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SENATE BILL 802

48TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2007

INTRODUCED BY

Shannon Robinson

AN ACT

RELATING TO TAXATION; CLARIFYING THE APPLICABILITY OF THE FILM PRODUCTION TAX CREDIT AS IT APPLIES TO POSTPRODUCTION COMPANIES AND DIRECT PRODUCTION EXPENDITURES; AMENDING THE DEFINITIONS APPLICABLE TO THE FILM PRODUCTION TAX CREDIT.

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

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

"7-2F-1. FILM PRODUCTION TAX CREDIT.--

A. The tax credit created by this section may be referred to as the "film production tax credit". An eligible film production company may apply for, and the taxation and revenue department may allow, a tax credit in an amount equal to the percentage specified in Subsection B of this section of:

(1) direct production expenditures made in New

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1 Mexico that:

2 (a) are directly attributable to the
3 production in New Mexico of a film or commercial audiovisual
4 product; ~~[and that]~~

5 (b) are subject to taxation by the state
6 of New Mexico; and

7 (c) exclude reimbursement for direct
8 production expenditures or postproduction expenditures for
9 which another taxpayer claims the film production tax credit;
10 and

11 (2) postproduction expenditures made in New
12 Mexico that are:

13 (a) directly attributable to the
14 production of a commercial film or audiovisual product;

15 (b) for services performed in New
16 Mexico; and

17 (c) subject to taxation by the state of
18 New Mexico.

19 B. Except as provided in ~~[Subsection]~~ Subsections
20 C, J and K of this section, the percentage to be applied in
21 calculating the amount of the film production tax credit is
22 ~~[(1) twenty]~~ twenty-five percent ~~[and (2) for taxable years~~
23 ~~beginning prior to January 1, 2009, an additional five~~
24 ~~percent]~~.

25 C. ~~[The additional five percent tax credit amount~~

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1 ~~pursuant to Paragraph (2) of Subsection B of this section shall~~
2 ~~not be available]~~ With respect to expenditures attributable to
3 a production for which the film production company receives a
4 tax credit pursuant to the federal new markets tax credit
5 program, the percentage to be applied in calculating the film
6 production tax credit is twenty percent.

7 D. The film production tax credit shall not be
8 claimed with respect to direct production expenditures or
9 postproduction expenditures for which the film production
10 company has delivered a nontaxable transaction certificate
11 pursuant to Section 7-9-86 NMSA 1978.

12 E. A long-form narrative film production for which
13 the film production tax credit is claimed pursuant to Paragraph
14 (1) of Subsection A of this section shall contain an
15 acknowledgment that the production was filmed in New Mexico.

16 F. To be eligible for the film production tax
17 credit, a film production company shall submit to the New
18 Mexico film division of the economic development department
19 information required by the division to demonstrate conformity
20 with the requirements of this section and shall agree in
21 writing:

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

24 (2) to publish, at completion of principal
25 photography, a notice at least once a week for three

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1 consecutive weeks in local newspapers in regions where filming
2 has taken place to notify the public of the need to file
3 creditor claims against the film production company by a
4 specified date;

5 (3) that outstanding obligations are not
6 waived should a creditor fail to file by the specified date;
7 and

8 (4) to delay filing of a claim for the film
9 production tax credit until the New Mexico film division
10 delivers written notification to the taxation and revenue
11 department that the film production company has fulfilled all
12 requirements for the credit.

13 G. The New Mexico film division shall determine the
14 eligibility of the company and shall report this information to
15 the taxation and revenue department in a manner and at times
16 the economic development department and the taxation and
17 revenue department shall agree upon.

18 H. To receive a film production tax credit, a film
19 production company shall apply to the taxation and revenue
20 department on forms and in the manner the department may
21 prescribe. The application shall include a certification of
22 the amount of direct production expenditures or postproduction
23 expenditures made in New Mexico with respect to the film
24 production for which the film production company is seeking the
25 film production tax credit. If the requirements of this

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1 section have been complied with, the taxation and revenue
2 department shall approve the film production tax credit and
3 issue a document granting the tax credit.

4 I. The film production company may apply all or a
5 portion of the film production tax credit granted against
6 personal income tax liability or corporate income tax
7 liability. If the amount of the film production tax credit
8 claimed exceeds the film production company's tax liability for
9 the taxable year in which the credit is being claimed, the
10 excess shall be refunded.

11 J. As applied to direct production expenditures for
12 the services of performing artists, the film production tax
13 credit authorized by this section shall not exceed five million
14 dollars (\$5,000,000) for services rendered by all performing
15 artists in a production for which the film production tax
16 credit is claimed.

17 K. The percentage to be applied in calculating the
18 amount of the film production tax credit is thirty percent if:

19 (1) seventy-five percent of the keys in below-
20 the-line positions on the project are New Mexico residents;

21 (2) the project is covered by a collective
22 bargaining agreement; and

23 (3) the keys are members of a union local
24 whose primary jurisdiction is New Mexico."

25 Section 2. Section 7-2F-2 NMSA 1978 (being Laws 2003,

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1 Chapter 127, Section 2, as amended) is amended to read:

2 "7-2F-2. DEFINITIONS.--As used in Chapter 7, Article 2F
3 NMSA 1978:

4 A. "commercial audiovisual product" means a film or
5 a videogame intended for commercial exploitation;

6 B. "direct production expenditure" means a
7 transaction that is subject to taxation in New Mexico,
8 including:

9 (1) payment of wages, fringe benefits or fees
10 for talent, management or labor to a person who is a New Mexico
11 resident for purposes of the Income Tax Act;

12 (2) payment to a personal services corporation
13 for the services of a performing artist if:

14 (a) the personal services corporation
15 pays gross receipts tax in New Mexico on the portion of those
16 payments qualifying for the tax credit; and

17 (b) the performing artist receiving
18 payments from the personal services corporation pays New Mexico
19 income tax; and

20 (3) any of the following provided by a vendor:

21 (a) the story and scenario to be used
22 for a film;

23 (b) set construction and operations,
24 wardrobe, accessories and related services;

25 (c) photography, sound synchronization,

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1 lighting and related services;

2 (d) editing and related services;

3 (e) rental of facilities and equipment;

4 (f) leasing of vehicles, not including
5 the chartering of aircraft for out-of-state transportation;

6 however, New Mexico-based chartered aircraft for in-state
7 transportation directly attributable to the production shall be
8 considered a direct production expenditure;

9 (g) food or lodging;

10 (h) commercial airfare if purchased
11 through a New Mexico-based travel agency or travel company for
12 travel to and from New Mexico or within New Mexico that is
13 directly attributable to the production;

14 (i) insurance coverage and bonding if
15 purchased through a New Mexico-based insurance agent; and

16 (j) other direct costs of producing a
17 film in accordance with generally accepted entertainment
18 industry practice;

19 C. "federal new markets tax credit program" means
20 the tax credit program codified as Section 45D of the United
21 States Internal Revenue Code of 1986, as amended;

22 D. "film" means a single media or multimedia
23 program, excluding advertising messages other than national or
24 regional advertising messages intended for exhibition, that:

25 (1) is fixed on film, digital medium,

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1 videotape, computer disc, laser disc or other similar delivery
2 medium;

3 (2) can be viewed or reproduced;

4 (3) is not intended to and does not violate a
5 provision of Chapter 30, Article 37 NMSA 1978; and

6 (4) is intended for reasonable commercial
7 exploitation for the delivery medium used;

8 E. "film production company" means a person that
9 produces one or more films; ~~and~~

10 F. "key" means a person who is the manager of a
11 department on a film; and

12 ~~[F-]~~ G. "postproduction expenditure" means an
13 expenditure that occurs after the completion of principal and
14 ongoing photography, including an expenditure for editing,
15 Foley recording, automatic dialogue replacement, sound editing,
16 special effects, including computer-generated imagery or other
17 effects, scoring and music editing, beginning and end credits,
18 negative cutting, soundtrack production, dubbing, subtitling or
19 addition of sound or visual effects; but not including an
20 expenditure for advertising, marketing, distribution or expense
21 payments."

22 Section 3. APPLICABILITY.--The provisions of this act
23 apply to taxable years beginning on or after July 1, 2007.

24 Section 4. EFFECTIVE DATE.--The effective date of the
25 provisions of this act is July 1, 2007.

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