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FISCAL IMPACT REPORT

ORIGINAL DATE 1/31/08
 SPONSOR Wirth LAST UPDATED 2/09/08 HB 374/aHBIC
 SHORT TITLE NM Based Media Company Investment Tax Credit SB _____
 ANALYST Francis

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Non-Rec	Fund Affected
FY08	FY09	FY10		
	(\$225.0)	(\$150.0)	Recurring	General Fund

(Parenthesis () Indicate Revenue Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY08	FY09	FY10	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
Total		\$45.0	\$45.0	\$90.0	Recurring	Agency budgets

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Taxation and Revenue Department (TRD)
 Economic Development Department (EDD)
 Department of Finance and Administration (DFA)

SUMMARY

Synopsis of HBIC Amendment

The House Business and Industry Committee amended House Bill 374 to require that any film production company must be “engaged in manufacturing or development wholly or substantially in New Mexico.” “Substantially in New Mexico” means that for film projects at least 85 percent of the principal and second unit photography takes place in New Mexico and that for animation projects at least 85 percent of the production budget is spent in New Mexico.

Synopsis of Original Bill

House bill 374 creates a personal income tax credit equivalent to 10 percent of an investment up

to \$250,000 in a New Mexico-based media company. A taxpayer can only claim two credits in a taxable year for different investments and can receive the credit for three consecutive years for investments in the same media company. If the credit exceeds the taxpayer's liability, the unused amount may be carried forward for up to three consecutive years. The credit cannot be claimed if another credit or deduction, federal or state, has been claimed.

A media company is defined as a company engaged in the manufacturing or development of feature films, television, regional and national commercials, documentaries, video games or post production and maintains its principal place of business in New Mexico. The Economic Development Department (EDD) would be responsible for certifying the investment and providing the taxpayer with a certificate of eligibility to be used to claim the credit.

The credit is available for tax years beginning on or after January 1, 2008.

FISCAL IMPLICATIONS

According to TRD, EDD reports that an estimated six taxpayers would likely take advantage of the credit in 2008. TRD: Assuming each of the investors would claim the maximum credit only once, and that a similar number of investors would claim the credit the following years, the revenue loss for each tax year would be \$150 thousand. Tax year 2008 liability changes were assumed to affect only FY2009 revenues. Tax year 2009 and subsequent year changes in liabilities were assumed to be evenly split across the two fiscal years included in the calendar year.

SIGNIFICANT ISSUES

There are already numerous film credits, deductions, and incentives targeted towards the media industry. The film production tax credit alone is expected to cost over \$50 million in FY08. This credit would be for investors who are investing in a company which will likely get the film production tax credit. In addition to the 25 percent tax credit on expenditures, New Mexico offers zero-interest loans from the State Investment Council and wage subsidies through the Job Training Incentive Program. The state also has invested \$22 million in capital outlay appropriations in media production education programs at New Mexico's colleges and universities. These subsidies, coupled with New Mexico's varied landscape and proximity to Los Angeles, have led to significant growth in the number of films made in the state.

Film Incentives in NM

- **25 percent production credit**
- **Zero percent film loans**
- **Gross receipts tax deduction**
- **JTIP training**
- **Capital outlay for media education**

DFA reports that "given all of the other credits and incentives available to the film industry, not to mention the funding for training, a new credit will have uncertain benefit: substantial investment capital is already flowing into the film industry. Apparently, the credit is intended to stimulate the growth of New Mexico production companies -- owned by New Mexicans (since a credit of this type would not benefit a passive investor)."

PERFORMANCE IMPLICATIONS

Given all of the other credits and incentives, not to mention the funding for training, a new credit will have uncertain benefit: investment capital is already flowing into the film industry.

ADMINISTRATIVE IMPLICATIONS

According to TRD, the administrative impact of this bill would be high. Coordination with the Film Office for certification and approval of applications would be necessary. An additional FTE at a cost of \$30,000 would be required to implement the credit.

According to the Economic Development Dept, EDD and/or the Film Division of EDD will be required to issue rules governing the procedure for qualifying investments and qualifying NM-based media companies and issuing a certification of eligibility to the taxpayer/investor. This will require substantial staff time both in the development of rules and the ongoing management of the program. It is estimated that 80 - 100 hours of staff time will be needed to promulgate the rules, and 5 hours per week would be dedicated to this project. It is unclear how the current staffing of NMFO would accommodate this new program. A contractor could be employed to manage this program at an estimate of \$15,000 per year. In the last six months of FY08, it is estimated that a contract for \$7,500 would be needed to develop the rules, confer with TRD, set up certification paperwork, etc.

TECHNICAL ISSUES

TRD reports 1) The bill is unclear as to which department (Economic Development or Taxation and Revenue) will determine the amount of the credit. 2) The proposed legislation should be clarified in a way that would allow determination of when a company is New Mexico based, or where its main location for business is. 3) The definition of a “company” should be clarified. 4) For purposes of this credit, the interaction of “headquarters” and “subsidiaries” should be clarified.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

There are several bills related to film being considered by the 2008 legislature.

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Bill	Title	Description
S 413	SANTA FE SUMMER YOUTH FILM PROGRAM	Film program for native american youth
S 325	COUNCIL ON FILM & MEDIA TERM LENGTHS	Changes term of Governor's Council on Film and Media members from four years to two
S 383	NM FILMMAKERS PRODUCTION FUND	Creates a fund for EDD to make grants/loans to NM and underrepresented minority filmmakers
S 519	FILM PRODUCTION TAX CREDIT ANNUAL CAP	Caps the film production tax credit
H 211	FILM PERFORMING ARTIST TAX EXEMPTION	Changes how performing artists and personal services companies representing performing artists are treated by the film production tax credit
H 294	CULTURALLY DIVERSE NM FILM CREWS	Appropriation for training and mentorship programs aimed at building a culturally diverse crew
H 470	NMSU GRANTS FILM TECHNICIAN PROGRAM	Film equipment and training for NMSU-Grants programs
H 507	GALLUP FILM OFFICE	Creation of Gallup film office
H 634	NM FILMMAKERS PRODUCTION FUND	Allows SIC to invest in small films

POSSIBLE QUESTIONS

Why is the credit necessary given all of the other industry incentives?

NF/mt