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SENATE BILL 238

52ND LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2016

INTRODUCED BY

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AN ACT

RELATING TO THE FILM PRODUCTION TAX CREDIT ACT; CREATING AN
ADDITIONAL CREDIT FOR A FILM PRODUCTION COMPANY THAT PROVIDES
DISTRIBUTION SERVICES IN NEW MEXICO; CONFORMING REFERENCES IN
LAW.

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

SECTION 1. Section 7-2F-2.1 NMSA 1978 (being Laws 2015,
Chapter 143, Section 4) is amended to read:

"7-2F-2.1. ADDITIONAL DEFINITIONS.--As used in Sections
~~[5 through 11 of this 2015 act]~~ 7-2F-6 through 7-2F-12 NMSA
1978:

A. "direct production expenditure":

(1) except as provided in Paragraph (2) of
this subsection, means a transaction that is subject to
taxation in New Mexico, including:

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1 (a) payment of wages, fringe benefits or
2 fees for talent, management or labor to a person who is a New
3 Mexico resident;

4 (b) payment for standard industry craft
5 inventory when provided by a resident industry crew in addition
6 to its industry crew services;

7 (c) payment for wages and per diem for a
8 performing artist who is not a New Mexico resident and who is
9 directly employed by a film production company; provided that
10 the film production company deducts and remits, or causes to be
11 deducted and remitted, income tax from the first day of
12 services rendered in New Mexico at the maximum rate pursuant to
13 the Withholding Tax Act;

14 (d) payment to a personal services
15 business on the wages and per diem paid to a performing artist
16 of the personal services business if: 1) the personal services
17 business pays gross receipts tax in New Mexico on the portion
18 of those payments qualifying for the tax credit; and 2) the
19 film production company deducts and remits, or causes to be
20 deducted and remitted, income tax at the maximum rate in New
21 Mexico pursuant to Subsection H of Section 7-3A-3 NMSA 1978 on
22 the portion of those payments qualifying for the tax credit
23 paid to a personal services business where the performing
24 artist is a full or part owner of that business or subcontracts
25 with a personal services business where the performing artist

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1 is a full or part owner of that business; and

2 (e) any of the following provided by a
3 vendor: 1) the story and scenario to be used for a film; 2)
4 set construction and operations, wardrobe, accessories and
5 related services; 3) photography, sound synchronization,
6 lighting and related services; 4) editing and related services;
7 5) rental of facilities and equipment; 6) leasing of vehicles,
8 not including the chartering of aircraft for out-of-state
9 transportation; however, New Mexico-based chartered aircraft
10 for in-state transportation directly attributable to the
11 production shall be considered a direct production expenditure;
12 provided that only the first one hundred dollars (\$100) of the
13 daily expense of leasing a vehicle for passenger transportation
14 on roadways in the state may be claimed as a direct production
15 expenditure; 7) food or lodging; provided that only the first
16 one hundred fifty dollars (\$150) of lodging per individual per
17 day is eligible to be claimed as a direct production
18 expenditure; 8) commercial airfare if purchased through a New
19 Mexico-based travel agency or travel company for travel to and
20 from New Mexico or within New Mexico that is directly
21 attributable to the production; 9) insurance coverage and
22 bonding if purchased through a New Mexico-based insurance
23 agent, broker or bonding agent; 10) services for an external
24 audit upon submission of an application for a film production
25 tax credit by an accounting firm that submits the application

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1 pursuant to Subsection I of Section [~~5 of this 2015 act~~] 7-2F-6
2 NMSA 1978; and 11) other direct costs of producing a film in
3 accordance with generally accepted entertainment industry
4 practice; and

5 (2) does not include an expenditure for:

6 (a) a gift with a value greater than
7 twenty-five dollars (\$25.00);

8 (b) artwork or jewelry, except that a
9 work of art or a piece of jewelry may be a direct production
10 expenditure if: 1) it is used in the film production; and 2)
11 the expenditure is less than two thousand five hundred dollars
12 (\$2,500);

13 (c) entertainment, amusement or
14 recreation; or

15 (d) subcontracted goods or services
16 provided by a vendor when subcontractors are not subject to
17 state taxation, such as equipment and locations provided by the
18 military, government and religious organizations;

19 B. "film production company" means a person that
20 produces one or more films or any part of a film and that
21 commences principal photography on or after January 1, 2016;
22 and

23 C. "vendor" means a person who sells or leases
24 goods or services that are related to standard industry craft
25 inventory, who has a physical presence in New Mexico and is

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1 subject to gross receipts tax pursuant to the Gross Receipts
2 and Compensating Tax Act and income tax pursuant to the Income
3 Tax Act or corporate income tax pursuant to the Corporate
4 Income and Franchise Tax Act but excludes a personal services
5 business."

6 SECTION 2. A new section of the Film Production Tax
7 Credit Act, Section 7-2F-9.1 NMSA 1978, is enacted to read:

8 "7-2F-9.1. [NEW MATERIAL] ADDITIONAL CREDIT--DISTRIBUTION
9 SERVICES.--

10 A. A film production company that has a physical
11 address in New Mexico from which the company conducts business
12 may apply for, and the taxation and revenue department may
13 allow, a tax credit in an amount equal to twenty-five percent
14 of distribution costs for distribution services performed for a
15 film or commercial audiovisual product of the company; provided
16 that the amount of credit shall not exceed the combined amount
17 of credit that the company is allowed in the same taxable year
18 for direct production expenditures and postproduction
19 expenditures for qualifying films shot in New Mexico; and
20 provided further that the number of out-of-state films for
21 which a company receives a credit shall not exceed the number
22 of qualified films shot in New Mexico in the taxable year.

23 B. As used in this section:

24 (1) "designated in-house division or
25 department" means a division or department located in New

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1 Mexico that has as its primary function the provision of
2 distribution services for a film production company;

3 (2) "distribution costs" means payments of
4 wages and fringe benefits to New Mexico residents:

5 (a) who are employees: 1) of a film
6 production company; and 2) within that company's designated in-
7 house division or department; and

8 (b) whose primary job responsibilities
9 are: 1) to perform distribution services for the designated
10 in-house division or department; and 2) those of standard
11 industry distribution service positions, as determined by the
12 division; and

13 (3) "distribution services" means services
14 provided in New Mexico and directly attributable to the process
15 of making a film or commercial audiovisual product available
16 for commercial exhibition."

17 **SECTION 3. APPLICABILITY.**--The provisions of Section 2 of
18 this act apply to film production companies that commence
19 principal photography on or after July 1, 2016.