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HOUSE BILL 117

**50TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2012**

INTRODUCED BY

Dennis J. Kintigh

AN ACT

RELATING TO TAXATION; AMENDING THE FILM PRODUCTION TAX CREDIT ACT; PROVIDING FOR TRANSFERABLE NEGOTIABLE INSTRUMENTS TO BE ISSUED IN LIEU OF REFUNDS; LIMITING THE VALUE OF NEGOTIABLE INSTRUMENTS THAT MAY BE REDEEMED IN A FISCAL YEAR; REDUCING THE RATE OF THE FILM PRODUCTION TAX CREDIT; RECONCILING MULTIPLE AMENDMENTS TO THE SAME SECTION OF LAW IN LAWS 2011; RECONCILING CONFLICTING AMENDMENTS TO THE SAME SECTION OF LAW IN LAWS 2011 BY REPEALING LAWS 2011, CHAPTER 165, SECTION 3.

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 by Laws 2011, Chapter 165, Section 1 and by Laws 2011, Chapter 177, Section 2) is amended to read:

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

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1           A. The tax credit created by this section may be  
2 referred to as the "film production tax credit". An eligible  
3 film production company may apply for, and the taxation and  
4 revenue department may allow, subject to the [~~limitation in~~  
5 ~~Subsection~~] provisions of Subsections D and E of this section,  
6 a tax credit in an amount equal to the percentage specified in  
7 Subsection B of this section of:

8                   (1) direct production expenditures made in New  
9 Mexico that:

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

13                           (b) are subject to taxation by the state  
14 of New Mexico;

15                           (c) exclude direct production  
16 expenditures for which another taxpayer claims the film  
17 production tax credit; and

18                           (d) do not exceed the usual and  
19 customary cost of the goods or services acquired when purchased  
20 by unrelated parties. The secretary of taxation and revenue  
21 may determine the value of the goods or services for purposes  
22 of this section when the buyer and seller are affiliated  
23 persons or the sale or purchase is not an arm's length  
24 transaction; and

25                   (2) postproduction expenditures made in New

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1 Mexico that:

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

4 (b) are for services performed in New  
5 Mexico;

6 (c) are subject to taxation by the state  
7 of New Mexico;

8 (d) exclude postproduction expenditures  
9 for which another taxpayer claims the film production tax  
10 credit; and

11 (e) do not exceed the usual and  
12 customary cost of the goods or services acquired when purchased  
13 by unrelated parties. The secretary of taxation and revenue  
14 may determine the value of the goods or services for purposes  
15 of this section when the buyer and seller are affiliated  
16 persons or the sale or purchase is not an arm's length  
17 transaction.

18 B. Except as provided in Subsections C and [P] Q of  
19 this section, the percentage to be applied in calculating the  
20 amount of the film production tax credit is:

21 (1) twenty-five percent prior to January 1,  
22 2013;

23 (2) from January 1, 2013 through December 31,  
24 2013, twenty-four percent;

25 (3) from January 1, 2014 through December 31,

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1     2014, twenty-three percent;  
2                     (4) from January 1, 2015 through December 31,  
3     2015, twenty-two percent;  
4                     (5) from January 1, 2016 through December 31,  
5     2016, twenty-one percent;  
6                     (6) from January 1, 2017 through December 31,  
7     2017, twenty percent;  
8                     (7) from January 1, 2018 through December 31,  
9     2018, nineteen percent;  
10                    (8) from January 1, 2019 through December 31,  
11    2019, eighteen percent;  
12                    (9) from January 1, 2020 through December 31,  
13    2020, seventeen percent;  
14                    (10) from January 1, 2021 through December 31,  
15    2021, sixteen percent;  
16                    (11) from January 1, 2022 through December 31,  
17    2022, fifteen percent;  
18                    (12) from January 1, 2023 through December 31,  
19    2023, fourteen percent;  
20                    (13) from January 1, 2024 through December 31,  
21    2024, thirteen percent;  
22                    (14) from January 1, 2025 through December 31,  
23    2025, twelve percent;  
24                    (15) from January 1, 2026 through December 31,  
25    2026, eleven percent;

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1                   (16) from January 1, 2027 through December 31,  
2 2027, ten percent;  
3                   (17) from January 1, 2028 through December 31,  
4 2028, nine percent;  
5                   (18) from January 1, 2029 through December 31,  
6 2029, eight percent;  
7                   (19) from January 1, 2030 through December 31,  
8 2030, seven percent;  
9                   (20) from January 1, 2031 through December 31,  
10 2031, six percent;  
11                   (21) from January 1, 2032 through December 31,  
12 2032, five percent;  
13                   (22) from January 1, 2033 through December 31,  
14 2033, four percent;  
15                   (23) from January 1, 2034 through December 31,  
16 2034, three percent;  
17                   (24) from January 1, 2035 through December 31,  
18 2035, two percent;  
19                   (25) from January 1, 2036 through December 31,  
20 2036, one percent; and  
21                   (26) on or after January 1, 2037, zero  
22 percent.

23                   C. With respect to expenditures attributable to a  
24 production for which the film production company receives a tax  
25 credit pursuant to the federal new markets tax credit program,

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1 the percentage to be applied in calculating the film production  
2 tax credit is:

3 (1) twenty percent prior to January 1, 2013;

4 (2) from January 1, 2013 through December 31,  
5 2013, nineteen percent;

6 (3) from January 1, 2014 through December 31,  
7 2014, eighteen percent;

8 (4) from January 1, 2015 through December 31,  
9 2015, seventeen percent;

10 (5) from January 1, 2016 through December 31,  
11 2016, sixteen percent;

12 (6) from January 1, 2017 through December 31,  
13 2017, fifteen percent;

14 (7) from January 1, 2018 through December 31,  
15 2018, fourteen percent;

16 (8) from January 1, 2019 through December 31,  
17 2019, thirteen percent;

18 (9) from January 1, 2020 through December 31,  
19 2020, twelve percent;

20 (10) from January 1, 2021 through December 31,  
21 2021, eleven percent;

22 (11) from January 1, 2022 through December 31,  
23 2022, ten percent;

24 (12) from January 1, 2023 through December 31,  
25 2023, nine percent;

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1                   (13) from January 1, 2024 through December 31,  
2                   2024, eight percent;

3                   (14) from January 1, 2025 through December 31,  
4                   2025, seven percent;

5                   (15) from January 1, 2026 through December 31,  
6                   2026, six percent;

7                   (16) from January 1, 2027 through December 31,  
8                   2027, five percent;

9                   (17) from January 1, 2028 through December 31,  
10                  2028, four percent;

11                  (18) from January 1, 2029 through December 31,  
12                  2029, three percent;

13                  (19) from January 1, 2030 through December 31,  
14                  2030, two percent;

15                  (20) from January 1, 2031 through December 31,  
16                  2031, one percent; and

17                  (21) on or after January 1, 2032, zero  
18                  percent.

19                  D. A claim for film production tax credits shall be  
20                  filed as part of a return filed pursuant to the Income Tax Act  
21                  or the Corporate Income and Franchise Tax Act. The date a  
22                  credit claim is received by the taxation and revenue department  
23                  shall determine the order that a credit claim is authorized for  
24                  payment by the department. ~~[The aggregate amount of the film~~  
25                  ~~production tax credit claims that may be authorized for payment~~

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1 ~~in any fiscal year is fifty million dollars (\$50,000,000) with~~  
2 ~~respect to the direct production expenditures or postproduction~~  
3 ~~expenditures made on film or commercial audiovisual products.~~  
4 ~~A film production company that submits a claim for a film~~  
5 ~~production tax credit that is unable to receive the tax credit~~  
6 ~~because the claims for the fiscal year exceed the limitation in~~  
7 ~~this subsection shall be placed for the subsequent fiscal year~~  
8 ~~at the front of a queue of film production tax credit claimants~~  
9 ~~submitting claims in the subsequent fiscal year in the order of~~  
10 ~~the date on which the credit was authorized for payment.]~~

11 E. Credit claims authorized for payment pursuant to  
12 the Film Production Tax Credit Act shall be paid [~~pursuant to~~  
13 ~~provisions of the Tax Administration Act to the taxpayer as~~  
14 ~~follows:~~

15 ~~(1) a credit claim amount of less than two~~  
16 ~~million dollars (\$2,000,000) per taxable year shall be paid~~  
17 ~~immediately upon authorization for payment of the credit claim;~~

18 ~~(2) a credit claim amount of two million~~  
19 ~~dollars (\$2,000,000) or more but less than five million dollars~~  
20 ~~(\$5,000,000) per taxable year shall be divided into two equal~~  
21 ~~payments, with the first payment to be made immediately upon~~  
22 ~~authorization of the payment of the credit claim and the second~~  
23 ~~payment to be made twelve months following the date of the~~  
24 ~~first payment; and~~

25 ~~(3) a credit claim amount of five million~~

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1 ~~dollars (\$5,000,000) or more per taxable year shall be divided~~  
2 ~~into three equal payments, with the first payment to be made~~  
3 ~~immediately upon authorization of payment of the credit claim,~~  
4 ~~the second payment to be made twelve months following the date~~  
5 ~~of the first payment and the third payment to be made twenty-~~  
6 ~~four months following the date of the first payment.~~

7 ~~F. Any amount of a credit claim that is carried~~  
8 ~~forward pursuant to Subsection E of this section shall be~~  
9 ~~subject to the limit on the aggregate amount of credit claims~~  
10 ~~that may be authorized for payment pursuant to Subsection D of~~  
11 ~~this section in the fiscal year in which that amount is paid.]~~  
12 in the form of a negotiable instrument in an amount equal to  
13 the amount of film production tax credit authorized by the  
14 taxation and revenue department that may be redeemed beginning  
15 on July 1, 2013, in the order of the date on which the credit  
16 was authorized, subject to the limitations set forth in  
17 Subsection D of this section. A taxpayer that fails to redeem  
18 the negotiable instrument at the time and in the order  
19 determined by the taxation and revenue department shall be  
20 placed in the queue described in Subsection G of this section  
21 according to the date the credit was authorized.

22 F. The negotiable instrument issued to the taxpayer  
23 is transferable. The taxation and revenue department shall be  
24 notified by the taxpayer or the transferee at the time of  
25 transfer to the new holder of the instrument. The instrument

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1 shall display notice to the taxpayer and the transferee that  
2 the department must be notified upon transfer of the  
3 instrument, and the instrument shall provide contact  
4 information necessary for the taxpayer or the transferee to  
5 provide the department notice of the transfer of the  
6 instrument.

7 G. The state shall redeem no more than forty-five  
8 million dollars (\$45,000,000) worth of negotiable instruments  
9 in any fiscal year beginning on July 1, 2013. Negotiable  
10 instruments in excess of the forty-five million dollar  
11 (\$45,000,000) limit shall be redeemed in sequence in the  
12 subsequent fiscal year, subject to the forty-five million  
13 dollar (\$45,000,000) limit.

14 ~~[G.]~~ H. A credit claim shall only be considered  
15 received by the taxation and revenue department if the credit  
16 claim is made on a complete tax return filed timely after the  
17 close of the taxable year. All direct production expenditures  
18 and postproduction expenditures incurred during the taxable  
19 year by a film production company shall be submitted as part of  
20 the same income tax return and paid pursuant to this section.  
21 A credit claim shall not be divided and submitted with multiple  
22 returns or in multiple years.

23 ~~[H. For purposes of determining the payment of~~  
24 ~~credit claims pursuant to Subsection E of this section]~~

25 I. The secretary of taxation and revenue may

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1 require that credit claims of affiliated persons be combined  
2 into one claim if necessary to accurately reflect closely  
3 integrated activities of affiliated persons.

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

13 ~~[K.]~~ L. To be eligible for the film production tax  
14 credit, a film production company shall submit to the division  
15 information required by the division to demonstrate conformity  
16 with the requirements of the Film Production Tax Credit Act,  
17 including detailed information on each direct production  
18 expenditure and each postproduction expenditure. A film  
19 production company shall provide to the division a projection  
20 of the film production tax credit claim the film production  
21 company plans to submit in the fiscal year. In addition, the  
22 film production company shall agree in writing:

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

25 (2) to post a notice at completion of

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1 principal photography on the web site of the division that:

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

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

12 (3) that outstanding obligations are not  
13 waived should a creditor fail to file;

14 (4) to delay filing of a claim for the film  
15 production tax credit until the division delivers written  
16 notification to the taxation and revenue department that the  
17 film production company has fulfilled all requirements for the  
18 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 ~~[E.]~~ M. The division shall determine the  
24 eligibility of the company and shall report this information to  
25 the taxation and revenue department in a manner and at times

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1 the economic development department and the taxation and  
2 revenue department shall agree upon. The division shall also  
3 post on its web site all information provided by the film  
4 production company that does not reveal revenue, income or  
5 other information that may jeopardize the confidentiality of  
6 income tax returns, including that the division shall report  
7 monthly the projected amount of credit claims for the fiscal  
8 year.

9 ~~[M.]~~ N. To provide guidance to film production  
10 companies regarding the amount of credit capacity remaining in  
11 the fiscal year, the taxation and revenue department shall post  
12 monthly on that department's web site the aggregate amount of  
13 credits claimed and ~~[processed]~~ authorized for the fiscal year.

14 ~~[N.]~~ O. To receive a film production tax credit, a  
15 film production company shall apply to the taxation and revenue  
16 department on forms and in the manner the department may  
17 prescribe. The application shall include a certification of  
18 the amount of direct production expenditures or postproduction  
19 expenditures made in New Mexico with respect to the film  
20 production for which the film production company is seeking the  
21 film production tax credit; provided that for the film  
22 production tax credit, the application shall be submitted  
23 within one year of the date of the last direct production  
24 expenditure in New Mexico or the last postproduction  
25 expenditure in New Mexico. If the amount of the requested tax

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1 credit exceeds five million dollars (\$5,000,000), the  
2 application shall also include the results of an audit,  
3 conducted by a certified public accountant licensed to practice  
4 in New Mexico, verifying that the expenditures have been made  
5 in compliance with the requirements of this section. If the  
6 requirements of this section have been complied with, subject  
7 to the provisions of Subsection D of this section, the taxation  
8 and revenue department shall approve the film production tax  
9 credit and issue a document granting the tax credit.

10 ~~[P-]~~ P. The film production company may apply all  
11 or a portion of the film production tax credit granted against  
12 personal income tax liability or corporate income tax  
13 liability. If the amount of the film production tax credit  
14 claimed exceeds the film production company's tax liability for  
15 the taxable year in which the credit is being claimed, the  
16 excess shall be refunded as provided in Subsection E of this  
17 section.

18 ~~[P-]~~ Q. As applied to direct production  
19 expenditures for the services of performing artists, the film  
20 production tax credit authorized by this section shall not  
21 exceed five million dollars (\$5,000,000) for services rendered  
22 by all performing artists in a production for which the film  
23 production tax credit is claimed."

24 **SECTION 2.** Section 7-2F-2 NMSA 1978 (being Laws 2003,  
25 Chapter 127, Section 2, as amended by Laws 2011, Chapter 165,

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1 Section 3 and by Laws 2011, Chapter 177, Section 4) is amended  
2 to read:

3 "7-2F-2. DEFINITIONS.--As used in the Film Production Tax  
4 Credit Act:

5 A. "affiliated person" means a person who directly  
6 or indirectly owns or controls, is owned or controlled by or is  
7 under common ownership or control with another person through  
8 ownership of voting securities or other ownership interests  
9 representing a majority of the total voting power of the  
10 entity;

11 B. "commercial audiovisual product" means a film or  
12 a videogame intended for commercial exploitation;

13 C. "direct production expenditure":

14 (1) except as provided in Paragraph (2) of  
15 this subsection, means a transaction that is subject to  
16 taxation in New Mexico, including:

17 (a) payment of wages, fringe benefits or  
18 fees for talent, management or labor to a person who is a New  
19 Mexico resident;

20 (b) payment to a personal services  
21 business for the services of a performing artist if the  
22 personal services business: 1) pays gross receipts tax in New  
23 Mexico on the portion of those payments qualifying for the tax  
24 credit; and 2) deducts and remits withheld income tax pursuant  
25 to Subsection I of Section 7-3A-3 NMSA 1978; and

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1 (c) any of the following provided by a  
2 vendor: 1) the story and scenario to be used for a film; 2)  
3 set construction and operations, wardrobe, accessories and  
4 related services; 3) photography, sound synchronization,  
5 lighting and related services; 4) editing and related services;  
6 5) rental of facilities and equipment; 6) leasing of vehicles,  
7 not including the chartering of aircraft for out-of-state  
8 transportation; however, New Mexico-based chartered aircraft  
9 for in-state transportation directly attributable to the  
10 production shall be considered a direct production expenditure;  
11 provided that only the first one hundred dollars (\$100) of the  
12 daily expense of leasing a vehicle for passenger transportation  
13 on roadways in the state may be claimed as a direct production  
14 expenditure; 7) food or lodging; provided that only the first  
15 one hundred fifty dollars (\$150) of lodging per individual per  
16 day is eligible to be claimed as a direct production  
17 expenditure; 8) commercial airfare if purchased through a New  
18 Mexico-based travel agency or travel company for travel to and  
19 from New Mexico or within New Mexico that is directly  
20 attributable to the production; 9) insurance coverage and  
21 bonding if purchased through a New Mexico-based insurance  
22 agent, broker or bonding agent; 10) related digital content;  
23 and ~~[10)]~~ 11) other direct costs of producing a film in  
24 accordance with generally accepted entertainment industry  
25 practice; and

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- 1 (2) does not include an expenditure for:
- 2 (a) a gift with a value greater than
- 3 twenty-five dollars (\$25.00);
- 4 (b) artwork or jewelry, except that a
- 5 work of art or a piece of jewelry may be a direct production
- 6 expenditure if: 1) it is used in the film production; and 2)
- 7 the expenditure is less than two thousand five hundred dollars
- 8 (\$2,500); or
- 9 (c) entertainment, amusement or
- 10 recreation;
- 11 D. "division" means the New Mexico film division of
- 12 the economic development department;
- 13 E. "federal new markets tax credit program" means
- 14 the tax credit program codified as Section 45D of the United
- 15 States Internal Revenue Code of 1986, as amended;
- 16 F. "film" means a single medium or multimedia
- 17 program, excluding advertising messages other than national or
- 18 regional advertising messages intended for exhibition, that:
- 19 (1) is fixed on film, digital medium,
- 20 videotape, computer disc, laser disc or other similar delivery
- 21 medium;
- 22 (2) can be viewed or reproduced;
- 23 (3) is not intended to and does not violate a
- 24 provision of Chapter 30, Article 37 NMSA 1978; and
- 25 (4) is intended for reasonable commercial

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1 exploitation for the delivery medium used;

2 G. "film production company" means a person that  
3 produces one or more films or any part of a film;

4 H. "fiscal year" means the state fiscal year  
5 beginning on July 1;

6 I. "New Mexico resident" means an individual who is  
7 domiciled in this state during any part of the taxable year or  
8 an individual who is physically present in this state for one  
9 hundred eighty-five days or more during the taxable year; but  
10 any individual, other than someone who was physically present  
11 in the state for one hundred eighty-five days or more during  
12 the taxable year and who, on or before the last day of the  
13 taxable year, changed the individual's place of abode to a  
14 place without this state with the bona fide intention of  
15 continuing actually to abide permanently without this state is  
16 not a resident for the purposes of the Film Production Tax  
17 Credit Act for periods after that change of abode;

18 J. "personal services business" means a business  
19 organization that receives payments for the services of a  
20 performing artist;

21 K. "physical presence" means a physical address in  
22 New Mexico, but does not include a post office box or other  
23 mail drop enterprise unless the physical presence is for a  
24 business and the business is providing mail services to a film  
25 production company from which a vendor conducts business,

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1 stores inventory or otherwise creates, assembles or offers for  
2 sale the product purchased or leased by a film production  
3 company;

4 L. "postproduction expenditure" means an  
5 expenditure for editing, Foley recording, automatic dialogue  
6 replacement, sound editing, special effects, including  
7 computer-generated imagery or other effects, scoring and music  
8 editing, beginning and end credits, negative cutting,  
9 soundtrack production, dubbing, subtitling or addition of sound  
10 or visual effects; but not including an expenditure for  
11 advertising, marketing, distribution or expense payments; and

12 M. "vendor" means a person selling goods or  
13 services that has a physical presence in New Mexico and is  
14 subject to gross receipts tax pursuant to the Gross Receipts  
15 and Compensating Tax Act and income tax pursuant to the Income  
16 Tax Act or corporate income tax pursuant to the Corporate  
17 Income and Franchise Tax Act."

18 SECTION 3. TEMPORARY PROVISION.--Claims for film  
19 production tax credits that are filed with the taxation and  
20 revenue department prior to January 1, 2013 shall be paid  
21 according to the provisions of Section 7-2F-1 NMSA 1978 in  
22 effect at the time the claim is filed, and those provisions  
23 shall continue to be adhered to until the entire amount of the  
24 claim is paid.

25 SECTION 4. REPEAL.--Laws 2011, Chapter 165, Section 3 is

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1 repealed.

2 SECTION 5. EFFECTIVE DATE.--The effective date of the  
3 provisions of this act is January 1, 2013.

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