

NM Refundable Film Production Tax Credit

QUICK REMINDERS - POST WEBSITE REVIEW!

Details are available online at NMFILM.COM

[Eligible projects](#) that fulfill the required obligations receive a 25% credit on the total qualifying transactions. Certain projects may also be eligible for an additional 5% on some or all direction production expenditures under the "[Eligibility](#)" link. Whereas the Film Office determines eligibility of the project and the corresponding percentage of credit, the NM Taxation & Revenue Department reviews the expenditures after production, to verify a transaction qualifies. The basic concept of this incentive is that the direct production and post production qualifying expenditures are subject to state taxation for services rendered in New Mexico. Examples of applicable state taxes are Gross Receipts Tax (for sales and services), Fuel Tax, Property Tax, and Personal Income Tax.

GENERAL

- Register your project with the Film Office before your principal photography and submit the project's tax application after the project's expenses for each tax year. Then after the close of your company's tax year, you file your state tax or informational return.
- When the "check is cut" (or the deposit is made) that's when the annual cap of \$50M is affected (drawn down). This is usually 8 to 12 months after wrap if the submission happens in a timely manner.
- It's not a case of "if" but "when" you receive the credit, and we help you determine that timeline.

QUALIFYING EXPENSES

- There are a few specific limits for hotel (\$150 per person per night), personal cars (\$100 per person per day), fine art & jewelry purchases (\$2500 per item on-camera) and gifts (\$25 per item per person).
- Per diem and allowances for residents and nonresidents qualify – this weekly flat is not capped. The exception is for the Nonresident Crew Exceptions Program (when paid via payroll – 15%)
- Relocation fees (for TV) do not qualify and US postal services do not qualify (federal).
- Tax-exempt entities are not subject to state taxation (e.g. businesses on Native Lands, non-profits, and government). These types of transactions, and non-qualifying locations fees, cannot be passed through a taxable NM entity to qualify.
- Charter flights going in or out of NM do not qualify – only commercial flights, where all legs are under one booking and the booking is through a NM travel agent with physical presence. Charter flights flown within NM may qualify.
- Background do not need Declaration of Residency Forms (DORs).
- Consider categorizing Crew and Talent as follows: Residents (all positions), Nonresident Actor/Stunt Loan Outs, Nonresident Directly Hired Actors/On-Camera Stunts, Nonresident ATL (non-qualifying, off-camera), Background (AP), and Nonresident Crew Exceptions (AP).

PERFORMING ARTISTS (ON-CAMERA TALENT)

- If an Actor Loan Out (ALO) is paid through a "Super Loan Out" (SLO) and they do not get a NM tax ID number (called a CRS# and which is easily obtained online), they will likely get a bill for Gross Receipts Tax (GRT) down the line by the NM Taxation & Revenue Dept., even though the SLO paid GRT. The SLO company needs this to issue a Non Transferable Tax Certificate Type 5 so the ALO is exempt from GRT.

- ALL nonresident performing artists should be aware that regardless as to whether they are paid via an ALO or are directly hired, the NM max withholding income tax rate of 4.9% must apply in order for a company to qualify those payments for the purposes of this incentive.
- For ALOs, the ALO payroll qualifies when subject to GRT and withholding. Wages (but not benefits) and per diem apply as qualifying expenditures for nonresident actors directly hired (as individuals on production payroll).

NONRESIDENT CREW EXCEPTIONS

- The program structure changes for productions starting principal on or after January 1, 2016.
 - The amended Nonresident Crew Exceptions Program establishes a flat 15% credit on employed nonresident crew. This amendment eliminates the need to contract a services company to employ these individuals; it eliminates the Film Office from approving positions; and, it still excludes nonresident Writer, Director, Producer, Production Designer, DP, LP, Costume Designer, Still Unit Photographer and Drivers (solely driving). Qualifying payments include wages, fringe benefits and per diem paid via production payroll along with the local payroll company's workers comp policy and handling fees. The number of positions is limited by a quota system:
- | NM BUDGET RANGES: | POSITIONS: |
|----------------------------------------|-------------------|
| -Up to \$2M (i.e. \$1.99M) | 4 positions |
| -\$2M up to \$10M (1 per 1 million) | add 8 max. |
| -\$10M up to \$50M (1 per 5 million) | add 8 max. |
| -\$50M up to \$150M (1 per 10 million) | add 10 max. |
- A Standalone Pilot intended for series in New Mexico is authorized for 8 additional nonresident crew positions beyond the established quota base. In addition, at the Film Office's discretion.
 - Up to 10 positions may be permitted beyond the quota base when five or more productions are being produced in NM (prep, principal or strike) at the same time as the said production.
 - The training requirement applies to this program which may include training of crew, promotion of NM and the industry, or a donation to a school with a film program. The amount for the donation to a NM film school equal to 2.5% of the qualifying payments made to the individuals that fulfilled the approved positions (e.g. \$250 for every \$10k). The NM film program must meet the given criteria but is the production's choice. Examples are listed online at nmfilm.com.

LOCAL VENDORS & OUTSOURCING

- Vendors must coordinate services at their designated business in NM. Other aspects of physical presence are NM business registration, bricks and mortar, a business sign, clear hours of operation, and an employee or owner that is a NM resident.
- For goods or equipment provided by local vendors to a production, where that vendor does not maintain any inventory or does not carry similar inventory at their NM business location, documentation must be provided by the production to show reasonable efforts were made to find goods and equipment already in NM or to find a vendor that already has similar inventory to outsource it for them.
- Similar or like inventory means inventory that would be used by the same production department or would be categorized the same way as reflected in a standard production vendor list.
- The Production Services Vendor that outsources for a production may be asked to provide a vendor list for that production to assist in determining reasonable efforts were made.