
FYI-370

New Mexico
Taxation and Revenue Department

FOR YOUR INFORMATION

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INFORMATION REGARDING FILM PRODUCTION TAX CREDITS

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Film Production Tax Credits

Film Production Tax Credit: Principal Photography Prior to January 1, 2016

- ◆ **Statutory Reference:** Film Production Tax Credit Act, Sections 7-2F-1 through 7-2F-15 NMSA 1978
- ◆ **Applicable Tax Programs:** Corporate Income Tax (CIT) and Personal Income Tax(PIT)
- ◆ Pass-through Entity (PTE) owners can claim the credit (see below for specifics)
- ◆ Refundable
- ◆ Taxation and Revenue Department (TRD) Forms:
 - **RPD-41229**, *Application for Film Production Tax Credit*
 - **RPD-41271**, *Film Production Tax Credit Declaration of Residency*
 - **RPD-41366**, *Notice of Distribution of Film Production Tax Credit*
 - **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 prior to January 1, 2016, a credit for 25% of direct production and direct 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 is available. An additional 5% may be added to the calculation for television shows, subject to certain requirements. The production must be in New Mexico for direct production expenditures, which includes payment to a personal services corporation for the services of a performing artist, if the film production company remits, or causes to be deducted and remitted, income tax at the maximum rate in New Mexico on the portion of those payments qualifying for the tax credit. The credit covers postproduction expenditures directly attributable only to services performed in New Mexico and subject to taxation here.

Excluded from the credit are costs 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 production tax credit. Chartering of aircraft for out-of-state transportation does not qualify for the credit. Commercial airfare does not qualify unless 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. An outside audit of expenditures may be required under certain circumstances. Certain types of "luxury" expenditures are not eligible for the credit, and expenditures cannot exceed the usual and customary cost of the goods and services acquired when purchased by unrelated parties.

A 20% credit is offered for expenditures for which the taxpayer receives a new markets tax credit from the federal government. A limit of \$5 million per year is established for credit claimed on services of performing artists in connection with one production. For vendor payments to be eligible for credit, a vendor must employ New Mexico residents as that term is defined in the Income Tax Act.

For additional qualifying information, please look at TRD's application and claim form listed above.

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. A film production company that is unable to receive one of the tax credits because claims exceed that limitation will be placed at the front of the queue for the next fiscal year. TRD is required to post on its web site the monthly aggregate amount of credits claimed and processed for the fiscal year. An amount of the annual credits under the Film Production Tax Credit Act, up to \$10 million, that are unused under the \$50 million cap may be carried forward and added into the subsequent fiscal year's cap. In a year where the cap is not reached, and there are amounts that would be paid in a subsequent year under the multi-year provision of the credits, those amounts may be paid in the current year up to the cap.

Note: A film production company must provide the New Mexico Film Office (NMFO) of the Economic Development Department (EDD) a projection of their likely credit claims in the fiscal year. The NMFO of EDD approves film production companies for eligibility. TRD determines whether the film production company's expenses are eligible.

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 through 7-2F-15
- ◆ **Applicable Tax Programs:** CIT and PIT
- ◆ PTE owners can claim the credit (see below for specifics)
- ◆ Refundable
- ◆ Taxation and Revenue Department Forms:
 - **RPD-4131**, *Application for Film and Television Tax Credit*
 - **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, a credit against personal or corporate income tax is available for 25% of direct production and direct 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 here, 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.
- An additional 5% credit is available if certain criteria are met regarding the use of qualified production facilities.
- An additional credit is available in an amount equal to fifteen percent of the payment of wages, fringe benefits and per diem for nonresident industry crew when certain criteria are met.

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 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.

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 through 7-2F-15
- ◆ **Applicable Tax Programs:** CIT and PIT
- ◆ Refundable
- ◆ Taxation and Revenue Department Forms:
 - **RPD-41391**, *Application for New Film Production Tax Credit*
 - **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 direct 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 here, 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.
- An additional 5% credit is available if certain criteria are met regarding the use of qualified production facilities.
- 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 sixty miles outside of the exterior boundaries of certain counties.
- An additional credit is available in an amount equal to fifteen percent of the payment of wages for nonresident industry crew when certain criteria are met.

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.

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:

"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 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.

"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.

EXPENDITURES

Direct Qualifying Expenses

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 Subsection A of 7-2F-12 NMSA 1978"

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

Description	Qualified Expenditure	Requirements
Above-the-Line Wages		
NM Resident	Yes	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. Declaration of Residency (DOR) Form is required.
Above-the-Line Expenditures		
New Mexico Crew & Cast		Services must be provided in NM. DOR is to be completed by each crew employee with a copy of a current NM driver's license or current NM state ID or current NM Film Residency Card.
Wages	Yes	Per Section 7-2F-2 (E)(1)(a) NMSA 1978
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.
Non-Resident Below the Line Crew (NRCE)		Services must be rendered in NM.
Wages	Yes	Per Section 7-2F-15 NMSA 1978, 15%-20% of the total NM production budget for below the line crew wages. Services must be rendered in NM. See Nonresident Below the line Crew section below for calculation example.
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.

Non-Resident Crew		Services must be rendered in NM.
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.
Direct Hire (Talent on camera)		Services must be rendered in NM.
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.
Super Loan Out (SLO)		Services must be rendered in NM.
SLO Payments	Yes	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 Subsection H of Section 7-3A-3 NMSA 1978..."
Extras		Services must be rendered in NM.
Wages	Yes	Per Section 7-2F-2(E)(1)(a) NMSA 1978 DOR Form is required.
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.
New Mexico Expenditures		Services must be rendered in NM.
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	
CPA Services	Yes	Per Section Per 7-2F-12(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 \$100.00. 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.
Fixed Assets	Yes	Note what happened to the item. If sold, subtract amount from the total purchased amount = amount to be claimed.
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.
Public Parking	Yes	The transaction must be subject to governmental gross receipts tax (GRT)
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 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 three hundred dollars (\$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. El Paso airport qualifies. Itineraries are to be provided for review.
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 only 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.

Allowable 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.

- Lodging; the first three hundred dollars (\$300) of lodging per individual, per day at a qualified New Mexico hotel/motel.
- Gifts to crew/actors; maximum \$100.00 per individual
- Artwork or jewelry: expenditure \$2,500.00 or less; item needs to be on camera and proof must be provided.

Additional 5% Credit - Qualified Production Facilities

- In addition to the percentage of direct production expenditures and post production expenditures, an additional 5% shall be applied to productions that utilize a production facility sound stage or standing set, qualified by NMFO.
- Only expenses incurred on a production in a qualified production facility are eligible for the additional 5%.
- 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.

Additional 5% Credit- Qualified Television Pilots and Series

- In addition to the percentage of direct production expenditure and post production 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.
- 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- Certain Areas of the State (Rural)

- In addition to the percentage of direct production expenditure and post production expenditure an additional 5% shall be applied for work, services or items provided on location for a production that is located in NM but at least 60 miles outside the exterior boundaries of Bernalillo County and Santa Fe County.
- All direct production expenditures will get the additional 5% uplift for expenditure 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 for days within the rural area.
- Excludes Non-resident Below the Line Crew.
- Rural Map- <https://nmtrd.maps.arcgis.com/home/index.html>

Unqualified Expenses

- Anything that is not subject to gross receipts tax or income tax.
- Anything provided by a vendor who does not have physical presence, including internet purchases.
- All flights booked directly through an airline are to be disallowed.
- All flights that do not originate or end in NM.
- If a car is booked through NM Travel Agent for an out-of-state pick up, the transaction is to be disallowed.
- The purchase was claimed in a previous film application.
- Out-of-State vendor(s)
- Indirect costs
- Expenditures with no detailed supporting documentation provided.
- Performing artist(s) hired by production company who do not have withholding or withholding at the maximum rate.
- Loan-out performing artists who do not have withholding or withholding at the maximum rate and gross receipts tax paid on the invoice amount for the loan-out.
- Expenditures not eligible as per statutory definition.

Example of most common unqualified expenditures (this list is not an exhausted list)

Description	Is it a Qualified Expenditure	Comments
Vendors Non-Residents		
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
Above-the-Line Expenditures		
New Mexico Crew & Cast		Services must be provided in NM. Declaration of Residency (DOR) is to be completed by crew employee and attach copy of NM current driver's license or a NM current ID.
Non-Resident Below the Line Crew (NRCE)		Services must be rendered in NM.
Benefits	No	Per Section 7-2F-9 NMSA 1978, services must be rendered in NM.
Fringes	No	Per Section 7-2F-9 NMSA 1978, payroll needs to state what the fringes are for and the name of the employee. Services must be rendered in NM.
Non-Resident Crew		Services must be rendered in NM.
Wages	No	Position not approved by NMFO

Benefits	No	Position not approved by NMFO
Fringes	No	Position not approved by NMFO
Direct Hire (Talent on camera)		Services must be rendered in NM.
Benefits	No	Per Section 7-2F-2(E)(1)(c) NMSA 1978
Fringes	No	Per Section 7-2F-2(E)(1)(c) NMSA 1978
New Mexico Expenditures		Services must be rendered in NM.
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	Unless otherwise approved by NMFO.
Internet Purchases	No	Not allowed where vendor does not have NM physical presence.

Reimbursements vs Per Diem

- 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

- *Eligible purchases for direct production expenditures with original receipts are required.*

Fixed Assets

- Fixed Asset: Note what happened to the item; if the item is sold subtract amount (sold for) from total purchased amount equals amount to be claimed.
- The market value – amount of purchase = allowed amount

Declaration of Residency (DOR)

- If an individual is claimed on someone else's income tax return, the full name and social security number of the filer's name is needed on the DOR to verify the individual providing services.

Film Residency Certification:

- The individual needs to have a copy of the film residency card or current NM driver's license or NM state issued ID **and** Declaration of Residency Form. The Department can do residency checks prior to hiring Individuals if the productions company asks for a residency check.

New Mexico Resident per Section 7-2F-2 NMSA 1978

- Payment of wages, fringe benefits, or fees for talent, management, or labor to a person who is a New Mexico resident.
- 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 taxation and revenue department as having made a false claim, regardless of whether the person becomes a New Mexico resident within that time frame.

Box Rentals (Standard Industry Craft) per Section 7-2F-2 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.

Non-Resident Performing Artist per Section 7-2F-2 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.

Loan Out per Section 7-2F-2 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

Nonresident Below the Line Crew (NRCE) per Section 7-2F-15 NMSA 1978

- 15% credit allowed for the payment of wages for below-the-line (BTL) crew who are not New Mexico Residents.
- The services must be rendered in New Mexico.
- As determined by the division up to 20% of the total NM BTL crew budget may be allowed by meeting the requirements in Section 7-2F-15 NMSA 1978.

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

	Total NM BTL Budget		Budget %		BTL Crew Wages		Credit Max
15% Credit up to \$22,500.00	\$ 1,000,000.00	X	15%	X	15%	=	\$ 22,500.00
20% Credit up to \$30,000.00	\$ 1,000,000.00	X	20%	X	15%	=	\$ 30,000.00

Extras

For background (extras) no DORs are required although TRD does check the payroll for a NM address.

Workers' Compensation Insurance

- Workers' compensation insurance policy is a qualifying expense when the policy is purchased through a NM based insurance agent or broker, and employees are covered by the insurance policy while working in NM.
- When an employee of a production company works out of state, the transaction is not taxable in NM and not a NM direct expenditure; therefore, the workers' compensation fee is not a qualified expense.

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."

APPLYING FOR A FILM PRODUCTION TAX CREDIT

Submission of Application to NMFO

Ledgers (bibles) and supporting documentation will be ready for review along with the application and/or pre-submission worksheet submitted to NMFO. Ledger Totals and Application amounts should be the same. When there are multiple tax years, application(s) and/or pre-submission worksheet(s) need to be submitted based on the production company's tax year in accordance with Section 7-2F-6 (F)(5) NMSA 1978.

Submission of Application to TRD

How to apply for the Film Production Tax Credit:

First, a film production company must first 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 Film Production Tax Credit, along with the NMFO's approval, a copy of the project's cost-accounting summary, and a breakout of the New Mexico costs for each line item to TRD.

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. The film production company must apply for the credit within one year of the date of the last direct production expenditure in New Mexico or the last postproduction expenditures in New Mexico.

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.

RPD-41391 Application for Film Production Tax Credit along with ledgers and supporting documentation must be submitted to TRD in accordance with Section 7-2F-6 (I) NMSA 1978.

Section 7-2F-6 (I) 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 incurred within the film production company's taxable year..."

CPA Audits

Certified Public Accountant (CPA) Audits:

1. Production Company submits a Pre-Submission Worksheet and Tax Information Authorization Forms (TIAs) for individuals processing the credit and for CPA conducting the audit to NMFO for confirmation of project eligibility.
 - a) 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.
2. NMFO will submit to TRD First Memo with package and eligibility.
3. NMFO will submit to TRD Second Memo with Film Credit Application and the audit findings of the CPA audit.

Application is entered in queue with a 180-day deadline from the date of delivery of the second memo from NMFO.

- o The audit **must** include a copy of the CPA's license to practice in NM and
- o A notarized statement confirming the CPA is independent from any other activities related to the film project for which is being audited.
- o ** 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. **

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:	File New Mexico Income Tax Return:
Federal Form 1040	Personal Income Tax Return
Federal Form 1041	Fiduciary Income Tax Return
Federal Form 1120	Corporate Income and Franchise Tax Return
Federal Form 1120S	Sub-Chapter S Corporate Income and Franchise Tax Return
Federal Form 1065	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 Department
2. Copy of Final Film Tax Credit Application
3. RPD-41228 Film-Related Tax Credit Claim Form
4. 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:

<http://www.tax.newmexico.gov/forms-publications.aspx> > 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 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 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 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.

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 Taxation and Revenue Department.
- TRD has 180 days from the date of the Memo from the NMFO to complete the credit review. The Business Credit Approval Letter will be sent via email to the person on the application on or before 180-day deadline.
- TRD will enter application into the queue and 180-day deadline will start from the date of delivery on NMFO Memo.
- TRD reviewer will email an additional information letter (if applicable), timeline, and TIAs to contact on 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 Letter will be sent via email to the person on the application on or before 180-day deadline.
- 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.
- RPD-41366 Notice of Distribution of Film Production Tax Credit is to be submitted with Film Tax Credit Application, Business Credit Approval Letter, and income tax return to RPD
- For the return to be processed more quickly, it can be E-filed; the website address is: <http://www.tax.newmexico.gov/Online-Services/>

Normal refund processing can take up to 16 weeks, depending on the amount and if the return is mailed.

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.

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

Questions

For any questions regarding the Applications for Film Production Tax Credit or the review for film credit, and/or expenditure qualifications, please email:

TRD-FilmCredit@state.nm.us Or Call 505-795-1735.

For any questions regarding filing RPD-41228 Film-Related Tax Credit Claim Form, RPD-41380, Notice of Assignment of Film Production Tax Credit, RPD-41366 Notice of Distribution of Film Production Tax Credit, and/or tax returns or refund questions, please email:

businesscredit.mgr@state.nm.us Or Call 505-827-0792.

TAXPAYER INFORMATION

The Department offers a variety of taxpayer information. Some information is free and other information must be purchased.

General Information. FYIs and Bulletins present general information with a minimum of technical language. All FYIs and Bulletins are free and available through all local tax offices, the Tax Information and Policy Office, and on the Internet. The Taxation and Revenue Department's Internet address is:

<http://www.tax.newmexico.gov>

Regulations. The Department establishes regulations to interpret and exemplify the various tax acts it administers. The Taxation and Revenue Department regulation book is available from the New Mexico Compilation Commission on a prepaid basis. The New Mexico Compilation Commission also has a compact disk of all statutes and regulations. Specific regulations are also available at the State Records Center and Archives or on its web page at www.nmcpr.state.nm.us/nmac.

Order regulation books directly from:

New Mexico Compilation Commission

<http://www.nmcompcomm.us/index.html>

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 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 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 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. Taxation and Revenue Department rulings are compiled and available on the Department's web page free of charge at <http://www.tax.newmexico.gov/rulings.aspx>.

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>.

FOR FURTHER ASSISTANCE

Local tax offices can provide full service and information about the Department's taxes, programs, and forms as well as specific information about your filing situation.

ALBUQUERQUE

Taxation and Revenue Department
5301 Central NE
P.O. Box 8485
Albuquerque, NM 87198-8485

LAS CRUCES

Taxation and Revenue Department
2540 S. El Paseo Bldg. #2
P.O. Box 607
Las Cruces, NM 88004-0607

SANTA FE

Taxation and Revenue Department
Manuel Lujan Sr. Bldg.
1200 S. St. Francis Dr.
P.O. Box 5374
Santa Fe, NM 87502-5374

ROSWELL

Taxation and Revenue Department
400 Pennsylvania Ave., Suite 200
P.O. Box 1557
Roswell, NM 88202-1557

FARMINGTON

Taxation and Revenue Department
3501 E. Main St., Suite N
P.O. Box 479
Farmington, NM 87499-0479

Call Center: 1-866-285-2996

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.