

1 AN ACT

2 RELATING TO THE FILM PRODUCTION TAX CREDIT ACT; PROVIDING  
3 THAT THE FILM PRODUCTION TAX CREDIT ONLY APPLIES TO FILM  
4 PRODUCTION COMPANIES THAT COMMENCE PRINCIPAL PHOTOGRAPHY  
5 PRIOR TO JANUARY 1, 2016; CREATING NEW CREDITS AND  
6 DEFINITIONS FOR FILM PRODUCTION COMPANIES THAT COMMENCE  
7 PRINCIPAL PHOTOGRAPHY ON AND AFTER JANUARY 1, 2016; PROVIDING  
8 THAT ALL CREDITS PROVIDED BY THE FILM PRODUCTION TAX CREDIT  
9 ACT ARE SUBJECT TO THE SAME AGGREGATE CAP; LIMITING THE TYPES  
10 OF DIRECT PRODUCTION EXPENDITURES THAT MAY BE ELIGIBLE FOR  
11 ADDITIONAL CREDIT; EXCLUDING PAYMENTS TO CERTAIN ARTISTS FROM  
12 THE LIMITATION OF DIRECT PRODUCTION EXPENDITURES; AMENDING  
13 AND CREATING DEFINITIONS USED IN THE FILM PRODUCTION TAX  
14 CREDIT ACT; LIMITING THE TYPES OF DIRECT PRODUCTION  
15 EXPENDITURES PAID TO A NONRESIDENT PERFORMING ARTIST THAT ARE  
16 ELIGIBLE FOR THE CREDIT.

17  
18 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

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

21 "7-2F-1. FILM PRODUCTION TAX CREDIT--FILM PRODUCTION  
22 COMPANIES THAT COMMENCE PRINCIPAL PHOTOGRAPHY PRIOR TO  
23 JANUARY 1, 2016.--

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

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

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

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

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

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

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

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

25                           (a) are directly attributable to the

1 production of a commercial film or audiovisual product;

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

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

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

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

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

20 (1) on a standalone pilot intended for  
21 series television in New Mexico or on series television  
22 productions intended for commercial distribution with an  
23 order for at least six episodes in a single season; provided  
24 that the New Mexico budget for each of those six episodes is  
25 fifty thousand dollars (\$50,000) or more; or

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

8                   (a) not more than thirty million  
9 dollars (\$30,000,000) that shoots at least ten principal  
10 photography days in New Mexico at a qualified production  
11 facility; provided that a film production company in  
12 principal photography on or after April 10, 2015 shall:

13 1) shoot at least seven of those days at a sound stage that  
14 is a qualified production facility and the remaining number  
15 of required days, if any, at a standing set that is a  
16 qualified production facility; and 2) for each of the ten  
17 days, include industry crew working on the premises of those  
18 facilities for a minimum of eight hours within a  
19 twenty-four-hour period; or

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

25 1) shoot at least ten of those days at a sound stage that is

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

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

12 E. A claim for film production tax credits shall  
13 be filed as part of a return filed pursuant to the Income Tax  
14 Act or the Corporate Income and Franchise Tax Act or an  
15 information return filed by a pass-through entity. The date  
16 a credit claim is received by the department shall determine  
17 the order that a credit claim is authorized for payment by  
18 the department. Except as otherwise provided in this  
19 section, the aggregate amount of claims for a credit provided  
20 by the Film Production Tax Credit Act that may be authorized  
21 for payment in any fiscal year is fifty million dollars  
22 (\$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

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

16 G. Except as otherwise provided in this section,  
17 credit claims authorized for payment pursuant to the Film  
18 Production Tax Credit Act shall be paid pursuant to  
19 provisions of the Tax Administration Act to the taxpayer as  
20 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  
24 claim;

25 (2) a credit claim amount of two million

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

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

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

1 exceed the aggregate amount of credit claims that may be  
2 authorized for payment pursuant to this section. If a  
3 partial payment is made pursuant to this subsection, the  
4 difference owed shall retain its original position in the  
5 queue.

6 I. Any amount of a credit claim that is carried  
7 forward pursuant to Subsection G of this section shall be  
8 subject to the limit on the aggregate amount of credit claims  
9 that may be authorized for payment pursuant to Subsections E  
10 and F of this section in the fiscal year in which that amount  
11 is paid.

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

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



1 affiliated persons.

2 L. The film production tax credit shall not be  
3 claimed with respect to direct production expenditures or  
4 postproduction expenditures for which the film production  
5 company has delivered a nontaxable transaction certificate  
6 pursuant to Section 7-9-86 NMSA 1978.

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

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

1 business. A film production company shall provide to the  
2 division a projection of the film production tax credit claim  
3 the film production company plans to submit in the fiscal  
4 year. In addition, the film production company shall agree  
5 in writing:

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

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

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

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

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

23 (4) to delay filing of a claim for the film  
24 production tax credit until the division delivers written  
25 notification to the taxation and revenue department that the

1 film production company has fulfilled all requirements for  
2 the credit; and

3 (5) to submit a completed application for  
4 the film production tax credit and supporting documentation  
5 to the division within one year of making the final  
6 expenditures in New Mexico that were incurred for the  
7 registered project and that are included in the credit claim.

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

19 P. To provide guidance to film production  
20 companies regarding the amount of credit capacity remaining  
21 in the fiscal year, the taxation and revenue department shall  
22 post monthly on that department's web site the aggregate  
23 amount of credits claimed and processed for the fiscal year.

24 Q. To receive a film production tax credit, a film  
25 production company shall apply to the taxation and revenue

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

21 R. The film production company may apply all or a  
22 portion of the film production tax credit granted against  
23 personal income tax liability or corporate income tax  
24 liability. If the amount of the film production tax credit  
25 claimed exceeds the film production company's tax liability

1 for the taxable year in which the credit is being claimed,  
2 the excess shall be refunded.

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

12 T. As used in this section, "direct production  
13 expenditure":

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

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

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

1 pursuant to the Withholding Tax Act;

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

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

1 hundred dollars (\$100) of the daily expense of leasing a  
2 vehicle for passenger transportation on roadways in the state  
3 may be claimed as a direct production expenditure; 7) food or  
4 lodging; provided that only the first one hundred fifty  
5 dollars (\$150) of lodging per individual per day is eligible  
6 to be claimed as a direct production expenditure; 8)  
7 commercial airfare if purchased through a New Mexico-based  
8 travel agency or travel company for travel to and from  
9 New Mexico or within New Mexico that is directly attributable  
10 to the production; 9) insurance coverage and bonding if  
11 purchased through a New Mexico-based insurance agent, broker  
12 or bonding agent; 10) services for an external audit upon  
13 submission of an application for a film production tax credit  
14 by an accounting firm that submits the application pursuant  
15 to this section; and 11) other direct costs of producing a  
16 film in accordance with generally accepted entertainment  
17 industry practice; and

18 (2) does not include an expenditure for:

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

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

1 (c) entertainment, amusement or  
2 recreation;

3 (d) subcontracted goods or services  
4 provided by a vendor when subcontractors are not subject to  
5 state taxation, such as equipment and locations provided by  
6 the military, government and religious organizations; or

7 (e) a service provided by a person who  
8 is not a New Mexico resident and employed in an industry crew  
9 position, excluding a performing artist, where it is the  
10 standard entertainment industry practice for the film  
11 production company to employ a person for that industry crew  
12 position, except when the person who is not a New Mexico  
13 resident is hired or subcontracted by a vendor; and when the  
14 film production company, as determined by the division and  
15 when applicable in consultation with industry, provides:

16 1) reasonable efforts to hire resident crew; and 2) financial  
17 or promotional contributions toward education or work force  
18 development efforts in New Mexico, including at least one of  
19 the following: a payment to a New Mexico public education  
20 institution that administers at least one industry-recognized  
21 film or multimedia program, as determined by the division, in  
22 an amount equal to two and one-half percent of payments made  
23 to nonresidents in approved positions employed by the vendor;  
24 promotion of the New Mexico film industry by directors,  
25 actors or executive producers affiliated with the production



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

5 U. As used in this section, "film production  
6 company" means a person that produces one or more films or  
7 any part of a film and that commences principal photography  
8 prior to January 1, 2016.

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

19 (1) the standard industry job position of:

- 20 (a) a director;
- 21 (b) a writer;
- 22 (c) a producer;
- 23 (d) an associate producer;
- 24 (e) a co-producer;
- 25 (f) an executive producer;

- 1 (g) a production supervisor;  
2 (h) a director of photography;  
3 (i) a motion picture driver whose sole  
4 responsibility is driving;  
5 (j) a production or personal assistant;  
6 (k) a designer;  
7 (l) a still photographer; or  
8 (m) a carpenter and utility technician  
9 at an entry level; and  
10 (2) nonstandard industry job positions and  
11 personal support services."

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

14 "7-2F-2. DEFINITIONS.--As used in the Film Production  
15 Tax Credit Act:

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

22 B. "background artist" means a person who is not a  
23 performing artist but is a person of atmospheric business  
24 whose work includes atmospheric noise, normal actions,  
25 gestures and facial expressions of that person's assignment;

1 or a person of atmospheric business whose work includes  
2 special abilities that are not stunts; or a substitute for  
3 another actor, whether photographed as a double or acting as  
4 a stand-in;

5 C. "commercial audiovisual product" means a film  
6 or a videogame intended for commercial exploitation;

7 D. "division" means the New Mexico film division  
8 of the economic development department;

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

12 F. "film" means a single medium or multimedia  
13 program, excluding advertising messages other than national  
14 or regional advertising messages intended for exhibition,  
15 that:

16 (1) is fixed on film, a digital medium,  
17 videotape, computer disc, laser disc or other similar  
18 delivery medium;

19 (2) can be viewed or reproduced;

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

22 (4) is intended for reasonable commercial  
23 exploitation for the delivery medium used;

24 G. "fiscal year" means the state fiscal year  
25 beginning on July 1;

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

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

19           J. "performing artist" means an actor, on-camera  
20 stuntperson, puppeteer, pilot who is a stuntperson or actor,  
21 specialty foreground performer or narrator; and who speaks a  
22 line of dialogue, is identified with the product or reacts to  
23 narration as assigned. "Performing artist" does not include  
24 a background artist;

25           K. "personal services business" means a business

1 organization, with or without physical presence, that  
2 receives payments pursuant to the Film Production Tax Credit  
3 Act for the services of a performing artist;

4 L. "physical presence" means a physical address in  
5 New Mexico from which a vendor conducts business, stores  
6 inventory or otherwise creates, assembles or offers for sale  
7 the product purchased or leased by a film production company  
8 and the business owner or an employee of the business is a  
9 resident;

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

18 N. "principal photography" means the production of  
19 a film during which the main visual elements are created; and

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

25 (1) sound stage with contiguous, clear-span

1 floor space of at least seven thousand square feet and a  
2 ceiling height of no less than twenty-one feet; or

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

8 SECTION 3. Section 7-2F-4 NMSA 1978 (being Laws 2011,  
9 Chapter 165, Section 5) is amended to read:

10 "7-2F-4. REPORTING--ACCOUNTABILITY.--

11 A. The economic development department shall:

12 (1) collect data to be used in an  
13 econometric tool that objectively assesses the effectiveness  
14 of the credits provided by the Film Production Tax Credit  
15 Act;

16 (2) track the direct expenditures for the  
17 credits;

18 (3) with the support and assistance of the  
19 legislative finance committee staff and the taxation and  
20 revenue department, review and assess the analysis developed  
21 in Paragraph (1) of this subsection and create a report for  
22 presentation to the revenue stabilization and tax policy  
23 committee and the legislative finance committee that provides  
24 an objective assessment of the effectiveness of the credits;  
25 and

1 (4) report annually to the revenue  
2 stabilization and tax policy committee and the legislative  
3 finance committee on aggregate approved tax credits made  
4 pursuant to the Film Production Tax Credit Act.

5 B. The division shall develop a form on which the  
6 taxpayer claiming a credit pursuant to the Film Production  
7 Tax Credit Act shall submit a report to accompany the  
8 taxpayer's application for that credit.

9 C. With respect to the film on which the  
10 application for a credit is based, the film production  
11 company shall report to the division at a minimum the  
12 following information:

13 (1) the total aggregate wages of the members  
14 of the New Mexico resident crew;

15 (2) the number of New Mexico residents  
16 employed;

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

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

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

23 (6) the aggregate wages paid to the members  
24 of the nonresident crew while working in New Mexico; and

25 (7) other information deemed necessary by

1 the division and economic development department to determine  
2 the effectiveness of the credit.

3 D. For purposes of assessing the effectiveness of  
4 a credit, the inability of the economic development  
5 department to aggregate data due to sample size shall not  
6 relieve the department of the requirement to report all  
7 relevant data to the legislature. The division shall provide  
8 notice to a film production company applying for a credit  
9 that information provided to the division may be revealed by  
10 the department in reports to the legislature."

11 SECTION 4. A new section of the Film Production Tax  
12 Credit Act is enacted to read:

13 "ADDITIONAL DEFINITIONS.--As used in Sections 5 through  
14 11 of this 2015 act:

15 A. "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  
20 or fees for talent, management or labor to a person who is a  
21 New Mexico resident;

22 (b) payment for standard industry craft  
23 inventory when provided by a resident industry crew in  
24 addition to its industry crew services;

25 (c) payment for wages and per diem for



1 a performing artist who is not a New Mexico resident and who  
2 is directly employed by a film production company; provided  
3 that the film production company deducts and remits, or  
4 causes to be deducted and remitted, income tax from the first  
5 day of services rendered in New Mexico at the maximum rate  
6 pursuant to the Withholding Tax Act;

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

21 (e) any of the following provided by a  
22 vendor: 1) the story and scenario to be used for a film;  
23 2) set construction and operations, wardrobe, accessories and  
24 related services; 3) photography, sound synchronization,  
25 lighting and related services; 4) editing and related

1 services; 5) rental of facilities and equipment; 6) leasing  
2 of vehicles, not including the chartering of aircraft for  
3 out-of-state transportation; however, New Mexico-based  
4 chartered aircraft for in-state transportation directly  
5 attributable to the production shall be considered a direct  
6 production expenditure; provided that only the first one  
7 hundred dollars (\$100) of the daily expense of leasing a  
8 vehicle for passenger transportation on roadways in the state  
9 may be claimed as a direct production expenditure; 7) food or  
10 lodging; provided that only the first one hundred fifty  
11 dollars (\$150) of lodging per individual per day is eligible  
12 to be claimed as a direct production expenditure;  
13 8) commercial airfare if purchased through a New Mexico-based  
14 travel agency or travel company for travel to and from  
15 New Mexico or within New Mexico that is directly attributable  
16 to the production; 9) insurance coverage and bonding if  
17 purchased through a New Mexico-based insurance agent, broker  
18 or bonding agent; 10) services for an external audit upon  
19 submission of an application for a film production tax credit  
20 by an accounting firm that submits the application pursuant  
21 to Subsection I of Section 5 of this 2015 act; and 11) other  
22 direct costs of producing a film in accordance with generally  
23 accepted entertainment industry practice; and

24 (2) does not include an expenditure for:

25 (a) a gift with a value greater than

1 twenty-five dollars (\$25.00);

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

7 (c) entertainment, amusement or  
8 recreation; or

9 (d) subcontracted goods or services  
10 provided by a vendor when subcontractors are not subject to  
11 state taxation, such as equipment and locations provided by  
12 the military, government and religious organizations;

13 B. "film production company" means a person that  
14 produces one or more films or any part of a film and that  
15 commences principal photography on or after January 1, 2016;  
16 and

17 C. "vendor" means a person who sells or leases  
18 goods or services that are related to standard industry craft  
19 inventory, who has a physical presence in New Mexico and is  
20 subject to gross receipts tax pursuant to the Gross Receipts  
21 and Compensating Tax Act and income tax pursuant to the  
22 Income Tax Act or corporate income tax pursuant to the  
23 Corporate Income and Franchise Tax Act but excludes a  
24 personal services business."

25 SECTION 5. A new section of the Film Production Tax

1 Credit Act is enacted to read:

2 "FILM AND TELEVISION TAX CREDIT--FILM PRODUCTION  
3 COMPANIES THAT COMMENCE PRINCIPAL PHOTOGRAPHY ON OR AFTER  
4 JANUARY 1, 2016.--

5 A. The tax credit created by this section may be  
6 referred to as the "film and television tax credit".

7 B. An eligible film production company may apply  
8 for, and the taxation and revenue department may allow,  
9 subject to the limitation in Section 11 of this 2015 act, a  
10 tax credit in an amount equal to twenty-five percent of:

11 (1) direct production expenditures made in  
12 New Mexico that:

13 (a) are directly attributable to the  
14 production in New Mexico of a film or commercial audiovisual  
15 product;

16 (b) are subject to taxation by the  
17 state of New Mexico;

18 (c) exclude direct production  
19 expenditures for which another taxpayer claims the film and  
20 television tax credit; and

21 (d) do not exceed the usual and  
22 customary cost of the goods or services acquired when  
23 purchased by unrelated parties. The secretary of taxation  
24 and revenue may determine the value of the goods or services  
25 for purposes of this section when the buyer and seller are

1 affiliated persons or the sale or purchase is not an arm's  
2 length transaction; and

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

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

7 (b) are for postproduction services  
8 performed in New Mexico;

9 (c) are subject to taxation by the  
10 state of New Mexico;

11 (d) exclude postproduction expenditures  
12 for which another taxpayer claims the film and television tax  
13 credit; and

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

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

1           D. The film and television tax credit shall not be  
2 claimed with respect to direct production expenditures or  
3 postproduction expenditures for which the film production  
4 company has delivered a nontaxable transaction certificate  
5 pursuant to Section 7-9-86 NMSA 1978.

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

16           F. To be eligible for the film and television tax  
17 credit, a film production company shall submit to the  
18 division information required by the division to demonstrate  
19 conformity with the requirements of the Film Production Tax  
20 Credit Act, including detailed information on each direct  
21 production expenditure and each postproduction expenditure.  
22 A film production company shall provide to the division a  
23 projection of the film and television tax credit claim the  
24 film production company plans to submit in the fiscal year.  
25 In addition, the film production company shall agree in

1 writing:

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

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

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

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

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

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

24 (5) to submit a completed application for  
25 the film and television tax credit and supporting

1 documentation to the division within one year of the close of  
2 the film production company's taxable year in which the  
3 expenditures in New Mexico were incurred for the registered  
4 project and that are included in the credit claim.

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

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

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



1 postproduction expenditures made in New Mexico with respect  
2 to the film production for which the film production company  
3 is seeking the film and television tax credit; provided that  
4 for the film and television tax credit, the application shall  
5 be submitted within one year of the date of the last direct  
6 production expenditure in New Mexico or the last  
7 postproduction expenditure in New Mexico incurred within the  
8 film production company's taxable year. If the amount of the  
9 requested tax credit exceeds five million dollars  
10 (\$5,000,000), the application shall also include the results  
11 of an audit, conducted by a certified public accountant  
12 licensed to practice in New Mexico, verifying that the  
13 expenditures have been made in compliance with the  
14 requirements of this section. If the requirements of this  
15 section have been complied with, subject to the provisions of  
16 Section 11 of this 2015 act, the taxation and revenue  
17 department shall approve the film and television tax credit  
18 and issue a document granting the tax credit.

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

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

3 "ADDITIONAL CREDIT--TELEVISION PILOTS AND SERIES.--

4 A. In addition to the credit provided by Section 5  
5 of this 2015 act, an additional five percent shall be applied  
6 in calculating the amount of the film and television tax  
7 credit to direct production expenditures, except as provided  
8 in Subsections C and D of this section, on:

9 (1) a standalone pilot intended for series  
10 television in New Mexico; and

11 (2) series television productions intended  
12 for commercial distribution with an order for at least six  
13 episodes in a single season; provided that the New Mexico  
14 budget for each of those six episodes is fifty thousand  
15 dollars (\$50,000) or more.

16 B. A film production company applying for an  
17 additional credit pursuant to this section shall not be  
18 eligible for the additional credit pursuant to Section 7 of  
19 this 2015 act.

20 C. Direct production expenditures that are  
21 payments to a nonresident performing artist in a standalone  
22 pilot shall not be eligible for the additional credit  
23 pursuant to this section.

24 D. Payments to a nonresident performing artist for  
25 a television series may be eligible for the additional credit

1 pursuant to this section; provided that:

2 (1) a television series completes at least  
3 one season of the scheduled episodes for that series in  
4 New Mexico;

5 (2) the film production company certifies  
6 the intention to produce a subsequent season to the series  
7 described in Paragraph (1) of this subsection in New Mexico;  
8 and

9 (3) the film production company, or its  
10 parent company, produces or begins production of an  
11 additional eligible television series in New Mexico during  
12 the same film production company's taxable year as the  
13 television series. Payments to a nonresident performing  
14 artist for the additional television series may also be  
15 eligible for the additional credit pursuant to this section."

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

18 "ADDITIONAL CREDIT--QUALIFIED PRODUCTION FACILITIES.--

19 A. In addition to the credit provided by Section 5  
20 of this 2015 act, an additional five percent shall be applied  
21 in calculating the amount of the film and television tax  
22 credit to direct production expenditures that are directly  
23 attributable and paid to a New Mexico resident who is hired  
24 as industry crew, or who is hired as a producer, writer or  
25 director working directly with the physical production and

1 has filed a New Mexico income tax return as a resident in the  
2 two previous taxable years. The direct production  
3 expenditures shall be on a production with a total new budget  
4 of:

5 (1) not more than thirty million dollars  
6 (\$30,000,000) that shoots at least ten principal photography  
7 days in New Mexico at a qualified production facility;  
8 provided that a film production company shall:

9 (a) shoot at least seven of those days  
10 at a sound stage that is a qualified production facility and  
11 the remaining number of required days, if any, at a standing  
12 set that is a qualified production facility; and

13 (b) for each of the ten days, include  
14 industry crew working on the premises of those facilities for  
15 a minimum of eight hours within a twenty-four-hour period; or

16 (2) thirty million dollars (\$30,000,000) or  
17 more that shoots at least fifteen principal photography days  
18 in New Mexico at a qualified production facility; provided  
19 that a film production company shall:

20 (a) shoot at least ten of those days at  
21 a sound stage that is a qualified production facility and the  
22 remaining number of required days, if any, at a standing set  
23 that is a qualified production facility; and

24 (b) for each day of the fifteen days,  
25 include industry crew working on the premises of the facility

1 for a minimum of eight hours within a twenty-four-hour  
2 period.

3 B. A film production company that receives an  
4 additional credit pursuant to Section 6 of this 2015 act  
5 shall not be eligible for the additional credit pursuant to  
6 this section."

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

9 "ADDITIONAL CREDIT--NONRESIDENT INDUSTRY CREW.--A film  
10 production company may apply for, and the taxation and  
11 revenue department may allow, subject to the limitation in  
12 this section, a tax credit in an amount equal to fifteen  
13 percent of the payment of wages, fringe benefits and per diem  
14 for nonresident industry crew; provided that:

15 A. the service for which payment is made is  
16 rendered in New Mexico;

17 B. payments for nonresident industry crew exclude  
18 payments for production designer, director of photography,  
19 line producer, costume designer, still unit photographer and  
20 driver whose sole responsibility is driving;

21 C. the number of nonresident industry crew shall  
22 be employed by the film production company in New Mexico, and  
23 shall be, as calculated by the division upon receipt of the  
24 first application for a film production tax credit and review  
25 of the project's New Mexico budget:

1 (1) four positions for up to two million  
2 dollars (\$2,000,000) of the final New Mexico budget;

3 (2) one additional position for each  
4 additional one million dollars (\$1,000,000) of the project's  
5 final New Mexico budget of at least two million dollars  
6 (\$2,000,000) up to ten million dollars (\$10,000,000);

7 (3) one additional position for each  
8 additional five million dollars (\$5,000,000) of the project's  
9 final New Mexico budget of at least ten million dollars  
10 (\$10,000,000) up to fifty million dollars (\$50,000,000);

11 (4) one additional position for every  
12 additional ten million dollars (\$10,000,000) of the project's  
13 final New Mexico budget of at least fifty million dollars  
14 (\$50,000,000) and thereafter;

15 (5) eight additional positions, above the  
16 number of positions described in this subsection, for a  
17 television pilot episode that has not been ordered to series  
18 at the time of New Mexico production; provided that the film  
19 production company certifies to the division that the series  
20 is intended to be produced in New Mexico if the pilot is  
21 ordered to series; and

22 (6) no more than thirty positions; provided  
23 that, at the discretion of the division, up to and including  
24 ten additional positions may be permitted if five other films  
25 are being produced in New Mexico at the time of the film

1 production company's production; and

2 D. the film production company makes financial or  
3 promotional contributions toward educational or work force  
4 development efforts in New Mexico as determined by the  
5 division, including:

6 (1) a payment to a New Mexico educational  
7 institution that administers at least one industry-recognized  
8 film or multimedia program, as determined by the division,  
9 equal to at least two and one-half percent of the direct  
10 production expenditures for the payment of wages, fringe  
11 benefits and per diem for nonresident industry crew made by  
12 the film production company to nonresident industry crew; or

13 (2) promotion of the New Mexico film  
14 industry by directors, actors or producers affiliated with  
15 the film production company's project through:

16 (a) social media that is managed by the  
17 state;

18 (b) radio interviews facilitated by the  
19 division;

20 (c) enhanced screen credit  
21 acknowledgments; or

22 (d) related events that are  
23 facilitated, conducted or sponsored by the division."

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

1 "PAYMENTS FOR PERFORMING ARTISTS--CREDIT LIMITATION.--  
2 That amount of a film and television tax credit for the total  
3 payments of direct production expenditures for the services  
4 of performing artists shall not exceed five million dollars  
5 (\$5,000,000) for services rendered by nonresident performing  
6 artists and featured resident principal performing artists in  
7 a production. This limitation shall not apply to the  
8 services of background artists and resident performing  
9 artists who are not cast in industry standard featured  
10 principal performer roles."

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

13 "REQUIREMENTS TO CONTRACT WITH CERTAIN VENDORS.--

14 A. A film production company shall make reasonable  
15 efforts, as determined by the division, to contract with a  
16 specialized vendor whose ordinary course of business directly  
17 relates to a standard industry craft inventory and that:

- 18 (1) provides services;
- 19 (2) provides inventory, for sale or lease,  
20 that is maintained in New Mexico and represented by the  
21 specialized vendor; or

22 (3) subcontracts similar standard industry  
23 craft inventory from other businesses with or without  
24 physical presence.

25 B. If a film production company does not contract



1 with a specialized vendor, but contracts with a vendor that  
2 provides services, does not sell or lease standard industry  
3 craft inventory and outsources inventory from out-of-state  
4 businesses for a film production company, the film production  
5 company shall provide documentation of reasonable efforts  
6 made to find a specialized vendor."

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

9 "CREDIT CLAIMS--AGGREGATE AMOUNT OF CLAIMS ALLOWED.--

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

1 subsequent fiscal year at the front of a queue of credit  
2 claimants submitting claims in the subsequent fiscal year in  
3 the order of the date on which the credit was authorized for  
4 payment.

5 B. Except as otherwise provided in this section,  
6 credit claims authorized for payment pursuant to the Film  
7 Production Tax Credit Act shall be paid pursuant to  
8 provisions of the Tax Administration Act to the taxpayer as  
9 follows:

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

14 (2) a credit claim amount of two million  
15 dollars (\$2,000,000) or more but less than five million  
16 dollars (\$5,000,000) per taxable year shall be divided into  
17 two equal payments, with the first payment to be made  
18 immediately upon authorization of the payment of the credit  
19 claim and the second payment to be made twelve months  
20 following the date of the first payment; and

21 (3) a credit claim amount of five million  
22 dollars (\$5,000,000) or more per taxable year shall be  
23 divided into three equal payments, with the first payment to  
24 be made immediately upon authorization of payment of the  
25 credit claim, the second payment to be made twelve months

1 following the date of the first payment and the third payment  
2 to be made twenty-four months following the date of the first  
3 payment.

4 C. For a fiscal year in which the amount of total  
5 credit claims authorized for payment is less than the  
6 aggregate amount of credit claims that may be authorized for  
7 payment pursuant to this section, the next scheduled payments  
8 for credit claims authorized for payment pursuant to  
9 Subsection B of this section shall be accelerated for payment  
10 for that fiscal year and shall be paid to a taxpayer pursuant  
11 to the Tax Administration Act and in the order in which  
12 outstanding payments are scheduled in the queue established  
13 pursuant to Subsections A and B of this section; provided  
14 that the total credit claims authorized for payment shall not  
15 exceed the aggregate amount of credit claims that may be  
16 authorized for payment pursuant to this section. If a  
17 partial payment is made pursuant to this subsection, the  
18 difference owed shall retain its original position in the  
19 queue.

20 D. Any amount of a credit claim that is carried  
21 forward pursuant to Subsection B of this section shall be  
22 subject to the limit on the aggregate amount of credit claims  
23 that may be authorized for payment pursuant to Subsection A of  
24 this section in the fiscal year in which that amount is paid.

25 E. A credit claim shall only be considered

1 received by the department if the credit claim is made on a  
2 complete return filed after the close of the taxable year.  
3 All direct production expenditures and postproduction  
4 expenditures incurred during the taxable year by a film  
5 production company shall be submitted as part of the same  
6 income tax return and paid pursuant to this section. A credit  
7 claim shall not be divided and submitted with multiple returns  
8 or in multiple years.

9 F. For purposes of determining the payment of  
10 credit claims pursuant to this section, the secretary of  
11 taxation and revenue may require that credit claims of  
12 affiliated persons be combined into one claim if necessary to  
13 accurately reflect closely integrated activities of affiliated  
14 persons." 

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