

**TITLE 3: TAXATION**  
**CHAPTER 13: BUSINESS TAX CREDITS**  
**PART 9: FILM PRODUCTION TAX CREDIT**

**3.13.9.1 ISSUING AGENCY:** Taxation and Revenue Department, Joseph M. Montoya Building, 1100 South St. Francis Drive, P.O. Box 630, Santa Fe NM 87504-0630  
[3.13.9.1 NMAC - N, 9/30/10]

**3.13.9.2 SCOPE:** This part applies to all film production companies who may be eligible to obtain the film production tax credit.  
[3.13.9.2 NMAC - N, 9/30/10]

**3.13.9.3 STATUTORY AUTHORITY:** Sections 7-2F-1 and 9-11-6.2 NMSA 1978.  
[3.13.9.3 NMAC - N, 9/30/10]

**3.13.9.4 DURATION:** Permanent.  
[3.13.9.4 NMAC - N, 9/30/10]

**3.13.9.5 EFFECTIVE DATE:** 9/30/10, unless a later date is cited at the end of a section, in which case the later date is the effective date.  
[3.13.9.5 NMAC - N, 9/30/10]

**3.13.9.6 OBJECTIVE:** The objective of this part is to interpret, exemplify, implement and enforce the provisions of the film production tax credit.  
[3.13.9.6 NMAC - N, 9/30/10]

**3.13.9.7 DEFINITIONS:** The terms defined in 3.13.9.7 NMAC apply to the implementation of the film production tax credit.

A. "Direct production expenditures" as defined in Subsection C of Section 7-2F-2 NMSA 1978 includes only those expenditures directly incurred and paid by the qualified production company to the vendor of the services or property and does not include expenditures incurred and paid by a third party even if incurred on behalf of the qualified production company.

B. "Performing artist" as used in Paragraph (1) of Subsection C of Section 7-2F-2 NMSA 1978 includes "stunt coordinators" when the stunt coordinator contracts with the production company under a standard stunt performer's contract.

[3.13.9.7 NMAC - N, 9/30/10, A, 6/28/13]

**3.13.9.8 CLAIMING THE FILM PRODUCTION TAX CREDIT:**

A. In order to claim an approved film production tax credit, a film production company must complete a timely filed tax return after the close of its taxable year.

B. When determining how an approved film production tax credit will be paid out pursuant to Subsection E of Section 7-2F-1 NMSA 1978, each tax return is equivalent to a single credit claim.

C. Example 1: Two separate film production companies elect to be part of a New Mexico consolidated tax return. Each film production company submits a separate film production tax credit application for approval of direct production expenditures; one application is for two million dollars (\$2,000,000) and the second for one million dollars (\$1,000,000). The department approves both applications. The total amount of three million dollars (\$3,000,000) from the two approved applications will be considered a single credit claim since the two film production companies elect to file as part of a New Mexico consolidated tax return.

D. Example 2: X, a film production company, is organized as a corporation who files its income taxes on a calendar year basis. For tax year 2012, X will file its corporate income tax return on March 15, 2013, and claim the approved film production tax credit amount from the department. The credit claim will be considered received by the department because the taxpayer filed a complete and timely tax return pursuant to the Corporate Income and Franchise Tax Act.

E. Example 3: A film production company files a complete and timely tax return for a certain tax period. The department does not approve the production company's application for the film production tax credit until after the production company has filed its tax return. The taxpayer ultimately files an amended tax return

within three years of the end of the calendar year in which the payment of tax was originally due and at that time, claims the film production tax credit that was previously approved by the department. The credit claim will be considered received because the filing of the amended return by the production company was a complete and timely tax return pursuant to the Corporate Income and Franchise Tax Act.

[3.13.9.8 NMAC - N, 6/28/13]

### **3.13.9.9 DETERMINATION OF PHYSICAL PRESENCE FOR PURPOSES OF CLAIMING THE FILM PRODUCTION TAX CREDIT:**

A. Any vendor (provider) who provides goods or performs services, who occupies and maintains one or more physical places of business in New Mexico, not a virtual or online business, has established “physical presence,” for purposes of the film production tax credit, if the following conditions are present:

(1) a provider of goods or services, or its employees, or representatives, is available at that provider’s place of business during established times;

(2) a provider of goods maintains an inventory of the goods sold at the provider’s New Mexico place of business and those goods are held for sale in the vendor’s ordinary course of business at that place of business; and

(3) critical elements of any service performed by a service provider occur, are managed at or coordinated from the service provider’s place of business.

B. The following indicia will be considered in determining if the above conditions are present:

(1) the provider of the goods or services is a resident or has at least one laborer who is a New Mexico resident, as defined in the Income Tax Act;

(2) a telephone is assigned for the exclusive use by the provider of goods or services at the provider’s place of business;

(3) the place of business has been designated for the use of the goods or services provided;

(4) the place of business contains office furniture or equipment for the use by the provider;

(5) the goods or services provider is identified by business name on a sign located in or adjacent to the place of business; and

(6) a client or other persons can expect to communicate, either in person or by telephone, with the goods or services provider, or employees or representatives of the provider, at the place of business.

[3.13.9.9 NMAC - N, 6/28/13]

### **3.13.9.10 QUALIFICATION OF DIRECT PRODUCTION EXPENDITURES:**

A. A payment to a personal service business for the services of a performing artist qualifies as a direct production expenditure if the personal services business:

(1) pays gross receipts tax in New Mexico on the portion of those payments that are qualified expenditures for the film production tax credit; and

(2) deducts and remits withheld income tax pursuant to Subsection I of Section 7-3A-3 NMSA 1978 or the film production company deducts and remits, or causes to be deducted and remitted, withheld income tax at the maximum rate in New Mexico on the portion of those payments qualifying for the film production tax credit.

B. Example 1: S, a super loan-out company, receives payments for the services of a performing artist (personal services business) from a film production company. S pays gross receipts tax on the payments they receive and deducts and remits withheld income tax on the payments to the performing artist. The payment from the production company to S qualifies as a direct production expenditure for purposes of the film production tax credit.

C. Example 2: G, a super loan-out company, receives payments for the services of a performing artist from a film production company and pays gross receipts tax on the payments received. G contracts with P, a payroll service company, to provide payroll services. The film production company by agreement with P causes P to deduct and remit withheld income tax on the payments to the performing artist. The payment from the production company to G qualifies as a direct production expenditure for purposes of the film production tax credit.

D. Example 3: H, a super loan-out company, receives payments for the direct hires (performing artists who do not own their own company) from a film production company and pays gross receipts tax on the payments received. No tax is deducted and remitted on the payments for the direct hires pursuant to Subsection I of Section 7-3A-3 NMSA 1978 because the direct hires are employees of the super loan-out company and wages are excluded from this requirement to withhold. The payment from the production company to S for the services of the direct hires qualifies as a direct production expenditure for purposes of the film production tax credit.

E. Example 4: A, an actor loan-out company, receives payments for the services of a performing artist from S, a super loan out company. S executes a nontaxable transaction certificate to A and pays gross receipts

tax on the payments they receive from the production company for the services of the performing artist. S, or the payroll company by agreement with the production company, deducts and remits withheld income tax on the payments to the performing artist. The payment from the production company to S for the services of the performing artist qualifies as a direct production expenditure for purposes of the film production tax credit.

F. Example 5: Y, an actor loan-out company (owned by the performing artist), receives payments for the services of a performing artist who is a resident of New Mexico. Y pays gross receipts tax on the payments they receive. No withheld income tax is deducted or remitted on the payments that are due to the performing artist from Y (personal services business) because the obligation to deduct and withhold does not apply to payments made to an individual who is a resident of New Mexico (Subsection C of Section 7-3A-3 NMSA 1978). The payments from the production company to Y for the services of a performing artist qualify as direct production expenditures for purposes of the film production tax credit.

[3.13.9.10 NMAC - N, 6/28/13]

History of 3.13.9 NMAC: [Reserved]