

1 SENATE CORPORATIONS AND TRANSPORTATION COMMITTEE SUBSTITUTE FOR
2 SENATE BILL 2

3 **54TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2019**
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10 AN ACT

11 RELATING TO TAXATION; AMENDING THE FILM PRODUCTION TAX CREDIT
12 ACT; LIMITING CERTAIN ADDITIONAL CREDITS TO PRODUCTIONS THAT
13 COMMENCE PRINCIPAL PHOTOGRAPHY PRIOR TO JULY 1, 2019; CREATING
14 THE NEW FILM PRODUCTION TAX CREDIT FOR PRODUCTIONS THAT
15 COMMENCE PRINCIPAL PHOTOGRAPHY ON OR AFTER JULY 1, 2019;
16 INCREASING THE AMOUNT OF CREDIT THAT MAY BE CLAIMED PER TAXABLE
17 YEAR; ALLOWING ADDITIONAL AMOUNTS FOR TELEVISION PILOTS AND
18 SERIES AND EXPENDITURES MADE IN CERTAIN AREAS OF THE STATE;
19 CREATING THE NONRESIDENT BELOW-THE-LINE CREW CREDIT; INCREASING
20 THE AGGREGATE CAP; PROVIDING THAT CERTAIN EXPENDITURES BY
21 CERTAIN FILM PRODUCTION COMPANIES SHALL NOT BE SUBJECT TO THE
22 AGGREGATE CAP; PROHIBITING THE NEW MEXICO FILM DIVISION OF THE
23 ECONOMIC DEVELOPMENT DEPARTMENT FROM CERTIFYING EXPENDITURE
24 BUDGETS THAT WOULD EXCEED ONE HUNDRED MILLION DOLLARS
25 (\$100,000,000) IN EXCESS OF THE AGGREGATE CAP; REQUIRING THE

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1 TAXATION AND REVENUE DEPARTMENT TO PAY A CERTAIN AMOUNT OF
2 PREVIOUSLY APPROVED CREDITS; AMENDING AND ENACTING SECTIONS OF
3 THE FILM PRODUCTION TAX CREDIT ACT; MAKING AN APPROPRIATION.
4

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

6 SECTION 1. Section 7-1-8.8 NMSA 1978 (being Laws 2009,
7 Chapter 243, Section 10, as amended) is amended to read:

8 "7-1-8.8. INFORMATION THAT MAY BE REVEALED TO OTHER STATE
9 AGENCIES.--An employee of the department may reveal to:

10 A. a committee of the legislature for a valid
11 legislative purpose, return information concerning any tax or
12 fee imposed pursuant to the Cigarette Tax Act;

13 B. the attorney general, return information
14 acquired pursuant to the Cigarette Tax Act for purposes of
15 Section 6-4-13 NMSA 1978 and the master settlement agreement
16 defined in Section 6-4-12 NMSA 1978;

17 C. the commissioner of public lands, return
18 information for use in auditing that pertains to rentals,
19 royalties, fees and other payments due the state under land
20 sale, land lease or other land use contracts;

21 D. the secretary of human services or the
22 secretary's delegate under a written agreement with the
23 department, the last known address with date of all names
24 certified to the department as being absent parents of children
25 receiving public financial assistance, but only for the purpose

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1 of enforcing the support liability of the absent parents by the
2 child support enforcement division or any successor
3 organizational unit;

4 E. the department of information technology, by
5 electronic media, a database updated quarterly that contains
6 the names, addresses, county of address and taxpayer
7 identification numbers of New Mexico personal income tax
8 filers, but only for the purpose of producing the random jury
9 list for the selection of petit or grand jurors for the state
10 courts pursuant to Section 38-5-3 NMSA 1978;

11 F. the state courts, the random jury lists produced
12 by the department of information technology under Subsection E
13 of this section;

14 G. the director of the New Mexico department of
15 agriculture or the director's authorized representative, upon
16 request of the director or representative, the names and
17 addresses of all gasoline or special fuel distributors,
18 wholesalers and retailers;

19 H. the public regulation commission, return
20 information with respect to the Corporate Income and Franchise
21 Tax Act required to enable the commission to carry out its
22 duties;

23 I. the state racing commission, return information
24 with respect to the state, municipal and county gross receipts
25 taxes paid by racetracks;

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1 J. the gaming control board, tax returns of license
2 applicants and their affiliates as provided in Subsection E of
3 Section 60-2E-14 NMSA 1978;

4 K. the director of the workers' compensation
5 administration or to the director's representatives authorized
6 for this purpose, return information to facilitate the
7 identification of taxpayers that are delinquent or noncompliant
8 in payment of fees required by Section 52-1-9.1 or 52-5-19 NMSA
9 1978;

10 L. the secretary of workforce solutions or the
11 secretary's delegate, return information for use in enforcement
12 of unemployment insurance collections pursuant to the terms of
13 a written reciprocal agreement entered into by the department
14 with the secretary of workforce solutions for exchange of
15 information;

16 M. the New Mexico finance authority, information
17 with respect to the amount of municipal and county gross
18 receipts taxes collected by municipalities and counties
19 pursuant to any local option municipal or county gross receipts
20 taxes imposed, and information with respect to the amount of
21 governmental gross receipts taxes paid by every agency,
22 institution, instrumentality or political subdivision of the
23 state pursuant to Section 7-9-4.3 NMSA 1978; [~~and~~]

24 N. the secretary of human services or the
25 secretary's delegate; provided that a person who receives the

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1 confidential return information on behalf of the human services
 2 department shall not reveal the information and shall be
 3 subject to the penalties in Section 7-1-76 NMSA 1978 if the
 4 person fails to maintain the confidentiality required:

5 (1) that return information needed for reports
 6 required to be made to the federal government concerning the
 7 use of federal funds for low-income working families; and

8 (2) the names and addresses of low-income
 9 taxpayers for the limited purpose of outreach to those
 10 taxpayers; provided that the human services department shall
 11 pay the department for expenses incurred by the department to
 12 derive the information requested by the human services
 13 department if the information requested is not readily
 14 available in reports for which the department's information
 15 systems are programmed;

16 O. the secretary of finance and administration or
 17 the secretary's delegate, aggregate return information
 18 concerning credits pursuant to the Film Production Tax Credit
 19 Act; and

20 P. the secretary of economic development or the
 21 secretary's delegate, aggregate return information concerning a
 22 credit pursuant to the Film Production Tax Credit Act."

23 SECTION 2. Section 7-1-8.8 NMSA 1978 (being Laws 2009,
 24 Chapter 243, Section 10, as amended by Section 1 of this act)
 25 is repealed and a new Section 7-1-8.8 NMSA 1978 is enacted to

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1 read:

2 "7-1-8.8. [NEW MATERIAL] INFORMATION THAT MAY BE REVEALED
3 TO OTHER STATE AGENCIES.--An employee of the department may
4 reveal to:

5 A. a committee of the legislature for a valid
6 legislative purpose, return information concerning any tax or
7 fee imposed pursuant to the Cigarette Tax Act;

8 B. the attorney general, return information
9 acquired pursuant to the Cigarette Tax Act for purposes of
10 Section 6-4-13 NMSA 1978 and the master settlement agreement
11 defined in Section 6-4-12 NMSA 1978;

12 C. the commissioner of public lands, return
13 information for use in auditing that pertains to rentals,
14 royalties, fees and other payments due the state under land
15 sale, land lease or other land use contracts;

16 D. the secretary of human services or the
17 secretary's delegate under a written agreement with the
18 department, the last known address with date of all names
19 certified to the department as being absent parents of children
20 receiving public financial assistance, but only for the purpose
21 of enforcing the support liability of the absent parents by the
22 child support enforcement division or any successor
23 organizational unit;

24 E. the department of information technology, by
25 electronic media, a database updated quarterly that contains

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1 the names, addresses, county of address and taxpayer
2 identification numbers of New Mexico personal income tax
3 filers, but only for the purpose of producing the random jury
4 list for the selection of petit or grand jurors for the state
5 courts pursuant to Section 38-5-3 NMSA 1978;

6 F. the state courts, the random jury lists produced
7 by the department of information technology under Subsection E
8 of this section;

9 G. the director of the New Mexico department of
10 agriculture or the director's authorized representative, upon
11 request of the director or representative, the names and
12 addresses of all gasoline or special fuel distributors,
13 wholesalers and retailers;

14 H. the public regulation commission, return
15 information with respect to the Corporate Income and Franchise
16 Tax Act required to enable the commission to carry out its
17 duties;

18 I. the state racing commission, return information
19 with respect to the state, municipal and county gross receipts
20 taxes paid by racetracks;

21 J. the gaming control board, tax returns of license
22 applicants and their affiliates as provided in Subsection E of
23 Section 60-2E-14 NMSA 1978;

24 K. the director of the workers' compensation
25 administration or to the director's representatives authorized

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1 for this purpose, return information to facilitate the
2 identification of taxpayers that are delinquent or noncompliant
3 in payment of fees required by Section 52-1-9.1 or 52-5-19 NMSA
4 1978;

5 L. the secretary of workforce solutions or the
6 secretary's delegate, return information for use in enforcement
7 of unemployment insurance collections pursuant to the terms of
8 a written reciprocal agreement entered into by the department
9 with the secretary of workforce solutions for exchange of
10 information;

11 M. the New Mexico finance authority, information
12 with respect to the amount of municipal and county gross
13 receipts taxes collected by municipalities and counties
14 pursuant to any local option municipal or county gross receipts
15 taxes imposed, and information with respect to the amount of
16 governmental gross receipts taxes paid by every agency,
17 institution, instrumentality or political subdivision of the
18 state pursuant to Section 7-9-4.3 NMSA 1978;

19 N. the secretary of human services or the
20 secretary's delegate; provided that a person who receives the
21 confidential return information on behalf of the human services
22 department shall not reveal the information and shall be
23 subject to the penalties in Section 7-1-76 NMSA 1978 if the
24 person fails to maintain the confidentiality required:

25 (1) that return information needed for reports

1 required to be made to the federal government concerning the
2 use of federal funds for low-income working families; and

3 (2) the names and addresses of low-income
4 taxpayers for the limited purpose of outreach to those
5 taxpayers; provided that the human services department shall
6 pay the department for expenses incurred by the department to
7 derive the information requested by the human services
8 department if the information requested is not readily
9 available in reports for which the department's information
10 systems are programmed;

11 O. the superintendent of insurance, return
12 information with respect to the premium tax and the health
13 insurance premium surtax;

14 P. the secretary of finance and administration or
15 the secretary's delegate, aggregate return information
16 concerning a credit pursuant to the Film Production Tax Credit
17 Act; and

18 Q. the secretary of economic development or the
19 secretary's delegate, aggregate return information concerning a
20 credit pursuant to the Film Production Tax Credit Act."

21 **SECTION 3.** Section 7-2F-1 NMSA 1978 (being Laws 2002,
22 Chapter 36, Section 1, as amended) is amended to read:

23 "7-2F-1. FILM PRODUCTION TAX CREDIT--FILM PRODUCTION
24 COMPANIES THAT COMMENCE PRINCIPAL PHOTOGRAPHY PRIOR TO JANUARY
25 1, 2016.--

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1 A. The tax credit created by this section may be
2 referred to as the "film production tax credit".

3 B. Except as otherwise provided in this section, an
4 eligible film production company may apply for, and the
5 taxation and revenue department may allow, subject to the
6 limitation in this section, a tax credit in an amount equal to
7 twenty-five percent of:

8 (1) direct production expenditures made in New
9 Mexico that:

10 (a) are directly attributable to the
11 production in New Mexico of a film or commercial audiovisual
12 product;

13 (b) are subject to taxation by the state
14 of New Mexico;

15 (c) exclude direct production
16 expenditures for which another taxpayer claims the film
17 production tax credit; and

18 (d) do not exceed the usual and
19 customary cost of the goods or services acquired when purchased
20 by unrelated parties. The secretary of taxation and revenue
21 may determine the value of the goods or services for purposes
22 of this section when the buyer and seller are affiliated
23 persons or the sale or purchase is not an arm's length
24 transaction; and

25 (2) postproduction expenditures made in

1 New Mexico that:

2 (a) are directly attributable to the
3 production of a commercial film or audiovisual product;

4 (b) are for services performed in New
5 Mexico;

6 (c) are subject to taxation by the state
7 of New Mexico;

8 (d) exclude postproduction expenditures
9 for which another taxpayer claims the film production tax
10 credit; and

11 (e) do not exceed the usual and
12 customary cost of the goods or services acquired when purchased
13 by unrelated parties. The secretary of taxation and revenue
14 may determine the value of the goods or services for purposes
15 of this section when the buyer and seller are affiliated
16 persons or the sale or purchase is not an arm's length
17 transaction.

18 C. In addition to the percentage applied pursuant
19 to Subsection B of this section, another five percent shall be
20 applied in calculating the amount of the film production tax
21 credit to direct production expenditures:

22 (1) on a standalone pilot intended for series
23 television in New Mexico or on series television productions
24 intended for commercial distribution with an order for at least
25 six episodes in a single season; provided that the New Mexico

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1 budget for each of those six episodes is fifty thousand dollars
2 (\$50,000) or more; or

3 (2) on a production with a total New Mexico
4 budget of the following amounts; provided that the expenditures
5 are directly attributable and paid to a New Mexico resident who
6 is hired as industry crew, or who is hired as a producer,
7 writer or director working directly with the physical
8 production and has filed a New Mexico income tax return as a
9 resident in the two previous taxable years:

10 (a) not more than thirty million dollars
11 (\$30,000,000) that shoots at least ten principal photography
12 days in New Mexico at a qualified production facility; provided
13 that a film production company in principal photography on or
14 after April 10, 2015 shall: 1) shoot at least seven of those
15 days at a sound stage that is a qualified production facility
16 and the remaining number of required days, if any, at a
17 standing set that is a qualified production facility; and 2)
18 for each of the ten days, include industry crew working on the
19 premises of those facilities for a minimum of eight hours
20 within a twenty-four-hour period; or

21 (b) thirty million dollars (\$30,000,000)
22 or more that shoots at least fifteen principal photography days
23 in New Mexico at a qualified production facility; provided that
24 a film production company in principal photography on or after
25 April 10, 2015 shall: 1) shoot at least ten of those days at a

1 sound stage that is a qualified production facility and the
2 remaining number of required days, if any, at a standing set
3 that is a qualified production facility; and 2) for each day of
4 the fifteen days, include industry crew working on the premises
5 of the facility for a minimum of eight hours within a twenty-
6 four-hour period.

7 D. With respect to expenditures attributable to a
8 production for which the film production company receives a tax
9 credit pursuant to the federal new markets tax credit program,
10 the percentage to be applied in calculating the film production
11 tax credit is twenty percent.

12 E. A claim for film production tax credits shall be
13 filed as part of a return filed pursuant to the Income Tax Act
14 or the Corporate Income and Franchise Tax Act [~~or an~~
15 ~~information return filed by a pass-through entity~~]. The date a
16 credit claim is received by the taxation and revenue department
17 shall determine the order that a credit claim is authorized for
18 payment by the department. [~~Except as otherwise provided in~~
19 ~~this section, the aggregate amount of claims for a credit~~
20 ~~provided by the Film Production Tax Credit Act that may be~~
21 ~~authorized for payment in any fiscal year is fifty million~~
22 ~~dollars (\$50,000,000) with respect to the direct production~~
23 ~~expenditures or postproduction expenditures made on film or~~
24 ~~commercial audiovisual products. A film production company~~
25 ~~that submits a claim for a film production tax credit that is~~

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1 ~~unable to receive the tax credit because the claims for the~~
2 ~~fiscal year exceed the limitation in this subsection shall be~~
3 ~~placed for the subsequent fiscal year at the front of a queue~~
4 ~~of credit claimants submitting claims in the subsequent fiscal~~
5 ~~year in the order of the date on which the credit was~~
6 ~~authorized for payment.~~

7 ~~F. If, in fiscal years 2013 through 2015, the~~
8 ~~aggregate amount in each fiscal year of the film production tax~~
9 ~~credit claims authorized for payment is less than fifty million~~
10 ~~dollars (\$50,000,000), then the difference in that fiscal year~~
11 ~~or ten million dollars (\$10,000,000), whichever is less, shall~~
12 ~~be added to the aggregate amount of the film production tax~~
13 ~~credit claims that may be authorized for payment pursuant to~~
14 ~~Subsection E of this section in the immediately following~~
15 ~~fiscal year.~~

16 ~~G.] F.~~ Except as otherwise provided in this section
17 and Section 10 of this 2019 act, credit claims authorized for
18 payment pursuant to the Film Production Tax Credit Act shall be
19 paid pursuant to provisions of the Tax Administration Act to
20 the taxpayer as follows:

21 (1) a credit claim amount of less than two
22 million dollars (\$2,000,000) per taxable year shall be paid
23 immediately upon authorization for payment of the credit claim;

24 (2) a credit claim amount of two million
25 dollars (\$2,000,000) or more but less than five million dollars

1 (\$5,000,000) per taxable year shall be divided into two equal
2 payments, with the first payment to be made immediately upon
3 authorization of the payment of the credit claim and the second
4 payment to be made twelve months following the date of the
5 first payment; and

6 (3) a credit claim amount of five million
7 dollars (\$5,000,000) or more per taxable year shall be divided
8 into three equal payments, with the first payment to be made
9 immediately upon authorization of payment of the credit claim,
10 the second payment to be made twelve months following the date
11 of the first payment and the third payment to be made twenty-
12 four months following the date of the first payment.

13 ~~[H.]~~ G. For a fiscal year in which the amount of
14 total credit claims authorized for payment is less than the
15 aggregate amount of credit claims that may be authorized for
16 payment pursuant to ~~[this]~~ Section 7-2F-12 NMSA 1978, the next
17 scheduled payments for credit claims authorized for payment
18 pursuant to Subsection [G] F of this section shall be
19 accelerated for payment for that fiscal year and shall be paid
20 to a taxpayer pursuant to the Tax Administration Act and in the
21 order in which outstanding payments are scheduled in the queue
22 established pursuant to ~~[Subsections E and G of this section]~~
23 Section 7-2F-12 NMSA 1978; provided that the total credit
24 claims authorized for payment shall not exceed the aggregate
25 amount of credit claims that may be authorized for payment

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1 pursuant to this section. If a partial payment is made
2 pursuant to this subsection, the difference owed shall retain
3 its original position in the queue.

4 ~~[F.]~~ H. Any amount of a credit claim that is
5 carried forward pursuant to Subsection ~~[G]~~ F of this section
6 shall be subject to the limit on the aggregate amount of credit
7 claims that may be authorized for payment pursuant to
8 ~~[Subsections E and F of this section in the fiscal year in~~
9 ~~which that amount is paid]~~ Section 7-2F-12 NMSA 1978.

10 ~~[J.]~~ I. A credit claim shall only be considered
11 received by the taxation and revenue department if the credit
12 claim is made on a complete return filed after the close of the
13 taxable year. All direct production expenditures and
14 postproduction expenditures incurred during the taxable year by
15 a film production company shall be submitted as part of the
16 same income tax return and paid pursuant to this section. A
17 credit claim shall not be divided and submitted with multiple
18 returns or in multiple years.

19 ~~[K.]~~ J. For purposes of determining the payment of
20 credit claims pursuant to this section, the secretary of
21 taxation and revenue may require that credit claims of
22 affiliated persons be combined into one claim if necessary to
23 accurately reflect closely integrated activities of affiliated
24 persons.

25 ~~[L.]~~ K. The film production tax credit shall not be

1 claimed with respect to direct production expenditures or
2 postproduction expenditures for which the film production
3 company has delivered a nontaxable transaction certificate
4 pursuant to Section 7-9-86 NMSA 1978.

5 ~~[M.]~~ L. A production for which the film production
6 tax credit is claimed pursuant to Paragraph (1) of Subsection B
7 of this section shall contain an acknowledgment to the state of
8 New Mexico in the end screen credits that the production was
9 filmed in New Mexico, and a state logo provided by the division
10 shall be included and embedded in the end screen credits of
11 long-form narrative film productions and television episodes,
12 unless otherwise agreed upon in writing by the film production
13 company and the division.

14 ~~[N.]~~ M. To be eligible for the film production tax
15 credit, a film production company shall submit to the division
16 information required by the division to demonstrate conformity
17 with the requirements of the Film Production Tax Credit Act,
18 including detailed information on each direct production
19 expenditure and each postproduction expenditure. A film
20 production company shall make reasonable efforts, as determined
21 by the division, to contract with a specialized vendor that
22 provides goods and services, inventory or services directly
23 related to that vendor's ordinary course of business. A film
24 production company shall provide to the division a projection
25 of the film production tax credit claim the film production

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1 company plans to submit in the fiscal year. In addition, the
2 film production company shall agree in writing:

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

5 (2) to post a notice at completion of
6 principal photography on the [~~web-site~~] website of the division
7 that:

8 (a) contains production company
9 information, including the name of the production, the address
10 of the production company and contact information that includes
11 a working phone number, fax number and email address for both
12 the local production office and the permanent production office
13 to notify the public of the need to file creditor claims
14 against the film production company; and

15 (b) remains posted on the [~~web-site~~]
16 website until all financial obligations incurred in the state
17 by the film production company have been paid;

18 (3) that outstanding obligations are not
19 waived should a creditor fail to file;

20 (4) to delay filing of a claim for the film
21 production tax credit until the division delivers written
22 notification to the taxation and revenue department that the
23 film production company has fulfilled all requirements for the
24 credit; and

25 (5) to submit a completed application for the

1 film production tax credit and supporting documentation to the
2 division within one year of making the final expenditures in
3 New Mexico that were incurred for the registered project and
4 that are included in the credit claim.

5 [Ø.] N. The division shall determine the
6 eligibility of the company and shall report this information to
7 the taxation and revenue department in a manner and at times
8 the economic development department and the taxation and
9 revenue department shall agree upon. The division shall also
10 post on its [~~web-site~~] website all information provided by the
11 film production company that does not reveal revenue, income or
12 other information that may jeopardize the confidentiality of
13 income tax returns, including that the division shall report
14 quarterly the projected amount of credit claims for the fiscal
15 year.

16 [P.] O. To provide guidance to film production
17 companies regarding the amount of credit capacity remaining in
18 the fiscal year, the taxation and revenue department shall post
19 monthly on that department's [~~web-site~~] website the aggregate
20 amount of credits claimed and processed for the fiscal year.

21 [Q.] P. To receive a film production tax credit, a
22 film production company shall apply to the taxation and revenue
23 department on forms and in the manner the department may
24 prescribe. The application shall include a certification of
25 the amount of direct production expenditures or postproduction

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1 expenditures made in New Mexico with respect to the film
2 production for which the film production company is seeking the
3 film production tax credit; provided that for the film
4 production tax credit, the application shall be submitted
5 within one year of the date of the last direct production
6 expenditure in New Mexico or the last postproduction
7 expenditure in New Mexico. If the amount of the requested tax
8 credit exceeds five million dollars (\$5,000,000), the
9 application shall also include the results of an audit,
10 conducted by a certified public accountant licensed to practice
11 in New Mexico, verifying that the expenditures have been made
12 in compliance with the requirements of this section. If the
13 requirements of this section have been complied with, [~~subject~~
14 ~~to the provisions of Subsection E of this section,~~] the
15 taxation and revenue department shall approve the film
16 production tax credit and issue a document granting the tax
17 credit.

18 [R.] Q. The film production company may apply all
19 or a portion of the film production tax credit granted against
20 personal income tax liability or corporate income tax
21 liability. If the amount of the film production tax credit
22 claimed exceeds the film production company's tax liability for
23 the taxable year in which the credit is being claimed, the
24 excess shall be refunded.

25 [S.] R. That amount of a film production tax credit

1 for total payments as applied to direct production expenditures
2 for the services of performing artists shall not exceed five
3 million dollars (\$5,000,000) for services rendered by
4 nonresident performing artists and featured resident principal
5 performing artists in a production. This limitation shall not
6 apply to the services of background artists and resident
7 performing artists who are not cast in industry standard
8 featured principal performer roles.

9 ~~[F.]~~ S. As used in this section, "direct production
10 expenditure"

11 ~~[(1) except as provided in Paragraph (2) of~~
12 ~~this subsection]~~ means a transaction that is subject to
13 taxation in New Mexico:

14 (1) including an expenditure for:

15 (a) payment of wages, fringe benefits or
16 fees for talent, management or labor to a person who is a New
17 Mexico resident;

18 (b) payment for wages and per diem for a
19 performing artist who is not a New Mexico resident and who is
20 directly employed by the film production company; provided that
21 the film production company deducts and remits, or causes to be
22 deducted and remitted, income tax from the first day of
23 services rendered in New Mexico at the maximum rate pursuant to
24 the Withholding Tax Act;

25 (c) payment to a personal services

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1 business for the services of a performing artist if: 1) the
2 personal services business pays gross receipts tax in New
3 Mexico on the portion of those payments qualifying for the tax
4 credit; and 2) the film production company deducts and remits,
5 or causes to be deducted and remitted, income tax at the
6 maximum rate in New Mexico pursuant to Subsection H of Section
7 7-3A-3 NMSA 1978 on the portion of those payments qualifying
8 for the tax credit paid to a personal services business where
9 the performing artist is a full or part owner of that business
10 or subcontracts with a personal services business where the
11 performing artist is a full or part owner of that business; and

12 (d) any of the following provided by a
13 vendor: 1) the story and scenario to be used for a film; 2)
14 set construction and operations, wardrobe, accessories and
15 related services; 3) photography, sound synchronization,
16 lighting and related services; 4) editing and related services;
17 5) rental of facilities and equipment; 6) leasing of vehicles,
18 not including the chartering of aircraft for out-of-state
19 transportation; however, New Mexico-based chartered aircraft
20 for in-state transportation directly attributable to the
21 production shall be considered a direct production expenditure;
22 provided that only the first one hundred dollars (\$100) of the
23 daily expense of leasing a vehicle for passenger transportation
24 on roadways in the state may be claimed as a direct production
25 expenditure; 7) food or lodging; provided that only the first

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1 one hundred fifty dollars (\$150) of lodging per individual per
2 day is eligible to be claimed as a direct production
3 expenditure; 8) commercial airfare if purchased through a New
4 Mexico-based travel agency or travel company for travel to and
5 from New Mexico or within New Mexico that is directly
6 attributable to the production; 9) insurance coverage and
7 bonding if purchased through a New Mexico-based insurance
8 agent, broker or bonding agent; 10) services for an external
9 audit upon submission of an application for a film production
10 tax credit by an accounting firm that submits the application
11 pursuant to this section; and 11) other direct costs of
12 producing a film in accordance with generally accepted
13 entertainment industry practice; and

14 (2) does not include an expenditure for:

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

17 (b) artwork or jewelry, except that a
18 work of art or a piece of jewelry may be a direct production
19 expenditure if: 1) it is used in the film production; and 2)
20 the expenditure is less than two thousand five hundred dollars
21 (\$2,500);

22 (c) entertainment, amusement or
23 recreation;

24 (d) subcontracted goods or services
25 provided by a vendor when subcontractors are not subject to

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1 state taxation, such as equipment and locations provided by the
2 military, government and religious organizations; or

3 (e) a service provided by a person who
4 is not a New Mexico resident and employed in an industry crew
5 position, excluding a performing artist, where it is the
6 standard entertainment industry practice for the film
7 production company to employ a person for that industry crew
8 position, except when the person who is not a New Mexico
9 resident is hired or subcontracted by a vendor; and when the
10 film production company, as determined by the division and when
11 applicable in consultation with industry, provides: 1)
12 reasonable efforts to hire resident crew; and 2) financial or
13 promotional contributions toward education or [~~work force~~]
14 workforce development efforts in New Mexico, including at least
15 one of the following: a payment to a New Mexico public
16 education institution that administers at least one industry-
17 recognized film or multimedia program, as determined by the
18 division, in an amount equal to two and one-half percent of
19 payments made to nonresidents in approved positions employed by
20 the vendor; promotion of the New Mexico film industry by
21 directors, actors or executive producers affiliated with the
22 production company's project through social media that is
23 managed by the state; radio interviews facilitated by the
24 division; enhanced screen credit acknowledgments; or related
25 events that are facilitated, conducted or sponsored by the

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1 division.

2 ~~[U-]~~ T. As used in this section, "film production
3 company" means a person that produces one or more films or any
4 part of a film and that commences principal photography prior
5 to January 1, 2016.

6 ~~[V-]~~ U. As used in this section, "vendor" means a
7 person who sells or leases goods or services that are related
8 to standard industry craft inventory, who has a physical
9 presence in New Mexico and is subject to gross receipts tax
10 pursuant to the Gross Receipts and Compensating Tax Act and
11 income tax pursuant to the Income Tax Act or corporate income
12 tax pursuant to the Corporate Income and Franchise Tax Act but
13 excludes a personal services business and services provided by
14 nonresidents hired or subcontracted if the tasks and
15 responsibilities are associated with:

- 16 (1) the standard industry job position of:
- 17 (a) a director;
 - 18 (b) a writer;
 - 19 (c) a producer;
 - 20 (d) an associate producer;
 - 21 (e) a co-producer;
 - 22 (f) an executive producer;
 - 23 (g) a production supervisor;
 - 24 (h) a director of photography;
 - 25 (i) a motion picture driver whose sole

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1 responsibility is driving;

2 (j) a production or personal assistant;

3 (k) a designer;

4 (l) a still photographer; or

5 (m) a carpenter and utility technician

6 at an entry level; and

7 (2) nonstandard industry job positions and
8 personal support services."

9 SECTION 4. Section 7-2F-2 NMSA 1978 (being Laws 2003,
10 Chapter 127, Section 2, as amended) is amended to read:

11 "7-2F-2. DEFINITIONS.--As used in the Film Production Tax
12 Credit Act:

13 A. "affiliated person" means a person who directly
14 or indirectly owns or controls, is owned or controlled by or is
15 under common ownership or control with another person through
16 ownership of voting securities or other ownership interests
17 representing a majority of the total voting power of the
18 entity;

19 B. "background artist" means a person who is not a
20 performing artist but is a person of atmospheric business whose
21 work includes atmospheric noise, normal actions, gestures and
22 facial expressions of that person's assignment; or a person of
23 atmospheric business whose work includes special abilities that
24 are not stunts; or a substitute for another actor, whether
25 photographed as a double or acting as a stand-in;

underscoring material = new
~~[bracketed material] = delete~~

1 C. "below-the-line crew" means a person in a
2 position that is off-camera and who provides technical services
3 during the physical production of a film. "Below-the-line
4 crew" does not include a person who is a writer, director,
5 producer or background artist or performing artist for the
6 film;

7 ~~[G.]~~ D. "commercial audiovisual product" means a
8 film or a ~~[videogame]~~ video game intended for commercial
9 exploitation;

10 E. "direct production expenditure" means a
11 transaction that is subject to taxation in New Mexico and is
12 certified pursuant to Subsection A of 7-2F-12 NMSA 1978:

13 (1) including an expenditure for:

14 (a) payment of wages, fringe benefits or
15 fees for talent, management or labor to a person who is a New
16 Mexico resident;

17 (b) payment for standard industry craft
18 inventory when provided by a below-the-line crew that is a New
19 Mexico resident in addition to its below-the-line crew
20 services;

21 (c) payment for wages and per diem for a
22 performing artist who is not a New Mexico resident and who is
23 directly employed by the film production company; provided that
24 the film production company deducts and remits, or causes to be
25 deducted and remitted, income tax from the first day of

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1 services rendered in New Mexico at the maximum rate pursuant to
2 the Withholding Tax Act;

3 (d) payment to a personal services
4 business for the services of a performing artist if: 1) the
5 personal services business pays gross receipts tax in New
6 Mexico on the portion of those payments qualifying for the tax
7 credit; and 2) the film production company deducts and remits,
8 or causes to be deducted and remitted, income tax at the
9 maximum rate in New Mexico pursuant to Subsection H of Section
10 7-3A-3 NMSA 1978 on the portion of those payments qualifying
11 for the tax credit paid to a personal services business where
12 the performing artist is a full or part owner of that business
13 or subcontracts with a personal services business where the
14 performing artist is a full or part owner of that business; and

15 (e) any of the following provided by a
16 vendor: 1) the story and scenario to be used for a film; 2)
17 set construction and operations, wardrobe, accessories and
18 related services; 3) photography, sound synchronization,
19 lighting and related services; 4) editing and related services;
20 5) rental of facilities and equipment; 6) the first one hundred
21 fifty dollars (\$150) of the daily expense of leasing of
22 vehicles, not including the chartering of aircraft for
23 out-of-state transportation; however, New Mexico-based
24 chartered aircraft for in-state transportation directly
25 attributable to the production shall be considered a direct

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underscored material = new
[bracketed material] = delete

1 production expenditure; 7) food; 8) the first three hundred
2 dollars (\$300) of lodging per individual, per day; 9)
3 commercial airfare if purchased through a New Mexico-based
4 travel agency or travel company for travel to and from New
5 Mexico or within New Mexico that is directly attributable to
6 the production; 10) insurance coverage and bonding if purchased
7 through a New Mexico-based insurance agent, broker or bonding
8 agent; 11) subcontracted goods and services from businesses;
9 provided that the ordinary course of business of the vendor
10 procuring the goods and services from the subcontractor
11 directly relates to standard film industry goods and services;
12 and 12) other direct costs of producing a film in accordance
13 with generally accepted entertainment industry practice; and

14 (2) does not include an expenditure for:

15 (a) a gift with a value greater than one
16 hundred dollars (\$100);

17 (b) artwork or jewelry, except that a
18 work of art or a piece of jewelry may be a direct production
19 expenditure if: 1) it is used in the film production; and 2)
20 the expenditure is less than two thousand five hundred dollars
21 (\$2,500);

22 (c) entertainment, amusement or
23 recreation;

24 (d) subcontracted goods or services
25 provided by a vendor when the subcontractors providing those

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1 goods or services to the vendor are not subject to state
2 taxation, such as equipment and locations provided by the
3 military, government and organizations that demonstrate to the
4 taxation and revenue department that they have been granted
5 exemption from the federal income tax by the United States
6 commissioner of internal revenue as organizations described in
7 Section 501(c)(3) of the United States Internal Revenue Code of
8 1986, as amended or renumbered;

9 (e) subcontracted services provided by a
10 vendor when the subcontracted services are provided by a person
11 who is below-the-line crew and is not a New Mexico resident;

12 (f) hidden or other indirect service
13 fees, costs, commissions or other remuneration received by
14 third parties and that are not directly paid by the film
15 production company or expressly enumerated on a film production
16 company's filing to claim a new film production tax credit;

17 (g) wages for a person who is not a New
18 Mexico resident and who falsely claims to be a New Mexico
19 resident. The wages of such person shall not be considered an
20 eligible expense for two years from the date in which the
21 person is determined by the taxation and revenue department as
22 having made a false claim, regardless of whether the person
23 becomes a New Mexico resident within that time frame; or

24 (h) which the film production company
25 receives funding pursuant to Section 21-19-7.1 NMSA 1978;

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1 ~~[D.]~~ F. "division" means the New Mexico film
2 division of the economic development department;

3 ~~[E.]~~ G. "federal new markets tax credit program"
4 means the tax credit program codified as Section 45D of the
5 United States Internal Revenue Code of 1986, as amended;

6 ~~[F.]~~ H. "film" means a single medium or multimedia
7 program, including television programs but excluding
8 advertising messages other than national or regional
9 advertising messages intended for exhibition, that:

10 (1) is fixed on film, a digital medium,
11 videotape, computer disc, laser disc or other similar delivery
12 medium;

13 (2) can be viewed or reproduced;

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

16 (4) is intended for reasonable commercial
17 exploitation for the delivery medium used;

18 I. "film production company" means a person that
19 produces one or more films or commercial audiovisual products
20 or any part of a film or commercial audiovisual product;

21 ~~[G.]~~ J. "fiscal year" means the state fiscal year
22 beginning on July 1;

23 ~~[H. "industry crew" means a person in a position~~
24 ~~that is off-camera and who provides technical services during~~
25 ~~the physical production of a film. "Industry crew" does not~~

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1 ~~include a writer, director, producer, background artist or~~
2 ~~performing artist;~~

3 ~~[I.]~~ K. "New Mexico resident" means an individual
4 who is domiciled in this state during any part of the taxable
5 year or an individual who is physically present in this state
6 for one hundred eighty-five days or more during the taxable
7 year; but any individual, other than someone who was physically
8 present in the state for one hundred eighty-five days or more
9 during the taxable year and who, on or before the last day of
10 the taxable year, changed the individual's place of abode to a
11 place without this state with the bona fide intention of
12 continuing actually to abide permanently without this state is
13 not a resident for the purposes of the Film Production Tax
14 Credit Act for periods after that change of abode;

15 ~~[J.]~~ L. "performing artist" means an actor,
16 on-camera stuntperson, puppeteer, pilot who is a stuntperson or
17 actor, specialty foreground performer or narrator; and who
18 speaks a line of dialogue, is identified with the product or
19 reacts to narration as assigned. "Performing artist" does not
20 include a background artist;

21 ~~[K.]~~ M. "personal services business" means a
22 business organization, with or without physical presence, that
23 receives payments pursuant to the Film Production Tax Credit
24 Act for the services of a performing artist;

25 ~~[L.]~~ N. "physical presence" means a physical

1 address in New Mexico from which a vendor conducts business,
 2 stores inventory or otherwise creates, assembles or offers for
 3 sale the product purchased or leased by a film production
 4 company and the [~~business owner~~] vendor or an employee of the
 5 [~~business~~] vendor is a resident;

6 [M.] O. "postproduction expenditure" means an
 7 expenditure, certified pursuant to Subsection A of Section
 8 7-2F-12 NMSA 1978, for editing, Foley recording, automatic
 9 dialogue replacement, sound editing, special effects, including
 10 computer-generated imagery or other effects, scoring and music
 11 editing, beginning and end credits, negative cutting,
 12 soundtrack production, dubbing, subtitling or addition of sound
 13 or visual effects; but not including an expenditure for
 14 advertising, marketing, distribution or expense payments;

15 [N.] P. "principal photography" means the
 16 production of a film during which the main visual elements are
 17 created; [~~and~~

18 [O.] Q. "qualified production facility" means a
 19 building, or complex of buildings, building improvements and
 20 associated back-lot facilities in which films are or are
 21 intended to be regularly produced and that contain at least
 22 one:

23 (1) sound stage with contiguous [~~clear-span~~]
 24 floor space of at least seven thousand square feet and a
 25 ceiling height of no less than [~~twenty-one~~] eighteen feet; or

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1 (2) standing set that includes at least one
2 interior, and at least five exteriors, built or re-purposed for
3 film production use on a continual basis and is located on at
4 least fifty acres of contiguous space designated for film
5 production use; and

6 R. "vendor" means a person who sells or leases
7 goods or services that are related to standard industry craft
8 inventory, who has a physical presence in New Mexico and is
9 subject to gross receipts tax pursuant to the Gross Receipts
10 and Compensating Tax Act or income tax pursuant to the Income
11 Tax Act or corporate income tax pursuant to the Corporate
12 Income and Franchise Tax Act but excludes a personal services
13 business and services provided by nonresidents hired or
14 subcontracted if the tasks and responsibilities are associated
15 with the standard industry job position of director, writer or
16 producer."

17 SECTION 5. Section 7-2F-4 NMSA 1978 (being Laws 2011,
18 Chapter 165, Section 5, as amended) is amended to read:

19 "7-2F-4. REPORTING--ACCOUNTABILITY.--

20 A. The economic development department shall:

21 (1) collect data to be used in an econometric
22 tool that objectively assesses the effectiveness of the credits
23 provided by the Film Production Tax Credit Act;

24 (2) track the direct expenditures for the
25 credits;

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1 (3) with the support and assistance of the
2 legislative finance committee staff and the taxation and
3 revenue department, review and assess the analysis developed in
4 Paragraph (1) of this subsection and create a report for
5 presentation to the revenue stabilization and tax policy
6 committee and the legislative finance committee that provides
7 an objective assessment of the effectiveness of the credits;
8 and

9 (4) report annually to the revenue
10 stabilization and tax policy committee and the legislative
11 finance committee on aggregate approved tax credits made
12 pursuant to the Film Production Tax Credit Act and the past
13 performance of and current outlook for the Film Production Tax
14 Credit Act, including:

15 (a) the aggregate amount of credits paid
16 subject to the aggregate amount allowed pursuant to Subsection
17 B of Section 7-2F-12 NMSA 1978 in the prior fiscal year and the
18 current amount of claims in the queue pursuant to Subsection C
19 of Section 7-2F-12 NMSA 1978;

20 (b) the aggregate amount of approved
21 credits paid in the prior fiscal year for expenditures by
22 certain film production companies that are not subject to the
23 aggregate amount of claims allowed pursuant to Section 7-2F-12
24 NMSA 1978;

25 (c) the number of applicants receiving

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1 the additional credit for television pilots and series pursuant
2 to Section 7-2F-7 NMSA 1978;

3 (d) the number of applicants receiving
4 the additional credit for direct production expenditures made
5 in certain areas of the state pursuant to Section 9 of this
6 2019 act;

7 (e) the aggregate amount of direct
8 production expenditures and post production expenditures in New
9 Mexico during the prior fiscal year, shown by county;

10 (f) the total number and wages of New
11 Mexico residents employed by film production companies in the
12 prior fiscal year; and

13 (g) any other relevant information, as
14 determined by the division.

15 B. The division shall develop a form on which the
16 taxpayer claiming a credit pursuant to the Film Production Tax
17 Credit Act shall submit a report to accompany the taxpayer's
18 application for that credit.

19 C. With respect to the production on which the
20 application for a credit is based, the film production company
21 shall report to the division at a minimum the following
22 information:

23 (1) the total aggregate wages of the members
24 of the New Mexico resident crew;

25 (2) the number of New Mexico residents

1 employed;

2 (3) the total amount of gross receipts taxes
3 paid;

4 (4) the total number of hours worked by New
5 Mexico residents;

6 (5) the total expenditures made in New Mexico
7 that do not qualify for the credit;

8 (6) the aggregate wages paid to the members of
9 the nonresident crew while working in New Mexico; ~~and~~

10 (7) the aggregate amount of direct production
11 expenditures and postproduction expenditures in New Mexico in
12 the prior fiscal year, shown by county; and

13 ~~(7)~~ (8) other information deemed necessary
14 by the division and economic development department to
15 determine the effectiveness of the credit.

16 D. For purposes of assessing the effectiveness of a
17 credit, the inability of the economic development department to
18 aggregate data due to sample size shall not relieve the
19 department of the requirement to report all relevant data to
20 the legislature. The division shall provide notice to a film
21 production company applying for a credit that information
22 provided to the division may be revealed by the department in
23 reports to the legislature."

24 SECTION 6. Section 7-2F-12 NMSA 1978 (being Laws 2015,
25 Chapter 143, Section 11) is repealed and a new Section 7-2F-12

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1 NMSA 1978 is enacted to read:

2 "7-2F-12. [NEW MATERIAL] CREDIT CLAIMS--CERTIFICATION OF
3 DIRECT PRODUCTION AND POSTPRODUCTION EXPENDITURES--AGGREGATE
4 AMOUNT OF CLAIMS ALLOWED--EXCEPTION.--

5 A. The division shall certify a film production
6 company's budget for direct production expenditures and
7 postproduction expenditures during a preproduction meeting with
8 the division; provided that the division is prohibited from
9 certifying a film production company's budget if the total
10 expected claims in excess of the aggregate amount of claims
11 that may be authorized for payment pursuant to Subsection B of
12 this section would exceed one hundred million dollars
13 (\$100,000,000) in any fiscal year.

14 B. Except as provided in Section 10 of this 2019
15 act, the aggregate amount of claims for a credit provided by
16 the Film Production Tax Credit Act that may be authorized for
17 payment in any fiscal year is one hundred ten million dollars
18 (\$110,000,000) with respect to the direct production
19 expenditures or postproduction expenditures made on film or
20 commercial audiovisual products; provided that direct
21 production expenditures and postproduction expenditures made by
22 a New Mexico film partner shall not be subject to the aggregate
23 amount of claims provided by this subsection.

24 C. If a film production company submits a claim for
25 a credit pursuant to the Film Production Tax Credit Act and the

1 aggregate amount of claims pursuant to Subsection B of this
2 section has been met for the fiscal year, the claim shall be
3 placed at the front of a queue for payment in a subsequent
4 fiscal year. Claims shall be placed in order of the date on
5 which the completed return in which the credit is claimed is
6 filed. Claims authorized for payment shall be paid pursuant to
7 the Tax Administration Act.

8 D. If, in fiscal years 2020 through 2022, the
9 aggregate amount of claims authorized for payment is less than
10 one hundred ten million dollars (\$110,000,000), excluding
11 claims by a New Mexico film partner, then the difference in
12 that fiscal year or twenty million dollars (\$20,000,000),
13 whichever is less, shall be added to the aggregate amount of
14 claims that may be authorized for payment pursuant to
15 Subsection B of this section in the immediately following
16 fiscal year.

17 E. To provide guidance to film production companies
18 regarding the amount of credit capacity remaining in the fiscal
19 year, the taxation and revenue department shall post monthly on
20 that department's website the aggregate amount of credits
21 claimed and paid for the fiscal year. In addition, the
22 division shall post monthly on the division's website the
23 aggregate amount of claims certified pursuant to Subsection A
24 of this section for the fiscal year or any subsequent fiscal
25 year.

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1 F. As used in this section, "New Mexico film
2 partner" means a film production company that has made a
3 commitment to produce films or commercial audiovisual products
4 in New Mexico and has purchased or executed a ten-year contract
5 to lease a qualified production facility."

6 SECTION 7. A new section of the Film Production Tax
7 Credit Act is enacted to read:

8 "[NEW MATERIAL] NEW FILM PRODUCTION TAX CREDIT.--

9 A. The tax credit created by this section may be
10 referred to as the "new film production tax credit".

11 B. A film production company that meets the
12 requirements of the Film Production Tax Credit Act may apply
13 for, and the taxation and revenue department may allow, a tax
14 credit in an amount equal to twenty-five percent of:

15 (1) direct production expenditures made in New
16 Mexico that:

17 (a) are directly attributable to the
18 production in New Mexico of a film or commercial audiovisual
19 product;

20 (b) are subject to taxation by the state
21 of New Mexico;

22 (c) exclude direct production
23 expenditures for which another taxpayer claims the new film
24 production tax credit; and

25 (d) do not exceed the usual and

1 customary cost of the goods or services acquired when purchased
2 by unrelated parties. The secretary of taxation and revenue
3 may determine the value of the goods or services for purposes
4 of this section when the buyer and seller are affiliated
5 persons or the sale or purchase is not an arm's length
6 transaction; and

7 (2) postproduction expenditures made in
8 New Mexico that:

9 (a) are directly attributable to the
10 production of a commercial film or audiovisual product;

11 (b) are for services performed in New
12 Mexico;

13 (c) are subject to taxation by the state
14 of New Mexico;

15 (d) exclude postproduction expenditures
16 for which another taxpayer claims the new film production tax
17 credit; and

18 (e) do not exceed the usual and
19 customary cost of the goods or services acquired when purchased
20 by unrelated parties. The secretary of taxation and revenue
21 may determine the value of the goods or services for purposes
22 of this section when the buyer and seller are affiliated
23 persons or the sale or purchase is not an arm's length
24 transaction.

25 C. With respect to expenditures attributable to a

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1 production for which the film production company receives a tax
2 credit pursuant to the federal new markets tax credit program,
3 the percentage to be applied in calculating the amount of
4 credit allowed pursuant to the Film Production Tax Credit Act
5 is twenty percent.

6 D. A claim for new film production tax credits
7 shall be filed as part of a return filed pursuant to the Income
8 Tax Act or the Corporate Income and Franchise Tax Act or an
9 information return filed by an entity assigned payment of an
10 authorized credit pursuant to Section 7-2F-5 NMSA 1978. The
11 date a complete credit claim is received by the taxation and
12 revenue department shall determine the order that a credit
13 claim is authorized for payment by the department. The film
14 production company may apply all or a portion of the new film
15 production tax credit granted against personal income tax
16 liability or corporate income tax liability. If the amount of
17 the credit claimed exceeds the film production company's tax
18 liability for the taxable year in which the credit is being
19 claimed, the excess shall be refunded.

20 E. A credit claim shall only be considered received
21 by the taxation and revenue department if the credit claim is
22 made on a complete return filed after the close of the taxable
23 year. All direct production expenditures and postproduction
24 expenditures incurred during the taxable year by a film
25 production company shall be submitted as part of the same

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1 income tax return and paid pursuant to this section. A credit
2 claim shall not be divided and submitted with multiple returns
3 or in multiple years.

4 F. For purposes of determining the payment of
5 credit claims pursuant to this section, the secretary of
6 taxation and revenue may require that credit claims of
7 affiliated persons be combined into one claim if necessary to
8 accurately reflect closely integrated activities of affiliated
9 persons.

10 G. The new film production tax credit shall not be
11 claimed with respect to direct production expenditures or
12 postproduction expenditures for which the film production
13 company has delivered a nontaxable transaction certificate
14 pursuant to Section 7-9-86 NMSA 1978 or alternative evidence
15 pursuant to Section 7-9-43 NMSA 1978.

16 H. A production for which the new film production
17 tax credit is claimed pursuant to Paragraph (1) of Subsection B
18 of this section shall contain an acknowledgment to the state of
19 New Mexico. Unless otherwise agreed upon in writing by the
20 film production company and the division, the acknowledgment
21 shall be in the end screen credits that the production was
22 filmed in New Mexico and a three-second static or animated
23 state logo provided by the division shall be included and
24 embedded in the following:

25 (1) end screen credits before the below-the-

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1 line crew crawl for the life of the project of long-form
2 narrative film productions; and

3 (2) body of the program for the life of
4 television episodes, the placement of which shall be:

5 (a) in the opening sequence;

6 (b) as a bumper into or out of a
7 commercial break; or

8 (c) in a prominent position in each
9 single project's end credits with no less than a half screen
10 exposure, but not covering content.

11 I. To be eligible for the new film production tax
12 credit, a film production company shall submit to the division
13 information required by the division to demonstrate conformity
14 with the requirements of the Film Production Tax Credit Act,
15 including production data deemed necessary by the division and
16 the economic development department to determine the
17 effectiveness of the credit, and a projection of the new film
18 production tax credit claim the film production company plans
19 to submit. In addition, the film production company shall
20 agree in writing:

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

23 (2) to post a notice at completion of
24 principal photography on the website of the division that:

25 (a) contains production company

1 information, including the name of the production and contact
2 information that includes a working phone number and email
3 address for both the local production office and the permanent
4 production office to notify the public of the need to file
5 creditor claims against the film production company; and

6 (b) remains posted on the website until
7 all financial obligations incurred in the state by the film
8 production company have been paid;

9 (3) that outstanding obligations are not
10 waived should a creditor fail to file;

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

16 (5) to submit a completed application for the
17 new film production tax credit and supporting documentation to
18 the division within one year of making the final expenditures
19 in New Mexico that were incurred for the registered project and
20 that are included in the credit claim.

21 J. The division, in consultation with the taxation
22 and revenue department, shall determine the eligibility of the
23 film production company and shall report this information to
24 the taxation and revenue department in a manner and at times
25 the economic development department and the taxation and

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1 revenue department shall agree upon. The division shall also
2 post on its website all information provided by the film
3 production company that does not reveal revenue, income or
4 other information that may jeopardize the confidentiality of
5 income tax returns.

6 K. To receive a new film production tax credit, a
7 film production company shall apply to the taxation and revenue
8 department on forms and in the manner the department may
9 prescribe. The application shall include a certification of
10 the amount of direct production expenditures or postproduction
11 expenditures made in New Mexico with respect to the film
12 production for which the film production company is seeking the
13 credit; provided that for the credit, the application shall be
14 submitted within one year of the date of the last direct
15 production expenditure in New Mexico or the last postproduction
16 expenditure in New Mexico. If the amount of the requested tax
17 credit exceeds five million dollars (\$5,000,000), the
18 application shall also include the results of an audit,
19 conducted by a certified public accountant licensed to practice
20 in New Mexico, verifying that the expenditures have been made
21 in compliance with the requirements of this section. If the
22 requirements of this section have been complied with, the
23 taxation and revenue department shall approve the credit and
24 issue a document granting the credit.

25 L. That amount of a new film production tax credit

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1 for total payments as applied to direct production expenditures
 2 for the services of performing artists shall not exceed five
 3 million dollars (\$5,000,000) for services rendered by
 4 nonresident performing artists and resident principal
 5 performing artists in a production. This limitation shall not
 6 apply to the services of background artists."

7 SECTION 8. A new section of the Film Production Tax
 8 Credit Act is enacted to read:

9 "[NEW MATERIAL] ADDITIONAL AMOUNTS TO BE APPLIED IN
 10 CALCULATING CREDIT AMOUNTS--EXPENDITURES MADE IN CERTAIN AREAS
 11 OF THE STATE--TELEVISION PILOTS AND SERIES.--

12 A. In addition to the percentage of direct
 13 production expenditures and postproduction expenditures
 14 calculated pursuant to Section 7 of this 2019 act, an
 15 additional five percent shall be applied for payments for
 16 direct production expenditures and postproduction expenditures:

17 (1) provided that the work, services or items
 18 are provided on location for a production of a film or
 19 commercial audiovisual product that is located in New Mexico
 20 but at least sixty miles outside of the exterior boundaries of
 21 certain counties; and

22 (2) either of the following:

23 (a) on a standalone pilot intended for
 24 series television in New Mexico or on series television
 25 productions intended for commercial distribution with an order

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1 for at least six episodes in a single season; provided that the
2 New Mexico budget for each of those six episodes is fifty
3 thousand dollars (\$50,000) or more; or

4 (b) on a production in a qualified
5 production facility.

6 B. As used in this section, "certain counties"
7 includes counties with a net taxable value of property for
8 property taxation purposes of greater than six billion dollars
9 (\$6,000,000,000)."

10 SECTION 9. A new section of the Film Production Tax
11 Credit Act is enacted to read:

12 "[NEW MATERIAL] NONRESIDENT BELOW-THE-LINE CREW CREDIT.--

13 A. A film production company may apply for, and the
14 taxation and revenue department may allow, a tax credit in an
15 amount equal to fifteen percent of the payment of wages for
16 below-the-line crew who are not New Mexico residents, that are
17 directly attributable to the production in New Mexico of a film
18 or commercial audiovisual product for which the film production
19 company is claiming a new film production tax credit; provided
20 that:

21 (1) the service for which payment is made is
22 rendered in New Mexico;

23 (2) the total eligible wages for
24 below-the-line crew who are not New Mexico residents are:

25 (a) not more than fifteen percent of the

1 production's total New Mexico budget for below-the-line crew
2 wages; or

3 (b) as determined by the division, up to
4 twenty percent of the production's total New Mexico budget for
5 below-the-line crew wages; provided that sufficient and
6 qualified below-the-line crew who are New Mexico residents are
7 not available. A film production company that is approved for
8 the additional credit by meeting the requirements of this
9 paragraph shall make a financial or promotional contribution
10 toward educational, media-related nonprofit or workforce
11 development efforts in New Mexico, as determined by the
12 division; and

13 (3) the film production company makes
14 financial or promotional contributions toward educational or
15 workforce development efforts in New Mexico as determined by
16 the division, including:

17 (a) a payment to a New Mexico
18 educational institution that administers at least one
19 industry-recognized film or multimedia program, as determined
20 by the division, equal to at least two and one-half percent of
21 the direct production expenditures for the payment of wages,
22 fringe benefits and per diem for nonresident industry crew made
23 by the film production company to nonresident industry crew; or

24 (b) promotion of the New Mexico film
25 industry by directors, actors or producers affiliated with the

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1 film production company's project through: 1) social media
2 that is managed by the state; 2) radio interviews facilitated
3 by the division; 3) enhanced screen credit acknowledgments; or
4 4) related events that are facilitated, conducted or sponsored
5 by the division.

6 B. The credit provided by this section may be
7 referred to as the "nonresidential below-the-line crew credit."

8 SECTION 10. TEMPORARY PROVISION--AUTHORIZATION TO PAY
9 APPROVED CREDITS PURSUANT TO THE FILM PRODUCTION TAX CREDIT
10 ACT.--

11 A. In addition to the aggregate amount of claims
12 that may be paid pursuant to Section 7-2F-12 NMSA 1978, a claim
13 for a tax credit approved by the taxation and revenue
14 department pursuant to the Film Production Tax Credit Act shall
15 be paid:

16 (1) prior to July 1, 2019; provided that the
17 aggregate amount of claims for credits that may be authorized
18 for payment pursuant to this subsection does not exceed one
19 hundred million dollars (\$100,000,000); and

20 (2) on or after July 1, 2019, but prior to
21 July 1, 2020; provided that the aggregate amount of claims for
22 credits that may be authorized for payment pursuant to this
23 subsection does not exceed ninety-five million dollars
24 (\$95,000,000) and that the claim meets the requirements of the
25 Film Production Tax Credit Act; provided further that, if the

1 fiscal year 2019 general fund revenues estimated by the
 2 consensus revenue estimating group presented to the legislative
 3 finance committee in August 2019 exceeds the fiscal year 2019
 4 general fund revenues forecasted by the consensus revenue
 5 estimating group in February 2019 by at least thirty million
 6 dollars (\$30,000,000), then the ninety-five-million dollar
 7 (\$95,000,000) threshold shall be increased to one hundred
 8 twenty-five million dollars (\$125,000,000).

9 B. A claim that exceeds the authorized amounts to
 10 be paid as provided in this section shall be paid in accordance
 11 with the applicable provisions of the Film Production Tax
 12 Credit Act, as those provisions were in effect on the date the
 13 claim was approved.

14 SECTION 11. APPLICABILITY.--

15 A. The provisions of Sections 4 and 7 through 9 of
 16 this act apply to film production companies that commence
 17 principal photography for a film or commercial audiovisual
 18 product on or after July 1, 2019.

19 B. The provisions of Sections 7-2F-2.1 and 7-2F-6
 20 through 7-2F-11 NMSA 1978 shall not apply to a film production
 21 company that commences principal photography for a film or
 22 commercial audiovisual product on or after July 1, 2019.

23 SECTION 12. EFFECTIVE DATE.--

24 A. The effective date of the provisions of Sections
 25 1, 4 and 5 through 9 of this act is July 1, 2019.

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1 B. The effective date of the provisions of Section
2 of this act is January 1, 2020.

underscoring material = new
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