

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

HOUSE BILL 302

**50TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2012**

INTRODUCED BY

Nate Gentry

AN ACT

RELATING TO TAXATION; PROVIDING FOR INDEXING FOR INFLATION OF THE LIMITATION ON FILM PRODUCTION TAX CREDIT CLAIMS AUTHORIZED FOR PAYMENT; RECONCILING MULTIPLE AMENDMENTS TO THE SAME SECTION OF LAW IN LAWS 2011; RECONCILING CONFLICTING AMENDMENTS TO THE SAME SECTION OF LAW IN LAWS 2011 BY REPEALING LAWS 2011, CHAPTER 165, SECTION 3.

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

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

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

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

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

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

1 film production company may apply for, and the taxation and  
2 revenue department may allow, subject to the limitation in  
3 Subsection D of this section, a tax credit in an amount equal  
4 to the percentage specified in Subsection B of this section of:

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

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

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

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

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

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

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

.188111.1

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

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

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

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

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

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

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

24 D. A claim for film production tax credits shall be  
25 filed as part of a return filed pursuant to the Income Tax Act

.188111.1

underscored material = new  
[bracketed material] = delete

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

17 Beginning in fiscal year 2013, the limitation on film  
18 production tax credit claims authorized for payment shall be  
19 indexed for inflation pursuant to the Film Production Tax  
20 Credit Act.

21 E. Credit claims authorized for payment pursuant to  
22 the Film Production Tax Credit Act shall be paid pursuant to  
23 provisions of the Tax Administration Act to the taxpayer as  
24 follows:

- 25 (1) a credit claim amount of less than two

.188111.1

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

1 million dollars (\$2,000,000) per taxable year shall be paid  
2 immediately upon authorization for payment of the credit claim;

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

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

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

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

.188111.1

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

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

12 I. 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 J. A long-form narrative film production for which  
18 the film production tax credit is claimed pursuant to Paragraph  
19 (1) of Subsection A of this section shall contain an  
20 acknowledgment that the production was filmed in New Mexico.

21 K. To be eligible for the film production tax  
22 credit, a film production company shall submit to the division  
23 information required by the division to demonstrate conformity  
24 with the requirements of the Film Production Tax Credit Act,  
25 including detailed information on each direct production

.188111.1

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

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

6 (1) to pay all obligations the film production  
7 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 address  
12 of the production company and contact information that includes  
13 a working phone number, fax number and email address for both  
14 the local production office and the permanent production office  
15 to notify the public of the need to file creditor claims  
16 against the film production company; and

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

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

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

.188111.1

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

1 credit; and

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

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

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

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

.188111.1



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

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

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

24 P. As applied to direct production expenditures for  
25 the services of performing artists, the film production tax

.188111.1

underscoring material = new  
[bracketed material] = delete

1 credit authorized by this section shall not exceed five million  
2 dollars (\$5,000,000) for services rendered by all performing  
3 artists in a production for which the film production tax  
4 credit is claimed."

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

9 "7-2F-2. DEFINITIONS.--As used in the Film Production Tax  
10 Credit Act:

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

17 B. "base year" means the state fiscal year 2012;

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

20 D. "consumer price index" means the last consumer  
21 price index published by the United States department of labor  
22 for all urban consumers, for all items and for the current  
23 series;

24 [~~E.~~] E. "direct production expenditure":

25 (1) except as provided in Paragraph (2) of

.188111.1

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

1 this subsection, means a transaction that is subject to  
2 taxation in New Mexico, including:

3 (a) payment of wages, fringe benefits or  
4 fees for talent, management or labor to a person who is a New  
5 Mexico resident;

6 (b) payment to a personal services  
7 business for the services of a performing artist if the  
8 personal services business: 1) pays gross receipts tax in New  
9 Mexico on the portion of those payments qualifying for the tax  
10 credit; and 2) deducts and remits withheld income tax pursuant  
11 to Subsection I of Section 7-3A-3 NMSA 1978; and

12 (c) 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

.188111.1

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

1 one hundred fifty dollars (\$150) of lodging per individual per  
2 day is eligible to be claimed as a direct production  
3 expenditure; 8) commercial airfare if purchased through a New  
4 Mexico-based travel agency or travel company for travel to and  
5 from New Mexico or within New Mexico that is directly  
6 attributable to the production; 9) insurance coverage and  
7 bonding if purchased through a New Mexico-based insurance  
8 agent, broker or bonding agent; 10) related digital content;  
9 and ~~[10)]~~ 11) other direct costs of producing a film in  
10 accordance with generally accepted entertainment industry  
11 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); or

20 (c) entertainment, amusement or  
21 recreation;

22 ~~[D-]~~ F. "division" means the New Mexico film  
23 division of the economic development department;

24 ~~[E-]~~ G. "federal new markets tax credit program"  
25 means the tax credit program codified as Section 45D of the

.188111.1

underscoring material = new  
[bracketed material] = delete

1 United States Internal Revenue Code of 1986, as amended;

2 ~~[F-]~~ H. "film" means a single medium or multimedia  
3 program, excluding advertising messages other than national or  
4 regional advertising messages intended for exhibition, that:

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

8 (2) can be viewed or reproduced;

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

11 (4) is intended for reasonable commercial  
12 exploitation for the delivery medium used;

13 ~~[G-]~~ I. "film production company" means a person  
14 that produces one or more films or any part of a film;

15 ~~[H-]~~ J. "fiscal year" means the state fiscal year  
16 beginning on July 1;

17 K. "limitation on film production tax credit claims  
18 authorized for payment" means the limitation of fifty million  
19 dollars (\$50,000,000) set forth in Subsection D of Section  
20 7-2F-1 NMSA 1978 that is indexed for inflation beginning in  
21 fiscal year 2013;

22 ~~[I-]~~ L. "New Mexico resident" means an individual  
23 who is domiciled in this state during any part of the taxable  
24 year or an individual who is physically present in this state  
25 for one hundred eighty-five days or more during the taxable

.188111.1

underscored material = new  
[bracketed material] = delete

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

9           ~~[J.]~~ M. "personal services business" means a  
10 business organization that receives payments for the services  
11 of a performing artist;

12           ~~[K.]~~ N. "physical presence" means a physical  
13 address in New Mexico, but does not include a post office box  
14 or other mail drop enterprise unless the physical presence is  
15 for a business and the business is providing mail services to a  
16 film production company from which a vendor conducts business,  
17 stores inventory or otherwise creates, assembles or offers for  
18 sale the product purchased or leased by a film production  
19 company;

20           ~~[L.]~~ O. "postproduction expenditure" means an  
21 expenditure for editing, Foley recording, automatic dialogue  
22 replacement, sound editing, special effects, including  
23 computer-generated imagery or other effects, scoring and music  
24 editing, beginning and end credits, negative cutting,  
25 soundtrack production, dubbing, subtitling or addition of sound

.188111.1

underscored material = new  
[bracketed material] = delete

1 or visual effects; but not including an expenditure for  
2 advertising, marketing, distribution or expense payments; and

3 ~~[M-]~~ P. "vendor" means a person selling goods or  
4 services that has a physical presence in New Mexico and is  
5 subject to gross receipts tax pursuant to the Gross Receipts  
6 and Compensating Tax Act and income tax pursuant to the Income  
7 Tax Act or corporate income tax pursuant to the Corporate  
8 Income and Franchise Tax Act."

9 SECTION 3. A new section of the Film Production Tax  
10 Credit Act is enacted to read:

11 "~~[NEW MATERIAL]~~ INDEXING THE LIMITATION ON FILM PRODUCTION  
12 TAX CREDIT CLAIMS AUTHORIZED FOR PAYMENT FOR INFLATION.--The  
13 dollar value of the limitation on film production tax credit  
14 claims authorized for payment pursuant to the Film Production  
15 Tax Credit Act that is indexed for inflation pursuant to this  
16 section shall be adjusted each fiscal year subsequent to the  
17 base year of fiscal year 2012 according to the following rules:

18 A. to determine the indexed value of the limitation  
19 on film production tax credit claims authorized for payment for  
20 a fiscal year, the amount of the limitation on film production  
21 tax credit claims authorized for payment in the base year shall  
22 be multiplied by the inflation adjustment factor determined  
23 pursuant to Subsection B of this section and then rounded to  
24 the nearest one million dollars (\$1,000,000); and

25 B. the inflation adjustment factor for a fiscal year

.188111.1

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

1 is the quotient of a fraction:

2 (1) the numerator of which is the sum of the  
3 monthly consumer price index values for the twelve months  
4 ending in the preceding August; and

5 (2) the denominator of which is the sum of the  
6 monthly consumer price index values for the twelve months  
7 ending in the August of the base year."

8 SECTION 4. REPEAL.--Laws 2011, Chapter 165, Section 3 is  
9 repealed.

10 SECTION 5. EFFECTIVE DATE.--The effective date of the  
11 provisions of this act is July 1, 2012.