

1 SENATE CORPORATIONS AND TRANSPORTATION COMMITTEE SUBSTITUTE FOR  
2 SENATE BILL 565

3 **52ND LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2015**

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10 AN ACT

11 RELATING TO THE FILM PRODUCTION TAX CREDIT ACT; PROVIDING THAT  
12 THE FILM PRODUCTION TAX CREDIT ONLY APPLIES TO FILM PRODUCTION  
13 COMPANIES THAT COMMENCE PRINCIPAL PHOTOGRAPHY PRIOR TO JANUARY  
14 1, 2016; CREATING NEW CREDITS AND DEFINITIONS FOR FILM  
15 PRODUCTION COMPANIES THAT COMMENCE PRINCIPAL PHOTOGRAPHY ON AND  
16 AFTER JANUARY 1, 2016; PROVIDING THAT ALL CREDITS PROVIDED BY  
17 THE FILM PRODUCTION TAX CREDIT ACT ARE SUBJECT TO THE SAME  
18 AGGREGATE CAP; LIMITING THE TYPES OF DIRECT PRODUCTION  
19 EXPENDITURES THAT MAY BE ELIGIBLE FOR ADDITIONAL CREDIT;  
20 EXCLUDING PAYMENTS TO CERTAIN ARTISTS FROM THE LIMITATION OF  
21 DIRECT PRODUCTION EXPENDITURES; AMENDING AND CREATING  
22 DEFINITIONS USED IN THE FILM PRODUCTION TAX CREDIT ACT;  
23 LIMITING THE TYPES OF DIRECT PRODUCTION EXPENDITURES PAID TO A  
24 NONRESIDENT PERFORMING ARTIST THAT ARE ELIGIBLE FOR THE CREDIT.  
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1 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

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

4 "7-2F-1. FILM PRODUCTION TAX CREDIT--FILM PRODUCTION  
5 COMPANIES THAT COMMENCE PRINCIPAL PHOTOGRAPHY PRIOR TO JANUARY  
6 1, 2016.--

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

9 B. Except as otherwise provided in this section, an  
10 eligible film production company may apply for, and the  
11 taxation and revenue department may allow, subject to the  
12 limitation in this section, a tax credit in an amount equal to  
13 ~~[the percentage specified in Subsection B of this section]~~  
14 twenty-five percent of:

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

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

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

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

25 (d) do not exceed the usual and

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

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

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

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

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

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

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

25 [~~B. Except as otherwise provided in this section,~~

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1 ~~the percentage to be applied in calculating the amount of the~~  
2 ~~film production tax credit is twenty-five percent.]~~

3 C. In addition to the percentage applied pursuant  
4 to Subsection B of this section, another five percent shall be  
5 applied in calculating the amount of the film production tax  
6 credit to direct production expenditures:

7 (1) on a standalone pilot intended for series  
8 television in New Mexico or on series television productions  
9 intended for commercial distribution with an order for at least  
10 six episodes in a single season; provided that the New Mexico  
11 budget [per episode] for each of those six episodes is fifty  
12 thousand dollars (\$50,000) or more; or

13 (2) ~~[that]~~ on a production with a total New  
14 Mexico budget of the following amounts; provided that the  
15 expenditures are directly attributable [to the wages and fringe  
16 benefits] and paid to a New Mexico resident [directly employed  
17 in an industry crew position, excluding a performing artist, on  
18 a production with a total budget of] who is hired as industry  
19 crew, or who is hired as a producer, writer or director working  
20 directly with the physical production and has filed a New  
21 Mexico income tax return as a resident in the two previous  
22 taxable years:

23 (a) not more than thirty million dollars  
24 (\$30,000,000) that shoots at least ten principal photography  
25 days in New Mexico at a qualified production facility [~~in New~~

1 ~~Mexico~~]; provided that a film production company in principal  
 2 photography on or after April 10, 2015 shall: 1) shoot at  
 3 least seven of those days at a sound stage that is a qualified  
 4 production facility and the remaining number of required days,  
 5 if any, at a standing set that is a qualified production  
 6 facility; and 2) for each of the ten days, include industry  
 7 crew working on the premises of those facilities for a minimum  
 8 of eight hours within a twenty-four-hour period; or

9 (b) thirty million dollars (\$30,000,000)  
 10 or more that shoots at least fifteen principal photography days  
 11 in New Mexico at a qualified production facility [~~in New~~  
 12 ~~Mexico~~]; provided that a film production company in principal  
 13 photography on or after April 10, 2015 shall: 1) shoot at  
 14 least ten of those days at a sound stage that is a qualified  
 15 production facility and the remaining number of required days,  
 16 if any, at a standing set that is a qualified production  
 17 facility; and 2) for each day of the fifteen days, include  
 18 industry crew working on the premises of the facility for a  
 19 minimum of eight hours within a twenty-four-hour period.

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

25 E. A claim for film production tax credits shall be

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1 filed as part of a return filed pursuant to the Income Tax Act  
2 or the Corporate Income and Franchise Tax Act or an information  
3 return filed by a pass-through entity. The date a credit claim  
4 is received by the department shall determine the order that a  
5 credit claim is authorized for payment by the department.

6 Except as otherwise provided in this section, the aggregate  
7 amount of [~~the film production tax credit~~] claims for a credit  
8 provided by the Film Production Tax Credit Act that may be  
9 authorized for payment in any fiscal year is fifty million  
10 dollars (\$50,000,000) with respect to the direct production  
11 expenditures or postproduction expenditures made on film or  
12 commercial audiovisual products. A film production company  
13 that submits a claim for a film production tax credit that is  
14 unable to receive the tax credit because the claims for the  
15 fiscal year exceed the limitation in this subsection shall be  
16 placed for the subsequent fiscal year at the front of a queue  
17 of [~~film production tax~~] credit claimants submitting claims in  
18 the subsequent fiscal year in the order of the date on which  
19 the credit was authorized for payment.

20 F. If, in fiscal years 2013 through 2015, the  
21 aggregate amount in each fiscal year of the film production tax  
22 credit claims authorized for payment is less than fifty million  
23 dollars (\$50,000,000), then the difference in that fiscal year  
24 or ten million dollars (\$10,000,000), whichever is less, shall  
25 be added to the aggregate amount of the film production tax

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1 credit claims that may be authorized for payment pursuant to  
2 Subsection E of this section in the immediately following  
3 fiscal year.

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

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

11 (2) a credit claim amount of two million  
12 dollars (\$2,000,000) or more but less than five million dollars  
13 (\$5,000,000) per taxable year shall be divided into two equal  
14 payments, with the first payment to be made immediately upon  
15 authorization of the payment of the credit claim and the second  
16 payment to be made twelve months following the date of the  
17 first payment; and

18 (3) a credit claim amount of five million  
19 dollars (\$5,000,000) or more per taxable year shall be divided  
20 into three equal payments, with the first payment to be made  
21 immediately upon authorization of payment of the credit claim,  
22 the second payment to be made twelve months following the date  
23 of the first payment and the third payment to be made twenty-  
24 four months following the date of the first payment.

25 H. For a fiscal year in which the amount of total

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1 credit claims authorized for payment is less than the aggregate  
2 amount of [~~the film production tax~~] credit claims that may be  
3 authorized for payment pursuant to this section, the next  
4 scheduled payments for credit claims authorized for payment  
5 pursuant to Subsection G of this section shall be accelerated  
6 for payment for that fiscal year and shall be paid to a  
7 taxpayer pursuant to the Tax Administration Act and in the  
8 order in which outstanding payments are scheduled in the queue  
9 established pursuant to Subsections E and G of this section;  
10 provided that the total credit claims authorized for payment  
11 shall not exceed the aggregate amount of [~~the film production~~  
12 ~~tax~~] credit claims that may be authorized for payment pursuant  
13 to this section. If a partial payment is made pursuant to this  
14 subsection, the difference owed shall retain its original  
15 position in the queue.

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

22 J. A credit claim shall only be considered received  
23 by the department if the credit claim is made on a complete  
24 return filed after the close of the taxable year. All direct  
25 production expenditures and postproduction expenditures

1 incurred during the taxable year by a film production company  
2 shall be submitted as part of the same income tax return and  
3 paid pursuant to this section. A credit claim shall not be  
4 divided and submitted with multiple returns or in multiple  
5 years.

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

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

17 M. A production for which the film production tax  
18 credit is claimed pursuant to Paragraph (1) of Subsection [A] B  
19 of this section shall contain an acknowledgment to the state of  
20 New Mexico in the end screen credits that the production was  
21 filmed in New Mexico, and a state logo provided by the division  
22 shall be included and embedded in the end screen credits of  
23 long-form narrative film productions and television episodes,  
24 unless otherwise agreed upon in writing by the film production  
25 company and the division.

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1           N. To be eligible for the film production tax  
2 credit, a film production company shall submit to the division  
3 information required by the division to demonstrate conformity  
4 with the requirements of the Film Production Tax Credit Act,  
5 including detailed information on each direct production  
6 expenditure and each postproduction expenditure. A film  
7 production company shall make reasonable efforts, as determined  
8 by the division, to contract with a specialized vendor that  
9 provides goods and services, inventory or services directly  
10 related to that vendor's ordinary course of business. A film  
11 production company shall provide to the division a projection  
12 of the film production tax credit claim the film production  
13 company plans to submit in the fiscal year. In addition, the  
14 film production company shall agree in writing:

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

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

19                           (a) contains production company  
20 information, including the name of the production, the address  
21 of the production company and contact information that includes  
22 a working phone number, fax number and email address for both  
23 the local production office and the permanent production office  
24 to notify the public of the need to file creditor claims  
25 against the film production company; and

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

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

6 (4) to delay filing of a claim for the film  
7 production tax credit until the division delivers written  
8 notification to the taxation and revenue department that the  
9 film production company has fulfilled all requirements for the  
10 credit; and

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

16 0. The division shall determine the eligibility of  
17 the company and shall report this information to the taxation  
18 and revenue department in a manner and at times the economic  
19 development department and the taxation and revenue department  
20 shall agree upon. The division shall also post on its web site  
21 all information provided by the film production company that  
22 does not reveal revenue, income or other information that may  
23 jeopardize the confidentiality of income tax returns, including  
24 that the division shall report [~~monthly~~] quarterly the  
25 projected amount of credit claims for the fiscal year.

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1           P. To provide guidance to film production companies  
2 regarding the amount of credit capacity remaining in the fiscal  
3 year, the taxation and revenue department shall post monthly on  
4 that department's web site the aggregate amount of credits  
5 claimed and processed for the fiscal year.

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

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1 credit and issue a document granting the tax credit.

2 R. The film production company may apply all or a  
 3 portion of the film production tax credit granted against  
 4 personal income tax liability or corporate income tax  
 5 liability. If the amount of the film production tax credit  
 6 claimed exceeds the film production company's tax liability for  
 7 the taxable year in which the credit is being claimed, the  
 8 excess shall be refunded.

9 S. That amount of a film production tax credit for  
 10 total payments as applied to direct production expenditures for  
 11 the services of performing artists [~~the film production tax~~  
 12 ~~credit authorized by this section~~] shall not exceed five  
 13 million dollars (\$5,000,000) for services rendered by [~~all~~]  
 14 nonresident performing artists and featured resident principal  
 15 performing artists in a production [~~for which the film~~  
 16 ~~production tax credit is claimed~~]. This limitation shall not  
 17 apply to the services of background artists and resident  
 18 performing artists who are not cast in industry standard  
 19 featured principal performer roles.

20 T. As used in this section, "direct production  
 21 expenditure":

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

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

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

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

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

24 (2) does not include an expenditure for:

25 (a) a gift with a value greater than

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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 2)  
5 the expenditure is less than two thousand five hundred dollars  
6 (\$2,500);

7 (c) entertainment, amusement or  
8 recreation;

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 the  
12 military, government and religious organizations; or

13 (e) a service provided by a person who  
14 is not a New Mexico resident and employed in an industry crew  
15 position, excluding a performing artist, where it is the  
16 standard entertainment industry practice for the film  
17 production company to employ a person for that industry crew  
18 position, except when the person who is not a New Mexico  
19 resident is hired or subcontracted by a vendor; and when the  
20 film production company, as determined by the division and when  
21 applicable in consultation with industry, provides: 1)  
22 reasonable efforts to hire resident crew; and 2) financial or  
23 promotional contributions toward education or work force  
24 development efforts in New Mexico, including at least one of  
25 the following: a payment to a New Mexico public education

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1 institution that administers at least one industry-recognized  
2 film or multimedia program, as determined by the division, in  
3 an amount equal to two and one-half percent of payments made to  
4 nonresidents in approved positions employed by the vendor;  
5 promotion of the New Mexico film industry by directors, actors  
6 or executive producers affiliated with the production company's  
7 project through social media that is managed by the state;  
8 radio interviews facilitated by the division; enhanced screen  
9 credit acknowledgments; or related events that are facilitated,  
10 conducted or sponsored by the division.

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

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

25 (1) the standard industry job position of:

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- 1                   (a) a director;
- 2                   (b) a writer;
- 3                   (c) a producer;
- 4                   (d) an associate producer;
- 5                   (e) a co-producer;
- 6                   (f) an executive producer;
- 7                   (g) a production supervisor;
- 8                   (h) a director of photography;
- 9                   (i) a motion picture driver whose sole  
10 responsibility is driving;
- 11                   (j) a production or personal assistant;
- 12                   (k) a designer;
- 13                   (l) a still photographer; or
- 14                   (m) a carpenter and utility technician  
15 at an entry level; and
- 16                   (2) nonstandard industry job positions and  
17 personal support services."

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

20           "7-2F-2. DEFINITIONS.--As used in the Film Production Tax  
21 Credit Act:

22           A. "affiliated person" means a person who directly  
23 or indirectly owns or controls, is owned or controlled by or is  
24 under common ownership or control with another person through  
25 ownership of voting securities or other ownership interests

1 representing a majority of the total voting power of the  
 2 entity;

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

10 ~~[B.]~~ C. "commercial audiovisual product" means a  
 11 film or a videogame intended for commercial exploitation;

12 ~~[C. "direct production expenditure":~~

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

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

19 ~~(b) payment for services by a performing~~  
 20 ~~artist who is not a New Mexico resident and who is directly~~  
 21 ~~employed by the film production company; provided that the film~~  
 22 ~~production company deducts and remits, or causes to be deducted~~  
 23 ~~and remitted, income tax in New Mexico pursuant to the~~  
 24 ~~Withholding Tax Act;~~

25 ~~(c) payment to a personal services~~

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

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

1 ~~one hundred fifty dollars (\$150) of lodging per individual per~~  
 2 ~~day is eligible to be claimed as a direct production~~  
 3 ~~expenditure; 8) commercial airfare if purchased through a New~~  
 4 ~~Mexico-based travel agency or travel company for travel to and~~  
 5 ~~from New Mexico or within New Mexico that is directly~~  
 6 ~~attributable to the production; 9) insurance coverage and~~  
 7 ~~bonding if purchased through a New Mexico-based insurance~~  
 8 ~~agent, broker or bonding agent; and 10) other direct costs of~~  
 9 ~~producing a film in accordance with generally accepted~~  
 10 ~~entertainment industry practice; and~~

11 ~~(2) does not include an expenditure for:~~

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

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

19 ~~(c) entertainment, amusement or~~  
 20 ~~recreation;~~

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

25 ~~(e) a service provided by a person who~~

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1 ~~is not a New Mexico resident and employed in an industry crew~~  
2 ~~position, excluding a performing artist, where it is the~~  
3 ~~standard entertainment industry practice for the film~~  
4 ~~production company to employ a person for that industry crew~~  
5 ~~position, except when the person who is not a New Mexico~~  
6 ~~resident is hired or subcontracted by a vendor; and when the~~  
7 ~~film production company, as determined by the division and when~~  
8 ~~applicable in consultation with industry, provides: 1)~~  
9 ~~reasonable efforts to hire resident crew; and 2) financial or~~  
10 ~~in-kind contributions toward education or work force~~  
11 ~~development efforts in New Mexico, including at least one of~~  
12 ~~the following: a pre-approved workshop; on-set shadowing per~~  
13 ~~each approved position; or ten percent of the portion of the~~  
14 ~~tax credit attributable to the payment for services provided by~~  
15 ~~nonresidents employed by the vendor in the approved positions,~~  
16 ~~which equates to two and one-half percent of the respective~~  
17 ~~total direct production expenditure and which is allocated to~~  
18 ~~New Mexico public education institutions that administer at~~  
19 ~~least one industry-recognized film or multimedia program;]~~

20 D. "division" means the New Mexico film division of  
21 the economic development department;

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

25 F. "film" means a single medium or multimedia

1 program, excluding advertising messages other than national or  
 2 regional advertising messages intended for exhibition, that:

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

6 (2) can be viewed or reproduced;

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

9 (4) is intended for reasonable commercial  
 10 exploitation for the delivery medium used;

11 ~~G. "film production company" means a person that~~  
 12 ~~produces one or more films or any part of a film;~~

13 H.] G. "fiscal year" means the state fiscal year  
 14 beginning on July 1;

15 H. "industry crew" means a person in a position  
 16 that is off-camera and who provides technical services during  
 17 the physical production of a film. "Industry crew" does not  
 18 include a writer, director, producer, background artist or  
 19 performing artist;

20 I. "New Mexico resident" means an individual who is  
 21 domiciled in this state during any part of the taxable year or  
 22 an individual who is physically present in this state for one  
 23 hundred eighty-five days or more during the taxable year; but  
 24 any individual, other than someone who was physically present  
 25 in the state for one hundred eighty-five days or more during

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1 the taxable year and who, on or before the last day of the  
2 taxable year, changed the individual's place of abode to a  
3 place without this state with the bona fide intention of  
4 continuing actually to abide permanently without this state is  
5 not a resident for the purposes of the Film Production Tax  
6 Credit Act for periods after that change of abode;

7 J. "performing artist" means an actor, on-camera  
8 stuntperson, puppeteer, pilot who is a stuntperson or actor,  
9 specialty foreground performer or narrator; and who speaks a  
10 line of dialogue, is identified with the product or reacts to  
11 narration as assigned. "Performing artist" does not include a  
12 background artist;

13 [~~J.~~] K. "personal services business" means a  
14 business organization, with or without physical presence, that  
15 receives payments pursuant to the Film Production Tax Credit  
16 Act for the services of a performing artist;

17 [~~K.~~] L. "physical presence" means a physical  
18 address in New Mexico from which a vendor conducts business,  
19 stores inventory or otherwise creates, assembles or offers for  
20 sale the product purchased or leased by a film production  
21 company and the business owner or an employee of the business  
22 is a resident;

23 [~~L.~~] M. "postproduction expenditure" means an  
24 expenditure for editing, Foley recording, automatic dialogue  
25 replacement, sound editing, special effects, including

1 computer-generated imagery or other effects, scoring and music  
 2 editing, beginning and end credits, negative cutting,  
 3 soundtrack production, dubbing, subtitling or addition of sound  
 4 or visual effects; but not including an expenditure for  
 5 advertising, marketing, distribution or expense payments;

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

8 [~~M.~~] O. "qualified production facility" means a  
 9 building, or complex of buildings, [~~and their~~] building  
 10 improvements and associated back-lot facilities in which films  
 11 are or are intended to be regularly produced and that contain  
 12 at least one:

13 (1) sound stage with contiguous, clear-span  
 14 floor space of at least seven thousand square feet and a  
 15 ceiling height of no less than twenty-one feet; or

16 (2) standing set that includes at least one  
 17 interior, and at least five exteriors, built or re-purposed for  
 18 film production use on a continual basis and is located on at  
 19 least fifty acres of contiguous space designated for film  
 20 production use [and

21 ~~N. "vendor" means a person selling goods or~~  
 22 ~~services that has a physical presence in New Mexico and is~~  
 23 ~~subject to gross receipts tax pursuant to the Gross Receipts~~  
 24 ~~and Compensating Tax Act and income tax pursuant to the Income~~  
 25 ~~Tax Act or corporate income tax pursuant to the Corporate~~

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1 ~~Income and Franchise Tax Act but excludes services provided by~~  
2 ~~nonresidents hired or subcontracted if the tasks and~~  
3 ~~responsibilities are associated with:~~

4 ~~(1) the standard industry job position of:~~

5 ~~(a) a director;~~

6 ~~(b) a writer;~~

7 ~~(c) a producer;~~

8 ~~(d) an associate producer;~~

9 ~~(e) a co-producer;~~

10 ~~(f) an executive producer;~~

11 ~~(g) a production supervisor;~~

12 ~~(h) a director of photography;~~

13 ~~(i) a motion picture driver whose sole~~

14 ~~responsibility is driving;~~

15 ~~(j) a production or personal assistant;~~

16 ~~(k) a designer;~~

17 ~~(l) a still photographer; or~~

18 ~~(m) a carpenter and utility technician~~

19 ~~at an entry level; and~~

20 ~~(2) nonstandard industry job positions and~~

21 ~~personal support services]."~~

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

24 "7-2F-4. REPORTING--ACCOUNTABILITY.--

25 A. The economic development department shall:

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1 (1) collect data to be used in an econometric  
 2 tool that objectively assesses the effectiveness of the [~~film~~  
 3 ~~production tax credit~~] credits provided by the Film Production  
 4 Tax Credit Act;

5 (2) track the direct expenditures for the  
 6 [~~film production tax credit~~] credits;

7 (3) with the support and assistance of the  
 8 legislative finance committee staff and the taxation and  
 9 revenue department, review and assess the analysis developed in  
 10 Paragraph (1) of this subsection and create a report for  
 11 presentation to the revenue stabilization and tax policy  
 12 committee and the legislative finance committee that provides  
 13 an objective assessment of the effectiveness of the [~~film~~  
 14 ~~production tax credit~~] credits; and

15 (4) report annually to the revenue  
 16 stabilization and tax policy committee and the legislative  
 17 finance committee on aggregate approved tax credits made  
 18 pursuant to the Film Production Tax Credit Act.

19 B. The division shall develop a form on which the  
 20 taxpayer claiming a [~~film production tax~~] credit pursuant to  
 21 the Film Production Tax Credit Act shall submit a report to  
 22 accompany the taxpayer's application for that credit.

23 C. With respect to the film on which the  
 24 application for a [~~film production tax~~] credit is based, the  
 25 film production company shall report to the division at a

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1 minimum the following information:

2 (1) the total aggregate wages of the members  
3 of the New Mexico resident crew;

4 (2) the number of New Mexico residents  
5 employed;

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

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

10 (5) the total expenditures made in New Mexico  
11 that do not qualify for the [~~film production tax~~] credit;

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

14 (7) other information deemed necessary by the  
15 division and economic development department to determine the  
16 effectiveness of the [~~film production tax~~] credit.

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

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

3           "[NEW MATERIAL] ADDITIONAL DEFINITIONS.--As used in  
4 Sections 5 through 11 of this 2015 act:

5           A. "direct production expenditure":

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

9                           (a) payment of wages, fringe benefits or  
10 fees for talent, management or labor to a person who is a New  
11 Mexico resident;

12                           (b) payment for standard industry craft  
13 inventory when provided by a resident industry crew in addition  
14 to its industry crew services;

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

22                           (d) payment to a personal services  
23 business on the wages and per diem paid to a performing artist  
24 of the personal services business if: 1) the personal services  
25 business pays gross receipts tax in New Mexico on the portion

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

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

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1 expenditure; 8) commercial airfare if purchased through a New  
 2 Mexico-based travel agency or travel company for travel to and  
 3 from New Mexico or within New Mexico that is directly  
 4 attributable to the production; 9) insurance coverage and  
 5 bonding if purchased through a New Mexico-based insurance  
 6 agent, broker or bonding agent; 10) services for an external  
 7 audit upon submission of an application for a film production  
 8 tax credit by an accounting firm that submits the application  
 9 pursuant to Subsection I of Section 5 of this 2015 act; and 11)  
 10 other direct costs of producing a film in accordance with  
 11 generally accepted entertainment industry practice; and

12 (2) does not include an expenditure for:

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

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

20 (c) entertainment, amusement or  
 21 recreation; or

22 (d) subcontracted goods or services  
 23 provided by a vendor when subcontractors are not subject to  
 24 state taxation, such as equipment and locations provided by the  
 25 military, government and religious organizations;

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

5           C. "vendor" means a person who sells or leases  
6 goods or services that are related to standard industry craft  
7 inventory, who has a physical presence in New Mexico and is  
8 subject to gross receipts tax pursuant to the Gross Receipts  
9 and Compensating Tax Act and income tax pursuant to the Income  
10 Tax Act or corporate income tax pursuant to the Corporate  
11 Income and Franchise Tax Act but excludes a personal services  
12 business."

13           **SECTION 5.** A new section of the Film Production Tax  
14 Credit Act is enacted to read:

15           "[NEW MATERIAL] FILM AND TELEVISION TAX CREDIT--FILM  
16 PRODUCTION COMPANIES THAT COMMENCE PRINCIPAL PHOTOGRAPHY ON OR  
17 AFTER JANUARY 1, 2016.--

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

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

24           (1) direct production expenditures made in New  
25 Mexico that:

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

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

6 (c) exclude direct production  
7 expenditures for which another taxpayer claims the film and  
8 television tax credit; and

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

16 (2) postproduction expenditures made in New  
17 Mexico that:

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

20 (b) are for postproduction services  
21 performed in New Mexico;

22 (c) are subject to taxation by the state  
23 of New Mexico;

24 (d) exclude postproduction expenditures  
25 for which another taxpayer claims the film and television tax

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1 credit; and

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

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

14 D. The film and television tax credit shall not be  
15 claimed with respect to direct production expenditures or  
16 postproduction expenditures for which the film production  
17 company has delivered a nontaxable transaction certificate  
18 pursuant to Section 7-9-86 NMSA 1978.

19 E. A production for which the film and television  
20 tax credit is claimed pursuant to Paragraph (1) of Subsection B  
21 of this section shall contain an acknowledgment to the state of  
22 New Mexico in the end screen credits that the production was  
23 filmed in New Mexico, and a state logo provided by the division  
24 shall be included and embedded in the end screen credits of  
25 long-form narrative film productions and television episodes,

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1 unless otherwise agreed upon in writing by the film production  
2 company and the division.

3 F. To be eligible for the film and television tax  
4 credit, a film production company shall submit to the division  
5 information required by the division to demonstrate conformity  
6 with the requirements of the Film Production Tax Credit Act,  
7 including detailed information on each direct production  
8 expenditure and each postproduction expenditure. A film  
9 production company shall provide to the division a projection  
10 of the film and television tax credit claim the film production  
11 company plans to submit in the fiscal year. In addition, the  
12 film production company shall agree in writing:

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

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

17 (a) contains production company  
18 information, including the name of the production, the address  
19 of the production company and contact information that includes  
20 a working phone number, fax number and email address for both  
21 the local production office and the permanent production office  
22 to notify the public of the need to file creditor claims  
23 against the film production company; and

24 (b) remains posted on the web site until  
25 all financial obligations incurred in the state by the film

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1 production company have been paid;

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

4 (4) to delay filing of a claim for the film  
5 and television tax credit until the division delivers written  
6 notification to the taxation and revenue department that the  
7 film production company has fulfilled all requirements for the  
8 credit; and

9 (5) to submit a completed application for the  
10 film and television tax credit and supporting documentation to  
11 the division within one year of the close of the film  
12 production company's taxable year in which the expenditures in  
13 New Mexico were incurred for the registered project and that  
14 are included in the credit claim.

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

25 H. To provide guidance to film production companies

1 regarding the amount of credit capacity remaining in the fiscal  
2 year, the taxation and revenue department shall post monthly on  
3 that department's web site the aggregate amount of credits  
4 claimed and processed for the fiscal year.

5 I. To receive a film and television tax credit, a  
6 film production company shall apply to the taxation and revenue  
7 department on forms and in the manner the department may  
8 prescribe. The application shall include a certification of  
9 the amount of direct production expenditures or postproduction  
10 expenditures made in New Mexico with respect to the film  
11 production for which the film production company is seeking the  
12 film and television tax credit; provided that for the film and  
13 television tax credit, the application shall be submitted  
14 within one year of the date of the last direct production  
15 expenditure in New Mexico or the last postproduction  
16 expenditure in New Mexico incurred within the film production  
17 company's taxable year. If the amount of the requested tax  
18 credit exceeds five million dollars (\$5,000,000), the  
19 application shall also include the results of an audit,  
20 conducted by a certified public accountant licensed to practice  
21 in New Mexico, verifying that the expenditures have been made  
22 in compliance with the requirements of this section. If the  
23 requirements of this section have been complied with, subject  
24 to the provisions of Section 11 of this 2015 act, the taxation  
25 and revenue department shall approve the film and television

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1 tax credit and issue a document granting the tax credit.

2 J. The film production company may apply all or a  
3 portion of the film and television tax credit granted against  
4 personal income tax liability or corporate income tax  
5 liability. If the amount of the film and television tax credit  
6 claimed exceeds the film production company's tax liability for  
7 the taxable year in which the credit is being claimed, the  
8 excess shall be refunded."

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

11 "[NEW MATERIAL] ADDITIONAL CREDIT--TELEVISION PILOTS AND  
12 SERIES.--

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

18 (1) a standalone pilot intended for series  
19 television in New Mexico; and

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

25 B. A film production company applying for an

1 additional credit pursuant to this section shall not be  
 2 eligible for the additional credit pursuant to Section 7 of  
 3 this 2015 act.

4 C. Direct production expenditures that are payments  
 5 to a nonresident performing artist in a standalone pilot shall  
 6 not be eligible for the additional credit pursuant to this  
 7 section.

8 D. Payments to a nonresident performing artist for  
 9 a television series may be eligible for the additional credit  
 10 pursuant to this section; provided that:

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

13 (2) the film production company certifies the  
 14 intention to produce a subsequent season to the series  
 15 described in Paragraph (1) of this subsection in New Mexico;

16 and

17 (3) the film production company, or its parent  
 18 company, produces or begins production of an additional  
 19 eligible television series in New Mexico during the same film  
 20 production company's taxable year as the television series.

21 Payments to a nonresident performing artist for the additional  
 22 television series may also be eligible for the additional  
 23 credit pursuant to this section."

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

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1           "[NEW MATERIAL] ADDITIONAL CREDIT--QUALIFIED PRODUCTION  
2 FACILITIES.--

3           A. In addition to the credit provided by Section 5  
4 of this 2015 act, an additional five percent shall be applied  
5 in calculating the amount of the film and television tax credit  
6 to direct production expenditures that are directly  
7 attributable and paid to a New Mexico resident who is hired as  
8 industry crew, or who is hired as a producer, writer or  
9 director working directly with the physical production and has  
10 filed a New Mexico income tax return as a resident in the two  
11 previous taxable years. The direct production expenditures  
12 shall be on a production with a total new budget of:

13                       (1) not more than thirty million dollars  
14 (\$30,000,000) that shoots at least ten principal photography  
15 days in New Mexico at a qualified production facility; provided  
16 that a film production company shall:

17                               (a) shoot at least seven of those days  
18 at a sound stage that is a qualified production facility and  
19 the remaining number of required days, if any, at a standing  
20 set that is a qualified production facility; and

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

24                       (2) thirty million dollars (\$30,000,000) or  
25 more that shoots at least fifteen principal photography days in

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1 New Mexico at a qualified production facility; provided that a  
2 film production company shall:

3 (a) shoot at least ten of those days at  
4 a sound stage that is a qualified production facility and the  
5 remaining number of required days, if any, at a standing set  
6 that is a qualified production facility; and

7 (b) for each day of the fifteen days,  
8 include industry crew working on the premises of the facility  
9 for a minimum of eight hours within a twenty-four-hour period.

10 B. A film production company that receives an  
11 additional credit pursuant to Section 6 of this 2015 act shall  
12 not be eligible for the additional credit pursuant to this  
13 section."

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

16 "[NEW MATERIAL] ADDITIONAL CREDIT--NONRESIDENT INDUSTRY  
17 CREW.--A film production company may apply for, and the  
18 taxation and revenue department may allow, subject to the  
19 limitation in this section, a tax credit in an amount equal to  
20 fifteen percent of the payment of wages, fringe benefits and  
21 per diem for nonresident industry crew; provided that:

22 A. the service for which payment is made is  
23 rendered in New Mexico;

24 B. payments for nonresident industry crew exclude  
25 payments for production designer, director of photography, line

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1 producer, costume designer, still unit photographer and driver  
2 whose sole responsibility is driving;

3 C. the number of nonresident industry crew shall be  
4 employed by the film production company in New Mexico, and  
5 shall be, as calculated by the division upon receipt of the  
6 first application for a film production tax credit and review  
7 of the project's New Mexico budget:

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

10 (2) one additional position for each  
11 additional one million dollars (\$1,000,000) of the project's  
12 final New Mexico budget of at least two million dollars  
13 (\$2,000,000) up to ten million dollars (\$10,000,000);

14 (3) one additional position for each  
15 additional five million dollars (\$5,000,000) of the project's  
16 final New Mexico budget of at least ten million dollars  
17 (\$10,000,000) up to fifty million dollars (\$50,000,000);

18 (4) one additional position for every  
19 additional ten million dollars (\$10,000,000) of the project's  
20 final New Mexico budget of at least fifty million dollars  
21 (\$50,000,000) and thereafter;

22 (5) eight additional positions, above the  
23 number of positions described in this subsection, for a  
24 television pilot episode that has not been ordered to series at  
25 the time of New Mexico production; provided that the film

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1 production company certifies to the division that the series is  
 2 intended to be produced in New Mexico if the pilot is ordered  
 3 to series; and

4 (6) no more than thirty positions; provided  
 5 that, at the discretion of the division, up to and including  
 6 ten additional positions may be permitted if five other films  
 7 are being produced in New Mexico at the time of the film  
 8 production company's production; and

9 D. the film production company makes financial or  
 10 promotional contributions toward educational or work force  
 11 development efforts in New Mexico as determined by the  
 12 division, including:

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

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

23 (a) social media that is managed by the  
 24 state;

25 (b) radio interviews facilitated by the

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1 division;

2 (c) enhanced screen credit  
3 acknowledgments; or

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

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

8 "[NEW MATERIAL] PAYMENTS FOR PERFORMING ARTISTS--CREDIT  
9 LIMITATION.--That amount of a film and television tax credit  
10 for the total payments of direct production expenditures for  
11 the services of performing artists shall not exceed five  
12 million dollars (\$5,000,000) for services rendered by  
13 nonresident performing artists and featured resident principal  
14 performing artists in a production. This limitation shall not  
15 apply to the services of background artists and resident  
16 performing artists who are not cast in industry standard  
17 featured principal performer roles."

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

20 "[NEW MATERIAL] REQUIREMENTS TO CONTRACT WITH CERTAIN  
21 VENDORS.--

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

- 1 (1) provides services;
- 2 (2) provides inventory, for sale or lease,
- 3 that is maintained in New Mexico and represented by the
- 4 specialized vendor; or
- 5 (3) subcontracts similar standard industry
- 6 craft inventory from other businesses with or without physical
- 7 presence.

8 B. If a film production company does not contract  
9 with a specialized vendor, but contracts with a vendor that  
10 provides services, does not sell or lease standard industry  
11 craft inventory and outsources inventory from out-of-state  
12 businesses for a film production company, the film production  
13 company shall provide documentation of reasonable efforts made  
14 to find a specialized vendor."

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

17 "NEW MATERIAL CREDIT CLAIMS--AGGREGATE AMOUNT OF CLAIMS  
18 ALLOWED.--

19 A. A claim for a film and television tax credit  
20 shall be filed as part of a return filed pursuant to the Income  
21 Tax Act or the Corporate Income and Franchise Tax Act or an  
22 information return filed by a pass-through entity. The date a  
23 credit claim is received by the department shall determine the  
24 order that a credit claim is authorized for payment by the  
25 department. The aggregate amount of claims for a credit

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underscored material = new  
[bracketed material] = delete

1 provided by the Film Production Tax Credit Act that may be  
2 authorized for payment in any fiscal year is fifty million  
3 dollars (\$50,000,000) with respect to the direct production  
4 expenditures or postproduction expenditures made on film or  
5 commercial audiovisual products. A film production company  
6 that submits a claim for a film and television tax credit that  
7 is unable to receive the tax credit because the claims for the  
8 fiscal year exceed the limitation in this subsection shall be  
9 placed for the subsequent fiscal year at the front of a queue  
10 of credit claimants submitting claims in the subsequent fiscal  
11 year in the order of the date on which the credit was  
12 authorized for payment.

13 B. Except as otherwise provided in this section,  
14 credit claims authorized for payment pursuant to the Film  
15 Production Tax Credit Act shall be paid pursuant to provisions  
16 of the Tax Administration Act to the taxpayer as follows:

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

20 (2) a credit claim amount of two million  
21 dollars (\$2,000,000) or more but less than five million dollars  
22 (\$5,000,000) per taxable year shall be divided into two equal  
23 payments, with the first payment to be made immediately upon  
24 authorization of the payment of the credit claim and the second  
25 payment to be made twelve months following the date of the

1 first payment; and

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

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

24 D. Any amount of a credit claim that is carried  
25 forward pursuant to Subsection B of this section shall be

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1 subject to the limit on the aggregate amount of credit claims  
2 that may be authorized for payment pursuant to Subsection A of  
3 this section in the fiscal year in which that amount is paid.

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

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