

FIFTY-FIRST LEGISLATURE
FIRST SESSION, 2013

HB 379/a

March 1, 2013

Mr. President:

Your **CORPORATIONS AND TRANSPORTATION COMMITTEE**, to whom has been referred

**HOUSE TAXATION AND REVENUE COMMITTEE SUBSTITUTE
FOR HOUSE BILL 379**

has had it under consideration and reports same with recommendation that it **DO PASS**, amended as follows:

1. On page 1, line 13, after the semicolon, strike the remainder of the line, strike lines 14 through 16 in their entirety and insert in lieu thereof:

"ALLOWING A MAXIMUM OF TEN MILLION DOLLARS (\$10,000,000) OF UNCLAIMED FILM PRODUCTION TAX CREDITS TO BE CARRIED FORWARD FOR THREE FISCAL YEARS; PROVIDING FOR ACCELERATED PAYMENTS OF FUTURE SCHEDULED PAYMENTS OF FILM PRODUCTION TAX CREDITS; PROVIDING FOR ADDITIONAL ELIGIBILITY REQUIREMENTS; CHANGING THE SCOPE OF DIRECT PRODUCTION EXPENDITURES FOR WHICH FILM PRODUCTION TAX CREDITS MAY BE CLAIMED; RECONCILING MULTIPLE AMENDMENTS TO SECTIONS OF LAW IN LAWS 2011; RECONCILING CONFLICTING AMENDMENTS TO THE SAME SECTION OF LAW BY REPEALING LAWS 2011, CHAPTER 165, SECTION 3; DECLARING AN EMERGENCY."

2. On page 3, between lines 18 and 19, insert the following subsection:

"C. In addition to the percentage applied pursuant to Subsection B of this section, another five percent shall be applied in calculating the amount of the film production tax credit to direct production expenditures:

(1) on series television productions intended for commercial distribution with an order for at least six episodes in a single season; provided that the budget per episode is fifty thousand dollars (\$50,000) or more; or

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(2) that are directly attributable to the wages and fringe benefits paid to a New Mexico resident directly employed in an industry crew position, excluding a performing artist, on a production with a total budget of:

(a) not more than thirty million dollars (\$30,000,000) that shoots at least ten principal photography days at a qualified production facility in New Mexico; or

(b) thirty million dollars (\$30,000,000) or more that shoots at least fifteen principal photography days at a qualified production facility in New Mexico."

3. On page 3, line 24, through page 9, line 18, strike Subsections D through L in their entirety and insert in lieu thereof the following subsections:

"E. A claim for film production tax credits shall be filed as part of a return filed pursuant to the Income Tax Act or the Corporate Income and Franchise Tax Act or an information return filed by a pass-through entity. The date a credit claim is received by the department shall determine the order that a credit claim is authorized for payment by the department. Except as otherwise provided in this section, the aggregate amount of the film production tax credit claims that may be authorized for payment in any fiscal year is fifty million dollars (\$50,000,000) with respect to the direct production expenditures or postproduction expenditures made on film or commercial audiovisual products. A film production company that submits a claim for a film production tax credit that is unable to receive the tax credit because the claims for the fiscal year exceed the limitation in this subsection shall be placed for the subsequent fiscal year at the front of a queue of film production tax credit claimants submitting claims in the subsequent fiscal year in the order of the date on which the credit was authorized for payment.

F. If, in fiscal years 2013 through 2015, the aggregate

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amount in each fiscal year of the film production tax credit claims authorized for payment is less than fifty million dollars (\$50,000,000), then the difference in that fiscal year or ten million dollars (\$10,000,000), whichever is less, shall be added to the aggregate amount of the film production tax credit claims that may be authorized for payment pursuant to Subsection E of this section in the immediately following fiscal year.

G. Except as otherwise provided in this section, credit claims authorized for payment pursuant to the Film Production Tax Credit Act shall be paid pursuant to provisions of the Tax Administration Act to the taxpayer as follows:

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

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

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

H. For a fiscal year in which the amount of total credit claims authorized for payment is less than the aggregate amount of the film production tax credit claims that may be authorized for payment pursuant to this section, the next scheduled payments for credit claims authorized for payment pursuant to Subsection G of

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this section shall be accelerated for payment for that fiscal year and shall be paid to a taxpayer pursuant to the Tax Administration Act and in the order in which outstanding payments are scheduled in the queue established pursuant to Subsections E and G of this section; provided that the total credit claims authorized for payment shall not exceed the aggregate amount of the film production tax credit claims that may be authorized for payment pursuant to this section. If a partial payment is made pursuant to this subsection, the difference owed shall retain its original position in the queue.

I. Any amount of a credit claim that is carried forward pursuant to Subsection G of this section shall be subject to the limit on the aggregate amount of credit claims that may be authorized for payment pursuant to Subsections E and F of this section in the fiscal year in which that amount is paid.

J. A credit claim shall only be considered received by the department if the credit claim is made on a complete return filed after the close of the taxable year. All direct production expenditures and postproduction expenditures incurred during the taxable year by a film production company shall be submitted as part of the same income tax return and paid pursuant to this section. A credit claim shall not be divided and submitted with multiple returns or in multiple years.

K. For purposes of determining the payment of credit claims pursuant to this section, the secretary of taxation and revenue may require that credit claims of affiliated persons be combined into one claim if necessary to accurately reflect closely integrated activities of affiliated persons.

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

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M. A production for which the film production tax credit is claimed pursuant to Paragraph (1) of Subsection A of this section shall contain an acknowledgment in the end screen credits that the production was filmed in New Mexico, and a state logo provided by the division shall be included in the end screen credits of long-form narrative film productions, unless otherwise agreed upon in writing by the film production company and the division.

N. To be eligible for the film production tax credit, a film production company shall submit to the division information required by the division to demonstrate conformity with the requirements of the Film Production Tax Credit Act, including detailed information on each direct production expenditure and each postproduction expenditure. A film production company shall make reasonable efforts, as determined by the division, to contract with a vendor that provides goods, inventory or services directly related to that vendor's ordinary course of business. A film production company shall provide to the division a projection of the film production tax credit claim the film production company plans to submit in the fiscal year. In addition, the film production company shall agree in writing:

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

(2) to post a notice at completion of principal photography on the web site of the division that:

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

(b) remains posted on the web site until all

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financial obligations incurred in the state by the film production company have been paid;

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

(4) to delay filing of a claim for the film production tax credit until the division delivers written notification to the taxation and revenue department that the film production company has fulfilled all requirements for the credit; and

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

4. On page 11, lines 13 through 18, strike the underscored language.

5. On page 12, line 14, through page 15, line 18, strike Subsection C in its entirety and insert in lieu thereof the following subsection:

"C. "direct production expenditure":

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

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

(b) payment for services by a performing artist who is not a New Mexico resident and who is directly employed by the film production company; provided that the film production company

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deducts and remits, or causes to be deducted and remitted, income tax in New Mexico pursuant to the Withholding Tax Act;

(c) payment to a personal services business for the services of a performing artist who is not a New Mexico resident if: 1) the personal services business pays gross receipts tax in New Mexico on the portion of those payments qualifying for the tax credit; and 2) the film production company deducts and remits, or causes to be deducted and remitted, income tax at the maximum rate in New Mexico pursuant to Subsection H of Section 7-3A-3 NMSA 1978 on the portion of those payments qualifying for the tax credit paid to a personal services business where the performing artist is a full or part owner of that business or subcontracts with a personal services business where the performing artist is a full or part owner of that business; and

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

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entertainment industry practice; and

(2) does not include an expenditure for:

(a) a gift with a value greater than twenty-five dollars (\$25.00);

(b) artwork or jewelry, except that a work of art or a piece of jewelry may be a direct production expenditure if: 1) it is used in the film production; and 2) the expenditure is less than two thousand five hundred dollars (\$2,500);

(c) entertainment, amusement or recreation;

(d) subcontracted goods or services provided by a vendor when subcontractors are not subject to state taxation, such as equipment and locations provided by the military, government and religious organizations; or

(e) a service provided by a person who is not a New Mexico resident and employed in an industry crew position, excluding a performing artist, where it is the standard entertainment industry practice for the film production company to employ a person for that industry crew position, except when the person who is not a New Mexico resident is hired or subcontracted by a vendor; and when the film production company, as determined by the division and when applicable in consultation with industry, provides: 1) reasonable efforts to hire resident crew; and 2) financial or in-kind contributions toward education or work force development efforts in New Mexico, including at least one of the following: a pre-approved workshop; on-set shadowing per each approved position; or ten percent of the portion of the tax credit attributable to the payment for services provided by nonresidents employed by the vendor in the approved positions, which equates to two-and-one-half percent of the respective total direct production expenditure and which is allocated to New Mexico public education institutions that administer at least one industry-recognized film

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or multimedia program;".

6. On page 18, line 22, strike "or" and insert in lieu thereof the following new subparagraphs:

"(k) a designer;

(l) a still photographer; or".

7. On page 19, lines 5 through 7, strike Section 4 in its entirety and insert in lieu thereof the following new section:

"SECTION 4. APPLICABILITY.--The provisions of:

A. Section 1; Subsections A, B and D through N of Section 2; and Paragraph (1) and Subparagraphs (a) through (d) of Paragraph (2) of Subsection C of Section 2 of this act apply to direct production expenditures and postproduction expenditures made on or after April 15, 2013; and

B. Subparagraph (e) of Paragraph (2) of Subsection C of Section 2 of this act applies to productions starting principal photography on or after January 1, 2014."

8. Reletter subsections and subparagraphs to correspond with these amendments.,

and thence referred to **FINANCE COMMITTEE.**

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Respectfully submitted,

SENATOR PHIL A. GRIEGO, CHAIRMAN

Adopted _____ Not Adopted _____
(Chief Clerk) (Chief Clerk)

Date _____

The roll call vote was 5 For 3 Against

Yes: 5

No: Papen, Rue, Sharer

Excused: Cotter, Moores

Absent: None

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