is limited to 20%, including productions that would otherwise qualify for any additional credit.

To apply for the film and television tax credit, a film production company must first register the project with the Film Office of the New Mexico Economic Development Department (EDD) for verification of eligibility, as defined in statute. The film production company may apply for the credit by completing Form RPD-41381, *Application for Film and Television Tax Credit*, and submitting the application to EDD. After EDD has confirmed all obligations have been met by the company, the completed application is submitted to the Taxation and Revenue Department (TRD) who approves the credit and issues a document granting it. The application must be submitted within one year of the close of the film production company's tax year in which the expenditures in New Mexico were incurred for the registered project and that are included in the credit claim.

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 the Film Production Tax Credit Act.

Qualifying direct production and postproduction expenditures must:

- be made in New Mexico,
- be directly attributable to the production in New Mexico of a film or commercial audiovisual product;
- be subject to taxation by the state of New Mexico;
- exclude direct production and postproduction expenditures for which another taxpayer claims the film production tax credit, and
- not exceed the usual and customary cost of the goods or services acquired when purchased by unrelated parties.*

*The TRD Secretary may determine the value of the goods or services acquired when the buyer and seller are affiliated persons or the sale or purchase is not an arm's length transaction.

The film and television tax credit shall **not** be claimed for expenditures for which the film production company has delivered a nontaxable transaction certificate pursuant to Section 7-9-86 NMSA 1978.

IMPORTANT: *Expenditures must be directly attributable to film production in New Mexico and subject to taxation by the State of New Mexico.*

An Additional 5% Allowed For Television Pilots and Series

An additional 5%, for a total of 30%, is applied in calculating the film and television tax credit to direct production expenditures on:

- a standalone pilot 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; provided that the New Mexico budget for each of those six episodes is \$50,000 or more.

A film production company applying for the additional credit allowed for television pilots and series is not eligible for the additional credit for qualified production facilities.

Direct production expenditures that are payments to a nonresident performing artist in a standalone pilot are not eligible for the additional credit for television pilots and series.

Payments to a nonresident performing artist for a television series may be eligible for this additional credit, provided that:

- a television series completes at least one season of the scheduled episodes for that series in New Mexico;
- the film production company certifies the intention to produce a subsequent season to the series in New Mexico, and

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- the film production company, or its parent company, produces or begins production of an additional eligible television series in New Mexico during the same film production company's tax year as the television series.

Additional 5% Allowed for Qualified Production Facilities

An additional 5%, for a total of 30%, is applied in calculating the amount of the film and television tax credit to direct production expenditures that are directly attributable and paid to a New Mexico resident who is hired as industry crew, or who is hired as a producer, writer or director working directly with the physical production and has filed a New Mexico income tax return as a resident in the two previous tax years.

The direct production expenditures shall be on a production with a total new budget of:

- not more than \$30,000,000, that shoots at least 10 principal photography days in New Mexico at a qualified production facility, provided that a film production company shall:
 - ▶ shoot at least 7 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
 - ▶ for each of the ten days, include industry crew working on the premises of those facilities for a minimum of eight hours within a 24-hour period.

or

- \$30,000,000 or more that shoots at least 15 principal photography days in New Mexico at a qualified production facility, provided that a film production company shall:
 - ▶ shoot at least 10 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
 - ▶ for each of the 15 days, include industry crew working on the premises of the facility for a minimum of eight hours within a 24-hour period.

A film production company that receives the additional credit for television pilots series, is not also eligible for the additional credit for qualified production facilities.

An Additional 15% Allowed for Nonresident Industry Crew

An additional 15% may be allowed on the payment of wages, fringe benefits and per diem for nonresident industry crew, provided that:

- the service for which payment is made is rendered in New Mexico, and
- payments for nonresident industry crew exclude payments for production designer, director of photography, line producer, costume designer, still unit photographer and driver whose sole responsibility is driving.

The allowable number of nonresident industry crew employed by the film production company in New Mexico, as calculated by the Film Office upon receipt of the first application for a film and television tax credit and review of the projects' New Mexico budget, is:

- four positions for up to \$2,000,000 of the final New Mexico budget,
- one additional position for each additional \$1,000,000 of the project's final New Mexico budget of at least \$2,000,000 up to \$10,000,000,
- one additional position for each additional \$5,000,000 of the projects final New Mexico budget of at least \$10,000,000 up to \$50,000,000, and thereafter,
- eight additional positions, may be allowed for a television pilot episode that has not been ordered to series at the time of New Mexico production, provided that the film production company certifies to the Film Office that the series is intended to be produced in New Mexico if the pilot is ordered to series, and
- no more than 30 positions, provided that, at the discretion of the Film Office, up to and including ten additional positions may be permitted, if five other films are being produced in New Mexico at the time of the film production company's production.

To qualify, the film production company must also make financial or promotional contributions toward educational or work force development efforts in New Mexico as determined by the Film Office, including:

- a payment to a New Mexico educational institution that administers at least one industry-recognized film or multimedia program, as determined by the Film Office, 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
- promotion of the New Mexico film industry by directors, actors or producers affiliated with the film production company's project through:
 - ▶ social media that is managed by the state,
 - ▶ radio interviews facilitated by the Film Office,
 - ▶ enhanced screen credit acknowledgments, or
 - ▶ related events that are facilitated, conducted or sponsored by the Film Office.

The Film Office verifies if the film production company qualifies and the amount of the additional credit allowed for nonresident industry crew.

Credit Limitation on Payments for Performing Artists

That amount of a film and television tax credit for the total

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payments of direct production expenditures for the services of performing artists shall not exceed \$5,000,000 for services rendered by nonresident 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.

Requirements to Contract With Certain Vendors

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

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

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

Instructions for Completing Form RPD-41381:

Name/address block Complete all information requested. If the contact for the permanent records is different, also attach the contact information for the person in charge of the permanent records for the application.

Enter the Project Title as indicated on the New Mexico Film Office's Film Production Company Registration Form.

Line 1. In column 1, enter the total qualifying direct production expenditures made in New Mexico directly attributable to the production in New Mexico of the film project, for which this credit is claimed. Multiply the qualifying expenditures in column 1 by 0.25 (25%), and enter the product in column 2.

Line 2. In column 1, enter the qualifying direct production expenditures from line 1 which qualify for the additional 5% for television pilots and series. For qualifications, see **An Additional 5% Allowed For Television Pilots and Series**. Multiply the qualifying expenditures in column 1 by 0.05 (5%), and enter the product in column 2.

Line 3. In column 1, enter the qualifying direct production expenditures which qualify for the additional 5% for qualifying production facilities. For qualifications, see **An Additional 5% Allowed For Qualifying Production Facilities**. Multiply the qualifying expenditures in column 1 by 0.05 (5%), and enter the product in column 2.

Line 4. In column 1, enter the total qualifying payments made for nonresident industry crew eligible for an additional 15% credit. For qualifying payments, see **An Additional 15% Allowed for Nonresident Industry Crew**, on the previous page. Multiply the qualifying payments in column 1 by 0.15 (15%), and enter the product in column 2.

Line 5. In column 1, enter the total qualifying postproduction expenditures made in New Mexico directly attributable to the production in New Mexico for which this credit is claimed. Multiply the postproduction expenditures in column 1 by 0.25 (25%), and enter the product in column 2.

Line 6. In column 1, enter the total expenditures (direct production expenditures and postproduction expenditures) attributable to the production for which the film production company receives a tax credit pursuant to the federal new markets tax credit program. Multiply the qualifying expenditures in column 1 by 0.20 (20%), and enter the product in column 2.

For taxpayers who receive a new markets tax credit from the federal government for expenditures that also qualify for the New Mexico film and television tax credit, the percentage used for calculating the New Mexico credit is limited to 20%, including productions that would otherwise qualify for any additional credit.

Line 7. Round to the nearest whole dollar and enter the total film production tax credit claimed. Add the sum of column 2, lines 1 through 6.

Sign the application, enter your title and the date of signature. By signing the application, you certify that the amounts identified as direct production and postproduction expenditures included in the application are qualifying expenditures according to the provisions of the Film Production Tax Credit Act.

Required Supporting Documentation for Form RPD-41381. Submit the following documentation to support your claim:

- A copy of the approval from the New Mexico Film Office.
- A copy of the final cost-accounting summary for the project with a breakout of the New Mexico costs for each line item.
- The name, address, social security number and amount paid to every resident of New Mexico for whom the company wishes to claim credit for qualifying payments.
- If the company has obtained Type 16 NTTCS from TRD, a listing is needed of every person to whom the company has delivered an NTTC. The list must contain the name, address and New Mexico Business Tax Identification Number (NMBTIN), if applicable, and the dollar amount of purchases.
- If the amount of the tax credit requested exceeds five million

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dollars, the application must 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 the Film Production Tax Credit Act.

Wages, fringe benefits or fees for talent, management and labor are eligible for the film production tax credit only when paid to individuals who are New Mexico residents during the time that they work on the project. Form RPD-41271, *Declaration of Residency*, must be completed by the New Mexico resident and retained in the records of the film production company.

To Claim the Approved Film And Television Tax Credit. Once the approved film production company is determined to be eligible by the Film Office and has been approved by TRD, a completed Form RPD-41228, *Film-Related Tax Credit Claim Form, including Schedule A*, must be attached to a completed New Mexico return (Form PIT-1, CIT-1, S-Corp, PTE or FID-1) filed after the close of the tax year for authorization for payment.

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 and television tax credit exceeds the film production company's income tax liability for the tax year, the excess may be refunded.

Limitations on Receiving the Credit Claimed on a Return. The aggregate film-related tax credits (*film production tax credit and film and television tax credit*) that may be paid out in any fiscal year is limited to \$50,000,000. A claimed film-related tax credit claimed that is unable to be paid because total claims paid during the current fiscal year, exceeded \$50,000,000, shall be placed at the front of the queue for the next fiscal year.

The date a credit claim is received by TRD determines the order that a credit claim is authorized for payment.

When credit claims are authorized by TRD, the film and television tax credits are paid as follows:

If the amount claimed by a film company is less than \$2,000,000 in a tax year, the amount shall be applied or paid immediately upon processing of the income tax return.

For credit claims of \$2,000,000 or more in a tax year, the credit shall be distributed over multiple years as follows:

- If the credit amount claimed is \$2,000,000 or more, but less than \$5,000,000 in a tax year, half of the amount of the film and television tax credit shall be applied or paid immediately upon processing of the income tax return and the remainder shall be paid 12 months following the date of the first payment, and
- If the credit amount claimed is \$5,000,000 or more in a

tax year, one third of the amount of the film and television tax credit shall be applied or paid immediately upon processing of the income tax return, one third of the film and television tax credit shall be paid 12 months following the date of the first payment, and one third of the film and television tax credit shall be paid 24 months following the date of the first payment.

Any amount of a credit claim that is carried forward as described above, is *also* subject to the total aggregate film -related tax credit limit of \$50,000,000 paid in any fiscal year. However, the portion of the amount of credit that is carried forward is placed in front of the queue in the next fiscal year. If a partial payment is made because the tax credit limit has been met in a fiscal year, then the difference owed shall retain its original position in the queue.

For purposes of determining the payment of credit claims that are required to be paid out over multiple years, the TRD Secretary may require that credit claims of affiliated persons be combined into one claim, if necessary, to accurately reflect closely integrated activities of affiliated persons.

NOTE: No interest shall be paid on any amount refunded under the Film Production Tax Credit Act.

Completing the Income Tax Return:

Complete the income tax return, CIT-1, PIT-1, S-Corp, PTE, or FID-1 based on the federal return that you are required to file.

If you are required to file:	File New Mexico form:
Federal Form 1040	PIT-1 return
Federal Form 1041	FID-1 return
Federal Form 1065	PTE return
Federal Form 1120	CIT-1 return
Federal Form 1120S	S-Corp return

You also need to complete the tax credit schedule, CIT-CR, PIT-CR, S-Corp-CR, or FID-CR. Enter the total film and television 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. The Department will compare the amounts entered and determine how and when the credit will be paid.

CAUTION: If the amount you request to be applied to the tax liability due on the return is not eligible to be paid immediately, you will be billed for the tax liability not paid, and you may be subject to interest on the unpaid tax due.

For all tax programs, you must attach Form RPD-41228, *Film-Related Tax Credit Claim Form*, including Schedule A, to your return. Failure to attach this form will result in denial of your claim for the credit.

Please submit your complete return with all required documents through the Taxpayer Access Point (TAP), <https://tap.state.nm.us> or by mail.

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Mail: New Mexico Taxation and Revenue Department
Attn: Business Credit Claim Unit
P.O. Box 630
Santa Fe, NM 87502-0630

If you have questions or need to provide supporting documentation you can email the Business Credit Unit at: BusinessCredit.Mgr@tax.nm.gov.

IMPORTANT DEFINITIONS

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.

Commercial audiovisual product means a film or a video game intended for commercial exploitation.

Direct production expenditure means a transaction subject to taxation in New Mexico, including:

- (1) Payment of wages, fringe benefits or fees for talent, management or labor to a person who is a New Mexico resident;
- (2) Payment for standard industry craft inventory when provided by a resident industry crew in addition to its industry crew services;
- (3) 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;
- (4) Payment to a personal services business for the services of a performing artist, if:
 - (a) the personal services business pays gross receipts tax in New Mexico on the portion of those payments qualifying for the tax credit, and
 - (b) the film production company deducts and remits, or causes to be deducted and remitted, income tax at the maximum withholding rate in New Mexico withholding 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.

NOTE: The amount of tax withheld is an amount equal to the owner's share of net income multiplied by the highest rate for single individuals (4.9%); and

- (5) Any of the following provided by a vendor:
 - (a) The story and scenario to be used for a film;
 - (b) Set construction and operations, wardrobe, accessories and related services;
 - (c) Photography, sound synchronization, lighting and related services;
 - (d) Editing and related services;
 - (e) Rental of facilities and equipment;
 - (f) Leasing of vehicles, not including the chartering of aircraft for out-of-state transportation (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 \$100 of the daily expenses of leasing a vehicle for passenger transportation on roadways in the state may be claimed as a direct production expenditure;
 - (g) Food or lodging provided that only the first \$150 of lodging per individual per day is eligible to be claimed as a direct production expenditure;
 - (h) 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;
 - (i) Insurance coverage and bonding if purchased through a New Mexico-based insurance agent, broker or bonding agent,
 - (j) services for an external audit upon submission of an application for a film and television tax credit by an accounting firm that submits the application pursuant to the Film Production Tax Credit Act.
 - (k) Other direct costs of producing a film in accordance with generally accepted entertainment industry practice.

A direct production expenditure does not include:

- (1) A gift with a value greater than \$25;
- (2) Artwork or jewelry, except that a work of art or piece of jewelry may be direct production expenditure if:
 - (a) It is used in the film production; and
 - (b) The expenditure is less than \$2,500
- (3) Entertainment, amusement or recreation;
- (4) Subcontracted goods or services provided by a vendor

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

NOTE: Direct production and postproduction expenditures exclude:

- (1) expenditures for which the film production company has delivered a nontaxable transaction certificate (NTTC) Type 16 pursuant to 7-9-86 NMSA 1978. Type 16 NTTCs may be executed by a qualified production company to purchase property, lease property or purchase services that qualify as production costs;
- (2) expenditures that are not subject to tax by New Mexico; and
- (3) expenditures for which another taxpayer claims the film production tax credit.

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.

Film means a single medium or multimedia program, excluding advertising messages other than national or regional advertising messages intended for exhibition, that:

- (1) is fixed on film, 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 include sexually oriented material harmful to minors or does not otherwise violate a provision of Chapter 30, Article 37 NMSA 1978, and
- (4) is intended for reasonable commercial exploitation for the delivery medium used.

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

New Mexico resident means an individual who is domiciled in this state during any part of the tax year or an individual who is physically present in this state for 185 days or more during the tax year; but any individual, other than someone who was physically present in the state for 185 days or more during the tax year and who, on or before the last day of the tax year, changed the individual's place of abode to a place outside New Mexico with the bona fide intention of continuing actually to abide permanently outside New Mexico 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 business owner or an employee of the business is a New Mexico resident.

Postproduction expenditure means an expenditure for editing, Foley recording, automatic dialogue replacement, sound editing, special effects, including computer-generated imagery or other effects, scoring and music editing, beginning and end credits, negative cutting, sound track 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, clear-span floor space of at least seven thousand square feet and a ceiling height of no less than twenty-one feet; or
- (2) standing set that includes at least one interior, and at least five exteriors, built or re-purposed for film production use on a continual basis and is located on at least fifty acres of contiguous space designated for film production use.

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 New Mexico gross receipts tax and income tax or corporate income tax. A vendor excludes a personal services business.