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FISCAL IMPACT REPORT

SPONSOR: Lujan DATE TYPED: 3/03/03 HB 295/aHBIC/aHTRC

SHORT TITLE: Film Industry Tax Incentives SB _____

ANALYST: Smith

REVENUE

Estimated Revenue		Subsequent Years Impact	Recurring or Non-Rec	Fund Affected
FY03	FY04			
	NFI		Recurring	General Fund

(Parenthesis () Indicate Revenue Decreases)

SOURCES OF INFORMATION

Responses Received From

TRD

SUMMARY

Synopsis of HTRC Amendment

The House Taxation and Revenue Committee Amendment removes the gross receipts deduction for food and lodging and adds a severability clause in response to 1st amendment concerns about the HBIC amendment.

Synopsis of HBIC Amendment

The House and Industry Committee Amendment excludes pornographic films from the tax benefits of this act.

Synopsis of Original Bill

House Bill 295 amends provisions of the film production tax credit (Chapter 7, Article 2F NMSA 1978) and the gross receipts tax deduction for sales to qualified film production companies (Section.7-9-86 NMSA 1978).

The definition of “direct production expenditure” is amended:

- to specify that a *transaction* must be subject to taxation in New Mexico in order to qualify, not the
- *expenditure* (generally in New Mexico, *expenditures* are not subject to tax, *receipts* and *income* are taxed);
- to include “fees” in addition to wages and fringe benefits for talent, management and labor that currently qualify; and
- to include “payment to a personal services corporation for the services of a performing artist” with certain restrictions.

The definition of “film” is amended:

- to clarify that only national and regional advertising messages shall be eligible for credit;
- to add a stipulation that a film must be intended to have a rating no more restrictive than “NC-17”; and
- to specify that the film must only be *intended* for “reasonable commercial exploitation” (current statute requires film to be exhibited in theaters or licensed for television or the home viewing market).

The definition of “film production company” is changed from “a person that produces film for exhibition in theaters, on television or elsewhere” to “a person that produces one or more films.”

The bill makes changes to the definitions of “film”, “production company”, to make them more consistent with the definitions of the film production tax credit. “Production costs” are expanded to include photography costs, leasing of vehicles, and food or lodging.

FISCAL IMPLICATIONS

TRD notes that film production tax credits in excess of \$1 million are currently pending, and the department expects additional applications to be filed soon for credits conservatively estimated to be in excess of \$2 million.

ADMINISTRATIVE IMPLICATIONS

TRD notes that the proposed changes would result in a positive administrative impact for the department. The film production tax credit in its current form has caused problems of interpretation for department personnel responsible for administering the program.

TECHNICAL ISSUES

TRD makes the following comments:

- Although the bill does clarify some issues that have hampered effective administration of the film production tax credit, there are sources of confusion that are not addressed in this proposal. The term “fringe benefits” should be defined. There have been situations in which film production companies claim state unemployment and workers’ compensation insurance as qualifying fringe benefits. Traditionally, unemployment and workers’ com

pensation insurance are considered payroll taxes. Explicitly disallowing these payroll taxes to be claimed as qualified production expenditures may help avoid confusion in the future.

- For the purposes of the film production tax credit, the definition of “direct production expenditure” is restricted to wages and salaries paid to New Mexico residents, as well as airfare and insurance costs purchased through New Mexico-based firms. But this same restriction is not extended to other types of expenditures that could go to out-of-state vendors.
- The film production tax credit restricts the definition of “direct production expenditure” to include selected payroll expenditures for New Mexico residents only, the gross receipts tax deduction does not restrict the selected payroll expenditures to New Mexico residents.
- The film production tax credit defines “film” to include only national and regional advertising messages, the gross receipts tax deduction definition of “film” includes all advertising messages.

OTHER SUBSTANTIVE ISSUES

TRD believes that the provision contained in the film production tax credit requiring the excess credit claimed over and above a tax The potential value of the refundable income tax credits are likely much more than film production companies’ personal income and corporate income tax liabilities . This could violate the anti donation clause of the New Mexico Constitution.

SS/njw:yr