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SENATE BILL 44

50TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2011

INTRODUCED BY

Timothy M. Keller

FOR THE REVENUE STABILIZATION AND TAX POLICY COMMITTEE

AN ACT

RELATING TO TAXATION; ENACTING THE FILM PRODUCTION TAX CREDIT ACT; PROVIDING TRACKING REQUIREMENTS FOR THE FILM PRODUCTION TAX CREDITS; PROVIDING FOR REVIEW OF 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;

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

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

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

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

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

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

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

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

25 C. With respect to expenditures attributable to a

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

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

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

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

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

22 (2) to [~~publish~~] post a notice at completion
23 of principal photography [~~a notice at least once a week for~~
24 ~~three consecutive weeks in local newspapers in regions where~~
25 ~~filming has taken place~~] on the web site of the division that:

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1 (a) contains production company
2 information, including the name of the production, the address
3 of the production company and contact information that includes
4 a working phone number, fax number and email address for both
5 the local production office and the permanent production office
6 to notify the public of the need to file creditor claims
7 against the film production company [~~by a specified date~~]; and

8 (b) remains posted on the web site until
9 all financial obligations incurred in the state by the film
10 production company have been paid;

11 (3) that outstanding obligations are not
12 waived should a creditor fail to file [~~by the specified date;~~
13 ~~and~~];

14 (4) to delay filing of a claim for the film
15 production tax credit until the [~~New Mexico film~~] division
16 delivers written notification to the taxation and revenue
17 department that the film production company has fulfilled all
18 requirements for the credit; and

19 (5) to submit a completed application for the
20 film production tax credit and supporting documentation to the
21 division within one year of making the final expenditures in
22 New Mexico that are included in the credit claim.

23 G. The [~~New Mexico film~~] division shall determine
24 the eligibility of the company and shall report this
25 information to the taxation and revenue department in a manner

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1 and at times the [~~economic development department~~] division and
2 the taxation and revenue department shall agree upon.

3 H. To receive a film production tax credit, a film
4 production company shall apply to the taxation and revenue
5 department on forms and in the manner the department may
6 prescribe. The application shall include a certification of
7 the amount of direct production expenditures or postproduction
8 expenditures made in New Mexico with respect to the film
9 production for which the film production company is seeking the
10 film production tax credit. If the requirements of this
11 section have been complied with, the taxation and revenue
12 department shall approve the film production tax credit and
13 issue a document granting the tax credit.

14 I. The film production company may apply all or a
15 portion of the film production tax credit granted against
16 personal income tax liability or corporate income tax
17 liability. If the amount of the film production tax credit
18 claimed exceeds the film production company's tax liability for
19 the taxable year in which the credit is being claimed, the
20 excess shall be refunded.

21 J. As applied to direct production expenditures for
22 the services of performing artists, the film production tax
23 credit authorized by this section shall not exceed five million
24 dollars (\$5,000,000) for services rendered by all performing
25 artists in a production for which the film production tax

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1 credit is claimed."

2 SECTION 2. A new section of Chapter 7, Article 2F NMSA
3 1978 is enacted to read:

4 "[NEW MATERIAL] SHORT TITLE.--Chapter 7, Article 2F NMSA
5 1978 may be cited as the "Film Production Tax Credit Act"."

6 SECTION 3. Section 7-2F-2 NMSA 1978 (being Laws 2003,
7 Chapter 127, Section 2, as amended) is amended to read:

8 "7-2F-2. DEFINITIONS.--As used in [~~Chapter 7, Article 2F~~
9 ~~NMSA 1978~~] the Film Production Tax Credit Act:

10 A. "commercial audiovisual product" means a film or
11 a videogame intended for commercial exploitation;

12 B. "direct production expenditure" means a
13 transaction that is subject to taxation in New Mexico,
14 including:

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

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

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

23 (b) the [~~performing artist receiving~~
24 ~~payments from the personal services corporation pays New Mexico~~
25 ~~income tax~~] personal services corporation deducts and remits

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1 income tax at the maximum rate in New Mexico on the portion of
2 those payments qualifying for the tax credit; and

3 (3) any of the following provided by a vendor
4 that has a physical presence in New Mexico:

5 (a) the story and scenario to be used
6 for a film;

7 (b) set construction and operations,
8 wardrobe, accessories and related services;

9 (c) photography, sound synchronization,
10 lighting and related services;

11 (d) editing and related services;

12 (e) rental of facilities and equipment;

13 (f) leasing of vehicles, not including
14 the chartering of aircraft for out-of-state transportation;
15 however, New Mexico-based chartered aircraft for in-state
16 transportation directly attributable to the production shall be
17 considered a direct production expenditure;

18 (g) food or lodging;

19 (h) commercial airfare if purchased
20 through a New Mexico-based travel agency or travel company for
21 travel to and from New Mexico or within New Mexico that is
22 directly attributable to the production;

23 (i) insurance coverage and bonding if
24 purchased through a New Mexico-based insurance agent, [~~and~~]
25 broker or bonding agent;

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1 (j) other direct costs of producing a
2 film in accordance with generally accepted entertainment
3 industry practice; and

4 (k) related digital content;

5 C. "division" means the New Mexico film division of
6 the economic development department;

7 [~~E.~~] D. "federal new markets tax credit program"
8 means the tax credit program codified as Section 45D of the
9 United States Internal Revenue Code of 1986, as amended;

10 [~~D.~~] E. "film" means a single [~~media~~] medium or
11 multimedia program, excluding advertising messages other than
12 national or regional advertising messages intended for
13 exhibition, that:

14 (1) is fixed on film, digital medium,
15 videotape, computer disc, laser disc or other similar delivery
16 medium;

17 (2) can be viewed or reproduced;

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

20 (4) is intended for reasonable commercial
21 exploitation for the delivery medium used;

22 [~~E.~~] F. "film production company" means a person
23 that produces one or more films or any part of a film; [~~and~~]

24 G. "physical presence" means a physical address in
25 New Mexico, not a post office box or other mail drop enterprise

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1 unless the business is providing mail services to a film
2 production company, from which a vendor conducts business,
3 stores inventory or otherwise creates, assembles or offers for
4 sale the product purchases or leased by a film production
5 company; the meaning of "physical presence" may vary from
6 vendor to vendor depending on the type of business conducted
7 and the special circumstances of that business that indicate
8 that the business has established and maintains a physical
9 presence in the state, as determined on a case-by-case basis by
10 the division; and

11 [F-] H. "postproduction expenditure" means an
12 expenditure for editing, Foley recording, automatic dialogue
13 replacement, sound editing, special effects, including
14 computer-generated imagery or other effects, scoring and music
15 editing, beginning and end credits, negative cutting,
16 soundtrack production, dubbing, subtitling or addition of sound
17 or visual effects, but not including an expenditure for
18 advertising, marketing, distribution or expense payments."

19 SECTION 4. A new section of Chapter 7, Article 2F NMSA
20 1978 is enacted to read:

21 "[NEW MATERIAL] PURPOSES--GOALS.--The purposes and goals
22 of the film production tax credit are to:

23 A. establish the film industry as a permanent
24 component of the economic base of New Mexico;

25 B. develop a pool of trained professionals and

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1 businesses in New Mexico to supply and support the film
2 industry in the state;

3 C. increase employment of New Mexico residents;

4 D. improve the economic success of existing
5 businesses in New Mexico; and

6 E. develop the infrastructure in the state
7 necessary for a thriving film industry."

8 SECTION 5. A new section of Chapter 7, Article 2F NMSA
9 1978 is enacted to read:

10 "[NEW MATERIAL] REPORTING--ACCOUNTABILITY.--

11 A. The economic development department shall:

12 (1) collect data to be used in an econometric
13 tool that objectively assesses the effectiveness of the film
14 production tax credit;

15 (2) track the direct expenditures for the film
16 production tax credit;

17 (3) with the support and assistance of the
18 legislative finance committee staff and the taxation and
19 revenue department, review and assess the analysis developed in
20 Paragraph (1) of this subsection and create a report for
21 presentation to the revenue stabilization and tax policy
22 committee and the legislative finance committee that provides
23 an objective assessment of the effectiveness of the film
24 production tax credit; and

25 (4) report annually to the revenue

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1 stabilization and tax policy committee and the legislative
2 finance committee on aggregate approved tax credits made
3 pursuant to the Film Production Tax Credit Act.

4 B. The division shall develop a form on which the
5 taxpayer claiming a film production tax credit pursuant to the
6 Film Production Tax Credit Act shall submit a report to
7 accompany the taxpayer's application for that credit.

8 C. With respect to the film on which the
9 application for a film production tax credit is based, the film
10 production company shall report to the division at a minimum
11 the following information:

12 (1) the total aggregate wages of the members
13 of the New Mexico resident crew;

14 (2) the number of New Mexico residents
15 employed;

16 (3) the total amount of gross receipts taxes
17 paid;

18 (4) the total number of hours worked by New
19 Mexico residents;

20 (5) the total expenditures made in New Mexico
21 that do not qualify for the film production tax credit;

22 (6) the aggregate wages paid to the members of
23 the nonresident crew while working in New Mexico; and

24 (7) other information deemed necessary by the
25 division and economic development department to determine the

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1 effectiveness of the film production tax credit.

2 D. For purposes of assessing the effectiveness of
3 the film production tax credit, the inability of the economic
4 development department to aggregate data due to sample size
5 shall not relieve the department of the requirement to report
6 all relevant data to the legislature. The division shall
7 provide notice to a film production company applying for the
8 film production tax credit that information provided to the
9 division may be revealed by the department in reports to the
10 legislature."

11 SECTION 6. A new section of Chapter 7, Article 2F NMSA
12 1978 is enacted to read:

13 "[NEW MATERIAL] FOUR-YEAR REVIEW OF TAX CREDIT
14 EFFECTIVENESS.--The revenue stabilization and tax policy
15 committee shall review the film production tax credit for its
16 effectiveness in achieving the goals and meeting the purposes
17 for which the credit was adopted at four-year intervals
18 beginning in calendar year 2012. The review shall be completed
19 by October 31 of the calendar year."