

HOUSE TAXATION AND REVENUE COMMITTEE SUBSTITUTE FOR
HOUSE BILLS 358 & 359

47TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2006

AN ACT

RELATING TO TAXATION; INCREASING THE FILM PRODUCTION TAX
CREDIT; REPEALING THE NEW MEXICO FILMMAKER TAX CREDIT;
DECLARING AN EMERGENCY.

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

Section 1. Section 7-2F-1 NMSA 1978 (being Laws 2002,
Chapter 36, Section 1, as amended) is amended to read:

"7-2F-1. FILM PRODUCTION TAX CREDIT.--

A. The tax credit created by this section may be
referred to as the "film production tax credit". An eligible
film production company may apply for, and the taxation and
revenue department may allow, a tax credit in an amount equal
to ~~[fifteen percent]~~ the percentage specified in Subsection B
of this section of:

(1) direct production expenditures made in New

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underscored material = new
[bracketed material] = delete

1 Mexico that are directly attributable to the production in New
2 Mexico of a film or commercial audiovisual product and that are
3 subject to taxation by the state of New Mexico; and

4 (2) postproduction expenditures made in New
5 Mexico that are:

6 (a) directly attributable to the
7 production of a commercial film or audiovisual product;

8 (b) for services performed in New
9 Mexico; and

10 (c) subject to taxation by the state of
11 New Mexico.

12 B. Except as provided in Subsection C of this
13 section, the percentage to be applied in calculating the amount
14 of the film production tax credit is:

15 (1) twenty percent; and

16 (2) an additional five percent if the film
17 production company is claiming the credit with respect to
18 expenditures attributable to:

19 (a) production in New Mexico for a
20 period of four or more months of a second or subsequent season
21 of a television series; or

22 (b) a production that utilizes a
23 permanent sound stage facility of not less than fifty-five
24 thousand square feet and that engages in a workforce training
25 program with a state educational institution; provided that the

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1 program is certified by the New Mexico film division of the
2 economic development department as being beneficial to the
3 state of New Mexico.

4 C. The additional five percent tax credit amount
5 pursuant to Paragraph (2) of Subsection B of this section shall
6 not be available with respect to expenditures attributable to a
7 production for which the film production company receives a tax
8 credit pursuant to the federal new markets tax credit program.

9 ~~[B.]~~ D. The film production tax credit shall not be
10 claimed with respect to direct production expenditures or
11 postproduction expenditures for which the film production
12 company has delivered a nontaxable transaction certificate
13 pursuant to Section 7-9-86 NMSA 1978.

14 ~~[C.]~~ E. A long-form narrative film production for
15 which the film production tax credit is claimed pursuant to
16 Paragraph (1) of Subsection A of this section shall contain an
17 acknowledgment that the production was filmed in New Mexico.

18 ~~[D.]~~ F. To be eligible for the film production tax
19 credit, a film production company shall submit to the New
20 Mexico film division of the economic development department
21 information required by the division to demonstrate conformity
22 with the requirements of this section and shall agree in
23 writing:

24 (1) to pay all obligations the film production
25 company has incurred in New Mexico;

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1 (2) to publish, at completion of principal
2 photography, a notice at least once a week for three
3 consecutive weeks in local newspapers in regions where filming
4 has taken place to notify the public of the need to file
5 creditor claims against the film production company by a
6 specified date;

7 (3) that outstanding obligations are not
8 waived should a creditor fail to file by the specified date;
9 and

10 (4) to delay filing of a claim for the film
11 production tax credit until the New Mexico film division
12 delivers written notification to the taxation and revenue
13 department that the film production company has fulfilled all
14 requirements for the credit.

15 ~~[E.]~~ G. The New Mexico film division shall
16 determine the eligibility of the company and shall report this
17 information to the taxation and revenue department in a manner
18 and at times the economic development department and the
19 taxation and revenue department shall agree upon.

20 ~~[F.]~~ H. To receive a film production tax credit, a
21 film production company shall apply to the taxation and revenue
22 department on forms and in the manner the department may
23 prescribe. The application shall include a certification of
24 the amount of direct production expenditures or postproduction
25 expenditures made in New Mexico with respect to the film

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1 production for which the film production company is seeking the
 2 film production tax credit. If the requirements of this
 3 section have been complied with, the taxation and revenue
 4 department shall approve the film production tax credit and
 5 issue a document granting the tax credit.

6 ~~[G.]~~ I. The film production company may apply all
 7 or a portion of the film production tax credit granted against
 8 personal income tax liability or corporate income tax
 9 liability. If the amount of the film production tax credit
 10 claimed exceeds the film production company's tax liability for
 11 the taxable year in which the credit is being claimed, the
 12 excess shall be refunded."

13 Section 2. Section 7-2F-2 NMSA 1978 (being Laws 2003,
 14 Chapter 127, Section 2, as amended) is amended to read:

15 "7-2F-2. DEFINITIONS.--As used in Chapter 7, Article 2F
 16 NMSA 1978:

17 A. "commercial audiovisual product" means a film or
 18 a videogame intended for commercial exploitation;

19 B. "direct production expenditure" means a
 20 transaction that is subject to taxation in New Mexico,
 21 including:

22 (1) payment of wages, fringe benefits or fees
 23 for talent, management or labor to a person who is a New Mexico
 24 resident for purposes of the Income Tax Act;

25 (2) payment to a personal services corporation

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1 for the services of a performing artist if:

2 (a) the personal services corporation
3 pays gross receipts tax in New Mexico on those payments; and

4 (b) the performing artist receiving
5 payments from the personal services corporation pays New Mexico
6 income tax; and

7 (3) any of the following provided by a vendor:

8 (a) the story and scenario to be used
9 for a film;

10 (b) set construction and operations,
11 wardrobe, accessories and related services;

12 (c) photography, sound synchronization,
13 lighting and related services;

14 (d) editing and related services;

15 (e) rental of facilities and equipment;

16 (f) leasing of vehicles;

17 (g) food or lodging;

18 (h) airfare if purchased through a New
19 Mexico-based travel agency or travel company;

20 (i) insurance coverage and bonding if
21 purchased through a New Mexico-based insurance agent; and

22 (j) other direct costs of producing a
23 film in accordance with generally accepted entertainment
24 industry practice;

25 C. "federal new markets tax credit program" means

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1 the tax credit program codified as Section 45D of the United
2 States Internal Revenue Code of 1986, as amended;

3 ~~[G.]~~ D. "film" means a single media or multimedia
4 program, excluding advertising messages other than national or
5 regional advertising messages intended for exhibition, that:

6 (1) is fixed on film, digital medium,
7 videotape, computer disc, laser disc or other similar delivery
8 medium;

9 (2) can be viewed or reproduced;

10 (3) is not intended to and does not violate a
11 provision of Chapter 30, Article 37 NMSA 1978; and

12 (4) is intended for reasonable commercial
13 exploitation for the delivery medium used;

14 ~~[D.]~~ E. "film production company" means a person
15 that produces one or more films; ~~and~~

16 ~~E.]~~ F. "postproduction expenditure" means an
17 expenditure that occurs after the completion of principal and
18 ongoing photography, including an expenditure for editing,
19 Foley recording, automatic dialogue replacement, sound editing,
20 special effects, including computer-generated imagery or other
21 effects, scoring and music editing, beginning and end credits,
22 negative cutting, soundtrack production, dubbing, subtitling or
23 addition of sound or visual effects; but not including an
24 expenditure for advertising, marketing, distribution or expense
25 payments;

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