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SENATE BILL 14

49TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SPECIAL SESSION, 2010

INTRODUCED BY

John Arthur Smith

AN ACT

RELATING TO TAXATION; ESTABLISHING A MAXIMUM ANNUAL CAP ON FILM PRODUCTION TAX CREDITS; DECLARING AN EMERGENCY.

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, subject to the limit in Subsection I of this section, 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 Mexico that:

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1 (a) are directly attributable to the
2 production in New Mexico of a film or commercial audiovisual
3 product;

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

6 (c) exclude direct production
7 expenditures for which another taxpayer claims the film
8 production tax credit; and

9 (2) postproduction expenditures made in New
10 Mexico that:

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

13 (b) are for services performed in New
14 Mexico;

15 (c) are subject to taxation by the state
16 of New Mexico; and

17 (d) exclude postproduction expenditures
18 for which another taxpayer claims the film production tax
19 credit.

20 B. Except as provided in Subsections C and [J] K of
21 this section, the percentage to be applied in calculating the
22 amount of the film production tax credit is twenty-five
23 percent.

24 C. With respect to expenditures attributable to a
25 production for which the film production company receives a tax

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1 credit pursuant to the federal new markets tax credit program,
2 the percentage to be applied in calculating the film production
3 tax credit is twenty percent.

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

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

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

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

21 (2) to publish, at completion of principal
22 photography, a notice at least once a week for three
23 consecutive weeks in local newspapers in regions where filming
24 has taken place to notify the public of the need to file
25 creditor claims against the film production company by a

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1 specified date;

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

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

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

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

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1 shall approve the film production tax credit subject to the
2 limits in Subsections I and K of this section and issue a
3 document granting the tax credit.

4 I. The amount of film production tax credits
5 approved by the taxation and revenue department shall not
6 exceed an aggregate annual amount of forty million dollars
7 (\$40,000,000), divided into semiannual twenty-million-dollar
8 (\$20,000,000) increments. Each increment shall be allocated to
9 an application period composed of the first or last six months
10 of a calendar year. If applications for the credit received by
11 the department in a six-month application period exceed twenty
12 million dollars (\$20,000,000), the department shall approve
13 partial tax credit amounts on a proportional basis, as follows:
14 the department shall calculate the partial tax credit amount
15 for each applicant by multiplying the amount of tax credit for
16 which the applicant would have been eligible, were it not for
17 the limit imposed in this subsection, by a fraction the
18 numerator of which is twenty million dollars (\$20,000,000) and
19 the denominator of which is the total amount of tax credits for
20 which all applicants in the six-month application period would
21 have been eligible were it not for the limit imposed in this
22 subsection.

23 ~~[I.]~~ J. The film production company may apply all
24 or a portion of the film production tax credit granted against
25 personal income tax liability or corporate income tax

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1 liability. If the amount of the film production tax credit
2 claimed exceeds the film production company's tax liability for
3 the taxable year in which the credit is being claimed, the
4 excess shall be refunded.

5 ~~[J-]~~ K. As applied to direct production
6 expenditures for the services of performing artists, the film
7 production tax credit authorized by this section shall not
8 exceed five million dollars (\$5,000,000) for services rendered
9 by all performing artists in a production for which the film
10 production tax credit is claimed."

11 Section 2. APPLICABILITY.--The provisions of this act
12 apply to taxable years beginning on or after January 1, 2010.

13 Section 3. EMERGENCY.--It is necessary for the public
14 peace, health and safety that this act take effect immediately.

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