

1 SENATE BILL 455

2 **50TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2011**

3 INTRODUCED BY

4 Timothy Z. Jennings

5
6
7
8
9
10 AN ACT

11 RELATING TO TAXATION; PROVIDING FOR MUNICIPALITIES OR COUNTIES
12 WITH POPULATIONS GREATER THAN THIRTY THOUSAND TO SHARE IN THE
13 COSTS OF THE FILM PRODUCTION TAX CREDIT; AUTHORIZING REDUCTIONS
14 IN CERTAIN DISTRIBUTIONS TO THOSE MUNICIPALITIES AND COUNTIES;
15 LIMITING THE ANNUAL AGGREGATE FILM PRODUCTION TAX CREDIT.

16
17 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

18 SECTION 1. A new section of the Tax Administration Act is
19 enacted to read:

20 "[NEW MATERIAL] FOOD AND MEDICAL HOLD-HARMLESS PAYMENT
21 OFFSET FOR FILM PRODUCTION TAX CREDIT EXPENSES--MUNICIPALITIES
22 AND COUNTIES.--

23 A. The department shall offset an amount from the
24 distributions made pursuant to Sections 7-1-6.46 and 7-1-6.47
25 NMSA 1978 that are made as hold-harmless payments to certain

184943.2

underscored material = new
~~[bracketed material] = delete~~

underscoring material = new
~~[bracketed material]~~ = delete

1 municipalities or counties for the benefit derived by those
2 municipalities or counties from the increased economic activity
3 due to the expenditures made by film production companies and
4 identified as direct production expenditures and postproduction
5 expenditures pursuant to Sections 7-2F-1 and 7-2F-2 NMSA 1978
6 for purposes of the film production tax credit.

7 B. The aggregate amount to be distributed pursuant
8 to Sections 7-1-6.46 and 7-1-6.47 NMSA 1978 to the
9 municipalities or counties shall be offset monthly by three and
10 one-third percent of the total annual amount of the film
11 production tax credits allowed in the fiscal year immediately
12 prior to the current fiscal year.

13 C. Distributions pursuant to Sections 7-1-6.46 and
14 7-1.6.47 NMSA 1978 shall be made in the net amount of gross
15 receipts tax and local option gross receipts tax revenue due to
16 each municipality or county after deduction of the offset made
17 pursuant to this section in proportion to the municipality's or
18 county's share of the aggregate net amount due to the
19 municipalities or counties that have distribution offsets.

20 D. As used in this section:

21 (1) "current fiscal year" means the fiscal
22 year in which the offset is being made;

23 (2) "film production company" means a person
24 that produces one or more films or any part of a film;

25 (3) "hold-harmless payment" means the

underscored material = new
[bracketed material] = delete

1 distributions made pursuant to Sections 7-1-6.46 and 7-1-6.47
2 NMSA 1978 that are in lieu of the gross receipts taxes and
3 local gross receipts taxes that a municipality or county would
4 have received but for the food and medical tax deductions
5 authorized pursuant to Sections 7-9-92 and 7-9-93 NMSA 1978;

6 (4) "municipality or county" means a
7 municipality or county that has a population greater than
8 thirty thousand according to the most recent federal decennial
9 census; and

10 (5) "offset" means a deduction in an amount
11 equivalent to forty percent of the film production tax credit
12 allowed by the department to municipalities and counties in the
13 prior fiscal year and deducted from the gross receipts
14 distributions made monthly to municipalities or counties as
15 hold-harmless payments."

16 SECTION 2. Section 7-1-6.46 NMSA 1978 (being Laws 2004,
17 Chapter 116, Section 1, as amended) is amended to read:

18 "7-1-6.46. DISTRIBUTION TO MUNICIPALITIES--OFFSET FOR
19 FOOD DEDUCTION AND HEALTH CARE PRACTITIONER SERVICES
20 DEDUCTION.--

21 A. A distribution pursuant to Section 7-1-6.1 NMSA
22 1978 shall be made to a municipality in an amount, subject to
23 any increase or decrease made pursuant to Section 7-1-6.15 NMSA
24 1978 and subject to any deduction made to offset the tax
25 expenditure from the film production tax credit pursuant to

184943.2

underscored material = new
[bracketed material] = delete

1 Section 1 of this 2011 act, equal to the sum of:

2 (1) for a municipality having a population of
3 less than ten thousand according to the most recent federal
4 decennial census and having per capita taxable gross receipts
5 for the previous calendar year that are less than the average
6 per capita taxable gross receipts for all municipalities for
7 that same calendar year:

8 (a) the total deductions claimed
9 pursuant to Section 7-9-92 NMSA 1978 for the month by taxpayers
10 from business locations attributable to the municipality
11 multiplied by the sum of the combined rate of all municipal
12 local option gross receipts taxes in effect in the municipality
13 for the month plus one and two hundred twenty-five thousandths
14 percent; and

15 (b) the total deductions claimed
16 pursuant to Section 7-9-93 NMSA 1978 for the month by taxpayers
17 from business locations attributable to the municipality
18 multiplied by the sum of the combined rate of all municipal
19 local option gross receipts taxes in effect in the municipality
20 for the month plus one and two hundred twenty-five thousandths
21 percent; or

22 (2) for a municipality not described in
23 Paragraph (1) of this subsection:

24 (a) the total deductions claimed
25 pursuant to Section 7-9-92 NMSA 1978 for the month by taxpayers

184943.2

underscored material = new
[bracketed material] = delete

1 from business locations attributable to the municipality
2 multiplied by the sum of the combined rate of all municipal
3 local option gross receipts taxes in effect in the municipality
4 on January 1, 2007 or January 1, 2011, whichever is less, plus
5 one and two hundred twenty-five thousandths percent; and

6 (b) the total deductions claimed
7 pursuant to Section 7-9-93 NMSA 1978 for the month by taxpayers
8 from business locations attributable to the municipality
9 multiplied by the sum of the combined rate of all municipal
10 local option gross receipts taxes in effect in the municipality
11 on January 1, 2007 or January 1, 2011, whichever is less, plus
12 one and two hundred twenty-five thousandths percent.

13 B. The distribution pursuant to Subsection A of
14 this section is in lieu of revenue that would have been
15 received by the municipality but for the deductions provided by
16 Sections 7-9-92 and 7-9-93 NMSA 1978. The distribution shall
17 be considered gross receipts tax revenue and shall be used by
18 the municipality in the same manner as gross receipts tax
19 revenue, including payment of gross receipts tax revenue bonds.

20 C. For the purposes of this section, "business
21 locations attributable to the municipality" means business
22 locations:

- 23 (1) within the municipality;
24 (2) on land owned by the state, commonly known
25 as the "state fairgrounds", within the exterior boundaries of

underscored material = new
[bracketed material] = delete

1 the municipality;

2 (3) outside the boundaries of the municipality
3 on land owned by the municipality; and

4 (4) on an Indian reservation or pueblo grant
5 in an area that is contiguous to the municipality and in which
6 the municipality performs services pursuant to a contract
7 between the municipality and the Indian tribe or Indian pueblo
8 if:

9 (a) the contract describes an area in
10 which the municipality is required to perform services and
11 requires the municipality to perform services that are
12 substantially the same as the services the municipality
13 performs for itself; and

14 (b) the governing body of the
15 municipality has submitted a copy of the contract to the
16 secretary.

17 D. A distribution [~~pursuant to this section~~] of the
18 net amount due after deductions made in Subsection A of this
19 section may be adjusted for a distribution made to a tax
20 increment development district with respect to a portion of a
21 gross receipts tax increment dedicated by a municipality
22 pursuant to the Tax Increment for Development Act."

23 SECTION 3. Section 7-1-6.47 NMSA 1978 (being Laws 2004,
24 Chapter 116, Section 2, as amended) is amended to read:

25 "7-1-6.47. DISTRIBUTION TO COUNTIES--OFFSET FOR FOOD

184943.2

underscored material = new
[bracketed material] = delete

1 DEDUCTION AND HEALTH CARE PRACTITIONER SERVICES DEDUCTION.--

2 A. A distribution pursuant to Section 7-1-6.1 NMSA
3 1978 shall be made to a county in an amount, subject to any
4 increase or decrease made pursuant to Section 7-1-6.15 NMSA
5 1978 and subject to any deduction made to offset the tax
6 expenditure from the film production tax credit pursuant to
7 Section 1 of this 2011 act, equal to the sum of:

8 (1) for a county having a population of less
9 than forty-eight thousand according to the most recent federal
10 decennial census:

11 (a) the total deductions claimed
12 pursuant to Section 7-9-92 NMSA 1978 for the month by taxpayers
13 from business locations within a municipality in the county
14 multiplied by the combined rate of all county local option
15 gross receipts taxes in effect for the month that are imposed
16 throughout the county;

17 (b) the total deductions claimed
18 pursuant to Section 7-9-92 NMSA 1978 for the month by taxpayers
19 from business locations in the county but not within a
20 municipality multiplied by the combined rate of all county
21 local option gross receipts taxes in effect for the month that
22 are imposed in the county area not within a municipality;

23 (c) the total deductions claimed
24 pursuant to Section 7-9-93 NMSA 1978 for the month by taxpayers
25 from business locations within a municipality in the county

184943.2

underscored material = new
[bracketed material] = delete

1 multiplied by the combined rate of all county local option
2 gross receipts taxes in effect for the month that are imposed
3 throughout the county; and

4 (d) the total deductions claimed
5 pursuant to Section 7-9-93 NMSA 1978 for the month by taxpayers
6 from business locations in the county but not within a
7 municipality multiplied by the combined rate of all county
8 local option gross receipts taxes in effect for the month that
9 are imposed in the county area not within a municipality; or

10 (2) for a county not described in Paragraph
11 (1) of this subsection:

12 (a) the total deductions claimed
13 pursuant to Section 7-9-92 NMSA 1978 for the month by taxpayers
14 from business locations within a municipality in the county
15 multiplied by the combined rate of all county local option
16 gross receipts taxes in effect on January 1, 2007 or January 1,
17 2011, whichever is less, that are imposed throughout the
18 county;

19 (b) the total deductions claimed
20 pursuant to Section 7-9-92 NMSA 1978 for the month by taxpayers
21 from business locations in the county but not within a
22 municipality multiplied by the combined rate of all county
23 local option gross receipts taxes in effect on January 1, 2007
24 or January 1, 2011, whichever is less, that are imposed in the
25 county area not within a municipality;

184943.2

underscored material = new
[bracketed material] = delete

1 (c) the total deductions claimed
2 pursuant to Section 7-9-93 NMSA 1978 for the month by taxpayers
3 from business locations within a municipality in the county
4 multiplied by the combined rate of all county local option
5 gross receipts taxes in effect on January 1, 2007 or January 1,
6 2011, whichever is less, that are imposed throughout the
7 county; and

8 (d) the total deductions claimed
9 pursuant to Section 7-9-93 NMSA 1978 for the month by taxpayers
10 from business locations in the county but not within a
11 municipality multiplied by the combined rate of all county
12 local option gross receipts taxes in effect on January 1, 2007
13 or January 1, 2011, whichever is less, that are imposed in the
14 county area not within a municipality.

15 B. The distribution pursuant to Subsection A of
16 this section is in lieu of revenue that would have been
17 received by the county but for the deductions provided by
18 Sections 7-9-92 and 7-9-93 NMSA 1978. The distribution shall
19 be considered gross receipts tax revenue and shall be used by
20 the county in the same manner as gross receipts tax revenue,
21 including payment of gross receipts tax revenue bonds.

22 C. A distribution [~~pursuant to this section~~] of the
23 net amount due after deductions made pursuant to Subsection A
24 of this section may be adjusted for a distribution made to a
25 tax increment development district with respect to a portion of

underscored material = new
[bracketed material] = delete

1 a gross receipts tax increment dedicated by a county pursuant
2 to the Tax Increment for Development Act."

3 SECTION 4. Section 7-2F-1 NMSA 1978 (being Laws 2002,
4 Chapter 36, Section 1, as amended) is amended to read:

5 "7-2F-1. FILM PRODUCTION TAX CREDIT.--

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

12 (1) direct production expenditures made in New
13 Mexico that:

14 (a) are directly attributable to the
15 production in New Mexico of a film or commercial audiovisual
16 product;

17 (b) are subject to taxation by the state
18 of New Mexico; and

19 (c) exclude direct production
20 expenditures for which another taxpayer claims the film
21 production tax credit; and

22 (2) postproduction expenditures made in New
23 Mexico that:

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

underscored material = new
[bracketed material] = delete

1 (b) are for services performed in New
2 Mexico;

3 (c) are subject to taxation by the state
4 of New Mexico; and

5 (d) exclude postproduction expenditures
6 for which another taxpayer claims the film production tax
7 credit.

8 B. Except as provided in Subsections [G] D and [F]
9 K of this section, the percentage to be applied in calculating
10 the amount of the film production tax credit is twenty-five
11 percent. Municipalities or counties with populations,
12 according to the most recent federal decennial census, of
13 greater than thirty thousand shall in the aggregate contribute
14 proportionally an amount equal to forty percent of the amount
15 of the film production tax credits allowed in each fiscal year.
16 The state shall contribute the remaining sixty percent of the
17 film production tax credits allowed in each fiscal year. The
18 municipal and county portion of the film production tax credits
19 shall be deducted from distributions made pursuant to Sections
20 7-1-6.46 and 7-1-6.47 NMSA 1978.

21 C. The maximum amount of the film production tax
22 credit allowable with respect to the aggregate of all film or
23 commercial audiovisual products is seventy-five million dollars
24 (\$75,000,000) with respect to direct production expenditures
25 and postproduction expenditures made on or after July 1, 2011.

underscored material = new
[bracketed material] = delete

1 ~~[G-]~~ D. With respect to expenditures attributable
2 to a production for which the film production company receives
3 a tax credit pursuant to the federal new markets tax credit
4 program, the percentage to be applied in calculating the film
5 production tax credit is twenty percent.

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

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

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

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

23 (2) to publish, at completion of principal
24 photography, a notice at least once a week for three
25 consecutive weeks in local newspapers in regions where filming

underscored material = new
[bracketed material] = delete

1 has taken place to notify the public of the need to file
2 creditor claims against the film production company by a
3 specified date;

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

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

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

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

184943.2

underscored material = new
[bracketed material] = delete

1 department shall approve the film production tax credit and
2 issue a document granting the tax credit.

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

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

16 L. A film production company that submits a claim
17 for a film production tax credit that is unable to receive the
18 tax credit because the claims for the year exceed the
19 limitation in Subsection C of this section shall be placed for
20 the subsequent taxable year in a queue of film production tax
21 credit claimants that were unable to receive tax credits due in
22 the year in which they applied for the credit in the order of
23 the date on which the credit was authorized for payment."

24 SECTION 5. APPLICABILITY.--

25 A. The offset to distributions from application of

underscoring material = new
~~[bracketed material] = delete~~

1 the provisions of this act regarding the film production tax
2 credit applies to distributions of net amounts equal to gross
3 receipts taxes and local option gross receipts taxes that would
4 have been attributable to sales of food or medical services on
5 or after July 1, 2011 but for the deductions authorized in
6 Sections 7-9-92 and 7-9-93 NMSA 1978.

7 B. The provisions of Section 4 of this act apply to
8 taxable years beginning on or after July 1, 2011.

9 SECTION 6. EFFECTIVE DATE.--The effective date of the
10 provisions of this act is July 1, 2011.