

New Mexico's 25% Tax Rebate

Spring 2011

→ **NEW CHANGES TO NEW MEXICO'S 25% TAX CREDIT BEGIN JUNE 17 AND JULY 1, 2011**

PLEASE REVIEW THE PDF ON THE HOMEPAGE OF OUR WEBSITE: [NMFILM.COM](http://nmfilm.com)

New Mexico offers the most straightforward, uncomplicated tax rebate program in the country with full assistance by the State Film Office & Taxation & Revenue throughout the entire process:

No minimum budget requirement

No minimum spend requirement

No minimum shoot day requirement

No minimum resident hire requirement

No prequalifying

No cap

No brokers needed

A four-person dedicated "Film Unit" at Tax & Rev

No audit fees

No lengthy wait: rebate in approximately 3 – 4 months

No kidding

Receive a **25% Tax Rebate** 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 under a separate tax structure.

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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.

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 types of productions will qualify as long as you answered YES to the four (4) 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”)
- **New media such as webisodes**
- **Music videos**
- **Infomercials**

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...) or stand-alone post production must submit a treatment/synopsis/storyboard/other medium-appropriate outline and indicate if it involves any potentially hazardous conditions, minors or animals, and is in 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 to enter into a contract with the New Mexico Film Office (*Production Tax Credit Agreement*), accepting the terms of the above.

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.

What qualifies?

Any of the following “direct production expenditures” (meaning a transaction that is subject to taxation in New Mexico), including:

- 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** tax returns will NOT qualify.

- 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.

FOR DETAILED INFORMATION ABOUT **NON-RESIDENT ACTORS**, SEE PAGE 12.

Any of the following 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
- 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

Statute:

New Mexico Taxation and Revenue Department (TRD) 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

Fast Facts: Page 1 of 2

- Nonresident performing artists (actors and stunt performers only) **will** qualify. For details, see page 3 under “What Qualifies?” and page 12 under our FAQs. *Fringes for non-resident actors do not qualify.*
- Other nonresident ATL such as directors, producers and writers **do not** qualify.
- Non-resident crew members **do not** qualify; however, their per diem and housing **do**.
- Employee fringe benefits paid to a payroll company **do** 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.
- It is not necessary to register the production company (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.
- 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.
- 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**.
- Scouting expenditures prior to production **do** qualify. (See bullet above when making scouting plans!)
- 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.
- The filing entity (“film production company”) **cannot** be a non-profit organization.
- Purchases made on the Internet **do not** qualify *unless the seller is located in New Mexico and GRT is attached.*
- Payments made to the State or Federal Government **do not** qualify. 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 **do not** qualify because 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.
- Background talent (Extras) **do not** need to fill out Declaration of Residency forms. However, New Mexico resident *principal* talent **do** need to fill out Declaration of Residency forms.
- 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, Fuel cards (location of purchase), Shipping, and P-cards must include backup/detail.

→ **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 rebate!**

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 rebateable, 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. 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

*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 rebate. 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!

→ **Tips for preparation of your “bibles” for your Tax Rebate Package!**

Keep detailed accounts (“bibles”) in both print *and*, if possible, on CD, of all rebateable expenditures incurred in New Mexico during pre-production, production and post (if applicable). **KEEP ALL RECEIPTS for purposes of the audit.**

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

Create three (3) separate comprehensive bibles (for very small projects, having everything contained in one bible is acceptable):

BIBLE #1: 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.

BIBLE #2: Petty cash: Make copies of petty cash envelope summaries, copying the front of each petty cash envelope and sort by PC envelope number.

BIBLE #3: Vendors/Accounts Payable (AP)/all other transactions: Full vendor names must be clearly visible on ledgers.

- Only include New Mexico rebateable expenditures.
- Preferred format: Excel or any kind of Text format.
- 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.”
- Submit backup for shipping (FedEx, etc...).
- If qualifying nonresident cast via a “super loan-out,” please include a summary of the transactions: (actors, salaries, and proof of the Gross Receipts Tax being paid).
- **Although no other receipts are required at this time*, YOU MUST KEEP ALL RECEIPTS for purposes of the audit.**
- *It is advisable for very small productions, such as student films and shorts, to include *all* receipts with their tax rebate package.
- Do not submit your tax rebate package until you've spent every last penny in New Mexico, which includes post production

How to apply & receive your rebate (in just ten easy steps):

Please do not begin this process until you are officially greenlit/fully financed and in prep.
Stand-alone post production: Review page 10 **first** before you begin.

Step One: Read this entire document

This clear-cut, step-by-step, bomb-proof document was created to make your experience and understanding of our tax rebate process as painless as possible. If you don't have 20 minutes and need a quick overview, simply head to our Fast Facts on pages 4 - 5 or our FAQs on pages 12 – 15. But please, **f o l l o w t h e s t e p s** when applying.

Step Two: Take 20 minutes and Repeat Step One (*We promise – it's an easy read and well worth it.*)

Step Three: Registration & Agreement

Complete the following two (2) forms. Forms can be found at 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.

- 1) *Film Production Company Registration*
- 2) *Production Tax Credit Agreement* (**Stand-alone post production** has a separate form, so make sure you complete the correct one!)

Mail, fax or email to:

John Raymond Armijo | New Mexico Film Office | Santa Fe University of Art and Design | 1600 Saint Michael's Drive
Santa Fe, NM 87505 | Fax: 505.476.5601 | Email: john@nmfilm.com (*please do not cc Jennifer*)

Step Four: Submit script

Submit script to the NMFO*. Any non-scripted projects (reality television, documentaries, etc...) or stand-alone post production 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.

Preferred method for sending script: Final Draft or PDF via email to jennifer@nmfilm.com or hard copy (to support our Green efforts, printing double-sided would be appreciated) to: Jennifer Schwalenberg (address above in Step Three)

→ **We may already have your script on file, so check with Jen first before submitting!*

Step Five: Pre-production meeting

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, Payroll Accountant, other accountants if deemed necessary, Line Producer and/or UPM and/or Production Supervisor*. Jennifer Schwalenberg: 505.476.5610 or jennifer@nmfilm.com

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

COMPLETE YOUR PRODUCTION

Enjoy our state, be safe, and please contact us if you need any assistance along the way.

Step Six: After completion of principal photography, place newspaper ad

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

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

“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 and fax or email a copy of the invoice for all three weeks or send copies of all three ads: 505.476.5601 fax

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

Step Seven: Did you pay everyone?

Email 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 TRD 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 Eight: Complete Stats Form

Please complete the *Film Stats* Form. Form can be found on our website: www.nmfilm.com under “Incentives,” and then “Forms” and email john@nmfilm.com. Stand-alone post production: please send applicable items.

Step Nine: Mail your Tax Rebate Package to the NMFO

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

Form can be found on the NMFO website: www.nmfilm.com. The address on this form should be your corporate, home or primary office – **not** your New Mexico production office, because your rebate check will be sent to the address you list if you do not choose direct deposit.

→ **REVIEW PAGE 5 under “Tips for Preparation of your bibles” before proceeding, and if you have any questions about how to prepare your package, please contact Mary Ann Fernandez (info on page 9)!**

Physically mail your TAX REBATE PACKAGE (email submissions are not acceptable), which must include:

- Application for Film Production Tax Credit form (RPD-41229)**
- Bible #1: Payroll (One printed/hard copy and one CD if possible). 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.**
- Bible #2: Petty cash: Copies of petty cash envelopes, sorted by PC envelope number**
- Bible #3: Vendors/Accounts Payable (If possible, include CD)**
- Remember to include:**
 - Backup for fuel cards (invoices with location address)
 - Backup for P-cards/credit cards
 - Backup for shipping
 - Chart of Accounts
 - Transaction summary for nonresident cast (actors, salaries, and proof of GRT being paid)

- For productions over \$1M: Submit hard copy Final Crew list and Final AP Vendor list**

FEWER MISTAKES EQUAL A FASTER REBATE!

Send your completed Tax Rebate Package to:

John Raymond Armijo
New Mexico Film Office
Santa Fe University of Art and Design
1600 Saint Michael's Drive
Santa Fe, NM 87505

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*. TRD may require receipts or invoices, so please have these available. After a review of the audit, they will **return** the *Application for Film Production Tax Credit* form to you with the approved amount.

How long does the audit take?

TRD performs audits based upon the order in which they are received, so they cannot predict a guaranteed timeframe. Other factors, such as size of credit, having "clean," detailed ledgers, and providing TRD with documentation promptly when requested, will determine the length of the audit process. After you have signed off on the approved amount and filed your New Mexico tax return (step twelve below), it will take an additional 3 – 4 weeks to receive your rebate.

Step Ten: After you receive your “approved amount” application, 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.**

**If you need help figuring out which income tax return to use, Jerry Montoya (contact info below) can walk you through the process.*

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 3 – 4 weeks to receive your rebate. *Sorry, no, we cannot expedite the process.*

If you didn’t find your question or answer in this document, please contact:

Jennifer Schwalenberg, Deputy Director, NMFO: 505.476.5610 or jennifer@nmfilm.com

Jerry Montoya, Audit Review, TRD: 505.827.0929 or jerrym@state.nm.us

Mary Ann Fernandez, Supervisor, Film Unit, TRD: 505.827.0919 or maryann.fernandez@state.nm.us

How to apply for Stand-alone post production:

Stand-alone post production

→ Important Note: Only the *producing entity* can claim the rebate. If you are hired or subcontracted by a film production company to complete a post-production aspect of a film/media production, the film production company will claim the rebate, not the post-production company. Remember, you must be the “film production company” in order to claim the rebate.

What qualifies? Post production expenditures made in New Mexico that:

- are directly attributable to the production of a commercial film or audiovisual product;
- are for services performed in New Mexico;
- are subject to taxation by the state of New Mexico;
- exclude post production expenditures for which another taxpayer claims the credit

Definition:

“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.

→ *This definition of Post Production means that expenditures such as travel, hotel, per diem, etc... normally allowed for the rebate under Production would NOT be allowed when incurred under Post Production.*

Process: Complete the following steps:

- Step One:** Complete. See page 6.
- Step Two:** Complete. See page 6.
- Step Three:** Complete. See page 6.
- Step Four:** Complete. See page 6.
- ~~Step Five: Do not complete. Not required.~~
- ~~Step Six: Do not complete. Not required.~~
- Step Seven:** Complete. See page 7.
- Step Eight:** Complete. See page 7.
- Step Nine:** Complete. See below.

STEP NINE:

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

Physically mail your TAX REBATE PACKAGE (email submissions are not acceptable), which must include:

- Application for Film Production Tax Credit form (RPD-41229)**
- Ledger of detailed post production expenditures**

Send your completed tax rebate package to:

[John Raymond Armijo](#) | [New Mexico Film Office](#) | [Santa Fe University of Art and Design](#) |
[1600 Saint Michael's Drive](#) | [Santa Fe, NM 87505](#)

- Step Ten:** Complete. See page 9.

NEW MEXICO'S 25% TAX REBATE
HANDY-DANDY CHECKLIST

Before Production:

- Collected Declaration of Residency forms and proofs of residency, and verified New Mexico residency through TRD up front
- Sent script (for non-scripted projects: synopsis or other medium-related outline)
- Sent Film Production Company Registration form
- Sent Film Production Tax Credit Agreement
- Pre-production meeting with NMFO & TRD (if applicable)

After Production:

- Completed requirement for Newspaper Ad (if applicable)
- Confirmed that all New Mexico financial obligations have been paid
- Completed Stats (Step Eight)
- Mailed the Tax Rebate Package, including the Application for Film Production Tax Credit, to NMFO
- If long-form narrative, follow up to ensure that the State of New Mexico receives a credit, a requirement per statute!**

After TRD confirms your approved "Tax Rebate Amount":

- Sent New Mexico Income 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 direct production expenditure that has a New Mexico state tax attached.
 - 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.
 - 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.
 - Will non-resident crew qualify?
No. However, their housing and per diem will.
 - Will non-resident ATL (above-the-line) qualify?
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. Please explain.
Sure. In order for non-resident performing artists/actors (cast & stunt performers only) to qualify, two things must happen:
 - *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, so basically, all nonresident cast must be paid through a “New Mexico entity,” also called a “super loan-out” for this purpose.*
 - *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:*
- 1) *Create a “super loan-out,” a secondary company, in a state outside of 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 5.125% gross receipts tax on these salaries; however this 5.125% is rebateable, so you would have a net profit of 21.15%. See example below. The non-resident actor loan-outs do NOT have to register their loan-outs to do biz in New Mexico!*
 - 2) *Many payroll companies can facilitate the “super loan-out” through their non-New Mexico offices, so check with your payroll company!*
 - 3) *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 7% in Albuquerque or 8.1875% in Santa Fe.*

4) *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 5.125% GRT and the actors themselves must still file a NM personal income tax return.*

- How did you get to the 21.15% for non-resident cast? (*Example using #1 Scenario*)
Super loan-out registers to do business in NM
Super loan-out pays Mr. Non-resident actor \$100.00
Super loan-out pays NM a 5.125% GRT on the \$100.00
Super loan-out has paid a total of \$105.13
Main production company/Filing Entity claims the 25% rebate on \$105.13 (the total invoice)
Main production company/Filing Entity receives rebate of \$26.28
Subtract the 5.125% GRT (\$5.13) already paid and you have a net of \$21.15 or 21.15%
- 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 actor 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. TRD literally sends you a check or deposits the amount into your bank account.
- Is the rebate transferable or assignable?
No.
- 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 get \$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**.*
- I bought a 35mm Panavision camera. Will that qualify?
*No, that would be considered a fixed asset. **Rentals** of this camera would qualify.*
- 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. You must purchase media buys for more than one state.
- Do video games qualify?
Yes, but the filing entity claiming the rebate must be an approved “film production company.”
- 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?
As long as it is intended for commercial exploitation.
- Do industrials or training videos qualify?
No, unless they are intended for commercial exploitation – will they be distributed in the commercial marketplace? If their purpose is “in-house” (used to train employees, etc...) no, they will not qualify.
- Do print ads qualify?
No.
- What about post-production?
Yes, and stand-alone post also qualifies. 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.*
- Do financing fees qualify?
No.
- 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 per project.
- 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.
- 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.
- 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 equipment with me (which I paid for in full in New Mexico), do I get the rebate on the full amount of the rental?
No, just the amount when the equipment was used in New Mexico.
- I'm using a New Mexico-based travel agency. Will a limo to LAX qualify if I book it through them?
No.
- Back to that non-resident director and producer thing...
Wow, you're pushy. Nope, they s t i l l don't qualify.
- Must I register my production company in the State of New Mexico?
No. TRD will use your Federal ID number (or social security #) to process the rebate/return.
- Must I use a New Mexico producer or production company in order to qualify?
No.
- Must I use a New Mexico bank?
No.
- Must I use a New Mexico payroll company in order for the crew to qualify?
No.
- What is the advantage of using a New Mexico payroll company?
Their processing fee will qualify.
- How do we receive our money?
By filing a New Mexico tax return.
- How long does it take to get the rebate?
TRD performs audits based upon the order in which they are received, so they cannot predict a guaranteed timeframe. Other factors, such as size of credit, having "clean," detailed ledgers, and providing TRD with documentation promptly when requested, will determine the length of the audit process. After you have signed off on the approved amount and filed your New Mexico tax return, it will take an additional 3 – 4 weeks to receive your rebate.
- It's taking a long time to get my rebate, and I really need the money. Can you help expedite the process?
New Mexico has one of the fastest turnaround times in the country and TRD has a specialized 4-person "Film Unit" to process film rebates. You can contact Mary Ann Fernandez, Film Unit Supervisor: 505.827.0919 or maryann.fernandez@state.nm.us
- Do I have to pay for the audit?
Not a penny.
- It seems too good to be true. Is it really that simple?
Yup.
- Are you guys really as cool as you seem?
Yes.