F I S C A L   I M P A C T   R E P O R T

ORIGINAL DATE 1/24/08

SPONSOR B. Lujan **LAST UPDATED** **HB** 211

SHORT TITLE Film Performing Artist Tax Exemption **SB**

ANALYST Schardin

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Non-Rec	Fund Affected
FY08	**FY09**	**FY10**		
Minimal			Recurring	General Fund

(Parenthesis ( ) Indicate Revenue Decreases)

SOURCES OF INFORMATION
LFC Files

Responses Received From
Economic Development Department (EDD)
Taxation and Revenue Department (TRD)

SUMMARY

Synopsis of Bill

House Bill 211 amends the film production tax credit. Under current law, "direct production expenditures" include, among other items, payment for performing artist services to a personal services corporation if the personal services corporation pays gross receipts tax on the services and *if the performing artist pays New Mexico income tax* on the payment for services.

The bill would amend the definition of "direct production expenditures" to include instead payment for performing artist services to a film performing artist entity if the entity pays gross receipts tax on the services and *if the entity deducts and remits withholding tax*. The new term "film performing artist entity" is defined as a business organization that receives payments for the services of a performing artist.

The definition of a "pass-through entity" in the withholding tax act is amended to explicitly include a film performing artist entity. The bill adds language to require a film performing artist entity to deduct withholding tax from each payment to each nonresident owner of a pass-through entity at the highest personal income tax rate for single individuals (4.9 percent in 2008 and beyond). For pass-through entities that are not film performing artist entities, the pass-through entity will be required to deduct withholding at the highest corporate income tax rate (7.6 percent).

Also deleted from the withholding tax act is the definition of a "person."

The bill creates a new gross receipts tax exemption for receipts of a film performing artist entity from another film performing artist entity for services of a performing artist.

The effective date of these provisions is July 1, 2008.

FISCAL IMPLICATIONS

TRD expects the bill may cause a small positive impact on income tax collections if it results in increased compliance through the proposed mandatory withholding for performing artists.

SIGNIFICANT ISSUES

According to EDD, the bill addresses two issues in current law:

1.) Under current law, if a performing artist fails to file and pay New Mexico personal income tax, TRD can demand repayment from the film production company for the portion of the film production tax credit awarded for expenditures to the performing artist. Both the state and the film production company can be left vulnerable in this situation, as it can be difficult to force a performing artist to pay the personal income tax. By creating mandatory withholding for performing artists, the bill protects the state and film production companies from the risk that a performing artist does not pay New Mexico personal income tax.

2.) In reality, the film production company, not each performing artist's loan-out corporation, pays gross receipts tax on the services provided by performing artists or the performing artist's loan-out corporation. Therefore, the law as currently written does not accurately reflect which entity pays gross receipts tax.

TRD notes that the gross receipts tax exemption proposed would prevent pyramiding in instances where there is more than one entity between a performing artist's loan-out corporation and the performing artist.

ADMINISTRATIVE IMPLICATIONS

According to EDD, mandatory withholding of income tax for performing artists will make the film production tax credit easier for TRD to administer.

SS/mt