

1 SENATE BILL 257

2 **53RD LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2018**

3 INTRODUCED BY

4 Pete Campos

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10 AN ACT

11 RELATING TO TAXATION; INCREASING THE ANNUAL AGGREGATE CAP FOR
12 THE TAX CREDITS PROVIDED FOR IN THE FILM PRODUCTION TAX CREDIT
13 ACT.

14
15 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

16 SECTION 1. Section 7-2F-1 NMSA 1978 (being Laws 2002,
17 Chapter 36, Section 1, as amended) is amended to read:

18 "7-2F-1. FILM PRODUCTION TAX CREDIT--FILM PRODUCTION
19 COMPANIES THAT COMMENCE PRINCIPAL PHOTOGRAPHY PRIOR TO JANUARY
20 1, 2016.--

21 A. The tax credit created by this section may be
22 referred to as the "film production tax credit".

23 B. Except as otherwise provided in this section, an
24 eligible film production company may apply for, and the
25 taxation and revenue department may allow, subject to the

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1 limitation in this section, a tax credit in an amount equal to
2 twenty-five percent of:

3 (1) direct production expenditures made in New
4 Mexico that:

5 (a) are directly attributable to the
6 production in New Mexico of a film or commercial audiovisual
7 product;

8 (b) are subject to taxation by the state
9 of New Mexico;

10 (c) exclude direct production
11 expenditures for which another taxpayer claims the film
12 production tax credit; and

13 (d) do not exceed the usual and
14 customary cost of the goods or services acquired when purchased
15 by unrelated parties. The secretary of taxation and revenue
16 may determine the value of the goods or services for purposes
17 of this section when the buyer and seller are affiliated
18 persons or the sale or purchase is not an arm's length
19 transaction; and

20 (2) postproduction expenditures made in
21 New Mexico that:

22 (a) are directly attributable to the
23 production of a commercial film or audiovisual product;

24 (b) are for services performed in New
25 Mexico;

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1 (c) are subject to taxation by the state
2 of New Mexico;

3 (d) exclude postproduction expenditures
4 for which another taxpayer claims the film production tax
5 credit; and

6 (e) do not exceed the usual and
7 customary cost of the goods or services acquired when purchased
8 by unrelated parties. The secretary of taxation and revenue
9 may determine the value of the goods or services for purposes
10 of this section when the buyer and seller are affiliated
11 persons or the sale or purchase is not an arm's length
12 transaction.

13 C. In addition to the percentage applied pursuant
14 to Subsection B of this section, another five percent shall be
15 applied in calculating the amount of the film production tax
16 credit to direct production expenditures:

17 (1) on a standalone pilot intended for series
18 television in New Mexico or on series television productions
19 intended for commercial distribution with an order for at least
20 six episodes in a single season; provided that the New Mexico
21 budget for each of those six episodes is fifty thousand dollars
22 (\$50,000) or more; or

23 (2) on a production with a total New Mexico
24 budget of the following amounts; provided that the expenditures
25 are directly attributable and paid to a New Mexico resident who

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1 is hired as industry crew, or who is hired as a producer,
2 writer or director working directly with the physical
3 production and has filed a New Mexico income tax return as a
4 resident in the two previous taxable years:

5 (a) not more than thirty million dollars
6 (\$30,000,000) that shoots at least ten principal photography
7 days in New Mexico at a qualified production facility; provided
8 that a film production company in principal photography on or
9 after April 10, 2015 shall: 1) shoot at least seven of those
10 days at a sound stage that is a qualified production facility
11 and the remaining number of required days, if any, at a
12 standing set that is a qualified production facility; and 2)
13 for each of the ten days, include industry crew working on the
14 premises of those facilities for a minimum of eight hours
15 within a twenty-four-hour period; or

16 (b) thirty million dollars (\$30,000,000)
17 or more that shoots at least fifteen principal photography days
18 in New Mexico at a qualified production facility; provided that
19 a film production company in principal photography on or after
20 April 10, 2015 shall: 1) shoot at least ten of those days at a
21 sound stage that is a qualified production facility and the
22 remaining number of required days, if any, at a standing set
23 that is a qualified production facility; and 2) for each day of
24 the fifteen days, include industry crew working on the premises
25 of the facility for a minimum of eight hours within a twenty-

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1 four-hour period.

2 D. With respect to expenditures attributable to a
3 production for which the film production company receives a tax
4 credit pursuant to the federal new markets tax credit program,
5 the percentage to be applied in calculating the film production
6 tax credit is twenty percent.

7 E. A claim for film production tax credits shall be
8 filed as part of a return filed pursuant to the Income Tax Act
9 or the Corporate Income and Franchise Tax Act or an information
10 return filed by a pass-through entity. The date a credit claim
11 is received by the department shall determine the order that a
12 credit claim is authorized for payment by the department.

13 ~~[Except as otherwise provided in this section]~~ The aggregate
14 amount of claims for a credit provided by the Film Production
15 Tax Credit Act that may be authorized for payment in any fiscal
16 year is ~~[fifty million dollars (\$50,000,000) with respect to~~
17 ~~the direct production expenditures or postproduction~~
18 ~~expenditures made on film or commercial audiovisual products]~~
19 sixty million dollars (\$60,000,000). A film production company
20 that submits a claim for a film production tax credit that is
21 unable to receive the tax credit because the claims for the
22 fiscal year exceed the limitation in this subsection shall be
23 placed for the subsequent fiscal year at the front of a queue
24 of credit claimants submitting claims in the subsequent fiscal
25 year in the order of the date on which the credit was

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1 authorized for payment.

2 ~~[F. If, in fiscal years 2013 through 2015, the~~
3 ~~aggregate amount in each fiscal year of the film production tax~~
4 ~~credit claims authorized for payment is less than fifty million~~
5 ~~dollars (\$50,000,000), then the difference in that fiscal year~~
6 ~~or ten million dollars (\$10,000,000), whichever is less, shall~~
7 ~~be added to the aggregate amount of the film production tax~~
8 ~~credit claims that may be authorized for payment pursuant to~~
9 ~~Subsection E of this section in the immediately following~~
10 ~~fiscal year.~~

11 ~~G.]~~ F. Except as otherwise provided in this
12 section, credit claims authorized for payment pursuant to the
13 Film Production Tax Credit Act shall be paid pursuant to
14 provisions of the Tax Administration Act to the taxpayer as
15 follows:

16 (1) a credit claim amount of less than two
17 million dollars (\$2,000,000) per taxable year shall be paid
18 immediately upon authorization for payment of the credit claim;

19 (2) a credit claim amount of two million
20 dollars (\$2,000,000) or more but less than five million dollars
21 (\$5,000,000) per taxable year shall be divided into two equal
22 payments, with the first payment to be made immediately upon
23 authorization of the payment of the credit claim and the second
24 payment to be made twelve months following the date of the
25 first payment; and

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1 (3) a credit claim amount of five million
2 dollars (\$5,000,000) or more per taxable year shall be divided
3 into three equal payments, with the first payment to be made
4 immediately upon authorization of payment of the credit claim,
5 the second payment to be made twelve months following the date
6 of the first payment and the third payment to be made twenty-
7 four months following the date of the first payment.

8 [~~H.~~] G. For a fiscal year in which the amount of
9 total credit claims authorized for payment is less than the
10 aggregate amount of credit claims that may be authorized for
11 payment pursuant to this section, the next scheduled payments
12 for credit claims authorized for payment pursuant to Subsection
13 [~~G.~~] F. of this section shall be accelerated for payment for that
14 fiscal year and shall be paid to a taxpayer pursuant to the Tax
15 Administration Act and in the order in which outstanding
16 payments are scheduled in the queue established pursuant to
17 Subsections E and [~~G.~~] F. of this section; provided that the
18 total credit claims authorized for payment shall not exceed the
19 aggregate amount of credit claims that may be authorized for
20 payment pursuant to this section. If a partial payment is made
21 pursuant to this subsection, the difference owed shall retain
22 its original position in the queue.

23 [~~F.~~] H. Any amount of a credit claim that is
24 carried forward pursuant to Subsection [~~G.~~] F. of this section
25 shall be subject to the limit on the aggregate amount of credit

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1 claims that may be authorized for payment pursuant to
2 [~~Subsections~~] Subsection E [~~and F~~] of this section in the
3 fiscal year in which that amount is paid.

4 [~~J.~~] I. A credit claim shall only be considered
5 received by the department if the credit claim is made on a
6 complete return filed after the close of the taxable year. All
7 direct production expenditures and postproduction expenditures
8 incurred during the taxable year by a film production company
9 shall be submitted as part of the same income tax return and
10 paid pursuant to this section. A credit claim shall not be
11 divided and submitted with multiple returns or in multiple
12 years.

13 [~~K.~~] J. For purposes of determining the payment of
14 credit claims pursuant to this section, the secretary of
15 taxation and revenue may require that credit claims of
16 affiliated persons be combined into one claim if necessary to
17 accurately reflect closely integrated activities of affiliated
18 persons.

19 [~~L.~~] K. The film production tax credit shall not be
20 claimed with respect to direct production expenditures or
21 postproduction expenditures for which the film production
22 company has delivered a nontaxable transaction certificate
23 pursuant to Section 7-9-86 NMSA 1978.

24 [~~M.~~] L. A production for which the film production
25 tax credit is claimed pursuant to Paragraph (1) of Subsection B

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1 of this section shall contain an acknowledgment to the state of
2 New Mexico in the end screen credits that the production was
3 filmed in New Mexico, and a state logo provided by the division
4 shall be included and embedded in the end screen credits of
5 long-form narrative film productions and television episodes,
6 unless otherwise agreed upon in writing by the film production
7 company and the division.

8 ~~[N.]~~ M. To be eligible for the film production tax
9 credit, a film production company shall submit to the division
10 information required by the division to demonstrate conformity
11 with the requirements of the Film Production Tax Credit Act,
12 including detailed information on each direct production
13 expenditure and each postproduction expenditure. A film
14 production company shall make reasonable efforts, as determined
15 by the division, to contract with a specialized vendor that
16 provides goods and services, inventory or services directly
17 related to that vendor's ordinary course of business. A film
18 production company shall provide to the division a projection
19 of the film production tax credit claim the film production
20 company plans to submit in the fiscal year. In addition, the
21 film production company shall agree in writing:

22 (1) to pay all obligations the film production
23 company has incurred in New Mexico;

24 (2) to post a notice at completion of
25 principal photography on the ~~[web site]~~ website of the division

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1 that:

2 (a) contains production company
3 information, including the name of the production, the address
4 of the production company and contact information that includes
5 a working phone number, fax number and email address for both
6 the local production office and the permanent production office
7 to notify the public of the need to file creditor claims
8 against the film production company; and

9 (b) remains posted on the [~~web site~~]
10 website until all financial obligations incurred in the state
11 by the film production company have been paid;

12 (3) that outstanding obligations are not
13 waived should a creditor fail to file;

14 (4) to delay filing of a claim for the film
15 production tax credit until the division delivers written
16 notification to the taxation and revenue department that the
17 film production company has fulfilled all requirements for the
18 credit; and

19 (5) to submit a completed application for the
20 film production tax credit and supporting documentation to the
21 division within one year of making the final expenditures in
22 New Mexico that were incurred for the registered project and
23 that are included in the credit claim.

24 [~~0-~~] N. The division shall determine the
25 eligibility of the company and shall report this information to

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1 the taxation and revenue department in a manner and at times
2 the economic development department and the taxation and
3 revenue department shall agree upon. The division shall also
4 post on its ~~[web site]~~ website all information provided by the
5 film production company that does not reveal revenue, income or
6 other information that may jeopardize the confidentiality of
7 income tax returns, including that the division shall report
8 quarterly the projected amount of credit claims for the fiscal
9 year.

10 ~~[P-]~~ O. To provide guidance to film production
11 companies regarding the amount of credit capacity remaining in
12 the fiscal year, the taxation and revenue department shall post
13 monthly on that department's ~~[web site]~~ website the aggregate
14 amount of credits claimed and processed for the fiscal year.

15 ~~[Q-]~~ P. To receive a film production tax credit, a
16 film production company shall apply to the taxation and revenue
17 department on forms and in the manner the department may
18 prescribe. The application shall include a certification of
19 the amount of direct production expenditures or postproduction
20 expenditures made in New Mexico with respect to the film
21 production for which the film production company is seeking the
22 film production tax credit; provided that for the film
23 production tax credit, the application shall be submitted
24 within one year of the date of the last direct production
25 expenditure in New Mexico or the last postproduction

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1 expenditure in New Mexico. If the amount of the requested tax
2 credit exceeds five million dollars (\$5,000,000), the
3 application shall also include the results of an audit,
4 conducted by a certified public accountant licensed to practice
5 in New Mexico, verifying that the expenditures have been made
6 in compliance with the requirements of this section. If the
7 requirements of this section have been complied with, subject
8 to the provisions of Subsection E of this section, the taxation
9 and revenue department shall approve the film production tax
10 credit and issue a document granting the tax credit.

11 ~~[R-]~~ Q. The film production company may apply all
12 or a portion of the film production tax credit granted against
13 personal income tax liability or corporate income tax
14 liability. If the amount of the film production tax credit
15 claimed exceeds the film production company's tax liability for
16 the taxable year in which the credit is being claimed, the
17 excess shall be refunded.

18 ~~[S-]~~ R. That amount of a film production tax credit
19 for total payments as applied to direct production expenditures
20 for the services of performing artists shall not exceed five
21 million dollars (\$5,000,000) for services rendered by
22 nonresident performing artists and featured resident principal
23 performing artists in a production. This limitation shall not
24 apply to the services of background artists and resident
25 performing artists who are not cast in industry standard

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1 featured principal performer roles.

2 [F.] S. As used in this section, "direct production
3 expenditure":

4 (1) except as provided in Paragraph (2) of
5 this subsection, means a transaction that is subject to
6 taxation in New Mexico, including:

7 (a) payment of wages, fringe benefits or
8 fees for talent, management or labor to a person who is a New
9 Mexico resident;

10 (b) payment for wages and per diem for a
11 performing artist who is not a New Mexico resident and who is
12 directly employed by the film production company; provided that
13 the film production company deducts and remits, or causes to be
14 deducted and remitted, income tax from the first day of
15 services rendered in New Mexico at the maximum rate pursuant to
16 the Withholding Tax Act;

17 (c) payment to a personal services
18 business for the services of a performing artist if: 1) the
19 personal services business pays gross receipts tax in New
20 Mexico on the portion of those payments qualifying for the tax
21 credit; and 2) the film production company deducts and remits,
22 or causes to be deducted and remitted, income tax at the
23 maximum rate in New Mexico pursuant to Subsection H of Section
24 7-3A-3 NMSA 1978 on the portion of those payments qualifying
25 for the tax credit paid to a personal services business where

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1 the performing artist is a full or part owner of that business
2 or subcontracts with a personal services business where the
3 performing artist is a full or part owner of that business; and

4 (d) any of the following provided by a
5 vendor: 1) the story and scenario to be used for a film; 2)
6 set construction and operations, wardrobe, accessories and
7 related services; 3) photography, sound synchronization,
8 lighting and related services; 4) editing and related services;
9 5) rental of facilities and equipment; 6) leasing of vehicles,
10 not including the chartering of aircraft for out-of-state
11 transportation; however, New Mexico-based chartered aircraft
12 for in-state transportation directly attributable to the
13 production shall be considered a direct production expenditure;
14 provided that only the first one hundred dollars (\$100) of the
15 daily expense of leasing a vehicle for passenger transportation
16 on roadways in the state may be claimed as a direct production
17 expenditure; 7) food or lodging; provided that only the first
18 one hundred fifty dollars (\$150) of lodging per individual per
19 day is eligible to be claimed as a direct production
20 expenditure; 8) commercial airfare if purchased through a New
21 Mexico-based travel agency or travel company for travel to and
22 from New Mexico or within New Mexico that is directly
23 attributable to the production; 9) insurance coverage and
24 bonding if purchased through a New Mexico-based insurance
25 agent, broker or bonding agent; 10) services for an external

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1 audit upon submission of an application for a film production
2 tax credit by an accounting firm that submits the application
3 pursuant to this section; and 11) other direct costs of
4 producing a film in accordance with generally accepted
5 entertainment industry practice; and

6 (2) does not include an expenditure for:

7 (a) a gift with a value greater than
8 twenty-five dollars (\$25.00);

9 (b) artwork or jewelry, except that a
10 work of art or a piece of jewelry may be a direct production
11 expenditure if: 1) it is used in the film production; and 2)
12 the expenditure is less than two thousand five hundred dollars
13 (\$2,500);

14 (c) entertainment, amusement or
15 recreation;

16 (d) subcontracted goods or services
17 provided by a vendor when subcontractors are not subject to
18 state taxation, such as equipment and locations provided by the
19 military, government and religious organizations; or

20 (e) a service provided by a person who
21 is not a New Mexico resident and employed in an industry crew
22 position, excluding a performing artist, where it is the
23 standard entertainment industry practice for the film
24 production company to employ a person for that industry crew
25 position, except when the person who is not a New Mexico

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1 resident is hired or subcontracted by a vendor; and when the
2 film production company, as determined by the division and when
3 applicable in consultation with industry, provides: 1)
4 reasonable efforts to hire resident crew; and 2) financial or
5 promotional contributions toward education or [~~work force~~]
6 workforce development efforts in New Mexico, including at least
7 one of the following: a payment to a New Mexico public
8 education institution that administers at least one industry-
9 recognized film or multimedia program, as determined by the
10 division, in an amount equal to two and one-half percent of
11 payments made to nonresidents in approved positions employed by
12 the vendor; promotion of the New Mexico film industry by
13 directors, actors or executive producers affiliated with the
14 production company's project through social media that is
15 managed by the state; radio interviews facilitated by the
16 division; enhanced screen credit acknowledgments; or related
17 events that are facilitated, conducted or sponsored by the
18 division.

19 [~~U.~~] T. As used in this section, "film production
20 company" means a person that produces one or more films or any
21 part of a film and that commences principal photography prior
22 to January 1, 2016.

23 [~~V.~~] U. As used in this section, "vendor" means a
24 person who sells or leases goods or services that are related
25 to standard industry craft inventory, who has a physical

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1 presence in New Mexico and is subject to gross receipts tax
2 pursuant to the Gross Receipts and Compensating Tax Act and
3 income tax pursuant to the Income Tax Act or corporate income
4 tax pursuant to the Corporate Income and Franchise Tax Act but
5 excludes a personal services business and services provided by
6 nonresidents hired or subcontracted if the tasks and
7 responsibilities are associated with:

- 8 (1) the standard industry job position of:
- 9 (a) a director;
 - 10 (b) a writer;
 - 11 (c) a producer;
 - 12 (d) an associate producer;
 - 13 (e) a co-producer;
 - 14 (f) an executive producer;
 - 15 (g) a production supervisor;
 - 16 (h) a director of photography;
 - 17 (i) a motion picture driver whose sole
18 responsibility is driving;
 - 19 (j) a production or personal assistant;
 - 20 (k) a designer;
 - 21 (l) a still photographer; or
 - 22 (m) a carpenter and utility technician
23 at an entry level; and
- 24 (2) nonstandard industry job positions and
25 personal support services."

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1 SECTION 2. Section 7-2F-12 NMSA 1978 (being Laws 2015,
2 Chapter 143, Section 11) is amended to read:

3 "7-2F-12. CREDIT CLAIMS--AGGREGATE AMOUNT OF CLAIMS
4 ALLOWED.--

5 A. A claim for a film and television tax credit
6 shall be filed as part of a return filed pursuant to the Income
7 Tax Act or the Corporate Income and Franchise Tax Act or an
8 information return filed by a pass-through entity. The date a
9 credit claim is received by the department shall determine the
10 order that a credit claim is authorized for payment by the
11 department. The aggregate amount of claims for a credit
12 provided by the Film Production Tax Credit Act that may be
13 authorized for payment in any fiscal year is [~~fifty million~~
14 ~~dollars (\$50,000,000) with respect to the direct production~~
15 ~~expenditures or postproduction expenditures made on film or~~
16 ~~commercial audiovisual products] sixty million dollars
17 (\$60,000,000). A film production company that submits a claim
18 for a film and television tax credit that is unable to receive
19 the tax credit because the claims for the fiscal year exceed
20 the limitation in this subsection shall be placed for the
21 subsequent fiscal year at the front of a queue of credit
22 claimants submitting claims in the subsequent fiscal year in
23 the order of the date on which the credit was authorized for
24 payment.~~

25 B. Except as otherwise provided in this section,

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1 credit claims authorized for payment pursuant to the Film
2 Production Tax Credit Act shall be paid pursuant to provisions
3 of the Tax Administration Act to the taxpayer as follows:

4 (1) a credit claim amount of less than two
5 million dollars (\$2,000,000) per taxable year shall be paid
6 immediately upon authorization for payment of the credit claim;

7 (2) a credit claim amount of two million
8 dollars (\$2,000,000) or more but less than five million dollars
9 (\$5,000,000) per taxable year shall be divided into two equal
10 payments, with the first payment to be made immediately upon
11 authorization of the payment of the credit claim and the second
12 payment to be made twelve months following the date of the
13 first payment; and

14 (3) a credit claim amount of five million
15 dollars (\$5,000,000) or more per taxable year shall be divided
16 into three equal payments, with the first payment to be made
17 immediately upon authorization of payment of the credit claim,
18 the second payment to be made twelve months following the date
19 of the first payment and the third payment to be made twenty-
20 four months following the date of the first payment.

21 C. For a fiscal year in which the amount of total
22 credit claims authorized for payment is less than the aggregate
23 amount of credit claims that may be authorized for payment
24 pursuant to this section, the next scheduled payments for
25 credit claims authorized for payment pursuant to Subsection B

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1 of this section shall be accelerated for payment for that
2 fiscal year and shall be paid to a taxpayer pursuant to the Tax
3 Administration Act and in the order in which outstanding
4 payments are scheduled in the queue established pursuant to
5 Subsections A and B of this section; provided that the total
6 credit claims authorized for payment shall not exceed the
7 aggregate amount of credit claims that may be authorized for
8 payment pursuant to this section. If a partial payment is made
9 pursuant to this subsection, the difference owed shall retain
10 its original position in the queue.

11 D. Any amount of a credit claim that is carried
12 forward pursuant to Subsection B of this section shall be
13 subject to the limit on the aggregate amount of credit claims
14 that may be authorized for payment pursuant to Subsection A of
15 this section in the fiscal year in which that amount is paid.

16 E. A credit claim shall only be considered received
17 by the department if the credit claim is made on a complete
18 return filed after the close of the taxable year. All direct
19 production expenditures and postproduction expenditures
20 incurred during the taxable year by a film production company
21 shall be submitted as part of the same income tax return and
22 paid pursuant to this section. A credit claim shall not be
23 divided and submitted with multiple returns or in multiple
24 years.

25 F. For purposes of determining the payment of

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1 credit claims pursuant to this section, the secretary of
2 taxation and revenue may require that credit claims of
3 affiliated persons be combined into one claim if necessary to
4 accurately reflect closely integrated activities of affiliated
5 persons."

6 SECTION 3. APPLICABILITY.--The provisions of this act
7 apply to fiscal year 2019 and subsequent fiscal years.