

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 that commences principal photography prior to January 1, 2016, for a film project as approved by the Film Office of the New Mexico Economic Development Department (EDD) to apply for a film production tax credit. Submit this completed application with required documentation to the Taxation and Revenue Department. See the instructions for a complete description of the requirements. A film production company that commences principal photography on or after January 1, 2016, that is determined to be eligible by EDD must use form RPD-41381, *Application for Film and Television Tax Credit*. For assistance, call (505) 841-6338 or send email to TRD-FilmCredit@state.nm.us.

Name of film production company		Taxpayer identification number (SSN or FEIN)	
Mailing address		City, state and ZIP code	
Name of contact person	Telephone number		E-mail address
Enter the title of the eligible project as indicated on the New Mexico Film Office registration form.			

	Col 1. Qualifying expenditures	Col 2. Credit amount claimed
1. Total qualifying direct production expenditures (25%)		
2. Total direct production expenditures qualifying for an additional 5% for television pilots and series		
3. Total direct production expenditures qualifying for an additional 5% for qualifying production facilities		
4. Total qualifying postproduction expenditures (25%)		
5. Total expenditures attributable to a production on which the film production company receives a tax credit pursuant to the federal new markets tax credit program (20%)		
6. Total film production tax credit claimed. Round to the nearest whole dollar and enter the sum of Column 2, lines 1-5.....		

I certify that the amounts identified as direct production and postproduction expenditures included in this application on line 6, column 2 are qualifying expenditures according to the provisions of the Film Production Tax Credit Act. Furthermore, 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.

Authorized Signature Title Date

FOR DEPARTMENT USE ONLY

This application for film production tax credit was reviewed by the Taxation and Revenue Department and was:

- Approved in the amount of \$ _____
- Adjusted and approved in the amount of \$ _____
- Disapproved

Reason for adjustment/disapproval _____

Signature of Director or Delegate Date

Application for Film Production Tax Credit Instructions

These instruction and definitions are modified to reflect the laws applicable for film projects that begin principal photography before January 1, 2016, and for applications submitted to the Film Office of the New Mexico Economic Development Department (EDD) after June 19, 2015. To contact the Film Office, call (505) 476-5600 or (800) 545-9871. For film production companies that commence principal photography on or after January 1, 2016, use Form RPD-41381, *Application for Film and Television Tax Credit*, to claim the tax credit.

If the amount of the requested tax credit exceeds \$5,000,000, the application shall 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.

ABOUT THIS CREDIT: The film production tax credit provides a tax credit for an eligible film production company and its corresponding project. The amount of the credit is equal to 25% of eligible direct production and postproduction expenditures made in New Mexico. See **Important Definitions** for the definitions of direct production and postproduction expenditures.

To apply for the film production tax credit, a film production company must first register the project with the Film Office of EDD for verification of eligibility, as defined in statute. The film production company may apply for the credit by completing Form RPD-41229, *Application for Film Production Tax Credit*, and submitting the application to EDD. After EDD has confirmed all obligations have been met by the company, the completed application is submitted to the Taxation and Revenue Department (TRD) who 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.

An Additional 5% Allowed For Series Television Productions and Certain Standalone Pilots Intended For Series in NM, or For Use of a Qualified Production Facility

If the production company submits their application for film production tax credit **on or after June 20, 2015**, the additional 5% applied in calculating the amount of the film production tax credit applies to applicable direct production expenditures:

- on a standalone pilot or on series television productions intended for commercial distribution with an order for at least six episodes in a single season; provided that the New Mexico budget for each of those six episodes is \$50,000 or more; or
- on a production with a total New Mexico budget of the following amounts; provided that the expenditures are directly attributable **and paid** to a New Mexico resident who is hired as industry crew, or who is hired as a producer, writer or director working directly with the physical

production and has filed a New Mexico income tax return as a resident in the two previous tax years;

- not more than thirty million dollars that shoots at least ten principal photography days in New Mexico at a qualified production facility; provided that a film production company in principal photography on or after April 10, 2015 shall:
 - ▶ shoot at least seven of those days at a sound stage that is a qualified production facility and the remaining number of required days, if any, at a standing set that is a qualified production facility; and
 - ▶ for each of the ten days, include industry crew working on the premises of those facilities for a minimum of eight hours within a 24-hour period; or
- thirty million dollars or more that shoots at least fifteen principal photography days in New Mexico at a qualified production facility; provided that a film production company in principal photography on or after April 10, 2015 shall:
 - ▶ shoot at least ten of those days at a sound stage that is a qualified production facility and the remaining number of required days, if any, at a standing set that is a qualified production facility; and
 - ▶ for each day of the 15 days, include industry crew working on the premises of the facility for a minimum of eight hours within a 24-hour period.

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 TRD Secretary 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.

Application for Film Production Tax Credit Instructions Continued

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

Enter the title of the eligible project as indicated on the New Mexico Film Office 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 film project, for which this credit is claimed. Multiply the qualifying expenditures in column 1 by 0.25 (25%), and enter the product in column 2.

Line 2. In column 1, enter the direct production expenditures from line 1 above which qualify for the additional 5% for television pilots and series. Qualifying expenditures must be made on or after April 15, 2013. To determine project eligibility and qualifying expenditures for the additional 5%, see **An Additional 5% Allowed For Series Productions and Certain Standalone Pilots Intended for Series in NM, or For Use of a Qualified Production Facility**, on the previous page. Multiply the qualifying expenditures in column 1 by 0.5 (5%), and enter the product in column 2.

Line 3. In column 1, enter the direct production expenditures from line 1 above which qualify for the additional 5% for qualifying production facilities. Qualifying expenditures must be made on or after April 15, 2013. To determine project eligibility and qualifying expenditures for the additional 5%, see **An Additional 5% Allowed For Series Productions and Certain Standalone Pilots Intended for Series in NM, or For Use of a Qualified Production Facility**, on the previous page. Multiply the qualifying expenditures in column 1 by 0.5 (5%), and enter the product in column 2.

Line 4. 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. Multiply the qualifying expenditures in column 1 by 0.25 (25%), and enter the product in column 2.

Line 5. If the film production company receives a credit pursuant to the federal new markets tax credit program for expenditures attributable to this production, the percentage to be applied to direct production expenditures and postproduction expenditures is limited to 20%. The film production company that receives the federal new markets tax credit, enters the qualifying direct production and postproduction expenditures in column 1 of line 5, and does not complete

lines 1 through 4. On line 5, multiply column 1 by 0.20 (20%), and enter the product in column 2.

Line 6. Round to the nearest whole dollar and enter the total film production tax credit claimed. Add the sum of column 2, lines 1 through 5.

Sign the application, enter your title and the date of signature. By signing the application, you certify that the amounts identified as direct production and postproduction expenditures included in the application are qualifying expenditures according to the provisions of the Film Production Tax Credit Act.

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

- A copy of the approval for eligibility 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 qualifying payments.
- If the company has obtained Type 16 NTTCs from TRD, 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.

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. Form RPD-41271, *Declaration of Residency*, must be completed by the New Mexico resident and retained in the records of the film production company.

To Claim the Approved Film Production Tax Credit. Once the film production company is determined to be eligible by the Film Office and has been approved by TRD, a completed Form RPD-41228, *Film-Related Tax Credit Claim Form*, including Schedule A, 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*.

Application for Film Production Tax Credit Instructions Continued

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.

If all or a part of the approved film production tax credit is assigned to a third-party financial institution, or to an authorized third-party, Form RPD-41380, *Notice of Assignment of Film Production Tax Credit*, must be submitted with the film production company's income tax return, including Form RPD-41228, *Film-Related Tax Credit Claim Form*. Form RPD-41380 authorizes TRD to pay the credit to the assigned third-party, and must be attached to the claim form or the credit will be paid to the film production company. See **Assignment of Film Production Tax Credits**, later in these instructions.

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.

The aggregate film-related tax credits (*film production tax credit and film and television tax credit*) that may be paid out in any fiscal year is limited to \$50,000,000. A claimed film-related tax credit 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.

The date a credit claim is received by TRD determines the order that a credit claim is authorized for payment.

When credit claims are authorized by TRD, the film production tax credits are paid as follows:

If the 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 and television 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 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 TRD Secretary may require that credit claims of affiliated persons be combined into one claim, if necessary, to accurately reflect closely integrated activities of affiliated persons.

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.

If you are required to file:	File New Mexico form:
Federal Form 1040	PIT-1 return
Federal Form 1041	FID-1 return
Federal Form 1065	PTE return
Federal Form 1120	CIT-1 return
Federal Form 1120S	S-Corp return

You also need to complete the tax credit schedule, CIT-CR, PIT-CR, S-Corp-CR or FID-CR. Enter the film production tax credit approval number issued by TRD, the total amount approved and the amount of the credit that you want applied to the tax liability due on the Schedule CR for business related tax credits. TRD 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

Application for Film Production Tax Credit Instructions Continued

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". TRD 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-Related Tax Credit Claim Form*, including Schedule A, 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, and Form RPD-41380, if applicable, must be mailed to: New Mexico Taxation and Revenue Department, Attn: Film Production Tax Credit, P.O. Box 8485, 14th floor, Albuquerque, NM 87198. Mailing to this address ensures that your claim is recorded timely.

Assignment of Film Production Tax Credits

Once the film production company has received approval from TRD, a completed Form RPD-41380, *Notice of Assignment of Film Production Tax Credit*, allows TRD to honor an assignment of a film production tax credit to a third-party financial institution, or to an authorized third-party. Form RPD-41380 must be attached to the film production company's income tax return on which the credit is claimed.

NOTE: Under current statute, only the film production tax credit may be assigned to financial institutions or third parties. The film and television tax credit, which applies to productions commencing on or after January 1, 2016, cannot currently be assigned. The Department will update these forms should the film and television tax credit become assignable.

An approved film production tax credit can be assigned once, and may not be further transferred or assigned.

For purposes of the Film Production Tax Credit Act,

- 1) an *authorized third-party* means an entity that:
 - (a) holds the rights to a film for which a film production tax credit may be claimed; and
 - (b) initiates that film's production, and
- 2) a *financial institution* means:
 - (a) a fund purposely created to produce a film; or
 - (b) a bank, savings institution or credit union that is

organized or chartered pursuant to the laws of New Mexico or the United States and that files a New Mexico income tax return.

The financial institution or authorized third-party must be verified, in advance, by the Film Office.

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.

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

"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 wages and per diem for 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 from the first day of services rendered in New Mexico at the maximum rate pursuant to the Withholding Tax Act;
- (3) payment to a personal services business for the services of a performing artist, if (a) the personal services business 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 at the maximum withholding rate in New Mexico 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

Application for Film Production Tax Credit Instructions Continued

- (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 attributable 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,
 - (j) services for an external audit upon submission of an application for a film production tax credit by an accounting firm that submits the application pursuant to this section; and
 - (k) 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;
- (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; or
- (5) 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 Film Office and when applicable in consultation with industry, provides

- (a) reasonable efforts to hire resident crew; and
- (b) financial or promotional contributions toward education or work force development efforts in New Mexico, including at least one of the following:
 - a payment to a New Mexico public education institution that administers at least one industry-recognized film or multimedia program, as determined by the division, in an amount equal to two and one-half percent of payments made to nonresidents in approved positions employed by the vendor;
 - promotion of the New Mexico film industry by directors, actors or executive producers affiliated with the production company's project through social media that is managed by the state;
 - radio interviews facilitated by the division;
 - enhanced screen credit acknowledgments; or
 - related events that are facilitated, conducted or sponsored by the division.

The amount of a film production tax credit for total payments as applied to direct production expenditures for services of performing artists shall not exceed \$5,000,000 for services rendered by nonresident performing artists and featured resident principal performing artists in a production. This limitation does not apply to the services of background artists and resident performing artists who are not cast in industry standard featured principal performer roles.

NOTE: 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:

- (1) 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;
- (2) expenditures that are not subject to tax by New Mexico; and
- (3) expenditures for which another taxpayer claims the film production tax credit.

Application for Film Production Tax Credit Instructions Continued

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

- (1) is fixed on film, digital medium, videotape, computer disc, laser disc or other similar delivery medium;
- (2) can be viewed or reproduced;
- (3) 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
- (4) is intended for reasonable commercial exploitation for the delivery medium used.

"Film production company" means a person that produces one or more films or any part of a film and that commences principal photography prior to January 1, 2016.

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

"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.

"Performing artist" means an actor, on-camera stuntperson, puppeteer, pilot who is a stunt person or actor, specialty foreground performer or narrator, and who speaks a line of dialogue, is identified with the product or reacts to narration as assigned. Performing artist does not include a background artist.

"Personal services business" means a business organization, with or without physical presence, that receives payments for the services of a performing artist.

"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 and the business owner or an employee of the business is a New Mexico resident.

"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.

"Principal photography" means the production of a film during which the main visual elements are created.

"Qualified production facility" means a building or complex of buildings, building improvements and associated back-lot facilities in which films are or are intended to be regularly produced and that contain at least one:

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

"Vendor" means a person who sells or leases goods or services that are related to standard industry craft inventory, who has a physical presence in New Mexico and is subject to gross receipts tax or personal or corporate income tax. Vendor excludes a personal services business and services provided by nonresidents hired or subcontracted if the tasks and responsibilities are associated with:

- (1) the standard industry job position of a director; a writer; a producer; an associate producer; a co-producer; an executive producer; a production supervisor; a director of photography; a motion picture driver whose sole responsibility is driving; a production or personal assistant; a designer; a still photographer; or a carpenter and utility technician at an entry level; and
- (2) nonstandard industry job positions and personal support services.