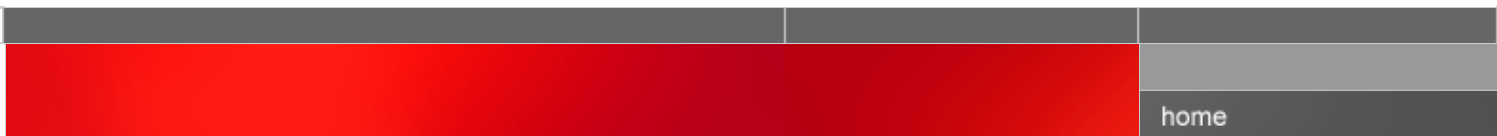


new mexico film office

incentives	bulletin board	production stats
locations dept.	nm filmmakers	list your property
industry directory	nm crew programs	green filmmaking



home
production resources
information for locals

new mexico's 25% refundable tax credit

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 section of the NMFO website walks you through this painless step-by-step process. 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.

- [DO YOU QUALIFY?](#)
- [WHAT ARE THE REQUIREMENTS?](#)
- [WHAT QUALIFIES?](#)

25% tax credit
 tax credit FAQs
 stand alone post
 film loan program
 film crew advancement
 no sales tax/NTTCs
 forms

WHAT DOES NOT QUALIFY?

\$50M ROLLING CAP: What does this mean and must I get in a queue?

WHEN CAN I CLAIM THE CREDIT?

WHAT ABOUT PRODUCTIONS THAT CROSS TAXABLE YEARS?

CAN YOU GUARANTEE WHEN I'LL RECEIVE THE CREDIT?

DEFERMENT PAYMENTS

REPORTING

DEFINITIONS

BILLS/STATUTES

RESIDENCY

REFUNDABLE CREDIT PROCESS

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 (See "[NM Tax Credit in 10 Steps](#)").

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.

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:

- 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.

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 New Mexico, 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>

RESIDENCY

You should verify New Mexico 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 copy of last year's New Mexico personal income tax return (filing as a **Resident** or **First-Year Resident**)
- A valid New Mexico driver's license
- Voter registration card
- 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

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!

TIP: Background talent (Extras) **do not** need to fill out Declaration of Residency forms; however, New Mexico resident *principal talent* B need to fill out Declaration of Residency forms.

REFUNDABLE CREDIT PROCESS

NM TAX CREDIT IN TEN STEPS

“BIBLES”: TIPS FOR PREPARING YOUR TAX CREDIT PACKAGE

STEPS FOR STAND-ALONE POST PRODUCTION

NM 25% TAX CREDIT CHECKLIST

[photo credits](#)

[site map](#)

**new mexico film office
 santa fe university of art and design
 1600 saint michael's drive santa fe, new mexico 87505**

**505 476 5600
 800 545 9871
 505 476 5601 fax**

**info@nmfilm.com
[staff directory](#)
[map & directions](#)**