

# newmexicofilmmoffice

## Amendments to the NM Refundable Film Production Tax Credit

June 19, 2015, is the date that **SB565** goes into effect (90 days after the Governor signs the bill). It is a significant date for two reasons: (1) eligibility of the credit amount is affected by when a company *applies* for the credit; and, (2) qualifying expenditures are affected by when *payments are made*. Eligibility of the amended law, as determined by the Film Office, applies to tax applications received by the NM Taxation and Revenue Department (TRD), via the Film Office, on or after June 19, 2015. The amended law applies to expenditures paid on or after June 19, 2015, as determined by TRD, for qualifying projects.

**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.

1. Standalone TV pilots are eligible for a 30% credit on direct production expenditures when documentation is included showing the intention for the series to be produced in New Mexico upon "pick-up" and when applying for the credit after June 19, 2015. *(page 3, section 1, subsection C, beginning line 20)*
2. As related to eligibility, "budget" means the *New Mexico* budget. *(page 3, subsection C, beginning line 24)*
3. Qualified Production Facility (QPF) now includes a "standing set" when used as a filming location on or after April 10, 2015. 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. the Western Towns) qualify as a QPFs. *(pages 4-5, subsection C, beginning line 8)*
4. 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 4, subsection C, beginning line 4)*
5. 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 9, subsection M, beginning line 7)*
6. 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 9, subsection N, beginning line 22)*
7. In addition to background, resident, non-lead actors are no longer subject to \$5M tax credit cap. *(page 13, subsection S, beginning line 8)*
8. State withholding is required for nonresident on-camera actors and stunt persons on production payroll at 4.9%. It applies for *payments* made on and after June 19, 2015, regardless of exemptions claimed or the number of days worked by these employed, nonresident actors in NM. The rate of withholding takes precedent over the rates in the NM Withholding Tax Act. *(page 13, subsection T, beginning line 20)*
9. 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. The application would have to be submitted, and the expenditure paid, on or after June 19, 2015, for that cost to be eligible. *(page 15, subsection T, beginning line 12)*
10. Definitions were amended. For example, "Personal Service Business" includes that this entity may not have physical presence; "Physical Presence" clarifies that either the owner or an employee of the vendor must be a resident; "Qualified Production Facility" details the specs for standing sets. *(page 18, Section 2, beginning line 22)*