

TAXATION & REVENUE FILM TAX CREDIT
PRE-PRODUCTION MEETING

Per Section 7-2F-2.1 (A) (1) NMSA 1978; states “direct production expenditure” “...means a transaction that is subject to taxation in New Mexico....”

Qualifying Spend

1. Vendor - Physical Presence with Bricks & Mortar
2. Direct Qualifying Expenses

Qualifying expenses have to be subject to taxation in NM: PIT, GRT, Property, etc.

Family/Friends Expenditures

As per statute, the expenditure has to be a NM direct expense to the production; and taxable in NM. Therefore, if the expenditure is not directly related to the production the transaction will not be allowed even if it's in a contract. The contract is between the production company and the individual.

- ☞ Internet purchase has to be picked up at the local store: Staples, Walmart, etc.
Purchased is entered into the store's inventory and GRT is paid at NM State rate.
- ☞ Public Parking would qualify. The transaction is subject to governmental GRT
- ☞ Shipping must originate from a NM qualified vendor.
- ☞ Insurance coverage and bonding must be purchased through a NM based insurance agent or broker.
- ☞ Flights – Have to be booked through a NM qualifying Travel Agent and have to have a leg in NM.
 - Itineraries are to be reviewed to determine what is allowed.

Examples:

- The flight is from NY to LA and the individual stays in LA for a few days then continues on to NM. The flight from LA to NM will be allowed.
- The flight is from NY to LA with layover a few hours then continues on to NM. The flight from NY to NM will be allowed.
- A car (service) can be book through the NM Travel Agent to be picked up at airport, rental home or hotel and take to location or airport only in NM.
 - If a car is booked through NM Travel Agent for an out-of-state pick up; the transaction is to be disallowed.
- Extra baggage: Baggage is to be paid in advance through NM Travel Agent to be allowed.
- All flights booked directly through an airline are to be disallowed.
- ☞ Charter Flights – Booked through a NM Based qualifying agent and flights are within NM.

3. Allowable Limits

- ☞ Vehicles limit is \$100 per day per person for in-state transportation for individuals related to the production. Vehicle has to be picked up at a qualifying rental company in New Mexico location.
- ☞ Food or lodging; \$150.00 per individual per day per person at a qualifying hotel in New Mexico
- ☞ Gifts to crew/actors; \$25.00 per individual

- ☞ Artwork or jewelry: expenditure \$2,500.00 or more; item needs to be on camera and proof is to be provided.

4. Reimbursements vs. Allowances

- ☞ Reimbursements are for NM residents only; *Reimbursement is for mileage and cell phone that a NM resident would use, as long as they provide monthly statement and a NM file an income tax return in NM.*
- ☞ Allowances/Per-diem are allowed for resident and non-resident.

5. Fixed Assets

- ☞ Fixed Asset: Note what happened to the item; if the item is sold subtract amount from total purchased amount equals amount to be claimed.
- ☞ The market value – amount of purchase = Allowed amount

6. Specialized Vendor: After being approved by NMFO to use a pass-through vendor (NM Production Company). If the company they are purchasing from has nexus in NM, the Production Company must issue a nontaxable transaction certificate (NTTC) to the company and will charge GRT on the whole invoice (items + services) to the end user (Production Company).

Some examples of purchases that are denied are as follows:

- ✓ The purchase was claimed in a previous film application
- ✓ Government entities
- ✓ Tribal locations
- ✓ Internet purchases
- ✓ Non-profit organization
- ✓ Out-of-State vendor
- ✓ Indirect cost (wrap parties, entertainment, etc.)
- ✓ No supporting documentation were provided
- ✓ An employee claim NM residency and files as a non-resident or part-year resident
- ✓ A crew position is not approved from NM Film Office for non-resident crew exception employee
- ✓ No withholding or withholding at the maximum rate on performing artist hired by production company
- ✓ No withholding or GRT on Super Loan-Out performing artist
- ✓ The expenditure is not eligible as per statute definition

7. Residency & First Year Resident - DORs must be complete for each individual.

- ☞ If an individual is claimed on someone else's Income Tax Return, the full name and social security number of the Filer's name is needed on the DOR to verify the individual providing services.
- ☞ If one of the documents provided is questionable or missing the individual will be checked in TRD system for residency by checking if a Personal Income Tax return was filed.

8. Excel List of Qualifying Residents with Full name and social security number to check residency.

- ☞ DORs are needed when submitting the excel spreadsheet; otherwise TRD cannot give the results.
- ☞ DORs will be checked when application is submitted; copies of NM current driver's license along with two supporting documents from the list. The final check is done when the application and memo is submitted to Taxation & Revenue for review.

DOR Certification Card:

- ☞ If the individual has the DOR certification card, a copy of the DOR card and current NM driver's license or ID is only need.

If the individual does not have a residency certification card, he/she can fill out a DOR and include the NM current driver's license and supporting documents to be reviewed.

The certification cards are mailed monthly for anyone who applies and is eligible.

A database was built from previous DORs, an individual can go on to the TRD website for the application.

<http://www.tax.newmexico.gov/Tax-Professionals/film-production-tax-credit.aspx>

Click **Letter to Film Industry Taxpayer - NM Film Residency Certification Program**

Instructions on how to apply for a NM Film Residency Certification Card

9. Non-Resident Industry Crew (NRCE) Per Section 7-2F-9 (A) (B) NMSA 1978

- Payments for wages, fringe benefits and per-diem will be rebate able at fifteen percent.
- The services rendered in New Mexico.
- The following ATL positions are not rebate able:
 - Production designer, director of photography, line producer, costume designer, still unit photographer and driver whose sole responsibility is driving.
- Only one list will be submitted for approved positions.

One list will be accepted and approved by NMFO, if there is multi tax years.

10. Super Loan Out

“payment to a personal services business on the wages and per diem paid to a performing artist of the personal services business if:

- 1) the personal services business pays gross receipts tax in New Mexico on the portion of those payments qualifying for the tax credit; and
- 2) the film production company deducts and remits, or causes to be deducted and remitted, income tax at the maximum rate in New Mexico pursuant to Subsection H of Section 7-3A-3 NMSA 1978 on the portion of those payments qualifying for the tax credit paid to a personal services business where the performing artist is a full or part owner of that business or subcontracts with a personal services business where the performing artist is a full or part owner of that business; and”

11. Actor Loan Out

“payment for wages and per diem for a performing artist who is not a New Mexico resident and who is directly employed by a film production company; provided that the film production company deducts and remits, or causes to be deducted and remitted, income tax from the first day of services rendered in New Mexico at the maximum rate pursuant to the Withholding Tax Act;...”

12. On background (Extras) no DORs are required; although, TRD does check the payroll for a NM address.

13. **Workers' Comp. Insurance**

If the workers' comp. insurance policy is purchased through a NM based insurance agent or broker, and employees are covered by the insurance coverage while working in NM. Yes it is direct production expenditure; therefore, the transaction is subject to tax and is rebate able.

When an employee of a production company works out of state, the transaction is not taxable in NM and not a NM direct expenditure; therefore, the workers' comp. is not rebate able.

14. Cap on performing Artists:

“That amount of a film and television tax credit for the total payments of direct production expenditures for the services of performing artists shall not exceed five million dollars (\$5,000,000) for services rendered by nonresident performing artists and featured resident principal performing artists in a production.

This limitation shall not apply to the services of background artists and resident performing artists who are not cast in industry standard featured principal performer roles.”

15. RPD-41366 Notice of Distribution of Film Production Tax Credit is to be submitted with Film Tax Credit Application (RPD 41229 or RPD 41381) is to be submitted to the NMFO.

- a. If TRD is to distribute of approved film production tax credit from a pass-through entity (PTE) to an owner, member or partner.

16. Site Visits and/or CPA Audits

Site Visit will only be for testing reliability and will be sampled for credits below CPA audit and will be sampled.

The objective of this is to ensure the auditors give proper consideration to the need of the document procedures performed, evidence obtained, and conclusions reached before the sampled is pulled upon submission of Bibles (ledgers).

ALL FORMS AND GUIDELINES CAN BE FOUND ON THE FOLLOWING WEBSITE:

<http://www.tax.newmexico.gov/Tax-Professionals/film-production-tax-credit.aspx>

Certified Public Accountant (CPA) Audits:

1. Production Company submits a Pre-Submission Worksheet and Tax Authorizations (TIAs) for individuals processing the credit and for CPA conducting the Audit to NMFO for confirmation of project eligibility.
 - a. Auditing and processing the credit: An audit will be conduct by an individual and the objective is to examine and evaluate the bibles which will meet the criteria for the film credit incentive.
2. NMFO will submit to Taxation & Revenue Department (TRD) First Memo with package and eligibility.
3. NMFO will submit to TRD Second Memo with Film Credit Application and the “Draft” “...results of the audit...” (As per Statute).
 - a. CPA: Licensed to practice in New Mexico will provide the results of an audit and Film Credit Application. CPA will verify that the expenditures have been made in compliance with the requirements of Section 7-2F-6 (I) NMSA 1978.

Submission of Application

Ledgers (bibles) are to be ready to submit to TRD when application and/or pre-submission worksheet is submitted to NMFO. When tax years cross, application(s) and/or pre-submission worksheet is to be turned in at the same time.

Under \$5M

When the New Mexico Film Office (NMFO) receives the Film Tax Credit Application (FTCA) from a Production Company for a completed project, a memo is created and sent to the Film Tax Credit Unit at NM Taxation and

Revenue Department (TRD) outlining the eligibility of the registered project (e.g. credit percentage allowed) and confirming applicable obligations have been met.

1. Film Tax Credit Application RPD 41229 (project was produced prior to January 1, 2016) or RPD 41381 project was produced on or after January 1, 2016. The form can be found on the following website:

Tax.newmexico.gov/Tax-Professionals/film-production-tax-credit

Next, the audit supervisor will assign the project to an auditor and an engagement letter, timeline and Tax Authorization Form is sent to the contact on the FTCA. The auditor will send a request link to upload the bibles (ledgers) via a secured electronic transfer.

All FTCAs are placed in queue based on “first-in, first-out” and the 180 days start from the date of Memo from NMFO.

\$5M+

An external CPA audit is required for credit \$5M+. The Production Company is to submit CPA Pre-Submission Worksheet and Tax Information Authorization to NMFO. NMFO will issue TRD a memo after all obligations are met.

CPA Pre-Submission Worksheet and Tax Information Authorization can be found on the follow website:

Tax.newmexico.gov/Tax-Professionals/film-production-tax-credit

Next, the audit supervisor will assign the project to an auditor who will send a request link to upload the bibles (ledgers) via a secured electronic transfer.

FOR FINIAL SUBMISSION BY PRODUCTION COMPANY TO NMFO:

2. Film Tax Credit Application RPD 41229 (project was produced prior to January 1, 2016) or RPD 41381 (project was produced on or after January 1, 2016).
3. NMFO will submit to TRD Second Memo with Film Credit Application.

Please refer to CPA Pre-Submission Worksheet on the following website:

<http://www.tax.newmexico.gov/Tax-Professionals/film-production-tax-credit.aspx>

FOR FINIAL SUBMISSION BY PRODUCTION COMPANY TO TRD:

8. Application is entered into queue with a 180- day deadline from the date of delivery of the second memo from NMFO.
9. TRD will submit links to Production Company and/or CPA to upload workpapers and the “Draft” “**...results of the audit...**” (As per statute)
 - ✓ The audit **must** include a copy of the CPA’s license to practice in NM.
 - ✓ A notarized statement confirming the CPA is independent from any other activities related to the film project for which is being audited.
10. TRD Supervisor and/or auditor will do their best to complete credit review at the unit level within 60 to 90 days.
 - ✓ When there is constant communication with CPA and auditor.

Site Visit is only done when the ledgers (ledgers) are complete and the application/memo has been received by TRD. TRD will determine if a site visit can be done after reviewing the ledgers.

17. Timeline for Credit

TRD has 180 days from the date of Memo from the NMFO.

Business Credit Approval Letter will be sent via email to the person on the application on or before 180 day deadline.

Once NMFO has reviewed and confirmed that all obligations are met by the production company, the Application/Memo package will be submitted to Taxation and Revenue Department (TRD).

- ◆ TRD will enter application into the queue and 180 day deadline line will start from the date of delivery on NMFO Memo.
- ◆ TRD will email an engagement notice, timeline and tax authorizations (TIAs) to contact on Application.
- ◆ TRD Auditor will be assigned to credit and the auditor will request submission of the ledgers and any other required documents via a secure electronic link.

Once TRD has completed the review; below are instructions to submit for credit refund. Filing for film credit refund may only occur at the end of company's taxable year.

Filing the Income Tax Return for Credit refund:

NM Income Tax Return to be filed is the same Production Company named on the Film Credit Application.

- Business Credit Approval Letter will be sent via email to the person on the application on or before 180 day deadline.
- An NM Income Tax return will need to be filed for the each year of expenditures (if there is more than one tax year) to receive the credit refund.

For the return to be processed quicker; it can be E-filed; the website address is as follows: <http://www.tax.newmexico.gov/Online-Services/>

If tax return is E-filed; please email TRD-FilmCredit@state.nm.us and advise when return was filed so it can be logged into workbook.

Or

Mailing address is as follows:

Priscilla Castro, Film Credit Supervisor
NM Taxation and Revenue
P.O. Box 8485, 14th Floor
Albuquerque, NM 87198
505-827-0919 / 505-841-6338

Norm for refunds, can take up to 16 weeks to receive; depending on the amount and if the return is mailed.

When tax returns are received by TRD Supervisor, supervisor will log the return in and hand deliver to the individual who is going to process the return. Income tax returns mailed to TRD, are entered first come, first entered in the system.

The following documents are to be included when filing for Film Credit:

- ✓ NM Income Tax return
- ✓ Copy of the approval letter
- ✓ Copy of Final Film Credit Application
- ✓ RPD-41228 Film-Related Tax Credit Claim Form
- ✓ RPD-41380 Notice of Assignment of Film Production Tax Credit (Optional)

Forms can be found on the following website:

<http://www.tax.newmexico.gov/forms-publications.aspx> > Tax Credits > Film Production

For any questions, please email TRD-FilmCredit@state.nm.us