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FISCAL IMPACT REPORT

ORIGINAL DATE 02/11/09
LAST UPDATED 02/15/09 **HB** 404/aHBIC

SPONSOR Lujan, B.

SHORT TITLE Clarify Film Production Tax Credit **SB** _____

ANALYST Francis

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Non-Rec	Fund Affected
FY09	FY10	FY11		
	NFI		Recurring	General fund

(Parenthesis () Indicate Revenue Decreases)

Duplicates SB80 in part

SOURCES OF INFORMATION

LFC Files

Taxation and Revenue Department (TRD)

Responses Received From

Taxation and Revenue Department (TRD)

SUMMARY

Synopsis of HBIC Amendment

The House Business and Industry Committee amended House Bill 404, changing some of the parameters of Section 4 which deals with pass-through entities. The amendment strikes the references to quarterly withholding and clarifies that withholding is done for nonresident owners. Also, estates and trusts remain non-pass through entities whether they distribute income to beneficiaries or not. The amendment addresses many issues raised regarding the ability for taxpayers to efficiently comply with their obligations. Of particular concern was the requirement that the withholding be done quarterly and that is now fixed by the HBIC amendment.

Synopsis of Original Bill

House Bill 404 defines “film performing artist entity” and requiring these entities that contract performing artists to withhold personal income tax in order to qualify as expenditures for the film production tax credit, exempts film performing artist entities gross receipts, and requires withholding reporting of certain pass through entities.

HB404 also changes the definition of direct production expenditure for the purpose of the film production tax credit to require that vendors have a physical presence in New Mexico.

According to TRD, This bill amends the Withholding Tax Act by defining “pass-through entity” to include a “film performing artist entity” and estates and trusts that distribute income to beneficiaries; “person” is expanded to match more closely the definition in the Tax Administration Act. A “personal service corporation” is the same as defined in the Internal Revenue Code. In addition to annual information reports, requires quarterly withholding from pass-through entities. A pass-through entity that is not a film performing artist entity, starting January 1, 2010, must withhold from each owner’s share. Starting July 1, 2009, pass-through entities that are film performing artist entities must withhold from the either the owner-employer’s share of net income in the case of entities that are personal service corporations or the entire net income in the case of entities not personal service corporations. When income moves through a chain of pass-through entities, each succeeding entity may take credit for withholding paid by preceding entities.

The effective date is July 1, 2009.

FISCAL IMPLICATIONS

HB404 replaces estimated payments with withholding and so there is no fiscal impact assuming that estimated payments are being made correctly. There may be positive fiscal impacts arising from the requirement that vendors for direct film production expenditures establish a physical presence: this would lower the amount of the film production tax credit, increasing corporate income tax revenues.

SIGNIFICANT ISSUES

HB404 provides a new definition for “film performing artist entity” as a personal service corporation or other business that receives payments for the services of a performing artist and requires that these entities withhold personal income tax payments from film performing artists if they are going to be deemed eligible expenditures for the film production credit. This provision will require that New Mexico personal income taxes are withheld at the time of payment ensuring accurate and timely collection of tax revenue.

HB404 also provides an exemption from the gross receipts tax for receipts of a film performing artist entity. This addresses possible double taxation if wages are paid through more than one entity.

ADMINISTRATIVE IMPLICATIONS

TRD reports Forms, instruction and publication modifications will be needed across multiple tax programs: CRS, PIT, CIT, PTE, FID and the withholding and film tax credit instructions and publications. Taxpayer and Department personnel will require education. The current CRS program might need to be enhanced. Audit procedures to be reviewed and developed.

A notice to film performing artists will be needed to announce their requirement to withhold, and can be disbursed with the assistance of the Film Office of the Economic Development Department.

The NM Film Office reports that they will need to create guidelines and rules regarding “physical presence” and conduct field visits to verify compliance.

DUPLICATION

HB 8 contains many of the same provisions but also has provisions regarding oil and gas withholding and corporate income tax payments.

NF/mt:svb

The Legislative Finance Committee has adopted the following principles to guide responsible and effective tax policy decisions:

- 1. Adequacy:*** revenue should be adequate to fund government services.
- 2. Efficiency:*** tax base should be as broad as possible to minimize rates and the structure should minimize economic distortion and avoid excessive reliance on any single tax.
- 3. Equity:*** taxes should be fairly applied across similarly situated taxpayers and across taxpayers with different income levels.
- 4. Simplicity:*** taxes should be as simple as possible to encourage compliance and minimize administrative and audit costs.
- 5. Accountability/Transparency:*** Deductions, credits and exemptions should be easy to monitor and evaluate and be subject to periodic review.

More information about the LFC tax policy principles will soon be available on the LFC website at www.nmlegis.gov/lcs/lfc