



Amendments to the NM Refundable Film Production Tax Credit

January 1, 2016, is the date that Sections 4 through 11 of **SB565** go into effect for productions who begin principal photography in the New Year. It is a significant date because it affects eligibility for additional credit amounts above the base 25% refund and clarifies types of payments for qualifying expenditures. Eligibility is determined by the Film Office and qualifying expenditures are determined by the NM Taxation & Revenue Department (TRD.)

Reminder: In New Mexico, the *registration* of the project occurs prior to production; the *application* for the credit occurs after production; and, the *filing* for the credit occurs after the close of the company's tax year.

Note: The law was broken into multiple sections for comprehension and applicability. Sections 2 through 11 of **SB565** apply to productions that start principal photography on or after January 1, 2016. Some language from section 1 is repeated in these additional sections.

Section 4: ADDITIONAL DEFINITIONS - applies to section 5-11

1. Within the definition of "Direct Production Expenditure," resident box rentals is addressed. The language clarifies that equipment box rentals, regardless of how they are paid by the company, qualify when that resident is providing crew services on the same production. It is not a vendor relationship. Note: in New Mexico, Gross Receipts Tax (GRT) applies to box rentals. *(page 24, subsection A, beginning line 22)*
2. State withholding is now required for nonresident on-camera actors and stunt persons on production payroll at 4.9%, in addition to those actors paid through an Actor Loan Out. The rate of withholding takes precedent over the rates in the NM Withholding Tax Act for this credit. *(pages 24-25, subsection A, beginning line 25)*
3. Within the definition of "Direct Production Expenditure" qualifying payments to nonresident actors paid through a Super Loan Out are limited to wages and per diem – benefits can no longer qualify. The eligible payment still includes fees and GRT on the wages, per the inclusive amount invoiced. *(pages 25, subsection A, beginning line 7)*
4. The expenditure for a required external audit by a CPA licensed to practice in NM is eligible if the CPA has physical presence and services are rendered in-state. Accrued amounts (e.g. a flat fee) or hourly invoices are both acceptable forms of payments. *(page 26, subsection A, beginning line 18)*

Section 5: FILM AND TELEVISION TAX CREDIT - FILM PRODUCTION COMPANIES THAT COMMENCE PRINCIPAL PHOTOGRAPHY ON OR AFTER JANUARY 1, 2016

5. Under "postproduction expenditures," *postproduction services*, not just services, must be performed in New Mexico to qualify. - *(page 29, subsection B, beginning line 7)*
6. All qualifying projects must include the acknowledgement to the State of New Mexico. The State's (Tourism) logo must now appear in the screen credits at a standard size as compared to other logos in the same end crawl for both features and television episodes. *(page 29, subsection B, beginning line 6)*
7. Submission deadline for each tax application is one year from last qualifying production expenditure, incurred for the registered project, within the production company's tax year. *(page 3, subsection I, beginning line 4)*

Section 6: ADDITIONAL CREDIT - TELEVISION PILOTS AND SERIES

8. Standalone TV pilots are eligible for a 30% credit on direct production expenditures, excluding payments to nonresident performing artists, when documentation is included showing the intention for the series to be produced in New Mexico upon "pick-up." *(page 34, subsections A & C, beginning line 4)*
9. As related to eligibility, "budget" means the *New Mexico* budget. *(page 34, section 6, subsection A, beginning line 13)*
10. Series television may only apply the additional 5% payments to nonresident on-camera actors and stunt persons when the same (parent) company begins another television series in NM within the same tax year. This means

one series has completed principal in a tax year and a separate series has officially begun New Mexico prep. Then, both eligible projects, produced by the same company, will receive the 30% on qualifying expenditures paid to nonresident actors. *(page 34-35, subsection D, beginning line 24)*

Section 7: ADDITIONAL CREDIT - QUALIFIED PRODUCTION FACILITIES

- 11. Qualified Production Facility (QPF) now includes a “standing set” when used as a filming location. It allows up to 3 days of principal photography at the qualified standing set to count towards the 10 day requirement at the soundstages, and up to 5 days towards the 15 day requirement. “Principal days” means that crew members are working at least 8 hours within a given day at the QPF. Currently, 4 soundstages and 3 standing sets (i.e. established Western Towns) qualify as QPFs. *(pages 36-37, subsection A, beginning line 5)*
- 12. The additional 5%, when meeting the requirements for using a qualified production facility (e.g. features), includes resident producer, writer, and/or director when they have filed their NM Personal Income Tax return as a full-time, in-state resident in the two previous tax years. *(page 35, subsection A, beginning line 19)*

Section 8: NONRESIDENT INDUSTRY CREW

- 13. The amended Nonresident Crew Exceptions Program establishes a flat 15% credit on employed nonresident crew. This amendment eliminates the need to contract a services company to employ these individuals; it eliminates Film Office from approving positions; and, it still excludes nonresident Writer, Director, Producer, Production Designer, DP, LP, Costume Designer, Still Unit Photographer and Drivers (Solely driving). Qualifying payments include wages, fringe benefits and per diem paid via production payroll along with the local payroll company’s workers comp policy and handling fees. The number of positions is limited by a quota system:

NM BUDGET RANGES	POSITIONS
Up to \$2M (i.e. \$1.99M)	4
\$2M up to \$10M (1 per 1 million)	add 8 max.
\$10M up to \$50M (1 per 5 million)	add 8 max.
\$50M up to \$150M (1 per 10 million)	add 10 max.

(pages 37-38, subsections A-C, beginning line 7)

MAX 30 POSITIONS TOTAL*

- 14. *A Standalone Pilot intended for series in New Mexico is authorized for 8 additional nonresident crew positions beyond the established quota base. In addition, at the division’s discretion, up to 10 positions may be permitted beyond the quota base when five or more productions are being produced in NM (prep, principal or strike) at the same time as the said production. No project will receive more than 40 approved positions. *(pages 38, subsection C, beginning line 15)*
- 15. The training requirement still applies and the language is streamlined. *(pages 39, subsection D, beginning line 2)*

Section 9: PAYMENTS FOR PERFORMING ARTISTS - CREDIT LIMITATION

- 16. In addition to background, resident, non-lead actors are no longer subject to \$5M tax credit cap. *(page 40, beginning line 1)*

Section 10: REQUIREMENTS TO CONTRACT WITH CERTAIN VENDORS

- 17. The term “Vendor” in section one is now “Specialized Vendor” to deter “pass-thrus.” The interpretation is that if a vendor sells, leases, or subcontracts a specific category of industry equipment or expendables, then they are considered specialized. A NM Vendor Form is submitted to the division by production if the vendor is not specialized or does not carry similar inventory to the production’s request. This form ensures reasonable efforts were made to find a specialized vendor first. *(page 40, subsection A, beginning line 14)*
- 18. Documentation is now required to show “reasonable efforts” to qualify payments to non-specialized, local vendors without inventory when they are sourcing inventory from out-of-state for a production. *(pages 40-41, subsection B, beginning line 25)*

Section 11: CREDIT CLAIMS - AGGREGATE AMOUNT OF CLAIMS ALLOWED

- 19. Obligated, authorized payments in the following fiscal year are still paid ahead of time, in order of scheduled dates, when the \$50M cap is not reached in a current fiscal year. (The \$10M “rollover” option has expired.) *(page 45, subsection C, beginning line 4)*