

1 HOUSE BILL 283

2 **55TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2021**

3 INTRODUCED BY

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10 AN ACT

11 RELATING TO THE FILM PRODUCTION TAX CREDIT ACT; EXCLUDING FROM
12 RECEIVING A TAX CREDIT PURSUANT TO THAT ACT A FILM THAT
13 CONTAINS SEXUALLY EXPLICIT CONDUCT AND THAT MOST PARENTS WOULD
14 CONSIDER PATENTLY TOO ADULT FOR THEIR CHILDREN AGED SEVENTEEN
15 AND UNDER, IN THE VIEW OF A BOARD OR ASSOCIATION COMMONLY KNOWN
16 IN THE INDUSTRY TO ISSUE RATINGS FOR FILMS EXHIBITED AND
17 DISTRIBUTED COMMERCIALY TO THE PUBLIC IN THE UNITED STATES.
18

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

20 SECTION 1. Section 7-2F-2 NMSA 1978 (being Laws 2003,
21 Chapter 127, Section 2, as amended) is amended to read:

22 "7-2F-2. DEFINITIONS.--As used in the Film Production Tax
23 Credit Act:

24 A. "affiliated person" means a person who directly
25 or indirectly owns or controls, is owned or controlled by or is

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1 under common ownership or control with another person through
2 ownership of voting securities or other ownership interests
3 representing a majority of the total voting power of the
4 entity;

5 B. "background artist" means a person who is not a
6 performing artist but is a person of atmospheric business whose
7 work includes atmospheric noise, normal actions, gestures and
8 facial expressions of that person's assignment; or a person of
9 atmospheric business whose work includes special abilities that
10 are not stunts; or a substitute for another actor, whether
11 photographed as a double or acting as a stand-in;

12 C. "below-the-line crew" means a person in a
13 position that is off-camera and who provides technical services
14 during the physical production of a film. "Below-the-line
15 crew" does not include a person who is a writer, director,
16 producer or background artist or performing artist for the
17 film;

18 D. "commercial audiovisual product" means a film or
19 a video game intended for commercial exploitation;

20 E. "direct production expenditure" means a
21 transaction that is subject to taxation in New Mexico and is
22 certified pursuant to Subsection A of Section 7-2F-12 NMSA
23 1978:

24 (1) including an expenditure for:

25 (a) payment of wages, fringe benefits or

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1 fees for talent, management or labor to a person who is a New
2 Mexico resident;

3 (b) payment for standard industry craft
4 inventory when provided by a below-the-line crew that is a New
5 Mexico resident in addition to its below-the-line crew
6 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 the 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 for the services of a performing artist if: 1) the
16 personal services business pays gross receipts tax in New
17 Mexico on the portion of those payments qualifying for the tax
18 credit; and 2) the film production company deducts and remits,
19 or causes to be deducted and remitted, income tax at the
20 maximum rate in New Mexico pursuant to Subsection H of Section
21 7-3A-3 NMSA 1978 on the portion of those payments qualifying
22 for the tax credit paid to a personal services business where
23 the performing artist is a full or part owner of that business
24 or subcontracts with a personal services business where the
25 performing artist is a full or part owner of that business; and

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1 (e) any of the following provided by a
2 vendor: 1) the story and scenario to be used for a film; 2)
3 set construction and operations, wardrobe, accessories and
4 related services; 3) photography, sound synchronization,
5 lighting and related services; 4) editing and related services;
6 5) rental of facilities and equipment; 6) the first one hundred
7 fifty dollars (\$150) of the daily expense of leasing of
8 vehicles, not including the chartering of aircraft for out-of-
9 state transportation; however, New Mexico-based chartered
10 aircraft for in-state transportation directly attributable to
11 the production shall be considered a direct production
12 expenditure; 7) food; 8) the first three hundred dollars (\$300)
13 of lodging per individual, per day; 9) commercial airfare if
14 purchased through a New Mexico-based travel agency or travel
15 company for travel to and from New Mexico or within New Mexico
16 that is directly attributable to the production; 10) insurance
17 coverage and bonding if purchased through a New Mexico-based
18 insurance agent, broker or bonding agent; 11) subcontracted
19 goods and services from businesses; provided that the ordinary
20 course of business of the vendor procuring the goods and
21 services from the subcontractor directly relates to standard
22 film industry goods and services; and 12) other direct costs of
23 producing a film in accordance with generally accepted
24 entertainment industry practice; and

25 (2) does not include an expenditure for:

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1 (a) a gift with a value greater than one
2 hundred dollars (\$100);

3 (b) artwork or jewelry, except that a
4 work of art or a piece of jewelry may be a direct production
5 expenditure if: 1) it is used in the film production; and 2)
6 the expenditure is less than two thousand five hundred dollars
7 (\$2,500);

8 (c) entertainment, amusement or
9 recreation;

10 (d) subcontracted goods or services
11 provided by a vendor when the subcontractors providing those
12 goods or services to the vendor are not subject to state
13 taxation, such as equipment and locations provided by the
14 military, government and organizations that demonstrate to the
15 taxation and revenue department that they have been granted
16 exemption from the federal income tax by the United States
17 commissioner of internal revenue as organizations described in
18 Section 501(c)(3) of the United States Internal Revenue Code of
19 1986, as amended or renumbered;

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

23 (f) hidden or other indirect service
24 fees, costs, commissions or other remuneration received by
25 third parties and that are not directly paid by the film

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1 production company or expressly enumerated on a film production
2 company's filing to claim a new film production tax credit;

3 (g) wages for a person who is not a
4 New Mexico resident and who falsely claims to be a New Mexico
5 resident. The wages of such person shall not be considered an
6 eligible expense for two years from the date in which the
7 person is determined by the taxation and revenue department as
8 having made a false claim, regardless of whether the person
9 becomes a New Mexico resident within that time frame; or

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

12 F. "division" means the New Mexico film division of
13 the economic development department;

14 G. "federal new markets tax credit program" means
15 the tax credit program codified as Section 45D of the United
16 States Internal Revenue Code of 1986, as amended;

17 H. "film" means a single medium or multimedia
18 program, including television programs but excluding
19 advertising messages other than national or regional
20 advertising messages intended for exhibition, that:

21 (1) is fixed on film, a digital medium,
22 videotape, computer disc, laser disc or other similar delivery
23 medium;

24 (2) can be viewed or reproduced;

25 (3) is not intended to and does not violate a

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1 provision of Chapter 30, Article 37 NMSA 1978; [~~and~~]

2 (4) does not contain or display any sexually
3 explicit conduct. As used in this paragraph, "sexually
4 explicit conduct" means actual:

5 (a) sexual intercourse, including
6 genital-to-genital, oral-to-genital, anal-to-genital or oral-
7 to-anal, whether between persons of the same or opposite sex;

8 (b) bestiality;

9 (c) masturbation;

10 (d) sadistic or masochistic abuse; or

11 (e) lascivious exhibition of the anus,
12 genitals or pubic area of a person;

13 (5) is not what most parents would consider
14 patently too adult for their children aged seventeen and under,
15 in the view of a board or association commonly known in the
16 industry to issue ratings for films exhibited and distributed
17 commercially to the public in the United States; and

18 [~~(4)~~] (6) is intended for reasonable
19 commercial exploitation for the delivery medium used;

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

23 J. "fiscal year" means the state fiscal year
24 beginning on July 1;

25 K. "New Mexico resident" means an individual who is

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

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

18 M. "personal services business" means a business
19 organization, with or without physical presence, that receives
20 payments pursuant to the Film Production Tax Credit Act for the
21 services of a performing artist;

22 N. "physical presence" means a physical address in
23 New Mexico from which a vendor conducts business, stores
24 inventory or otherwise creates, assembles or offers for sale
25 the product purchased or leased by a film production company

1 and the vendor or an employee of the vendor is a resident;

2 O. "postproduction expenditure" means an
3 expenditure, certified pursuant to Subsection A of Section
4 7-2F-12 NMSA 1978, for editing, Foley recording, automatic
5 dialogue replacement, sound editing, special effects, including
6 computer-generated imagery or other effects, scoring and music
7 editing, beginning and end credits, negative cutting,
8 soundtrack production, dubbing, subtitling or addition of sound
9 or visual effects; but not including an expenditure for
10 advertising, marketing, distribution or expense payments;

11 P. "principal photography" means the production of
12 a film during which the main visual elements are created;

13 Q. "qualified production facility" means a
14 building, or complex of buildings, building improvements and
15 associated back-lot facilities in which films are or are
16 intended to be regularly produced and that contain at least
17 one:

18 (1) sound stage with contiguous floor space of
19 at least seven thousand square feet and a ceiling height of no
20 less than eighteen feet; or

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

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R. "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."

SECTION 2. APPLICABILITY.--The provisions of this act apply to a film production company that commences principal photography for a film or commercial audiovisual product on or after July 1, 2021.