

# New Mexico's 25% Tax Rebate

Winter 2009

New Mexico offers a **25% Tax Rebate** on all direct production expenditures, including New Mexico crew, that are subject to taxation by the State of New Mexico. It applies to feature films, independent films, television, regional and national commercials, documentaries, video games and post-production. Non-resident actors and stunt performers will also qualify under a separate tax structure.

No minimum budget requirement

No minimum spend requirement

No minimum shoot day requirement

No prequalifying

No cap

No kidding

Qualifications/Requirements/Definitions: Pages 2-4

Cheat Sheet: Page 5

Getting started/the process: Pages 6-10

Checklist: Page 11

FAQs: Pages 12-15

## 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.

- Yes (if Yes, continue)
- No (If No, you cannot qualify)

2) Is your production intended for exhibition?

- Yes (if Yes, continue)
- No (If No, you cannot qualify)

3) Is your production intended for reasonable commercial exploitation?

- Yes (if Yes, continue)
- No (If No, you cannot qualify)

The following types of productions will qualify as long as you answered YES to the three (3) questions above:

- **Feature films**
- **Independent films**
- **Television (MOW, pilots, series, reality)**
- **Documentaries**
- **Student films**
- **Short films**
- **Animation**
- **Video games** (make sure you are an "approved film production company")
- **Music videos** (make sure the music video is intended for reasonable commercial exploitation)

**Regional and national commercials** (*proof of national or regional broadcast required*) also qualify

**Stand-alone post production** will also qualify

## What are the requirements?

- Script cannot be obscene in nature. Any non-scripted projects (reality television, documentaries, etc...) must submit a treatment/synopsis/storyboard/other medium-appropriate outline and indicate if it involves any potentially hazardous conditions, minors or animals, and its compliance with state laws.
- 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 agree to publish, at completion of principal photography, a notice at least once a week, for three consecutive weeks, in local newspapers in regions where filming has taken place to notify the public of the need to file creditor claims against the film production company by a specified date. This information will also be posted on the web site of the New Mexico Film Office until all financial obligations have been paid.
- Production shall agree that outstanding obligations are not waived should a creditor fail to file by the specified date.
- Production shall agree to delay filing of a claim for the Production Tax Rebate until the New Mexico Film Office delivers written notification to the Taxation and Revenue Department that the film production company has fulfilled all requirements for the credit.

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- Production shall agree to enter into a contract with the New Mexico Film Office (*Production Tax Credit Agreement*), accepting the terms of the above.

### What Qualifies? (all must be subject to taxation by the State of New Mexico):

- Wages or salaries, fringe benefits or fees for talent, management, and labor to a person who is a New Mexico resident for purposes of the Income Tax Act.

A resident is defined under Section 7-2-2(S) NMSA 1978 of the Income Tax act as follows:

"resident" means an individual who is domiciled in this state during any part of the taxable year; but any individual, who on or before the last day of the taxable year changed his 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 Income Tax Act.

Additionally, the resident must file **Resident** or **First-Year Resident** tax returns. Anyone filing **Part-Year Resident** or **Non-Resident** will NOT qualify.

- 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.

Any of the following "direct production expenditures" (meaning a transaction that is subject to taxation in New Mexico) provided by a New Mexico vendor:

- Costs of a story and scenario to be used for a film if writer is a New Mexico resident
- 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
- 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
- Food and lodging
- 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
- Insurance coverage and bonding if purchased through a New Mexico-based insurance agent
- Other direct costs of producing a film in accordance with generally accepted entertainment industry practices
- Payment to a personal services corporation for the services of a non-resident performing artist (actors and stunt performers only) if: the personal services corporation pays gross receipts tax in New Mexico on the portion of those payments qualifying for the tax credit; and the performing artist receiving payments from the personal services corporation pays New Mexico income tax.

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.

See following web link for info:

[http://www.state.nm.us/tax/pubs/FY1102\\_INFORMATION\\_FOR\\_NEW\\_BUSINESSES.pdf](http://www.state.nm.us/tax/pubs/FY1102_INFORMATION_FOR_NEW_BUSINESSES.pdf)

FOR DETAILED INFORMATION ABOUT NON-RESIDENT CAST QUALIFYING FOR THE REBATE, SEE THE QUESTION, "I'm confused about the non-resident actor 'super loan-out' thing I've been hearing about. Could you explain?" IN OUR FAQs ON PAGE 12.

## Definitions:

"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 a videogame intended for commercial exploitation.

"Direct production expenditures" means:

a transaction that is subject to taxation in New Mexico.

"Film production company" means:

a person that produces one or more films or any part of a film.

"Post-production expenditure" means:

an expenditure for editing, Foley recording, automatic dialogue replacement, sound editing, special effects, including computer-generated imagery or other effects, scoring and music editing, beginning and end credits, negative cutting, soundtrack production, dubbing, subtitling or addition of sound or visual effects; but not including an expenditure for advertising, marketing, distribution or expense payments.

*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% rebate.*

## Statute:

New Mexico Taxation and Revenue Department Film Production Tax Credit

Section 7-2F-1 and 7-2F-2 NMSA 1978

[http://www.tax.state.nm.us/regs/Film\\_Production\\_Tax\\_Credit\\_Act.pdf](http://www.tax.state.nm.us/regs/Film_Production_Tax_Credit_Act.pdf)

# Film Production Tax Rebate Cheat Sheet

Please photocopy this page and distribute to your department heads.

- It is not necessary to register the filing entity to do business in New Mexico. Tax & Rev will use your Federal ID number (or social security number if individual) to process the rebate/return.
- Employee fringe benefits paid to a payroll company qualify for the tax rebate, including Pension, Health & Welfare, Holiday, Vacation. The following **does not**: SUI, FICA, FUI and Workers Compensation fee. Workers Compensation Insurance will qualify only if purchased through a New Mexico based agent.
- Non-resident performing artists (actors and stunt performers only) **will** qualify if the personal services corporation pays gross receipts tax in NM on the portion of those payments qualifying for the tax credit; and the performing artist receiving payments from the personal services corporation pays New Mexico income tax. See FAQs (page 12) for details. Fringes for non-resident actors do **not** qualify.
- Non-resident crew members **do not** qualify; however, their per diem and housing **do**.
- New Mexico-based chartered aircraft for in-state transportation directly attributable to the production **will qualify**; however the chartering of aircraft for out-of-state transportation **will not**.
- 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 **will qualify**.
- Purchases made using petty cash must be documented by **vendor receipts**. Copy the front of each petty cash envelope and include with your summary report. The **vendor** to whom the petty cash was paid is needed, not the crew member who was given the petty cash.
- Credit card purchases must include detail of purchase/vendor name.
- Fuel cards and P-cards will need backup/detail (especially location for fuel cards) of transaction.
- 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.
- Purchases made on the Internet **do not** qualify unless the seller is located in New Mexico.
- Payments made to the State or Federal Government **do not** qualify. This would include permits and postage (parking lots are the exception).
- FedEx or UPS packages will only qualify if they're being sent from New Mexico.
- Purchases made on Native American tribal lands **do not** qualify as they are tax exempt. This includes gas stations, restaurants, hotels, etc... located on these lands.
- Cell phone reimbursements when the billing address is outside of New Mexico **do not** qualify.
- A Declaration of Residency form is required for the payroll of every New Mexico resident you include for the tax rebate except for Background Talent, and you must get proof of residency (Copy of last year's New Mexico personal income tax return filing as a **First-Year Resident** or **Resident**; valid New Mexico driver's license; current New Mexico voter registration card; or other clear and convincing evidence showing intent to maintain a permanent residence in New Mexico). The employee must completely fill out his/her Declaration of Residency form, and you must include a copy of that form **and** a copy of their proof of residency in your tax rebate package. If it is discovered that the "resident" 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 Declaration of Residency form and provided proof), he/she will NOT qualify for the tax rebate. By signing the Declaration of Residency form, the resident also authorizes Tax & Rev to disclose their residency status to the production company, so you can verify their residency!

## TO BEGIN THE PROCESS, START HERE:

For [film/television](#) projects, please do not complete these steps until you are officially greenlit/fully financed and in prep. For [stand-alone post-production](#), bypass non-applicable steps.

### Step One: Registration & Agreement

Complete the following two (2) forms. Forms can be found at [www.nmfilm.com](http://www.nmfilm.com) under "Incentives." There is no deadline to submit these forms; however, we ask that they are submitted *before* principal photography begins, or for stand-alone post-production, before post has been completed.

- *Film Production Company Registration*
- *Production Tax Credit Agreement\** (Stand-alone post production has a separate form)

Mail, fax or email to:  
John Raymond Armijo  
New Mexico Film Office  
418 Montezuma Ave.  
Santa Fe, NM 87501  
Fax: 505 476 5601  
Email: [john@nmfilm.com](mailto:john@nmfilm.com)

\*After we receive this agreement, a signed copy will be faxed to you for your records.

### Step Two: Submit script

Submit script to the New Mexico Film Office. For non-scripted projects (reality television, etc...), you must submit a synopsis or medium-appropriate outline.

*Preferred method for sending script: Final Draft or PDF via email to [jennifer@nmfilm.com](mailto:jennifer@nmfilm.com) or hard copy (to support our Green efforts, printing double-sided would be appreciated) to:*

Jennifer Schwalenberg  
New Mexico Film Office  
419 Montezuma Ave.  
Santa Fe, NM 87501

### Step Three: Pre-production meeting

If applicable\*, call or email Jennifer Schwalenberg to schedule a pre-production meeting with the *New Mexico Taxation & Revenue Dept.* and the *New Mexico Film Office*. This meeting should include your *Head Accountant, Line Producer and/or UPM and/or Production Supervisor*. Jennifer Schwalenberg: (505) 476-5610 or [jennifer@nmfilm.com](mailto:jennifer@nmfilm.com)

\*For budgets under \$1M, this meeting is optional.

## Step Four: Cheat Sheet

Distribute the Rebate *Cheat Sheet* (on page 5) to your department heads.

## Step Five: Verifying New Mexico residency

Each New Mexico resident employed on your production (excluding Background Talent) must complete a *Declaration of Residency* 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! Residents must also provide proof of residency, which must be one (1) of the following:

- a. A copy of last year's New Mexico personal income tax return (filing as a **Resident** or **First-Year Resident**)
- b. A valid New Mexico driver's license
- c. Voter registration card
- d. Other clear and convincing evidence showing intent to maintain a permanent residence in New Mexico

**IMPORTANT NOTE:** If it is discovered that the applicant filed a New Mexico **Part-Year Resident** or **Non-Resident** or 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 Declaration of Residency form and provided proof*), he/she will NOT qualify for the tax rebate.

## Step six: Preparing your bibles

Keep a detailed account (ledger/bible), in print (and if possible on CD as well), of all rebateable expenditures incurred in New Mexico during pre-production, production and post (if applicable).

Here are some guidelines for preparing your Tax Rebate Package (For stand-alone post-production, please concentrate on applicable items):

- Create three (3) separate binders/comprehensive bibles:
  - 1) **One for Payroll & Declaration of Residency forms:** Make copies of each employee's *Declaration of Residency* form and proofs of residency (attaching them) and sort alphabetically by last name. If possible, please include a Payroll Summary Report as well.
  - 2) **One for Petty cash:** Make copies of petty cash envelope summaries, copying the front of each petty cash envelope and sort by PC envelope number.
  - 3) **One for Vendors/AP/all other transactions:** full vendor names must be clearly visible on ledgers
- Only include New Mexico rebateable expenditures
- Please include a Chart of Accounts
- Any credit card purchases must include detail of purchases/vendor names; it can't just say "Visa."
- Submit backup for *fuel cards* (invoices with location address); it can't just say, "Shell."
- If qualifying non-resident cast via a "super loan-out," please include a summary of the transactions (actors, salaries, and proof of the Gross Receipts Tax being paid)
- **No other receipts are required at this time, though have them on hand in case they are requested**

### Step seven: Newspaper ad

In compliance with the *Production Tax Credit Agreement*, please provide proof of the following:

*(Stand-alone post-production submissions are excluded from this requirement.)*

“Production shall agree to publish, at completion of principal photography, a notice at least once a week, for three consecutive weeks, in local newspapers in regions where filming has taken place to notify the public of the need to file creditor claims against the film production company by a specified date.”  
*Ads can be of any size.* Please include production title, address phone, fax, and/or contact name(s) for your primary or corporate office – not your New Mexico production office, as vendors need to be able to contact you after you have closed your NM office. Please submit this information to John Raymond Armijo at [john@nmfilm.com](mailto:john@nmfilm.com) and fax a copy of the newspaper bill for all three weeks: (505) 476-5601

This information will also be posted on the web site of the NMFO until all financial obligations have been met. To view a **sample** newspaper ad, please contact John Raymond Armijo: [john@nmfilm.com](mailto:john@nmfilm.com)

### Step eight: Completing your bibles

Complete your three (3) binders/ledgers/bibles of New Mexico expenditures. See Step Six for details. Do not complete your ledgers until your very last New Mexico expenditure, which would include any post-production, as you can only file once.

### Step nine: Did you pay everyone?

Email [sharmaine@nmfilm.com](mailto:sharmaine@nmfilm.com) for verification that payment of all financial obligations incurred in the State of New Mexico has been made and that you do not have any outstanding financial obligations. The NMFO will provide a letter to the New Mexico Taxation and Revenue Department confirming that this requirement, per law, has been fulfilled. Until we have confirmation that all financial obligations in the state have been met, we cannot, by law, submit your tax rebate package to TRD.

### Step ten: Stats

Please email [jennifer@nmfilm.com](mailto:jennifer@nmfilm.com) the following twelve (12) pieces of information. Stand- alone post production: please send applicable items.

#### PRODUCTION INFORMATION

- 1) Title of production:
- 2) Type of production (Feature Film, Television Series, Documentary, etc...):
- 3) Prep dates AND Number of prep days:
- 4) Shoot dates AND Number of shoot days:
- 5) Average **New Mexico** crew size (per day) for prep:
- 6) Average **New Mexico** crew size (per day) for shoot:
- 7) Estimated total number of New Mexico crew members hired (please include prep crew, construction, caterers, teamsters, production office, etc... Do not include day players or actors)
- 8) List of all New Mexico cities/towns/Native American lands for locations:
- 9) Final Crew list and Final Vendor list (for productions with budgets over \$1 million only):

## BUDGETARY INFORMATION

- 10) Total budget:
- 11) Total dollar amount spent in New Mexico (including New Mexico labor):
- 12) Total dollar amount spent in New Mexico on:
  - a. New Mexico Crew (All New Mexico crew: Director, Producers, Writer, BTL, Security):
  - b. New Mexico Talent (Principals and Background/Extras):
  - c. New Mexico Facility/Property Rental: Stage Space, Production Office, Location Fees:
  - d. New Mexico Lodging/Accommodations:
  - e. New Mexico Food (Catering, Craft Service, Other):
  - f. New Mexico Rental Vehicles/Non-Film Vehicles:
  - g. New Mexico "Rolling Equipment" Rentals (Trucks, Trailers, Cranes, Picture Cars):
  - h. New Mexico Film Equipment Rentals (Grip, Lighting, Camera, other):
  - i. New Mexico Construction costs (Lumber, Hardware, Supplies, other):
  - j. New Mexico Set Dressing:
  - k. New Mexico Wardrobe:
  - l. New Mexico SPFX/Props:

### Why do you need to submit this statistical data when you're already sending your bibles?

Although we receive your complete tax rebate package, including your bibles, the New Mexico Film Office protects the confidentiality of your financials and does not review any of your reports. This proprietary information is only examined by the New Mexico Taxation & Revenue Department for purposes of the audit.

### What will the Film Office do with this information?

This information will NOT be made available to the public on a per-production basis; however, we will release yearly **aggregates** for categories a – l based on all film/television programs within that fiscal year. We believe this policy will protect truly proprietary information while fulfilling our fundamental responsibility to the people of New Mexico to provide meaningful, accurate data regarding this program.

## Step eleven: Mail your tax rebate package to the NMFO

Complete the following form: *Application for Film Production Tax Credit (RPD-41229)*

The address on this form should be your corporate, home or primary office – **not** your New Mexico production office, as your rebate check will be sent to the address you list if you do not choose direct deposit.

Physically mail your **TAX REBATE PACKAGE** (email submissions are not acceptable), which should include the following:

- Application for Film Production Tax Credit* form (RPD-41229)
- Payroll Ledger/Binder/Bible (One printed/hard copy and one CD). Included in the Payroll bible should be Declaration of Residency forms with proofs of residency attached to the forms and sorted alphabetically by last name. If possible, please include Payroll Summary Report.
- Petty cash Binder: Copies of petty cash envelopes, sorted by PC envelope number
- Vendor/AP Ledger/Binder/Bible (If possible, include CD). If possible, include Chart of Accounts.
- Be sure to include:
  - Backup for fuel cards (invoices with location address)
  - Backup for P-cards/credit cards
  - Transaction summary for non-resident cast (actors, salaries, and proof of GRT being paid)
- Hard copy Final Crew list and Final AP Vendor list

NOTE: FEWER MISTAKES EQUAL A FASTER REBATE!

Send your completed tax rebate package to:

John Raymond Armijo  
New Mexico Film Office  
418 Montezuma Ave.  
Santa Fe, NM 87501

Upon review by the NMFO and after confirmation that all financial obligations in the state have been met, this package will be forwarded to the New Mexico Taxation & Revenue Department (TRD). TRD performs an audit and will review your claim *line by line*. After a review of the audit, they will **return** the *Application for Film Production Tax Credit* form to you with the approved amount.

Depending upon the amount of submissions (TRD performs audits based upon the order in which they are received) TRD projects that the average audit process will take approximately sixty (60) – seventy-five (75) days to complete; however, it is imperative to provide TRD with any documentation *immediately upon request* in order to stay within this timeframe. Please note this projection *is not guaranteed* by TRD though they make every effort to stay within this timeframe. After you have signed off on the approved amount and filed your New Mexico tax return (step twelve below), it will take an additional 2 – 4 weeks to receive your rebate.

### Step twelve: File your tax return and wait for your cash

After you receive the form back from TRD with the approved amount, **file an income tax return** (Using forms: PIT, CIT, PTE or FID-1). **For a quicker check, be sure to check the "REFUND EXPRESS" box for direct deposit.** Filing a tax return is *just the mechanism* for receiving your rebate.

Attach a copy of the approved *Application for Film Production Tax Credit* to your income tax return and send to:

Jerry Montoya  
Audit and Compliance Division, Director's Office  
P.O. Box 630  
Santa Fe, NM 87504-0630

The credit will then be applied to any tax liability you have incurred (franchise fees, if applicable), with the excess credit refunded back to your production company. Once TRD has received your approved Application and tax return, it will take approximately 2 – 4 weeks to receive your rebate.

For questions regarding the tax incentive program, please see the FAQs on pages 12 – 15 or you may contact Jennifer Schwalenberg, Deputy Director, New Mexico Film Office: 505 476 5610 or [jennifer@nmfilm.com](mailto:jennifer@nmfilm.com) OR Jerry Montoya, Taxation & Revenue Department: 505 827 0929 or [jerrym@state.nm.us](mailto:jerrym@state.nm.us)

## NEW MEXICO'S 25% TAX REBATE CHECKLIST

### BEFORE PRODUCTION:

- Sent *Film Production Company Registration* form
- Sent *Production Tax Credit Agreement*
- Sent script (for non-scripted projects: synopsis or other medium-related outline)
- Pre-production meeting with NMFO & TRD (if applicable)
- Distributed Rebate Guidelines "Cheat Sheet" to department heads (if applicable)
- Collected *Declaration of Residency* forms and proofs of residency

### AFTER PRODUCTION:

- Completed requirement for Newspaper Ad (if applicable)
- Confirmed that all New Mexico financial obligations have been paid (Step Nine)
- Completed Step Ten (Stats)
- Mailed the tax rebate package, including the *Application for Film Production Tax Credit*, to NMFO

### AFTER TRD CONFIRMS YOUR TAX REBATE "APPROVED AMOUNT":

- Sent New Mexico Tax Return and copy of approved *Application for Film Production Tax Credit* to Jerry Montoya at TRD

## New Mexico's 25% Tax Rebate Frequently Asked Questions

- What qualifies?  
*Any New Mexico expenditure that has a New Mexico state tax attached.*
- What doesn't qualify?  
*Anything that doesn't have a New Mexico state tax attached: non-profits, governmental agencies, etc...*
- In a nutshell, what are the qualifications for feature films?  
*The script is not obscene, you pay all of your New Mexico obligations, and you give the State of New Mexico a credit.*
- Will non-resident crew qualify?  
*No. However, their housing and per diem will.*
- Does the rebate apply to non-resident ATL (above-the-line)?  
*Only actors and stunt performers – "performing artists."*
- What about *other* non-resident ATL such as directors or producers?  
*Nope, just actors and stunt performers.*
- Really, are you *absolutely* certain non-resident directors or producers don't qualify?  
*Yup, absolutely certain.*
- What about *New Mexican* ATL (above-the-line)?  
*Yes, all ATL (above-the-line) New Mexico residents will qualify.*
- I'm confused about the non-resident actor "super loan-out" thing I've been hearing about. Could you explain?  
*Sure. In order for non-resident performing artists/actors (cast & stunt performers only) to qualify, two things must happen:*
  - 1) *A transaction with a New Mexico entity must occur, triggering a New Mexico tax, a requirement in order for the expenditure to qualify. In other words, a Gross Receipts Tax (GRT) must be paid on all qualifying non-resident cast.*
  - 2) *The non-resident actors must agree to file a New Mexico personal income tax return in order for their salaries to qualify.*

*Here are four (4) ways to do this:*

- *Create a "super loan-out," a secondary company, in a state other than New Mexico. Register this "super loan-out" to do business in New Mexico and run all of the non-resident cast salaries (salaries only, no fringes) through this entity. New Mexico requires that the "super loan-out" pay a 5% gross receipts tax on these salaries; however this 5% is rebateable, so you would have a net profit of 21.25%. See example below. The non-resident actor loan-outs do NOT have to register their loan-outs to do biz in New Mexico!*
- *Many payroll companies can facilitate the "super loan-out" through their non-New Mexico offices*
- *You can use an existing New Mexico company as the "super loan-out," bypassing the need to create a new company. However, you would then be subject to a higher GRT rate, currently 6.750% in Albuquerque or 7.9375% in Santa Fe.*

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- *If you only have one or a few non-resident actors and they are willing to register their actor loan-outs in New Mexico, you can bypass the need for a “super loan-out.” The filing entity (the main production company claiming the rebate) can directly pay the actor loan-outs; however, the actor loan-outs would be required to pay the 5% GRT, and the actors themselves must still file a NM personal income tax return.*

How did you get to the 21.25% for non-resident cast?

*Example using a secondary company outside of New Mexico as the Super loan-out:*

*Super loan-out registers to do biz in NM*

*Super loan-out pays Mr. Non-resident actor \$100.00*

*Super loan-out pays NM a 5% GRT on the \$100.00*

*Super loan-out has paid a total of \$105.00*

*Main production company/Filing Entity claims the 25% rebate on \$105.00*

*Main production company/Filing Entity receives rebate \$26.25*

*Subtract the 5% GRT (\$5.00) already paid and you have a net of \$21.25 or 21.25%*

- **Why can't my production company act as the “super loan-out”?**  
*Simply because there wouldn't be any transaction taking place, a requirement for the expenditure to be taxable and thus qualify for the rebate.*
- **What if I have a non-resident actor who doesn't have a loan-out?**  
*They can still qualify as individuals. They just become “employees” of the super loan-out. Same applies, though: GRT must be paid and the non-resident cast must file a New Mexico personal income tax return.*
- **What determines New Mexico residency?**  
*The individual must consider New Mexico his/her primary residence, be domiciled here on the last day of the taxable year (December 31) and file a **Resident** or **First-Year Resident** tax return.*
- **Do fringes for New Mexico residents qualify?**  
*Employee fringe benefits paid to a payroll company qualify for the tax rebate, including Pension, Health & Welfare, Holiday, Vacation. The following **does not**: SUI, FICA, FUI and Workers Compensation fee. Workers Compensation Insurance will qualify only if purchased through a New Mexico based agent. Fringes for non-resident crew members will **not** qualify.*
- **Is it a *credit* or a *rebate*?**  
*Technically, New Mexico has a “refundable tax credit.” In other words, cash for the full amount – with no brokering required. New Mexico Taxation & Revenue literally sends you a check or deposits the amount into your bank account. It is not transferable or assignable.*
- **Is the rebate on the full amount or just the tax portion?**  
*The full amount. Example: you spend \$95.00 and \$5.00 on tax for a total of \$100.00. You would receive \$25.00 back.*
- **Must I always pay tax in order for an expenditure to qualify?**  
*No, not in all cases will you be paying the tax. Example: you rent a home to be used as a location. The homeowner will not charge you tax; however, that location fee will qualify because now the homeowner must pay income tax on that amount. Remember, it's anything that has a state tax **attached**.*
- **Do commercials qualify?**  
*Yes, as long as they're a regional or national broadcast. And we'll require proof of media buys.*

- What do you consider a "regional commercial"?  
*Airing in more than one state, but media buys must be for more than one state. If a local commercial happens to air in Texas because that cable company's broadcast has "spill-over" across the border, that would NOT qualify.*
- Do video games qualify?  
*Yes, but the filing entity claiming the rebate must be an approved "film production company."*  
Definition of "Film Production Company": a person that produces one or more films or any part of a film.
- Do student films qualify?  
*Yes, as long as they're intended for exhibition and commercial exploitation.*
- Do documentaries qualify?  
*Yes. Same rules apply: intended for exhibition and commercial exploitation.*
- Do music videos qualify?  
*That depends. Is the music video intended for commercial exploitation? If so, yes. If just for marketing purposes to generate record sales, no.*
- Do industrials or training videos qualify?  
*No, unless they are intended for commercial exploitation – will they make a profit? If their purpose is "in-house" (used to train employees, etc...) no, they will not qualify.*
- Will pornography qualify?  
*No.*
- What about post-production?  
*Yes. Stand-alone post will even qualify. So if you film in California, but decide to do your post in New Mexico, your post-production expenditures will qualify.*
- Will shipping qualify?  
*Only packages sent **from New Mexico** will qualify.*
- Can a non-profit organization claim the rebate?  
*No, sorry, because the mechanism for receiving the rebate is filing a New Mexico tax return, and non-profits are tax exempt.*
- Do I have to spend a minimum amount in order to qualify?  
*No.*
- Is there a cap on New Mexico expenditures?  
*No. The more you spend, the more you get back.*
- Is there an annual cap/allocated fund?  
*No.*
- Any caps?  
*Just on cast/talent. \$20M cap, meaning a maximum rebate of \$5M on cast/talent.*
- Is there a certain percentage I must film in New Mexico in order to qualify?  
*No. Even if you film one day in New Mexico, the expenditures for that one day will qualify.*

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- Is there a certain percentage of New Mexico crew I must hire in order to qualify?  
*No. But keep in mind since non-resident crew do not qualify, the more New Mexico crew members you hire, the greater the rebate.*
- I will film most of my movie in New Mexico, but a few scenes take place in another state. If I take my New Mexico crew with me, do I get the rebate on their salaries while they're out of state?  
*No.*
- Do I have to pre-qualify or "get in line"?  
*No.*
- When should I apply?  
*Not until you're greenlit, meaning you're fully financed, and in prep.*
- Back to that non-resident director and producer thing...  
*Wow, you're pushy. Sorry, no, they don't qualify. And Lisa is not available, and she will tell you the same thing.*
- Must I register my production company in the State of New Mexico?  
*No.*
- Must I use a New Mexico producer or production company in order to qualify?  
*No.*
- Must I use a New Mexico bank?  
*No.*
- How do we receive our money?  
*By filing a New Mexico tax return.*
- How long does it take to get the rebate?  
*Depending upon the amount of submissions (TRD performs audits based upon the order in which they are received) TRD projects that the average audit process will take approximately sixty (60) – seventy-five (75) days to complete; however, it is imperative to provide TRD with any documentation immediately upon request in order to stay within this timeframe. Please note this projection is not guaranteed by TRD though they make every effort to stay within this timeframe. Once you've returned the approved amount and filed your tax return, it's takes an additional 2 – 4 weeks to receive your rebate*
- Do I have to pay for the audit?  
*Not a penny.*
- It seems too good to be true. Is it really that simple?  
*Yes.*
- I still have some unanswered questions. What do I do?  
*Read this entire document or review the information on our web site.*
- I already did. And I *still* have questions.  
*Contact Jennifer at the New Mexico Film Office: [jennifer@nmfilm.com](mailto:jennifer@nmfilm.com) or 505-476-5610 or Jerry Montoya, New Mexico Taxation & Revenue Dept: [jerrym@state.nm.us](mailto:jerrym@state.nm.us) or 505-827-0929*

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