

Compiled Comparison: FL HB 697 “Entertainment industry financial incentive program” to Louisiana and New Mexico Current Film Incentives Law

By Emily Patricia Graham, Esq., licensed in Florida and Louisiana

State:	Florida House Bill 697, Senate Bill 1430 Proposed Revision to Fla. Stat. 288.1254 “Entertainment industry financial incentive program”	Louisiana current, Louisiana Revised Statute 47:6007 “Motion picture investor tax credit” louisianaentertainment.gov	New Mexico current N. Mexico Statute Sections 7-2f-1 and 7-2f-2 “Film production tax credit” nmfilm.com
Cap on state-wide credits?	<p>\$75M</p> <p>(b) Tax credit eligibility.—</p> <p>1. General production queue. —Ninety-four percent of tax credits authorized in any state fiscal year must be dedicated to the general production queue.</p> <p>A qualified production, excluding a commercial, music video, or independent Florida film, that demonstrates a minimum of \$625,000 in qualified expenditures is eligible for tax credits equal to 20 percent of its actual qualified expenditures.</p> <p>a. An off-season certified production that is a feature film, independent film, commercial, or television series or pilot is eligible for an additional 5-percent tax credit on actual qualified expenditures.</p> <p>An off-season certified production that does not complete 75 percent of principal photography due to a disruption caused by a hurricane or tropical storm may not be disqualified from eligibility for the additional 5-percent credit as a result of the disruption.</p> <p>b. A qualified high-impact television series</p>	There is no cap for the motion picture production tax credit. As long as there is tax liability in Louisiana there will be a market for tax credits.	None.

	<p>shall be allowed first position in this queue for tax credit awards not yet certified.</p> <p>2. Commercial and music video queue.—Three percent of tax credits authorized in any state fiscal year must be dedicated to the commercial and music video queue.</p> <p>After a qualified production company that produces commercials, music videos, or both reaches the threshold of \$500,000, it is eligible to apply for certification for a tax credit award. The maximum credit award shall be equal to 20 percent of its actual qualified expenditures up to a maximum of \$500,000.</p> <p>If there is a surplus of such tax credits remaining after the Office of Film and Entertainment certifies and determines the tax credits for all qualified commercial and video projects for which applications are made within 270 days after the opening of the application process, such surplus tax credits shall be available to any eligible qualified productions under the general production queue.</p> <p>3. Independent production queue. —Three percent of tax credits authorized in any state fiscal year must be dedicated to the independent production queue. An independent Florida film or digital media project that meets the criteria</p>		
Elective or mandatory registration	Elective, but mandatory to receive credits.	Elective, but mandatory to receive credits.	Elective, but mandatory to receive credits.
Credits	If the company cannot use the entire credit	Yes to all.	No. Neither transferrable nor assignable.

<p>transferable to other years , people, or from other states?</p>	<p>for the year or taxable periods, can carry forward up to five years, and only government’s decision.</p> <p>Transferrable within five years of awarding, to other persons/companies who meet same requirements. Transferee cannot transfer again. No more than four transferees, and transfer must occur in the same year.</p> <p>Not transferrable from other states.</p>	<p>Transferrable for up to ten years of tax liability afterward, if the Louisiana tax liability for a year is less than the year’s incentives. Transfer does not extend the time a credit can be used.</p> <p>Transferrable to anyone with Louisiana tax liability. A credit can have multiple transferees.</p> <p>You have an option to transfer credits (incentives) to Louisiana for 85/100 on the dollar and will receive a check immediately.</p>	
<p>What expenditures qualify</p>	<p>Florida expenditures: wages to Florida residents and payments for Florida goods and services</p> <p>"Production expenditures" means the costs of tangible and intangible property used for, and services performed primarily and customarily in, production, including preproduction and postproduction, but excluding costs for development, marketing, and distribution.</p>	<p>Louisiana spends: Services will qualify if performed in Louisiana. Goods will qualify if purchased through a source in Louisiana. A source is a physical nexus with at least one full time employee. Additionally, if a good is obtained through a production services company, there must be a mark-up on the price and state sales and/or use tax charged to the production.</p> <p>Location spend includes pre-production, production, & post-production expenditures directly incurred in Louisiana that are used in a state-certified production; including without limitation expenses such as above-the-line and below-the-line expenses, equipment rental & purchases, travel, props, location fees, payroll, editing, and sound mixing.</p>	<p>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.</p> <p>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.</p> <p>“direct production expenditures” (meaning a transaction that is subject to taxation in New Mexico) provided by a New Mexico vendor.</p> <p>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,</p>

			including tax, up to \$20 million are eligible.
Minimum budget, Minimum spend	<p>1. General production queue. A qualified production, excluding a commercial, music video, or independent Florida film, that demonstrates a minimum of \$625,000 in qualified expenditures.</p> <p>2. Commercial and music video queue.— A qualified production company that produces national or regional commercials or music videos may be eligible for a tax credit award if it demonstrates a minimum of \$100,000 in qualified expenditures per national or regional commercial or music video and exceeds a combined threshold of \$500,000 after combining actual qualified expenditures from qualified commercials and music videos during a single state fiscal year. After a qualified production company that produces commercials, music videos, or both reaches the threshold of \$500,000, it is eligible to apply for certification for a tax credit award.</p> <p>3. Independent production queue. —none</p>	<p>\$300,000</p> <p>If you do not meet the threshold, consider slating more than one production shot in Louisiana together within one year in order to meet the minimum threshold.</p>	None, none
Incentive percentage for major film, T.V. and media productions	<p>20% (up from the current 15%)</p> <p>An additional 5% remains available to entice productions to film in our state during the Hurricane season;</p> <p>Family friendly extra credit of 5% (up from current 2%)</p>	<p>A 30% investor tax credit is granted based upon the <u>total in-state expenditures</u> of a motion picture production.</p> <p>The additional 5% per production is capped at \$1 Million per individual (only an issue if you are paying an individual Louisiana resident more than \$10 Million).</p> <p>Sound Recording and Infrastructure</p>	<p>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.</p> <p>Is it a credit or a rebate?</p>

		<p>Investor Tax Rebate Production: A 25% refundable tax credit based on total in-state expenditures for the production of sound recordings. Infrastructure: A 25% refundable tax credit on sound recording infrastructure development.</p> <p>Digital Interactive Media Tax Credits Provides a sellable tax credit of up to 25% of the base investment in digital media production done in state, including salary of Louisiana Labor.</p> <p>Live Performance Tax Credit For eligible live productions, including theater, opera, ballet, jazz, comedy revues and variety entertainment – provide a 25% state tax credit on base investment and construction costs with an additional 10% tax credit on payroll for Louisiana residents. The additional 5% per production is capped at \$1 Million per individual (only an issue if you are paying an individual Louisiana resident more than \$10 Million).</p>	<p>Technically, New Mexico has a “refundable tax credit.” In other words, <u>cash</u> 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.</p> <p>The rebate is on the full amount, not just the tax portion?</p> <p>Example: you spend \$95.00 and \$5.00 on tax for a total of \$100.00. You would receive \$25.00 back.</p> <p>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.</p>
Does local spend include bond fees and per diem?	Yes for both, as long as for a Florida company.	<p>Bond Fees? Yes, as long as it is purchased from a Louisiana company. Per diems? Yes.</p>	<p>Yes, if purchased through a New Mexico-based insurance agent Per diems? Yes.</p>
Applies to all productions (big budget and indie, regional and national?)	<p>Yes, with restricted percentages on per year credits and different queues. See above caps on state wide credits per year.</p> <p>Must have national distribution.</p> <p>"Production" means a theatrical or direct-to-video motion picture; a made-for-television motion picture; a commercial; a music video; an industrial or educational</p>	<p>Yes, the immediate write-off provision now applies to the first \$15 million (or \$20 million in low income or distressed areas) of costs for all productions regardless of the aggregate cost of the project.</p> <p>Must have national distribution plan.</p>	<p>Must answer yes to these three questions:</p> <ol style="list-style-type: none"> 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 production intended for exhibition?

	<p>film; an infomercial; a documentary film; a television pilot program; a presentation for a television pilot program; a television series, including, but not limited to, a drama, a reality show, a comedy, a soap opera, a telenovela, a game show, or a miniseries production; or a digital media project by the entertainment industry. One season of a television series is considered one production.</p> <p>The term does not include a weather or market program; a sporting event; a sports show; a gala; a production that solicits funds; a home shopping program; a political program; a political documentary; political advertising; a gambling-related project or production; a concert production; or a local, regional, or Internet-distributed-only news show, current-events show, pornographic production, or current-affairs show. A production may be produced on or by film, tape, or otherwise by means of a motion picture camera; electronic camera or device; tape device; computer; any combination of the foregoing; or any other means, method, or device now used or later adopted.</p>		<p>3. Is your production intended for reasonable commercial exploitation?</p> <p>Script must not be obscene.</p> <p>Other requirements.</p> <p>The following types of productions will qualify as long as you answered YES to the three (3) questions above:</p> <p>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</p>
Local spend includes finance fees?	Yes, from Florida company.	Yes, as long as purchasers are from a Louisiana based company	Yes, as reasonable and customary in the industry and from New Mexico companies.
Local spend include foreigners working in state?	As long as worker meets definition of a Florida resident.	The 30% credit includes the entire spend on payroll (above and below the line) regardless of where the cast or crew are domiciled. To earn an additional 5% on local hire payroll, that labor must be a resident of Louisiana (which is defined as a person with	No, must be a resident as defined under Section 7-2-2(S) NMSA 1978 of the Income Tax act. Non-resident crew qualify? No. However, their housing and per diem

		<p>permanent residence in Louisiana for at least six months of the year).</p>	<p>will.</p> <p>Does the rebate apply to non-resident ATL (above-the-line)? Only actors and stunt performers – “performing artists.”</p> <p>What about other non-resident ATL such as directors or producers? No, just actors and stunt performers.</p> <p>What about New Mexican ATL (above-the-line)? Yes, all ATL (above-the-line) New Mexico residents will qualify.</p>
<p>Loan outs?</p>	<p>Not specified.</p>	<p>Yes.</p>	<p>Non-resident actor “super loan-out” :</p> <p>In order for non-resident performing artists/actors (cast & stunt performers only) to qualify, two things must happen:</p> <p>1) A <u>transaction</u> 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.</p> <p>2) The non-resident actors must agree to file a New Mexico personal income tax return in order for their salaries to qualify.</p> <p>Here are four (4) ways to do this:</p> <p>Create a “super loan-out,” a secondary company, in a state <u>other than New Mexico</u>. Register this “super loan-out” to do business in New Mexico and run all of the non-resident cast salaries (salaries only, no</p>

			<p>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.</p> <p>Many payroll companies can facilitate the “super loan-out” through their non-New Mexico offices</p> <p>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.</p>
<p>Application</p>	<p>Certification.—The Office of Film and Entertainment shall review the application within 15 business days after receipt. Upon its determination that the application contains all the information required by this subsection and meets the criteria set out in this section, the Office of Film and Entertainment shall qualify the applicant and recommend to the Office of Tourism, Trade, and Economic Development that the applicant be certified for the maximum tax credit award amount. Within 5 business days after receipt of the recommendation, the Office of Tourism, Trade, and Economic Development shall reject the recommendation or certify the maximum recommended tax credit award, if any, to the applicant and to the executive director of the Department of Revenue.</p>	<p>If started spending money in Louisiana before receiving initial certification, you can still claim what was spent. Expenditures are creditable for at least one year prior and one year after initial certification.</p> <p>An application must be submitted to the office with the following information:</p> <p>-application fee (minimum: \$200 maximum: \$5000): Fee is assessed as 0.2% of 30% of Your Estimated Expenditures in Louisiana.</p> <p>- a detailed preliminary budget</p> <p>-a national multimarket distribution plan</p>	<p>No pre-qualifying.</p> <p>Registration may at any time for this refund, but best timing is as follows:</p> <p>BEFORE PRODUCTION:</p> <ul style="list-style-type: none"> -Sent Film Production Company Registration form -Send Production Tax Credit Agreement -Send 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 <u>and</u> proofs of residency

		<p>-a statement that the project meets the definition of a ‘state certified production’</p> <p>-any other information requested by the office needed to make a determination</p> <p>-notarized statement (click here for template)</p> <p>-Louisiana LLC & Louisiana Tax ID #</p> <p>Upon receipt of all required documents, a unique I.D. No. is issued and evaluation begins.</p> <p>After evaluation, the office will draft and approve an initial certification letter and send to applicants for signature.</p> <p>Upon either completion of the production, completion of the Louisiana portion of your production, or meeting the minimum in-state spend of \$300,000 on actual filming or post production work, applicants must submit an audit for our review and a request for credits.</p>	<p>AFTER PRODUCTION:</p> <p>Completed requirement for Newspaper Ad (if applicable)</p> <p>-Confirmed that all New Mexico financial obligations have been paid (Step Nine)</p> <p>-Completed Step Ten (Stats)</p> <p>-Mail the tax rebate package, including the Application for Film Production Tax Credit, to NMFO</p> <p>AFTER TRD CONFIRMS YOUR TAX REBATE “APPROVED AMOUNT”:</p> <p>Send New Mexico Tax Return and <u>copy of approved</u> Application for Film Production Tax Credit to TRD</p>
<p>Required affidavit and/or public notice for creditor claims?</p>	<p>No.</p>	<p>D(2)a.</p> <p>Prior to any final certification of a state-certified production or infrastructure project, the motion picture production company or infrastructure project applicant shall submit to the office a notarized statement demonstrating conformity with, and agreeing to, the following:</p> <p style="padding-left: 40px;">c. To pay all undisputed legal obligations the film production company has incurred in Louisiana.</p> <p>(ii) To publish, at completion of principal photography, a notice at least once a week for three consecutive weeks in local</p>	<p>During Application, after production and in compliance with the Production Tax Credit Agreement, please provide proof of the following:</p> <p>(Stand-alone post-production submissions are excluded from this requirement.)</p> <p>“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</p>

		<p>newspapers in regions where filming has taken place in order to notify the public of the need to file creditor claims against the film production company by a specified date.</p> <p>(iii) That the outstanding obligations are not waived should a creditor fail to file by the specified date.</p> <p>(iv) To delay filing a claim for the film production tax credit until the office delivers written notification to the secretary of the Department of Revenue that the film production company has fulfilled all requirements for the credit.</p>	<p>film production company by a specified date.”</p> <p>Ads can be of any size. Include <u>production title</u>, <u>address phone</u>, <u>fax</u>, and/or <u>contact name(s)</u> 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. Submit to special person at the NM Film Office.</p> <p>This information will also be posted on the web site of the NMFO until all financial obligations have been met.</p>
Audits	<p>The process must require:</p> <p>a. certified production to submit, in a timely manner after principal photography or the digital media project ends and after making all of its qualified expenditures, data substantiating each qualified expenditure to an independent certified public accountant licensed in this state;</p> <p>b. Such accountant to conduct a compliance audit, at the certified production’s expense, to substantiate each qualified expenditure and submit the results as a report, along with the required substantiating data, to the Office of Film and Entertainment; and</p> <p>c. The Office of Film and Entertainment to review the accountant’s submittal and report to the Office of Tourism, Trade, and Economic Development the final verified amount of actual qualified expenditures made by the certified production.</p>	<p>The audit must be performed according to our guidelines. In addition to your request, we’ll also need the following:</p> <p>full bible run(s) – any and all data detailing expenditures (in-state and out-of-state) related to the production</p> <p>full employment data – any and all data related to payroll associated with the production</p> <p>additional data may be requested after the office’s review of the data.</p> <p>The office will make inquiries in regards to the audit. If all questions are answered satisfactorily, the request will go to Louisiana Economic Development’s legal department for the secretary’s approval and signature. Once signed, the certification letter is issued and the credits are now certified. **Please note: the statute strictly prohibits transferring of any credits before they are certified by office.**</p>	<p>Part of the approval process, “step eleven”, after the New Mexico Film Office receives the tax rebate package.</p> <p>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.</p> <p>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</p>

		After receiving the certification letter from our office, the credits can be applied to any Louisiana income tax liabilities, transferred to the Office of Entertainment Industry Development for \$0.85 (only for initial certifications received after July 1, 2009); or transferred to another Louisiana taxpayer.	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.
Fringes Qualify?	Yes.	Yes.	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.
Insurance premiums	Yes, if purchased through a Florida-based insurance agent.	In order for Insurance premiums to qualify as an expenditure for the purposes of earning Louisiana Motion Picture Production tax credits, the insurance company must have a physical office in Louisiana, be duly licensed to write insurance in Louisiana and any premiums collected must be subject to the Louisiana insurance premium tax. Only the amounts collected and subject to Louisiana taxes will qualify.	Yes, if purchased through a New Mexico-based insurance agent
Fuel credits	Not specifically, but yes for travel expenses.	Fuel purchases made in Louisiana will be eligible for tax credits, subject to a reduction of 0.20 cents per gallon for payment of state sales tax which is a non-qualifying expenditure under Act 478. For example, if a production purchases 100 gallons of gas @ \$2.50 per gallon for a total of \$250.00, it must deduct \$20 (100 gallons x 0.20 cpg), leaving a net amount of \$230 eligible for tax credits.	Fuel cards and P-cards will need backup/detail (especially location for fuel cards) of transaction.

<p>To what does tax credit apply?</p>	<p>Applies to corporate income tax and sales and use tax credits to qualified entertainment entities rather than reimbursements from appropriations. (Florida does not have state income tax on natural persons.)</p>	<p>A tax credit can be applied toward Louisiana state income tax. Since most motion picture investors do not have Louisiana tax liability, the credit cannot be personally utilized. (Louisiana also has state income tax for juridical entities and natural persons.) This is why the tax credit is fully transferable. Anyone may purchase the tax credit. Generally, tax credit brokers purchase a motion picture project's earned tax credits.</p>	<p>New Mexico tax liability.</p>
<p>State logo or "Filmed in..." required?</p>	<p>Promoting Florida.—The Office of Film and Entertainment shall ensure that, as a condition of receiving a tax credit under this section, marketing materials promoting this state as a tourist destination or film and entertainment production destination are included, when appropriate, at no cost to the state, which must, at a minimum, include placement of a "Filmed in Florida" or "Produced in Florida" logo in the opening credits and end credits and on all packaging material and hard media, unless prohibited by licensing or other contractual obligations. The size and placement of such logo shall be commensurate to other logos used. If no logos are used, the statement "Filmed in Florida using Florida's Entertainment Industry Financial Incentive," or a similar statement approved by the Office of Film and Entertainment, shall be used. The Office of Film and Entertainment shall provide a logo and supply it for the purposes specified in this paragraph.</p>	<p>D. (8) As a condition for receiving certification of tax credits under this Section, state-certified productions may be required to display an animated state brand or logo, or both, which includes a fleur de lis as prescribed by the secretary of the Department of Economic Development as long as the animated state brand or logo is not contrary to any rule or regulation of the Federal Communications Commission.</p>	<p>A long-form narrative film production shall contain an acknowledgment that the production was filmed in the State of New Mexico.</p>