

## NM Refundable Film Production Tax Credit

### QUICK REMINDERS - POST WEBSITE REVIEW!

Details are available online at [NMFILM.COM](http://NMFILM.COM)

#### GENERAL

- Delineation: the New Mexico State Film Office determines eligibility of a project and the NM Taxation & Revenue reviews and determines if a transaction qualifies.
- The base percentage of the credit is 25% with no minimum spend requirement. Some types of projects may qualify for an additional 5% if certain requirements are met.
- The basic concept of this incentive is that qualifying expenditures must be subject to state taxation for services rendered in New Mexico. Examples of state taxes are Gross Receipts Tax (for sales and services), Fuel Tax, Property Tax, and Personal Income Tax.
- Register your project with the Film Office before your principal photography and submit the project's tax application after the project's expenses for each tax year. Then after the close of your company's tax year, you file your state tax or informational return.
- When the "check is cut" (or the deposit is made) that's when the annual cap of \$50M is affected (drawn down). This is usually 8 to 12 months after wrap if the submission happens in a timely manner.
- It's not a case of "if" but "when" you receive the credit, and we help you determine that timeline.

#### QUALIFYING EXPENSES

- Review the few specific limits for hotel, personal cars, fine art & jewelry purchases, and gifts.
- Per diem and allowances for residents and nonresidents qualify – this weekly flat is not capped.
- Relocation fees (for TV) do not qualify and US postal services do not qualify (federal).
- Tax-exempt entities are not subject to state taxation (e.g. businesses on Native Lands, non-profits, and government). These types of transactions, and non-qualifying locations fees, cannot be passed through a taxable NM entity to qualify.
- Charter flights going in or out of NM do not qualify – only commercial flights, where all legs are under one booking and the booking is through a NM travel agent with physical presence. Charter flights flown within NM may qualify.
- Background do not need Declaration of Residency Forms (DORs).
- Consider categorizing Crew and Talent as follows: Residents (all positions), Nonresident Actor/Stunt Loan Outs, Nonresident Directly Hired Actors/On-Camera Stunts, Nonresident ATL (non-qualifying, off-camera), Background (AP), and Nonresident Crew Exceptions (AP).

#### PERFORMING ARTISTS (ON-CAMERA TALENT)

- If an Actor Loan Out (ALO) is paid through a "Super Loan Out" (SLO) and they do not get a NM tax ID number (called a CRS# and which is easily obtained online), they will likely get a bill for Gross Receipts Tax (GRT) down the line by the NM Taxation & Revenue Dept., even though the SLO paid GRT. The SLO company needs this to issue a Non Transferable Tax Certificate Type 5 so the ALO is exempt from GRT.
- ALL nonresident performing artists should be aware that regardless as to whether they are paid via an ALO or are directly hired, the NM max withholding income tax rate of 4.9% must apply in order for a company to qualify those payments for the purposes of this incentive.

- Starting 2016, only wages and per diem apply as qualifying expenditures for nonresident actors – this will apply to ALOs, not just the directly hired, nonresident actors. (This was the case prior to 2012.)

### **NONRESIDENT CREW EXCEPTIONS**

- The program structure changes for productions starting principal on or after January 1, 2016.
- The training requirement applies to this program now and will continue to apply going forward including training of crew, promotion of NM and the industry, or a donation to a school with a film program.
- One way to fulfill the training requirement is to make a donation to a NM film school in an amount equal to 2.5% of the qualifying payments (that were made to the individuals that fulfilled the pre-approved positions - \$250 for every \$10k). The NM film program must meet the given criteria but is the production's choice.

### **LOCAL VENDORS & OUTSOURCING**

- Vendors must coordinate services at their designated business in NM. Other aspects of physical presence are NM business registration, bricks and mortar, a business sign, clear hours of operation, and an employee or owner that is a NM resident.
- For goods or equipment provided by local vendors to a production, where that vendor does not maintain any inventory or does not carry similar inventory at their NM business location, documentation must be provided by the production to show reasonable efforts were made to find goods and equipment already in NM or to find a vendor that already has similar inventory to outsource it for them.
- Similar or like inventory means inventory that would be used by the same production department or would be categorized the same way as reflected in a standard production vendor list.
- The Production Services Vendor that outsources for a production may be asked to provide a vendor list for that production to assist in determining reasonable efforts were made.