

New
Mexico's
25%
Refundable
Film
Production
Tax
Credit

New
legislation
reflected
in red

July 2011

New Mexico offers a straightforward 25% film production refundable tax credit with full assistance by the State Film Office & Taxation & Revenue throughout the entire process.

This easy-to-read document, *created for you*, will walk you through the painless process and details and includes a very comprehensive step-by-step procedure, so please take the time to review it completely. It's worth it.

No minimum budget requirement

No minimum spend requirement

No minimum shoot day requirement

No minimum resident hire requirement

No prequalifying

A \$50M rolling cap

No brokers needed

A four-person dedicated "Film Unit" at Tax & Rev

No kidding

Receive a **25% Tax Credit** on all direct production and post production expenditures, including New Mexico crew, that are subject to taxation by the State of New Mexico. Eligible productions include feature films, independent films, television, regional and national commercials, documentaries, animation, video games, webisodes, and post-production (including "stand-alone" post production). Non-resident actors and stunt performers will also qualify.

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Do
You
qualify?

1) Are you a film production company?

Definition of “Film Production Company”: a person that produces one or more films or any part of a film.
*The filing entity (“film production company”) **cannot** be a non-profit organization.*

2) Is your project a “film” or “commercial audiovisual product”?

“Film” means a single media 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 violate a provision of Chapter 30, Article 37 NMSA 1978; and is intended for reasonable commercial exploitation for the delivery medium used.

“Commercial audiovisual product” means a film or videogame intended for commercial exploitation

3) Is your production intended for exhibition?

4) Is your production intended for reasonable commercial exploitation?

The following will qualify as long as you answered YES to the four (4) questions above:

- Feature films
- Independent films
- Television (MOW, pilots, series, reality)
 - Commercials*
- Documentaries
 - Student films
 - Short films
 - Animation
 - Video games
 - Webisodes
 - Music videos
 - Infomercials

*Regional and national commercials (*proof of national or regional broadcast required*) will qualify

Stand-alone post production will also qualify

What are the requirements?

- A long-form narrative film production shall contain an acknowledgment that the production was filmed in the State of New Mexico;
- Production shall agree to pay all obligations the film production company has incurred in New Mexico;
- Production shall submit to the film office information required by the division to demonstrate conformity (Steps One through Ten on pages 10 - 13).

Note: Expenditures attributable to a production for which the film production company receives a tax credit pursuant to the federal new markets tax credit program will only qualify for a 20% credit.

What qualifies?

Any of the following “direct production expenditures” made in New Mexico that:

- are directly attributable to the production in New Mexico of a film or commercial audiovisual product;
 - are subject to taxation by the State of New Mexico;
- exclude direct production expenditures for which another taxpayer claims the film production tax credit;
 - do not exceed the usual and customary cost of the goods and services acquired when purchased by unrelated parties. The Secretary of Taxation and Revenue Department (TRD) may determine the value of the goods or services when the buyer and seller are affiliated persons or the sale or purchase is not an arm’s length transaction.
- Wages or salaries, fringe benefits or fees for talent, management, and labor to a person who is a New Mexico resident.
 - Employee fringe benefits paid to a payroll company **do** qualify for the tax credit, including Pension, Health & Welfare, Holiday, Vacation. Workers Compensation Insurance will qualify only if purchased through a New Mexico based agent;
 - Payment to a **personal services business** for the services of a non-resident performing artist (actors and stunt performers **only**) if the **personal services business 1)** pays gross receipts tax in New Mexico on the portion of those payments qualifying for the tax credit; **and 2) deducts and remits withheld income tax pursuant to Subsection I of Section 7-3A-3 NMSA 1978 or causes to be deducted and remitted income tax at the maximum rate in New Mexico on the portion of those payments qualifying for the tax credit. SEE PAGE 12 FOR MORE INFO.**

As applied to direct production expenditures for the services of performing artists, the film production tax credit authorized by this section shall not exceed five million dollars (\$5,000,000) for services rendered by all performing artists in a production for which the film production tax credit is claimed, meaning collectively, actors’ salaries, including tax, up to \$20 million are eligible.

Any of the following provided by a New Mexico vendor that has a physical presence in New Mexico at which the laborers employed by the vendor include New Mexico residents as that term is defined in the Income Tax Act:

- Costs of the story and scenario to be used for a film;
- Costs of set construction and operations, wardrobe, accessories, and related services;
- Costs of photography, sound synchronization, lighting, and related services;
- Costs of editing and related services;
- Rental of facilities and equipment (including location fees);
- Leasing of vehicles, not including the chartering of aircraft for out-of-state transportation; however 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 one hundred dollars (\$100) of the daily expense of leasing a vehicle for passenger transportation on roadways in the state may be claimed;**
- Food and lodging; **provided that only the first one hundred fifty dollars (\$150) of lodging per individual per day is eligible to be claimed;**
- Commercial airfare if purchased through a New Mexico-based travel agency or company for travel to and from New Mexico or within New Mexico that is directly attributable to the production;
Scouting expenditures prior to production will qualify so see bullet above when making scouting arrangements!
- Insurance coverage and bonding if purchased through a NM-based insurance agent, **broker or bonding agent;**
- Post-production expenditures that are directly attributable to the production of a commercial film or audiovisual product, for services performed in New Mexico; and subject to taxation by the State of New Mexico;
- Other direct costs of producing a film in accordance with generally accepted entertainment industry practices.

What does NOT qualify?

- A gift with a value greater than twenty-five dollars (\$25.00);
 - Artwork or jewelry, except that a work of art or a piece of jewelry may be a direct production expenditure if: 1) it is used in the film production; and 2) the expenditure is less than two thousand five hundred dollars (\$2,500);
 - entertainment, amusement or recreation;
-
- Nonresident ATL such as directors, producers and writers; however, their per diem and housing **do**;
 - Non-resident crew members; however, their per diem and housing **do**;
 - Fringes for non-resident actors;
 - SUI, FICA, FUI and Workers Compensation fee;
 - Chartering of New Mexico-based aircraft for out-of-state transportation (only New Mexico-based aircraft for in-state transportation will qualify);
 - Purchases made on the Internet *unless the seller is located in New Mexico and GRT is attached*;
 - Payments made to the State or Federal Government. This would include permits and postage. *Parking lots are the exception and will qualify*;
 - FedEx or UPS packages will only qualify if they're being sent *from* New Mexico;
 - Purchases made on Native American tribal lands, including gas stations, restaurants, hotels, etc...located on these lands;
 - Cell phone reimbursements when the billing address is outside of New Mexico;
 - Only expenditures directly incurred and paid by the qualified film production company (approved and on file with the film office) to the vendor of the services or property will qualify. Expenditures incurred and paid by a third party and claimed by the qualified film production company will not qualify;
 - Expenditures made to Section 501 (c), non-profit organizations do not qualify because these organizations are tax exempt. These include Goodwill, Salvation Army, churches, museums, schools, etc.

\$50M Rolling Cap | What does this mean and must I get in a queue?

A rolling cap means that any accrued amounts greater than \$50M in any one fiscal year will be “rolled over” into the next fiscal year. There is no prequalifying or “getting in line” since credits will be awarded based upon when you file your credit claim and tax return. TRD will award tax credits on a first-come, first-served basis and when the \$50M cap is full, the remaining amounts will be placed at the front of a queue and awarded in the next fiscal year.

This means that productions will be motivated to submit their Tax Credit Package to the New Mexico Film Office (NMFO) as quickly as possible.

A claim for film production tax credits shall be filed as part of a return filed pursuant to the Income Tax Act or the Corporate Income and Franchise Tax Act. The date a credit claim is received by the department shall determine the order that a credit claim is authorized for payment by the department.

A film production company that submits a claim for a film production tax credit that is unable to receive the tax credit because the claims for the fiscal year exceed the limitation in this subsection shall be placed for the subsequent fiscal year at the front of a queue of film production tax credit claimants submitting claims in the subsequent fiscal year in the order of the date on which the credit was authorized for payment.

When can I claim the credit?

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

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

For purposes of determining the payment of credit claims, the Secretary of TRD may require that credit claims of affiliated persons be combined into one claim if necessary to accurately reflect closely integrated activities of affiliated persons.”

What does this mean?

This is based on the taxpayer’s taxable year, which may or may not correspond with a calendar or fiscal year depending on the entity’s structure and filing schedule. Example: Film company X’s taxable year is a calendar year. Film company X incurs expenditures from March through May, 2011. They submit their tax credit package in July, 2011 and are approved by TRD in October, 2011. Film company X must wait until January, 2012, in order to submit their credit claim and file their tax return.

Based on a first-come, first-served basis, TRD will award credits until they reach \$50M. Any amounts over \$50M will be awarded at the beginning of the next fiscal year (July 1 of each year) when there is a “new pot” of funds.

What about productions that cross taxable years?

“All direct production expenditures and postproduction expenditures incurred during the taxable 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.”

What does this mean?

Under this scenario, the film company must file a return for each taxable year that reflects the amount of credit earned during that year. If credit-eligible expenditures occur in more than one year, the taxpayer should file more than one credit claim, with each claim reflecting the expenditures that occurred within a given taxable year.

Can you guarantee when I'll receive the credit?

Can you provide me with an "approval letter" or a guarantee?

No. However, per statute, the Film Office "shall report monthly the projected amount

of credit claims for the fiscal year." In addition, "to provide guidance to film companies regarding the amount of credit capacity remaining in the fiscal year, TRD shall post monthly on their website the aggregate amount of credits claimed and processed for the fiscal year."

Deferment Payments (based on the amount of your **tax credit**, not your budget)

Credit claims authorized for payment shall be paid to the taxpayer as follows:

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

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

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

Reporting

To be eligible for the film production tax credit, a film production company shall submit to the division information required by the division, including detailed information on each direct production expenditure and each postproduction expenditure. A film production company shall provide to the

division a projection of the film production tax credit claim the film production company plans to submit in the fiscal year.

The division shall also post on its web site all information provided by the film production company that does not reveal revenue, income or other information that may jeopardize the confidentiality of income tax returns, including that the division shall report monthly the projected amount of credit claims for the fiscal year.

You must submit your application within **one year!**

The application shall be submitted within one year of the date of the last direct production expenditure in New Mexico or the last

postproduction expenditure in New Mexico. However, because the credits are awarded on a first-come, first-served basis, you'll want to submit your tax credit package to the NMFO as quickly as possible.

If your projected credit exceeds \$5M, you'll need to get an outside audit

If the amount of the requested tax credit exceeds five million dollars (\$5,000,000), the application shall also include the results of an audit, conducted by a certified public accountant licensed to practice in NM, verifying that the expenditures have been made in compliance with the requirements.

Definitions

An “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.

“Resident” means an individual who is domiciled in this state during any part of the taxable year or an individual who is physically present in this state for one hundred eighty-five days or more during the taxable year; but any individual, other than someone who was physically present in the state for one hundred eighty-five days or more during the taxable year and who, on or before the last day of the taxable year, changed the individual's place of abode to a place without this state with the bona fide intention of continuing actually to abide permanently without this state is not a resident for the purposes of the Film Prod Tax Credit Act for periods after that change of abode.”

What does this mean?

You are deemed a resident only if you are filing New Mexico **Resident** or **First-Year Resident** tax returns.

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

"Physical presence" means a physical address in New Mexico, but does not include a post office box or other mail drop enterprise unless the physical presence is for a business and the business is providing mail services to a film production company 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;

"Vendor" means a person selling goods or services that has a physical presence in New Mexico and is subject to gross receipts tax pursuant to the Gross Receipts and Compensating Tax Act and income tax pursuant to the Income Tax Act or corporate income tax pursuant to the Corporate Income and Franchise Tax Act."

What if a New Mexico vendor doesn't have any employees?

New Mexico vendors are not required to have employees; however, if they do, at least one of them must be a New Mexico resident. If the vendor has only one employee, that one employee must be a New Mexico resident.

Tip

It is not necessary to register the production company (filing entity) to do business in New Mexico. TRD will use your Federal ID number (or social security number if individual) to process the credit/return.

Bills/Statutes

SB44: <http://www.nmlegis.gov/Sessions/11%20Regular/final/SB0044.pdf>

HB607: <http://www.nmlegis.gov/Sessions/11%20Regular/final/HB0607.pdf>

You should verify NM residency before production to ensure that the crew members you are hiring will, to the best of TRD's knowledge, qualify for the credit*!

Each New Mexico resident employed on your production (excluding Background Talent) must complete a *Declaration of Residency* (DOR) form, a document which they sign under penalty of perjury stating that they are in fact a New Mexico resident, and which also authorizes TRD (Tax & Rev) to disclose their residency status to the production company, so you can verify their residency status on the front end!

In order for New Mexico residents to be creditable, they must be filing New Mexico **Resident** or **First-Year Resident** tax returns. Residents must also provide proof of residency, which must be one (1) of the following:

- a. A copy of last year's New Mexico personal income tax return (filing as a **Resident** or **First-year Resident**)
- b. A valid New Mexico driver's license
- c. Voter registration card
- d. Other clear and convincing evidence showing intent to maintain a permanent residence in New Mexico

*If a crew member just moved here and is not in the TRD system, you can choose to rely on good faith that the new crew member *will* file a First-Year Resident tax return. However, if it is discovered that the applicant or any applicant filed a New Mexico *Part-Year Resident* or *Non-Resident* tax return, or if they have changed their residency to another state on or before the last day of the taxable year (December 31), or if TRD has other evidence indicating they are not a resident (*even though they filled out a DOR form and provided proof*), he/she will NOT qualify.

Please remember that the DOR is just a tool that we have created to assist you in determining residency; it is not a guarantee that the crew member will qualify for the credit. The film company can choose to obtain additional proofs of residency or set additional criteria – whatever is going to make you feel as certain as you can that they *are* residents or *will* be residents!

→ Send DORs to Jerry Montoya at TRD: jerrym@state.nm.us or 505 827 9801 fax. If you are emailing Jerry, be sure to write the names of the crew members in the body of the email!

Background talent (Extras) **do not** need to fill out Declaration of Residency forms. However, New Mexico resident *principal* talent **do** need to fill out Declaration of Residency forms.

 **Tip**

Tips for preparation of your “bibles” for your Tax Credit Package!

Keep detailed accounts (“bibles”) in both print *and*, if possible, on CD, of all creditable expenditures incurred in New Mexico during pre-production, production and post (if applicable). **KEEP ALL RECEIPTS for purposes of the audit.**

Here are some guidelines for preparing your tax credit package (For stand-alone post-production, please concentrate on applicable items):

Create three (3) separate comprehensive bibles (for very small projects, having everything contained in one bible is acceptable):

BIBLE #1: Payroll & Declaration of Residency forms: Make copies of each employee’s *Declaration of Residency* form and proofs of residency (attaching them) and sort alphabetically by last name. If possible, please include a Payroll Summary Report as well.

BIBLE #2: Petty cash: Make copies of petty cash envelope summaries, copying the front of each petty cash envelope and sort by PC envelope number. Purchases made using petty cash must be documented by vendor receipts. Copy the front of each petty cash envelope and include with your summary report. The vendor to whom the petty cash was paid is needed, not the crew member who was given the petty cash.

BIBLE #3: Vendors/Accounts Payable (AP)/all other transactions: Full vendor names must be clearly visible on ledgers.

- Only include New Mexico creditable expenditures.
- Preferred format: Excel or any kind of Text format.
- Please include a Chart of Accounts.
- Any credit card purchases must include detail of purchases/vendor names; it can’t just say “Visa.”
- Submit backup for fuel cards (invoices with location address); it can’t just say, “Shell.”
- Submit backup for shipping (FedEx, etc...).
- If qualifying nonresident cast via a “personal services business,” please include a summary of the transactions: (actors, salaries, and proof of the Gross Receipts Tax being paid and the Personal Income Tax being withheld).
- **Although no other receipts are required at this time*, YOU MUST KEEP ALL RECEIPTS for purposes of the audit.**
- *It is advisable for very small productions, such as student films and shorts, to include *all* receipts with their tax credit package.
- Do not submit your tax credit package until you’ve spent every last penny in New Mexico, which includes post production.

How to apply & receive your credit in just ten easy steps:

Please do not begin this process until you are officially green-lit/fully financed and in prep.

→ **Stand-alone post production:** Review page 14 **first** before you begin.

Step One: Read this entire document. Yes, really.

This clear-cut, step-by-step, bomb-proof document was created to make your experience and understanding of our tax credit process as painless as possible. So please grab a cup of coffee, a quiet corner and 20 minutes. If you're in a mad rush, simply head to our FAQs on pages 16 - 20. But please read the entire document when time allows and follow the steps (repeat: f o l l o w t h e s t e p s) when applying.

Step Two: Print Checklist on Page Fifteen (15)

Print Page Fifteen (15), the Tax Credit Checklist, and post on your production wall.

Step Three: Registration & Agreement

Complete the following two (2) forms. Forms can be found at www.nmfilm.com under "Incentives." There is no deadline to submit these forms; however, we ask that they are submitted *before* principal photography begins, or for stand-alone post-production, before post has been completed.

- 1) *Film Production Company Registration*
- 2) *Film Production Tax Credit Agreement* (Stand-alone post production has a separate form)

Mail, fax or email to:

John Raymond Armijo | New Mexico Film Office | Joseph Montoya Building | 1100 Saint Francis Drive
Santa Fe, NM 87505 | Fax: 505.476.5601 | Email: john@nmfilm.com (*please do not cc Jennifer*)

After we approve the Registration Form, a signed copy of the Agreement will be faxed to you for your records.

Step Four: Submit script

Submit script to the NMFO*. Any non-scripted projects (reality television, documentaries, etc...) or stand-alone post production must submit a treatment/synopsis/storyboard/other medium-appropriate outline and indicate if it involves any potentially hazardous conditions, minors or animals, and its compliance with state laws.

Preferred method for sending script: PDF or Final Draft via email to tobi@nmfilm.com or hard copy (to support our Green efforts, printing double-sided would be appreciated) to: New Mexico Film Office (address above in Step Three)

→ **We may already have your script on file, so check with the Film Office first before submitting!*

Step Five: Pre-production meeting

Call or email the Film Office to schedule a pre-production meeting* with the *New Mexico Taxation & Revenue Dept.* and the *New Mexico Film Office*. This meeting should include your *Head Accountant, Payroll Accountant, other accountants if deemed necessary, Line Producer and/or UPM and/or Production Supervisor*. Film Office: 505.476.5612 or tobi@nmfilm.com

For budgets under \$1M, this meeting is optional; however, ALL films are encouraged to contact the Film Office or TRD if they have any questions **after thoroughly reviewing this document.*

COMPLETE YOUR PRODUCTION!

Enjoy our state, be safe, and please contact us if you need any assistance along the way.

Step Six: After completion of principal photography, place newspaper ad

(Stand-alone post-production submissions are excluded from this requirement.)

In compliance with the *Production Tax Credit Agreement*, please provide proof of the following:

“Production shall agree to publish, at completion of principal photography, a notice at least once a week, for three consecutive weeks, in local newspapers in regions where filming has taken place to notify the public of the need to file creditor claims against the film production company by a specified date.” *Ads can be of any size.* This must include production title, address of production company, phone, fax, and email for BOTH your local production office, as well as your primary or corporate office, as vendors need to be able to contact you after you have closed your NM office. Please submit this information to John Raymond Armijo at john@nmfilm.com and fax or email a copy of the invoice for all three weeks or send copies of all three ads: 505.476.5601 fax

This information will also be posted on the web site of the NMFO until all financial obligations have been met. To view a **sample** newspaper ad, please contact John Raymond Armijo: john@nmfilm.com

Step Seven: Did you pay everyone?

Email john@nmfilm.com for verification that payment of all financial obligations incurred in the State of New Mexico has been made and that you do not have any outstanding financial obligations. The NMFO will provide a letter to TRD confirming that this requirement, per law, has been fulfilled. Until we have confirmation that all financial obligations in the state have been met, we cannot, by law, submit your Tax Credit Package to TRD.

Step Eight: Stats

Complete the “Stats” form and email to john@nmfilm.com. Form can be found at www.nmfilm.com: click “incentives” in the top menu, then click “forms” on the side menu (red section).

Step Nine: Mail your Tax Credit Package to the NMFO

Complete the following form: *Application for Film Production Tax Credit (RPD-41229)*

Form can be found at www.nmfilm.com under “Incentives.” The address on this form should be your corporate, home or primary office – **not** your New Mexico production office, because your credit check will be sent to the address you list if you do not choose direct deposit.

→ **REVIEW PAGE 9 under “Tips for Preparation of your bibles” before proceeding, and if you have any questions about how to prepare your package, please contact:** Mary Ann Fernandez of TRD: 505.827.0919 or maryann.fernandez@state.nm.us

Physically mail your TAX CREDIT PACKAGE (email submissions are not acceptable), which must include:

- Application for Film Production Tax Credit form (RPD-41229)**
- Bible #1 entitled PAYROLL (One printed/hard copy and one CD if possible). Included in the “Payroll” Bible should be Declaration of Residency forms with proofs of residency attached to the forms and sorted alphabetically by last name. If possible, please include Payroll Summary Report.**
- Bible #2 entitled PETTY CASH: Copies of petty cash envelopes, sorted by PC envelope number**
- Bible #3 entitled VENDORS/ACCOUNTS PAYABLE (If possible, include CD)**
- Remember to include:**
 - Backup for fuel cards (invoices with location address)
 - Backup for P-cards/credit cards
 - Backup for shipping
 - Chart of Accounts
 - Transaction summary for nonresident cast (actors, salaries, and proof of GRT being paid)
- For productions over \$1M: Submit hard copy Final Crew list and Final AP Vendor list**

FEWER MISTAKES EQUAL A FASTER CREDIT!

Send your completed Tax Credit Package to:

John Raymond Armijo
New Mexico Film Office
Santa Fe University of Art and Design
1600 Saint Michael’s Drive
Santa Fe, NM 87505

Upon review by the NMFO and a second confirmation that all financial obligations in the state have been met, this package will be forwarded to the New Mexico Taxation & Revenue Department (TRD). TRD performs an audit and will review your claim *line by line*. TRD may require additional backup, so please have this readily available and provide any requested documentation to TRD immediately, as your response time will directly affect the timeliness of the audit. After a review of the audit, they will **return** the *Application for Film Production Tax Credit* form to you with the approved amount.

How long does the audit take?

TRD performs audits based upon the order in which they are received, so they cannot predict a guaranteed timeframe. Other factors, such as size of credit, having “clean,” detailed ledgers, and providing TRD with documentation promptly when requested, will determine the length of the audit process. After you have signed off on the approved amount and filed your New Mexico tax return (step twelve below), it will take an additional 3 – 4 weeks to receive your credit.

Step Ten: After you receive your “approved amount” application, file your tax return **after the close of your taxable year** and wait for your credit

After you receive the form back from TRD with the approved amount, **file an income tax return*** (Using forms: PIT, CIT, PTE or FID-1) after the close of your taxable year. This means that even though you have an approved amount from TRD, you must wait until “after the close of the taxable year” to file your credit claim.

For a quicker check, be sure to check the “REFUND EXPRESS” box for direct deposit.

**If you need help figuring out which income tax return to use, Jerry Montoya (contact info below) can walk you through the process.*

Attach a copy of the approved Application for Film Production Tax Credit to **your income tax return** and send to:

Jerry Montoya
Audit and Compliance Division, Director’s Office
P.O. Box 630
Santa Fe, NM 87504-0630

The credit will then be applied to any tax liability you have incurred (franchise fees, if applicable), with the excess credit refunded back to your production company based on the deferment payments structured below:

If your tax credit is less than \$2M:
You’ll receive your credit immediately upon authorization by TRD

If your tax credit is between \$2M, but less than \$5M:
You’ll receive your credit in two equal payments: one immediately upon authorization by TRD subject to the cap, and the second half twelve months later subject to the cap.

If your tax credit is \$5M or more:
You’ll receive your credit in three equal payments: one immediately upon authorization by TRD subject to the cap, the second payment twelve months later subject to the cap, and the third payment twenty-four months after the first payment subject to the cap.

Once TRD has received your approved Application and tax return, it will take approximately 3 – 4 weeks to receive your credit. *Sorry, no, we cannot expedite the process.*

If you didn’t find your question or answer in this document, please contact:

General questions about the process or Film Office forms:

New Mexico Film Office: 505.476.5612 or tobi@nmfilm.com

Questions pertaining to your Tax Credit Package or the audit:

Mary Ann Fernandez, Supervisor, Film Unit, TRD: 505.827.0919 or maryann.fernandez@state.nm.us

Jerry Montoya, Audit Review, TRD: 505.827.0929 or jerry@state.nm.us

How to apply for Stand-alone post production

Important Note: Only the *producing entity* can claim the credit. If you are hired or subcontracted by a film production company to complete a post-production aspect of a

film/media production, the film production company will claim the credit, **not** the post-production company. Remember, you must be the “film production company” in order to claim the credit.

What qualifies? Post production expenditures made in New Mexico that:

- are directly attributable to the production of a commercial film or audiovisual product;
- are for services performed in New Mexico;
- are subject to taxation by the state of New Mexico;
- exclude post production expenditures for which another taxpayer claims the credit;
- **do not exceed the usual and customary cost of the goods and services acquired when purchased by unrelated parties. The Secretary of TRD may determine the value of the goods or services when the buyer and seller are affiliated persons or the sale or purchase is not an arm’s length transaction.**

Definition:

“Post-production 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.

→ *This definition of Post Production means that expenditures such as travel, hotel, per diem, etc... normally allowed for the credit under Production would NOT be allowed when incurred under Post Production.*

Process: Complete the following steps:

- Step One:** Complete. See page 10.
- Step Two:** Complete. See page 10.
- Step Three:** Complete. See page 10.
- Step Four:** Complete. See page 10.
- ~~Step Five: Do not complete. Not required.~~
- ~~Step Six: Do not complete. Not required.~~
- Step Seven:** Complete. See page 11.
- Step Eight:** Complete. See page 11.
- Step Nine:** Complete the following form: *Application for Film Production Tax Credit (RPD-41229)*

Physically mail your TAX CREDIT PACKAGE (email submissions are not acceptable), which must include:

- Application for Film Production Tax Credit form (RPD-41229)**
- Ledger of detailed post production expenditures**

Send your completed Tax Credit Package to: [John Raymond Armijo](#) | [NM Film Office](#) | [Santa Fe University of Art and Design](#) | [1600 Saint Michael’s Drive](#) | [Santa Fe, NM 87505](#)

- Step Ten:** Complete. See page 13.

NEW MEXICO'S 25% TAX CREDIT CHECKLIST

Productions: Please print this form, tape to your office wall, and check off as you go.

Before Production:

- Thoroughly read this document
- Collected Declaration of Residency forms and proofs of residency, and verified New Mexico residency through TRD up front (Jerry Montoya, TRD: jerrym@state.nm.us or 505 827 9801 fax. Write the crew members' names in the body of the email!)
- Sent *Film Production Company Registration* form **STEP THREE**
- Sent *Film Production Tax Credit Agreement* **STEP THREE**
- Sent script (for non-scripted projects: synopsis or other medium-related outline) **STEP FOUR**
- Pre-production meeting with NMFO & TRD (if applicable) **STEP FIVE**

After Production:

- Make certain that you submit your Tax Credit Package to the NMFO within one (1) year of your final expenditure
- Completed requirement for Newspaper Ad (if applicable) **STEP SIX**
- Confirmed that all New Mexico financial obligations have been paid **STEP SEVEN**
- Completed Stats form **STEP EIGHT**
- If the amount of your requested tax credit exceeds five million dollars (\$5,000,000), you must get an audit conducted by a certified public accountant licensed to practice in New Mexico
- Mailed the Tax Credit Package, including the *Application for Film Production Tax Credit*, to NMFO **STEP NINE**
- If long-form narrative, follow up to ensure that the State of New Mexico receives a credit, a requirement per statute!

After TRD confirms your approved "Tax Credit Amount":

- Sent New Mexico Income Tax Return and copy of approved *Application for Film Production Tax Credit* to Jerry Montoya at TRD **STEP TEN**

- In a nutshell, tell me about the new rules for your tax credit.
 - A “rolling cap” of \$50M per fiscal year;
 - Deferment payments for tax credits \$2M and over;
 - Personal Income Tax (4.9%) for nonresident actors must be withheld and submitted upfront;
 - Productions must wait to file their credit claim after the close of their taxable year;
 - Productions must submit their tax credit package within one (1) year of final expenditure;
 - If your credit is over \$5M, you’ll need an outside audit;
 - Qualified vendors must have a physical presence – and if they have employees, at least one of them needs to be a New Mexico resident;
 - Certain expenditures are limited (hotels: \$150 per night; rental cars: \$100 per day...)

- Tell me about your new “rolling cap” of \$50M. What’s “rolling” about it?
We can accrue unlimited tax credit amounts; however, any amounts over \$50M will be “rolled over” until the next fiscal year.

- When does your fiscal year begin? In other words, when is your “new pot of money” available?
July 1 of each year.

- Do I have to pre-qualify or “get in line”?
No. The credit and “rolling cap” are based on first-come, first-served.

- How can I be one of the first ones served?
It all depends on when you file your credit claim and tax return (you file them together), and you can only do this after the close of your taxable year. As an example: if you’re approved by TRD in May, but your taxable year doesn’t end until August 31, you must wait until September 1 to cash in your credit claim and file your tax return.

- Can you guarantee **when** I’ll get my credit?
No. However, to provide guidance, the Film Office will post monthly the projected amount of credit claims per fiscal year, and TRD will post monthly the aggregate amount of actual credit claims.

- Can you provide my investor with an approval letter?
Since productions are not prequalified and the credit is based on first-come, first-served, productions will not receive an approval letter. It is simply a matter of: meet the criteria and you will receive a 25% tax credit, subject to the cap.

- If you can’t provide me with a guarantee, how do I, or my investors, have assurance?
It is simply a matter of: meet the criteria and you WILL receive a 25% tax credit, subject to the cap.

- Deferment payments? What’s that all about?
*This is all based on the amount of your **tax credit**, not your budget. If your tax credit is less than \$2M, you’ll be paid immediately upon authorization of payment by TRD.*

If your tax credit is between \$2M - \$5M, your credit will be divided into two (2) equal payments: the first payment to be paid immediately upon authorization of payment by TRD, and the second payment to be made twelve (12) months following the date of the first payment.

If your tax credit is \$5M or more, your credit will be divided into three (3) equal payments: : the first payment to be paid immediately upon authorization of payment by TRD, the second payment to be made twelve (12) months following the date of the first payment, and the third payment to be made twenty-four (24) months following the date of the first payment.

- I'm already confused about the "super loan-out"/personal services business thing in order to qualify my nonresident actors. It sounds like it's even more complicated now. Can you please explain in simple terms?

Sure. In order for nonresident performing artists (actors & stunt performers) to qualify, two (2) things must happen:

- *The personal services business (aka "super loan-out") must pay Gross Receipts Tax (GRT) in New Mexico on the portion of the payments qualifying for the credit; therefore, the personal service business must be registered to do business in New Mexico; and*
- *The personal services business (aka "super loan-out") must also deduct and remit Personal Income Tax (PIT) at the highest rate of 4.9% on the actors' salaries **or** causes the PIT to be deducted and remitted.*

So, it's actually pretty simple: The super loan-out pays GRT to the state and also withholds 4.9% PIT and remits that to the state, as well. The actors or their loan-outs will be able to file a New Mexico income tax return with their deductions in order to reclaim all or portions of the PIT.

Here are four (4) ways to do this:

- 1) *Create a "super loan-out," a secondary company, in a state outside of New Mexico. Register this "super loan-out" to do business in New Mexico and run all of the non-resident cast salaries (salaries only, no fringes) through this entity. New Mexico requires that the "super loan-out" pay a 5.125% gross receipts tax on these salaries; however this 5.125% is rebateable, so you would have a net profit of 21.15%. See example below. **The non-resident actor loan-outs do NOT have to register their loan-outs to do biz in New Mexico!***
- 2) *Many payroll companies can facilitate the "super loan-out" through their non-New Mexico offices, so check with your payroll company!*
- 3) *You can use an existing New Mexico company as the "super loan-out," bypassing the need to create a new company. However, you would then be subject to a higher GRT rate, currently 7% in Albuquerque or 8.1875% in Santa Fe.*
- 4) *If you only have one or a few nonresident actors and they are willing to register their actor loan-outs in New Mexico, you can bypass the need for a "super loan-out." The filing entity (the main production company claiming the credit) can directly pay the actor loan-outs; however, the actor loan-outs would be required to pay the 5.125% GRT and withhold and remit the PIT.*

- How did you get to the 21.15% for non-resident cast? (Example using #1 Scenario)

Super loan-out registers to do business in NM

Super loan-out pays Mr. Non-resident actor \$100.00

Super loan-out pays NM a 5.125% GRT on the \$100.00

(Remember that the super loan-out must also withhold and remit 4.9% PIT)

Super loan-out has paid a total of \$105.13

Main production company/Filing Entity claims the 25% credit on \$105.13 (the total invoice)

Main production company/Filing Entity receives credit of \$26.28

Subtract the 5.125% GRT (\$5.13) already paid and you have a net of \$21.15 or 21.15%

- Do the actors' loan-outs need to register to do business in New Mexico?

No. Unless you're using Scenario #4 above.

- Why can't my production company act as the "super loan-out"?

Simply because there wouldn't be any transaction taking place, a requirement for the expenditure to be taxable and thus qualify for the credit.

- What if I have a non-resident actor who doesn't have a loan-out?

They can still qualify as individuals. They just become "employees" of the super loan-out. Same applies, though: GRT must be paid and PIT must be withheld and remitted.

- In another nutshell, what are the qualifications for feature films?
Your production is intended for “reasonable commercial exploitation,” you pay all of your New Mexico obligations, and you give the State of New Mexico a credit. Oh, and you provide whatever information the Film Office requests of you.
- When should I apply?
Not until you’re green-lit, meaning you’re fully financed, and in prep.
- Do nonresident crew qualify?
No. However, their housing and per diem will.
- Will nonresident ATL (above-the-line) qualify?
Only actors and stunt performers – “performing artists.”
- What about *other* nonresident ATL such as directors or producers?
No, just actors and stunt performers.
- Really, are you *absolutely* certain nonresident directors or producers don’t qualify?
Yes, absolutely certain.
- What about *New Mexican* ATL (above-the-line)?
Yes, all ATL (above-the-line) New Mexico residents will qualify.
- What determines New Mexico residency?
*The individual must consider New Mexico his/her primary residence, be domiciled here on the last day of the taxable year (December 31) and file a **Resident** or **First-Year Resident** tax return. And productions can check residency upfront through Tax & Rev, so beware nonresident crew: Falsely claiming to be a New Mexico resident will NOT get you a job!*
- Do fringes for New Mexico residents qualify?
*Yes. Employee fringe benefits paid to a payroll company qualify for the tax credit, including Pension, Health & Welfare, Holiday, Vacation. The following **does not**: SUI, FICA, FUI and Workers Compensation fee. Workers Compensation Insurance will qualify only if purchased through a New Mexico based agent. Fringes for non-resident crew members will **not** qualify.*
- Is it a *rebate* or a *credit*?
Technically, New Mexico has a “refundable tax credit.” In other words, cash for the full amount – with no brokering required. TRD literally sends you a check or deposits the amount into your bank account.
- Is the credit transferable or assignable?
No.
- Is the credit on the full amount or just the tax portion?
The full amount. Example: you spend \$95.00 and \$5.00 on tax for a total of \$100.00. You get \$25.00 back.
- Must I always pay tax in order for an expenditure to qualify?
*No, not in all cases will you be paying the tax. Example: you rent a home to be used as a location. The homeowner will not charge you tax; however, that location fee will qualify because now the homeowner must pay income tax on that amount. Remember, it’s anything that has a state tax **attached**.*
- I bought a 35mm Panavision camera. Will that qualify?
*No, that would be considered a fixed asset. **Rentals** of this camera would qualify.*
- Do commercials qualify?
Yes, as long as they’re a regional or national broadcast. And we’ll require proof of media buys.

- What do you consider a “regional commercial”?
Airing in more than one state, but media buys must be for more than one state. If a local commercial happens to air in Texas because that cable company’s broadcast has “spill-over” across the border, that would NOT qualify. You must purchase media buys for more than one state.
- Do video games qualify?
Yes, but the filing entity claiming the credit must be an approved “film production company.”
- Do student films qualify?
Yes, as long as they’re intended for exhibition and commercial exploitation.
- Do documentaries qualify?
Yes. Same rules apply: intended for exhibition and commercial exploitation.
- Do music videos qualify?
As long as it is intended for commercial exploitation.
- Do industrials or training videos qualify?
No, unless they are intended for commercial exploitation – will they be distributed in the commercial marketplace? If their purpose is “in-house” (used to train employees, etc...) no, they will not qualify.
- Do print ads qualify?
No.
- What about post-production?
Yes, and stand-alone post also qualifies. So if you film in California, but decide to do your post in New Mexico, your post-production expenditures will qualify.
- Will shipping qualify?
*Only packages sent **from New Mexico** will qualify.*
- Do financing fees qualify?
No.
- Can a non-profit organization claim the credit?
No, because the mechanism for receiving the credit is filing a New Mexico tax return, and non-profits are tax exempt.
- Do I have to spend a minimum amount in order to qualify?
No.
- Is there a per-project cap?
No.
- Any other caps other than the “rolling” \$50M annual?
Just on cast/talent. \$20M cap, meaning a maximum credit of \$5M on cast/talent per project.
- Is there a certain percentage I must film in New Mexico in order to qualify?
No. Even if you film one day in New Mexico, the expenditures for that one day will qualify.
- Is there a certain percentage of New Mexico crew I must hire in order to qualify?
No. But keep in mind since nonresident crew do not qualify, the more New Mexico crew members you hire, the greater the credit.

- I will film most of my movie in New Mexico, but a few scenes take place in another state. If I take my New Mexico crew with me, do I get the credit on their salaries while they're out of state?
No.
- I will film most of my movie in New Mexico, but a few scenes take place in another state. If I take my New Mexico equipment with me (which I paid for in full in New Mexico), do I get the credit on the full amount of the rental?
No, just the amount when the equipment was used in New Mexico.
- I'm using a New Mexico-based travel agency. Will a limo to LAX qualify if I book it through them?
No.
- Back to that non-resident director and producer thing...
Wow, you're pushy. No, they s t i l l don't qualify.
- Must I register my production company in the State of New Mexico?
No. TRD will use your Federal ID number (or social security #) to process the credit/return.
- Must I use a New Mexico producer or production company in order to qualify?
No.
- Must I use a New Mexico bank?
No.
- Must I use a New Mexico payroll company in order for the crew to qualify?
No.
- What is the advantage of using a New Mexico payroll company?
Their processing fee will qualify.
- How do we receive our money?
By filing your credit claim along with your New Mexico tax return.
- How long does it take to get the credit?
TRD performs audits based upon the order in which they are received, so they cannot predict a guaranteed timeframe. Other factors, such as size of credit, having "clean," detailed ledgers, and providing TRD with documentation promptly when requested, will determine the length of the audit process. After you have signed off on the approved amount and filed your New Mexico tax return (step twelve below), it will take an additional 3 – 4 weeks to receive your credit.
- It's taking a long time to get my credit, and I really need the money. Can you help expedite the process?
New Mexico has one of the fastest turnaround times in the country and TRD has a specialized four-person "Film Unit" to process film credits. You can contact Mary Ann Fernandez, Film Unit Supervisor: 505.827.0919 or maryann.fernandez@state.nm.us.
- Do I have to pay for the TRD audit?
Not a penny. Only productions whose tax credits are \$5M or more must get an outside audit from a CPA licensed to practice in New Mexico and attach the results to their application.
- It seems too good to be true. Is it really that simple?
Yes.