

STATE OF NEW MEXICO - TAXATION AND REVENUE DEPARTMENT  
**APPLICATION FOR FILM PRODUCTION TAX CREDIT**

**The purpose of this form.** This form may be used by a film production company, approved by the Film Division of the New Mexico Economic Development Department, to apply for a film production tax credit. To contact the Film Division, call (505) 476-5600 or (800) 545-9871. Submit this completed application with required documentation to the Taxation and Revenue Department. Submit one application for each approved film project. The Department will notify you of the approved amount of credit. This refundable credit can be applied against personal or corporate income tax due the State of New Mexico. See the instructions that follow for a complete description of the requirements.

<b>Name of eligible film production company</b>		<b>Taxpayer identification number</b> (SSN or FEIN)
<b>Mailing address</b>		<b>City, state and ZIP code</b>
<b>Name of contact person</b>	<b>Telephone number</b>	<b>E-mail address</b>
<b>Enter the Project Title as indicated on the New Mexico Film Office Film Production Company Registration Form.</b>		

	<b>Col 1. Qualifying expenditures</b>	<b>Col 2. Credit amount claimed</b>
1. Total qualifying direct production expenditures (25%) .....		
2. Total direct production expenditures qualifying for an additional 5% .....		
3. Total qualifying postproduction expenditures (25%) .....		
4. Total film production tax credit claimed. Enter the sum of column 2, lines 1, 2, and 3. ....		

5. Is the film production company receiving a credit pursuant to the federal new markets tax credit program for expenditures attributable to this production? Circle one: Yes No

<b>I certify that:</b>	<b>Certifications</b>
<input type="checkbox"/> the total direct production and postproduction expenditures included above: <ul style="list-style-type: none"> <li>• are made in New Mexico;</li> <li>• are directly attributable to the production of a film or commercial audiovisual product;</li> <li>• include only transactions which are subject to taxation by the State of New Mexico;</li> <li>• <i>exclude</i> expenditures for which another taxpayer claims the film production tax credit; and</li> <li>• <i>exclude</i> expenditures for which the film production company delivered a nontaxable transaction certificate pursuant to 7-9-86 NMSA 1978.</li> </ul>	
<input type="checkbox"/> the film contains an acknowledgement in the end screen credits that the production was filmed in New Mexico, and if a long-form narrative film a New Mexico state logo is in the end screen edits. If you do not mark this box, attach a copy of the written agreement between the film production company and the New Mexico Film Office.	
<i>I declare I have examined this application, including accompanying invoices, schedules and/or statements, and to the best of my knowledge and belief this application is true, correct and complete.</i>	
Authorized Signature _____	Title _____
	Date _____

<b>FOR DEPARTMENT USE ONLY</b>	
This application for Film Production Tax Credit was reviewed by the Taxation and Revenue Department and was	
<input type="checkbox"/> Approved in the amount of	\$ _____
<input type="checkbox"/> Adjusted and approved in the amount of	\$ _____
<input type="checkbox"/> Disapproved	

Reason for adjustment/disapproval \_\_\_\_\_

Signature of Director or Delegate \_\_\_\_\_ Date \_\_\_\_\_

# Application for Film Production Tax Credit Instructions

**ABOUT THIS CREDIT:** The film production tax credit, Section 7-2F-1 NMSA 1978, provides a tax credit for an eligible film production company. The amount of the credit is equal to 25% of eligible direct production and direct postproduction expenditures made in New Mexico.

## An Additional 5% Allowed For Series Television Productions

For direct production expenditures made on or after April 15, 2013, the percentage to be applied in calculating the film production tax credit remains at 25%, and an additional 5%, for a total of 30%, for series television productions, is applied in calculating the film production tax credit for direct production expenditures made in New Mexico:

- on a series television production intended for commercial distribution with an order for at least six episodes in a single season; and each episode is budgeted for \$50,000 or more; or
- that are directly attributable to the wages and fringe benefits paid to a New Mexico resident directly employed in an industry crew position, excluding a performing artist, on a production with a total budget of:
  - not more than thirty million dollars that shoots at least ten principal photography days at a qualified production facility in New Mexico; or
  - thirty million dollars or more that shoots at least fifteen principal photography days at a qualified production facility in New Mexico.

For taxpayers who receive a new markets tax credit from the federal government for expenditures that also qualify for the New Mexico film production tax credit, the percentage used for calculating the New Mexico credit is limited to 20%, including productions that may qualify for the additional 5% credit.

Qualifying direct production and direct postproduction expenditures must:

- be directly attributable to the production in New Mexico of a film or commercial audiovisual product;
- be subject to taxation by the state of New Mexico;
- exclude direct production and direct postproduction expenditures for which another taxpayer claims the film production tax credit, and
- not exceed the usual and customary cost of the goods or services acquired when purchased by unrelated parties\*.

\*The secretary of Taxation and Revenue may determine the value of the goods or services acquired when purchased by unrelated parties or the sale or purchase is not an arm's length transaction.

The film production tax credit shall **not** be claimed for expenditures for which the film production company has delivered a nontaxable transaction certificate pursuant to Section 7-9-86 NMSA 1978.

*Important: Expenditures must be directly attributable to film production in New Mexico and subject to taxation by the State of New Mexico.*

**To be eligible for the film production tax credit**, a film production company must first be approved by the Film Division of the New Mexico Economic Development Department. After approval, the company may apply for the credit by submitting a completed Form RPD-41229, *Application for Film Production Tax Credit*, to the Taxation and Revenue Department (TRD). TRD approves the credit and issues a document granting it. The application must be submitted within one year of the date of the last direct production or postproduction expenditure in New Mexico.

## Instructions for Completing Form RPD-41229:

**Name/address block** Complete all information requested. If the contact for the permanent records is different, also attach the contact information for the person in charge of the permanent records to the application.

Enter the Project Title as indicated on the New Mexico Film Office Film Production Company Registration Form.

**Line 1** - In Column 1, enter the total qualifying direct production expenditures made in New Mexico directly attributable to the production in New Mexico of the commercial film or audiovisual product for which this credit is claimed. In Column 2, enter the qualifying expenditures multiplied by 0.25 (25%).

**Line 2** - In Column 1, enter the qualifying direct production expenditures from line 1 above which qualify for the additional 5% film production tax credit. Qualifying expenditures must be made on or after April 15, 2013. To determine who qualifies, see "An Additional 5% Allowed", in the previous column. In Column 2, enter the qualifying expenditures multiplied by 0.05 (5%).

**Line 3** - In Column 1, enter the qualifying postproduction expenditures made in New Mexico directly attributable to the production of a commercial film or audiovisual product for which this credit is claimed. In Column 2, enter the qualifying expenditures multiplied by 0.25 (25%).

**Line 4** - Enter the total film production tax credit claimed. Add the sum of Column 2, lines 1, 2, and 3.

**Line 5** - Is the film production company receiving a credit pursuant to the federal new markets tax credit program for expenditures attributable to this production? Circle the answer. If yes, then the percentage to be applied to direct production expenditures and postproduction expenditures is 20%.

**Certifications** - Certify that the statements set out under *Certifications* are true and correct by marking the box next to each statement that applies.

## Application for Film Production Tax Credit Instructions Continued

You must certify the first statement to be eligible to claim the credit for the expenditures reported. If the second statement does not apply to you, you must provide a copy of the written agreement between the film production company and the New Mexico Film Office, indicating that both parties agree that the requirement to include the acknowledgement or New Mexico state logo in the end screen credits has been waived.

**Sign** the application, enter your title and the date of signature.

**Required Supporting Documentation for Form RPD-41229.** Submit the following documentation to support your claim:

- A copy of the approval from the New Mexico Film Office.
- A copy of the final cost-accounting summary for the project with a breakout of the New Mexico costs for each line item.
- The name, address, social security number and amount paid to every resident of New Mexico for whom the company wishes to claim credit for wages and salaries.
- If the company has obtained Type 16 NTTCs from the Taxation and Revenue Department, a listing is needed of every person to whom the company has delivered an NTTC. The list must contain the name, address and New Mexico CRS identification number, if applicable, and the dollar amount of purchases.
- If the amount of the tax credit requested exceeds five million dollars, the application must also include the results of an audit, conducted by a certified public accountant licensed to practice in New Mexico, verifying that the expenditures have been made in compliance with the requirements of the Film Production Tax Credit Act.

**To Claim the Approved Film Production Tax Credit.** Once the approved film production company has received approval from the Film Division and the Taxation and Revenue Department, a completed Form RPD-41228, *Film Production Tax Credit Claim Form*, must be attached to a completed New Mexico return (Form PIT-1, CIT-1, S-Corp, or FID-1) filed after the close of the tax year for authorization for payment. For qualifying expenditures made after April 15, 2013, the credit may be claimed by filing the New Mexico PTE, *Pass-Through Entity Income and Information Return*.

All direct production expenditures and postproduction expenditures incurred during the tax year by a film production company shall be submitted as part of the same income tax return. A credit claim shall not be divided and submitted with multiple returns or in multiple years.

Subject to certain limitations, the amount of the tax credit authorized for payment may be applied to the tax due on

the return, or if the amount of the film production tax credit exceeds the film production company's income tax liability for the tax year, the excess may be refunded.

### **Limitations on Receiving the Credit Claimed on a Return.**

Except as provided in the next paragraph, the total aggregate film production tax credits that may be paid out in any fiscal year is limited to \$50,000,000. A film production tax credit claimed that is unable to be paid because total claims paid during the current fiscal year, exceeded \$50,000,000, shall be placed at the front of the queue for the next fiscal year.

If in fiscal years 2013 through 2015, the aggregate amount in each fiscal year of the film production tax credit claims authorized for payment is less than \$50,000,000, then the difference in that fiscal year or \$10,000,000, whichever is less, shall be added to the aggregate amount of the film production tax credit claims that may be authorized for payment in the immediately following fiscal year.

If the credit amount claimed by a film company is less than \$2,000,000 in a tax year, the amount shall be applied or paid immediately upon processing of the income tax return.

For credit claims of \$2,000,000 or more in a tax year, the credit shall be distributed over multiple years as follows:

- If the credit amount claimed is \$2,000,000 or more, but less than \$5,000,000 in a tax year, half of the amount of the film production tax credit shall be applied or paid immediately upon processing of the income tax return and the remainder shall be paid 12 months following the date of the first payment, and
- If the credit amount claimed is \$5,000,000 or more in a tax year, one third of the amount of the film production tax credit shall be applied or paid immediately upon processing of the income tax return, one third of the film production tax credit shall be paid 12 months following the date of the first payment, and one third of the film production tax credit shall be paid 24 months following the date of the first payment.

Any amount of a credit claim that is carried forward as described above, is *also* subject to the total aggregate film production tax credit limit of \$50,000,000 paid in any fiscal year. However, the portion of the amount of credit that is carried forward is placed in front of the queue in the next fiscal year. If a partial payment is made because the tax credit limit has been met in a fiscal year, then the difference owed shall retain its original position in the queue.

For purposes of determining the payment of credit claims that are required to be paid out over multiple years, the secretary of the Taxation and Revenue Department may require that credit claims of affiliated persons be combined into one claim, if necessary, to accurately reflect closely integrated activities of affiliated persons.

## Application for Film Production Tax Credit Instructions Continued

NOTE: No interest shall be paid on any amount refunded under the Film Production Tax Credit Act.

### Completing the Income Tax Return:

Complete the income tax return, CIT-1, PIT-1, S-Corp, PTE, or FID-1 based on the federal return that you are required to file.

<u>If you are required to file:</u>	<u>File New Mexico form:</u>
Federal Form 1040,	PIT-1 return;
Federal Form 1041,	FID-1 return;
Federal Form 1065,	PTE return;
Federal Form 1120,	CIT-1 return; or
Federal Form 1120S,	S-Corp return

You may also need to complete the tax credit schedule, CIT-CR, PIT-CR, S-Corp-CR or FID-CR. Enter the total film production tax credit approved and the amount of the credit that you want applied to the tax liability due on the schedule CR for non-refundable credits. For CIT, S-Corp, PTE, and FID returns, also enter the refundable portion of the tax credit claimed on the main return. For PIT, enter the refundable portion of the tax credit claimed on Schedule PIT-RC. The Department will compare the amounts entered and determine how and when the credit will be paid. No interest shall be paid on any amount refunded under the Film Production Tax Credit Act. **Caution:** If the amount you request to be applied to the tax liability due on the return is not eligible to be paid immediately, you will be billed for the tax liability not paid, and you may be subject to interest on the unpaid tax due.

For direct production expenditures made on or after April 15, 2013, an eligible film production company that is required to file Federal Form 1065, may apply for a film production tax credit, and may claim the credit on the New Mexico PTE return.

For direct production expenditures made before April 15, 2013, the eligible film production company required to file Federal Form 1065, may not claim the credit on the New Mexico PTE return. In this case, the taxpayer filing the Form PTE must pass approved film production tax credit to its owners, members or partners, using Form RPD-41366, *Notice of Distribution of Film Production Tax Credit*. This form must be completed and attached to Form RPD-41229, *Application for Film Production Tax Credit*, at the time of making application for the credit, but no later than the date the credit is approved by TRD. When completing Form RPD-41366 do not complete the fields marked "to be completed by TRD". The Department will complete these fields once the film production tax credit is approved. The amount of tax credit distributed will be based on the percentage of claim provided by the film production company.

For all tax programs, you must attach Form RPD-41228, *Film Production Tax Credit Claim Form*, to your return. Failure to attach this form will result in denial of your claim for the credit.

Do not mail the return to the address on the income tax return.

The completed income tax return and Form RPD-41228 must be mailed to: New Mexico Taxation and Revenue, Attn: Film Production Tax Credit, P.O. Box 5418, Santa Fe, New Mexico, 87502-5418. Mailing to this address ensures that your claim is recorded timely.

### Important Definitions:

**"Affiliated person"** means a person who directly or indirectly owns or controls, is owned or controlled by or is under common ownership or control with another person through ownership of voting securities or other ownership interests representing a majority of the total voting power of the entity.

**"Commercial audiovisual product"** means a film or a video game intended for commercial exploitation.

**"Direct production expenditure"** means a transaction subject to taxation in New Mexico, including:

1. Payment of wages, fringe benefits or fees for talent, management or labor to a person who is a New Mexico resident;
2. Payment for services by a performing artist who is not a New Mexico resident and who is directly employed by the film production company; provided that the film production company deducts and remits, or causes to be deducted and remitted, income tax in New Mexico pursuant to the Withholding Tax Act;
3. Payment to a personal services business for the services of a performing artist, if the personal services business (a) pays gross receipts tax in New Mexico on the portion of those payments qualifying for the tax credit, and (b) the film production company deducts and remits, or causes to be deducted and remitted, income tax withholding on the portion of those payments qualifying for the tax credit paid to a personal services business where the performing artist is a full or part owner of that business or subcontracts with a personal services business where the performing artist is a full or part owner of that business. The amount of tax withheld is an amount equal to the owner's share of net income multiplied by the highest rate for single individuals (4.9%); and
4. Any of the following provided by a vendor:
  - a. The story and scenario to be used for a film;
  - b. Set construction and operations, wardrobe, accessories and related services;
  - c. Photography, sound synchronization, lighting and related services;
  - d. Editing and related services;
  - e. Rental of facilities and equipment;
  - f. Leasing of vehicles, not including the chartering of aircraft for out-of-state transportation (New Mexico-based chartered aircraft for in-state transportation directly attribut-

## Application for Film Production Tax Credit Instructions Continued

able to the production **shall be** considered a direct production expenditure) provided that only the first \$100 of the daily expenses of leasing a vehicle for passenger transportation on roadways in the state may be claimed as a direct production expenditure;

g. Food or lodging provided that only the first \$150 of lodging per individual per day is eligible to be claimed as a direct production expenditure;

h. Commercial airfare if purchased through a New Mexico-based travel agency or travel company for travel to and from New Mexico or within New Mexico that is directly attributable to the production;

i. Insurance coverage and bonding if purchased through a New Mexico-based insurance agent, broker or bonding agent, and

j. Other direct costs of producing a film in accordance with generally accepted entertainment industry practice.

### **A direct production expenditure does not include:**

1. A gift with a value greater than \$25;
2. Artwork or jewelry, except that a work of art or piece of jewelry may be direct production expenditure if:
  - a. It is used in the film production; and
  - b. The expenditure is less than \$2,500
3. Entertainment, amusement or recreation; or
4. Subcontracted goods or services provided by a vendor when subcontractors are not subject to state taxation, such as equipment and locations provided by the military, government, and religious organizations.

For a production that starts its principal photography on or after January 1, 2014, a direct production expenditure also does not include a service provided by a person who is not a New Mexico resident and employed in an industry crew position, excluding a performing artist, where it is the standard entertainment industry practice for the film production company to employ a person for that industry crew position, except when the person who is not a New Mexico resident is hired or subcontracted by a vendor; and when the film production company, as determined by the division and when applicable in consultation with industry, provides:

- a. Reasonable efforts to hire resident crew; and
- b. Financial or in-kind contributions toward education or work force development efforts in New Mexico, including at least one of the following:
  - (1) A pre-approved workshop,
  - (2) On-set shadowing per each approved position, or
  - (3) Ten percent of the portion of the tax credit attributable to the payment or services provided by non-residents

employed by the vendor in the approved positions, which equates to 2-1/2% of the respective total direct production expenditure and which is allocated to New Mexico public education institutions that administer at least one industry-recognized film or multimedia program.

**Limit for Performing Artists:** The film production tax credit is limited to \$5,000,000 for the direct production expenses attributable to services rendered by all performing artists in a production.

**"Film production company"** means a person that produces one or more films or any part of a film.

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

**"Postproduction expenditure"** means an expenditure for editing, Foley recording, automatic dialogue replacement, sound editing, special effects, including computer-generated imagery or other effects, scoring and music editing, beginning and end credits, negative cutting, soundtrack production, dubbing, subtitling or addition of sound or visual effects; but not including an expenditure for advertising, marketing, distribution, or expense payments.

**Direct production and postproduction expenditures may not exceed the cost of goods and services in an arm's length transaction.**

**Direct production and postproduction expenditures exclude:**

- (a) expenditures for which the film production company has delivered a nontaxable transaction certificate (NTTC) Type 16 pursuant to 7-9-86 NMSA 1978. Type 16 NTTCs may be executed by a qualified production company to purchase property, lease property or purchase services that qualify as production costs;
- (b) expenditures that are not subject to tax by New Mexico; and
- (c) expenditures for which another taxpayer claims the film production tax credit.

**"Film"** means a single medium or multimedia program, excluding advertising messages other than national or regional advertising messages intended for exhibition, that:

- is fixed on film, digital medium, videotape, computer disc, laser disc or other similar delivery medium;
- can be viewed or reproduced;
- is not intended to and does not include sexually oriented material harmful to minors or does not otherwise violate a provision of Chapter 30, Article 37 NMSA 1978, and
- is intended for reasonable commercial exploitation for the

## Application for Film Production Tax Credit Instructions Continued

delivery medium used.

**"New Mexico resident"** means an individual who is domiciled in this state during any part of the tax year or an individual who is physically present in this state for 185 days or more during the tax year; but any individual, other than someone who was physically present in the state for 185 days or more during the tax year and who, on or before the last day of the tax year, changed the individual's place of abode to a place outside New Mexico with the bona fide intention of continuing actually to abide permanently outside New Mexico is not a resident for the purposes of the Film Production Tax Credit Act for periods after that change of abode.

**"Personal services business"** means a business organization that receives payments for the services of a performing artist.

**"Qualified production facility"** means a building or complex of buildings and their improvements and associated back-lot facilities in which films are or are intended to be regularly produced and that contain at least one sound stage with contiguous, clear-span floor space of at least seven thousand square feet and a ceiling height of no less than twenty-one feet.

**"Vendor"** means a person selling goods or services that has a physical presence in New Mexico and is subject to New Mexico gross receipts tax and income tax or corporate income tax. A vendor excludes services provided by non-residents hired or subcontracted if the tasks and responsibilities are associated with (1) the standard industry job position of director, writer, producer, associate producer, co-producer, executive producer, production supervisor, director of photography, motion picture driver whose sole responsibility is driving, production or personal assistant, designer, still photographer, or carpenter and utility technician at an entry level; and (2) non-standard industry job positions and personal support services.

**Wages, fringe benefits or fees for talent, management and labor** are eligible for the film production tax credit only when paid to individuals who are New Mexico residents during the time that they work on the project. Form RPD-41271, *Declaration of Residency*, must be completed by the New Mexico resident and retained in the records of the film production company.