

1 SENATE BILL 468

2 **51ST LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2013**

3 INTRODUCED BY

4 Phil A. Griego

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9  
10 AN ACT

11 RELATING TO TAXATION; PROVIDING FOR ACCELERATED PAYMENTS OF  
12 FUTURE SCHEDULED PAYMENTS OF FILM PRODUCTION TAX CREDITS IN  
13 YEARS WHEN TOTAL CREDITS CLAIMED ARE LESS THAN FIFTY MILLION  
14 DOLLARS (\$50,000,000); PROVIDING FOR A METHOD OF INCOME  
15 WITHHOLDING; RECONCILING MULTIPLE AMENDMENTS TO THE SAME  
16 SECTION OF LAW IN LAWS 2011; RECONCILING CONFLICTING AMENDMENTS  
17 TO THE SAME SECTION OF LAW BY REPEALING LAWS 2011, CHAPTER 165,  
18 SECTION 3; DECLARING AN EMERGENCY.

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

21 SECTION 1. Section 7-2F-1 NMSA 1978 (being Laws 2002,  
22 Chapter 36, Section 1, as amended by Laws 2011, Chapter 165,  
23 Section 1 and by Laws 2011, Chapter 177, Section 2) is amended  
24 to read:

25 "7-2F-1. FILM PRODUCTION TAX CREDIT.--

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1           A. The tax credit created by this section may be  
2 referred to as the "film production tax credit". An eligible  
3 film production company may apply for, and the taxation and  
4 revenue department may allow, subject to the limitation in  
5 Subsection D of this section, a tax credit in an amount equal  
6 to the percentage specified in Subsection B of this section of:

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

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

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

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

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

24                   (2) postproduction expenditures made in New  
25 Mexico that:

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

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

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

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

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

17 B. Except as provided in Subsections C and [P] Q of  
18 this section, the percentage to be applied in calculating the  
19 amount of the film production tax credit is twenty-five  
20 percent.

21 C. With respect to expenditures attributable to a  
22 production for which the film production company receives a tax  
23 credit pursuant to the federal new markets tax credit program,  
24 the percentage to be applied in calculating the film production  
25 tax credit is twenty percent.

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1           D. A claim for film production tax credits shall be  
2 filed as part of a return filed pursuant to the Income Tax Act  
3 or the Corporate Income and Franchise Tax Act. The date a  
4 credit claim is received by the department shall determine the  
5 order that a credit claim is authorized for payment by the  
6 department. The aggregate amount of the film production tax  
7 credit claims that may be authorized for payment in any fiscal  
8 year is fifty million dollars (\$50,000,000) with respect to the  
9 direct production expenditures or postproduction expenditures  
10 made on film or commercial audiovisual products. A film  
11 production company that submits a claim for a film production  
12 tax credit that is unable to receive the tax credit because the  
13 claims for the fiscal year exceed the limitation in this  
14 subsection shall be placed for the subsequent fiscal year at  
15 the front of a queue of film production tax credit claimants  
16 submitting claims in the subsequent fiscal year in the order of  
17 the date on which the credit was authorized for payment.

18           E. Except as provided in Subsection G of this  
19 section, credit claims authorized for payment pursuant to the  
20 Film Production Tax Credit Act shall be paid pursuant to  
21 provisions of the Tax Administration Act to the taxpayer as  
22 follows:

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

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1 (2) a credit claim amount of two million  
2 dollars (\$2,000,000) or more but less than five million dollars  
3 (\$5,000,000) per taxable year shall be divided into two equal  
4 payments, with the first payment to be made immediately upon  
5 authorization of the payment of the credit claim and the second  
6 payment to be made twelve months following the date of the  
7 first payment; and

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

15 F. Any amount of a credit claim that is carried  
16 forward pursuant to Subsection E of this section shall be  
17 subject to the limit on the aggregate amount of credit claims  
18 that may be authorized for payment pursuant to Subsection D of  
19 this section in the fiscal year in which that amount is paid.

20 G. In a fiscal year in which the amount of total  
21 credit claims authorized for payment is less than fifty million  
22 dollars (\$50,000,000), credit claims authorized for payment  
23 pursuant to Subsection E of this section in the subsequent  
24 twelve or twenty-four months from the date of first payment  
25 shall be paid pursuant to the Tax Administration Act to a

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1 taxpayer in order of outstanding scheduled payments pursuant to  
2 the provisions of the Film Production Tax Credit Act; provided  
3 that the aggregate amount of authorized payments shall not  
4 exceed fifty million dollars (\$50,000,000). Where a partial  
5 payment is made for an outstanding scheduled payment, the  
6 difference owed shall remain in the queue.

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

16 ~~[H.]~~ I. For purposes of determining the payment of  
17 credit claims pursuant to Subsection E of this section, the  
18 secretary of taxation and revenue may require that credit  
19 claims of affiliated persons be combined into one claim if  
20 necessary to accurately reflect closely integrated activities  
21 of affiliated persons.

22 ~~[I.]~~ J. The film production tax credit shall not be  
23 claimed with respect to direct production expenditures or  
24 postproduction expenditures for which the film production  
25 company has delivered a nontaxable transaction certificate

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1 pursuant to Section 7-9-86 NMSA 1978.

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

11 ~~[K-]~~ L. To be eligible for the 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 detailed information on each direct production  
16 expenditure and each postproduction expenditure. A film  
17 production company shall make reasonable efforts, as determined  
18 by the division, to contract with vendors that have a physical  
19 presence in New Mexico and that provide goods, inventory or  
20 services directly related to that vendor's ordinary course of  
21 business. A film production company shall provide to the  
22 division a projection of the film production tax credit claim  
23 the film production company plans to submit in the fiscal year.  
24 In addition, the film production company shall agree in  
25 writing:

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

3 (2) to post a notice at completion of  
4 principal photography on the web site of the division that:

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

12 (b) remains posted on the web site until  
13 all financial obligations incurred in the state by the film  
14 production company have been paid;

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

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

22 (5) to submit a completed application for the  
23 film production tax credit and supporting documentation to the  
24 division within one year of making the final expenditures in  
25 New Mexico that are included in the credit claim.

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

12           ~~[M.]~~ N. To provide guidance to film production  
13 companies regarding the amount of credit capacity remaining in  
14 the fiscal year, the taxation and revenue department shall post  
15 monthly on that department's web site the aggregate amount of  
16 credits claimed and processed for the fiscal year.

17           ~~[N.]~~ O. To receive a film production tax credit, a  
18 film production company shall apply to the taxation and revenue  
19 department on forms and in the manner the department may  
20 prescribe. The application shall include a certification of  
21 the amount of direct production expenditures or postproduction  
22 expenditures made in New Mexico with respect to the film  
23 production for which the film production company is seeking the  
24 film production tax credit; provided that for the film  
25 production tax credit, the application shall be submitted

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

13 ~~[P.]~~ P. The film production company may apply all  
14 or a portion of the film production tax credit granted against  
15 personal income tax liability or corporate income tax  
16 liability. If the amount of the film production tax credit  
17 claimed exceeds the film production company's tax liability for  
18 the taxable year in which the credit is being claimed, the  
19 excess shall be refunded.

20 ~~[P.]~~ Q. As applied to direct production  
21 expenditures for the services of performing artists, the film  
22 production tax credit authorized by this section shall not  
23 exceed five million dollars (\$5,000,000) for services rendered  
24 by all performing artists in a production for which the film  
25 production tax credit is claimed."

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1           SECTION 2. Section 7-2F-2 NMSA 1978 (being Laws 2003,  
2 Chapter 127, Section 2, as amended by Laws 2011, Chapter 165,  
3 Section 3 and by Laws 2011, Chapter 177, Section 4) is amended  
4 to read:

5           "7-2F-2. DEFINITIONS.--As used in the Film Production Tax  
6 Credit Act:

7           A. "affiliated person" means a person who directly  
8 or indirectly owns or controls, is owned or controlled by or is  
9 under common ownership or control with another person through  
10 ownership of voting securities or other ownership interests  
11 representing a majority of the total voting power of the  
12 entity;

13           B. "commercial audiovisual product" means a film or  
14 a videogame intended for commercial exploitation;

15           C. "direct production expenditure":

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

19                           (a) payment of wages, fringe benefits or  
20 fees for talent, management or labor to a person who is a New  
21 Mexico resident;

22                           (b) payment to a personal services  
23 business for the services of a performing artist if: ~~the~~ 1)  
24 a personal services business ~~(1)~~ pays gross receipts tax in  
25 New Mexico on the portion of those payments qualifying for the

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

11 (c) any of the following provided by a  
12 vendor: 1) the story and scenario to be used for a film; 2)  
13 set construction and operations, wardrobe, accessories and  
14 related services; 3) photography, sound synchronization,  
15 lighting and related services; 4) editing and related services;  
16 5) rental of facilities and equipment; 6) leasing of vehicles,  
17 not including the chartering of aircraft for out-of-state  
18 transportation; however, New Mexico-based chartered aircraft  
19 for in-state transportation directly attributable to the  
20 production shall be considered a direct production expenditure;  
21 provided that only the first one hundred dollars (\$100) of the  
22 daily expense of leasing a vehicle for passenger transportation  
23 on roadways in the state may be claimed as a direct production  
24 expenditure; 7) food or lodging; provided that only the first  
25 one hundred fifty dollars (\$150) of lodging per individual per

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1 day is eligible to be claimed as a direct production  
2 expenditure; 8) commercial airfare if purchased through a New  
3 Mexico-based travel agency or travel company for travel to and  
4 from New Mexico or within New Mexico that is directly  
5 attributable to the production; 9) insurance coverage and  
6 bonding if purchased through a New Mexico-based insurance  
7 agent, broker or bonding agent; and 10) other direct costs of  
8 producing a film in accordance with generally accepted  
9 entertainment industry practice; and

10 (2) does not include an expenditure for:

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

13 (b) artwork or jewelry, except that a  
14 work of art or a piece of jewelry may be a direct production  
15 expenditure if: 1) it is used in the film production; and 2)  
16 the expenditure is less than two thousand five hundred dollars  
17 (\$2,500); [~~or~~]

18 (c) entertainment, amusement or  
19 recreation;

20 (d) subcontracted goods or services  
21 provided by a vendor with a physical presence in New Mexico  
22 when subcontractors are not subject to state taxation, such as  
23 equipment and locations provided by the military, government  
24 and religious organizations; or

25 (e) nonresidents providing services and

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1 responsibilities related to off-camera industry job positions  
2 where it is the standard entertainment industry practice for  
3 the film production company to employ these individuals, except  
4 when a nonresident is hired or subcontracted by a vendor with a  
5 physical presence in New Mexico and the film production  
6 company, as determined by the division and when applicable in  
7 consultation with industry, provides: 1) reasonable efforts to  
8 hire resident crew; and 2) financial or in-kind contributions  
9 toward education or work force development efforts that shall  
10 include at least one of the following: a pre-approved  
11 workshop; on-set shadowing per each approved position; or ten  
12 percent of the portion of the tax credit calculated from the  
13 payment of services to the nonresidents by the vendor in the  
14 approved positions, which equates to two-and-one-half percent  
15 of the respective total direct production expenditure, and  
16 allocated to New Mexico public education institutions that  
17 administer at least one film or multimedia program;

18 D. "division" means the New Mexico film division of  
19 the economic development department;

20 E. "federal new markets tax credit program" means  
21 the tax credit program codified as Section 45D of the United  
22 States Internal Revenue Code of 1986, as amended;

23 F. "film" means a single medium or multimedia  
24 program, excluding advertising messages other than national or  
25 regional advertising messages intended for exhibition, that:

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1 (1) is fixed on film, digital medium,  
2 videotape, computer disc, laser disc or other similar delivery  
3 medium;

4 (2) can be viewed or reproduced;

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

7 (4) is intended for reasonable commercial  
8 exploitation for the delivery medium used;

9 G. "film production company" means a person that  
10 produces one or more films or any part of a film;

11 H. "fiscal year" means the state fiscal year  
12 beginning on July 1;

13 I. "New Mexico resident" means an individual who is  
14 domiciled in this state during any part of the taxable year or  
15 an individual who is physically present in this state for one  
16 hundred eighty-five days or more during the taxable year; but  
17 any individual, other than someone who was physically present  
18 in the state for one hundred eighty-five days or more during  
19 the taxable year and who, on or before the last day of the  
20 taxable year, changed the individual's place of abode to a  
21 place without this state with the bona fide intention of  
22 continuing actually to abide permanently without this state is  
23 not a resident for the purposes of the Film Production Tax  
24 Credit Act for periods after that change of abode;

25 J. "personal services business" means a business

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1 organization that receives payments for the services of a  
2 performing artist;

3 K. "physical presence" means a physical address in  
4 New Mexico, but does not include a post office box or other  
5 mail drop enterprise unless the physical presence is for a  
6 business and the business is providing mail services to a film  
7 production company from which a vendor conducts business,  
8 stores inventory or otherwise creates, assembles or offers for  
9 sale the product purchased or leased by a film production  
10 company;

11 L. "postproduction expenditure" means an  
12 expenditure for editing, Foley recording, automatic dialogue  
13 replacement, sound editing, special effects, including  
14 computer-generated imagery or other effects, scoring and music  
15 editing, beginning and end credits, negative cutting,  
16 soundtrack production, dubbing, subtitling or addition of sound  
17 or visual effects; but not including an expenditure for  
18 advertising, marketing, distribution or expense payments; and

19 M. "vendor" means a person selling goods or  
20 services that has a physical presence in New Mexico and is  
21 subject to gross receipts tax pursuant to the Gross Receipts  
22 and Compensating Tax Act and income tax pursuant to the Income  
23 Tax Act or corporate income tax pursuant to the Corporate  
24 Income and Franchise Tax Act, but excludes services provided by  
25 nonresidents hired or subcontracted if:

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1                   (1) the tasks and responsibilities are  
2 associated with the standard industry job position of a:  
3                   (a) director;  
4                   (b) writer;  
5                   (c) producer;  
6                   (d) associate producer;  
7                   (e) co-producer;  
8                   (f) executive producer;  
9                   (g) production supervisor;  
10                  (h) director of photography;  
11                  (i) motion picture driver whose sole  
12 responsibility is driving;  
13                  (j) production or personal assistant; or  
14                  (k) carpenter and utility technicians at  
15 an entry level; and

16                   (2) tasks and responsibilities are associated  
17 with nonstandard industry job positions and personal support  
18 services."

19                  **SECTION 3. REPEAL.--**Laws 2011, Chapter 165, Section 3 is  
20 repealed.

21                  **SECTION 4. APPLICABILITY.--**The provisions of:

22                    A. Subsection G of Section 1 of this act apply to  
23 fiscal year 2013 and subsequent fiscal years;

24                    B. Subparagraph (e) of Paragraph (2) of Subsection  
25 C of Section 2 of this act apply to productions starting

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principal photography on or after January 1, 2014; and

C. Subsections A through F and H through Q of Section 1; Subsections A, B and D through M of Section 2; and Paragraph (1) and Subparagraphs (a) through (d) of Paragraph (2) of Subsection C of Section 2 of this act apply on or after July 1, 2013.

**SECTION 5. EMERGENCY.**--It is necessary for the public peace, health and safety that this act take effect immediately.