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HOUSE BILL 15

52ND LEGISLATURE - STATE OF NEW MEXICO - SECOND SPECIAL SESSION, 2016

INTRODUCED BY

Rod Montoya and David M. Gallegos and James R.J. Strickler and
James G. Townsend and Conrad James

AN ACT

RELATING TO TAXATION; REDUCING THE CAP ON FILM PRODUCTION TAX
CREDITS TO TWENTY-FIVE MILLION DOLLARS (\$25,000,000) FOR FISCAL
YEAR 2017; 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--FILM PRODUCTION
COMPANIES THAT COMMENCE PRINCIPAL PHOTOGRAPHY PRIOR TO JANUARY
1, 2016.--

A. The tax credit created by this section may be
referred to as the "film production tax credit".

B. Except as otherwise provided in this section, an
eligible film production company may apply for, and the
taxation and revenue department may allow, subject to the

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1 limitation in this section, a tax credit in an amount equal to
2 twenty-five percent of:

3 (1) direct production expenditures made in New
4 Mexico that:

5 (a) are directly attributable to the
6 production in New Mexico of a film or commercial audiovisual
7 product;

8 (b) are subject to taxation by the state
9 of New Mexico;

10 (c) exclude direct production
11 expenditures for which another taxpayer claims the film
12 production tax credit; and

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

20 (2) postproduction expenditures made in
21 New Mexico that:

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

24 (b) are for services performed in New
25 Mexico;

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1 (c) are subject to taxation by the state
2 of New Mexico;

3 (d) exclude postproduction expenditures
4 for which another taxpayer claims the film production tax
5 credit; and

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

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

17 (1) on a standalone pilot intended for series
18 television in New Mexico or on series television productions
19 intended for commercial distribution with an order for at least
20 six episodes in a single season; provided that the New Mexico
21 budget for each of those six episodes is fifty thousand dollars
22 (\$50,000) or more; or

23 (2) on a production with a total New Mexico
24 budget of the following amounts; provided that the expenditures
25 are directly attributable and paid to a New Mexico resident who

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1 is hired as industry crew, or who is hired as a producer,
2 writer or director working directly with the physical
3 production, and has filed a New Mexico income tax return as a
4 resident in the two previous taxable years:

5 (a) not more than thirty million dollars
6 (\$30,000,000) that shoots at least ten principal photography
7 days in New Mexico at a qualified production facility; provided
8 that a film production company in principal photography on or
9 after April 10, 2015 shall: 1) shoot at least seven of those
10 days at a sound stage that is a qualified production facility
11 and the remaining number of required days, if any, at a
12 standing set that is a qualified production facility; and 2)
13 for each of the ten days, include industry crew working on the
14 premises of those facilities for a minimum of eight hours
15 within a twenty-four-hour period; or

16 (b) thirty million dollars (\$30,000,000)
17 or more that shoots at least fifteen principal photography days
18 in New Mexico at a qualified production facility; provided that
19 a film production company in principal photography on or after
20 April 10, 2015 shall: 1) shoot at least ten of those days at a
21 sound stage that is a qualified production facility and the
22 remaining number of required days, if any, at a standing set
23 that is a qualified production facility; and 2) for each day of
24 the fifteen days, include industry crew working on the premises
25 of the facility for a minimum of eight hours within a twenty-

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1 four-hour period.

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

7 E. A claim for film production tax credits shall be
8 filed as part of a return filed pursuant to the Income Tax Act
9 or the Corporate Income and Franchise Tax Act or an information
10 return filed by a pass-through entity. The date a credit claim
11 is received by the taxation and revenue department shall
12 determine the order that a credit claim is authorized for
13 payment by the department. [~~Except as otherwise provided in~~
14 ~~this section~~]

15 F. The aggregate amount of claims for a credit
16 provided by the Film Production Tax Credit Act that may be
17 authorized for payment in any fiscal year [~~is fifty million~~
18 ~~dollars (\$50,000,000)~~] with respect to the direct production
19 expenditures or postproduction expenditures made on film or
20 commercial audiovisual products is:

21 (1) for a fiscal year that begins prior to
22 July 1, 2016, fifty million dollars (\$50,000,000);

23 (2) for a fiscal year that begins July 1, 2016
24 and ends June 30, 2017, twenty-five million dollars
25 (\$25,000,000); and

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1 (3) for a fiscal year that begins on or after
2 July 1, 2017, fifty million dollars (\$50,000,000).

3 G. A film production company that submits a claim
4 for a film production tax credit that is unable to receive the
5 tax credit because the claims for the fiscal year exceed the
6 limitation in [~~this~~] Subsection F of this section shall be
7 placed for the subsequent fiscal year at the front of a queue
8 of credit claimants submitting claims in the subsequent fiscal
9 year in the order of the date on which the credit was
10 authorized for payment.

11 ~~[F. If, in fiscal years 2013 through 2015, the~~
12 ~~aggregate amount in each fiscal year of the film production tax~~
13 ~~credit claims authorized for payment is less than fifty million~~
14 ~~dollars (\$50,000,000), then the difference in that fiscal year~~
15 ~~or ten million dollars (\$10,000,000), whichever is less, shall~~
16 ~~be added to the aggregate amount of the film production tax~~
17 ~~credit claims that may be authorized for payment pursuant to~~
18 ~~Subsection E of this section in the immediately following~~
19 ~~fiscal year.~~

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

25 (1) a credit claim amount of less than two

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

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

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

17 [~~H.~~] I. For a fiscal year in which the amount of
18 total credit claims authorized for payment is less than the
19 aggregate amount of credit claims that may be authorized for
20 payment pursuant to this section, the next scheduled payments
21 for credit claims authorized for payment pursuant to Subsection
22 [~~G.~~] F. of this section shall be accelerated for payment for that
23 fiscal year and shall be paid to a taxpayer pursuant to the Tax
24 Administration Act and in the order in which outstanding
25 payments are scheduled in the queue established pursuant to

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1 Subsections [~~E and~~] G and H of this section; provided that the
2 total credit claims authorized for payment shall not exceed the
3 aggregate amount of credit claims that may be authorized for
4 payment pursuant to this section. If a partial payment is made
5 pursuant to this subsection, the difference owed shall retain
6 its original position in the queue.

7 [~~I.~~] J. Any amount of a credit claim that is
8 carried forward pursuant to Subsection [~~G~~] H of this section
9 shall be subject to the limit on the aggregate amount of credit
10 claims that may be authorized for payment pursuant to
11 [~~Subsections E and~~] Subsection F of this section in the fiscal
12 year in which that amount is paid.

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

22 [~~K.~~] L. For purposes of determining the payment of
23 credit claims pursuant to this section, the secretary of
24 taxation and revenue may require that credit claims of
25 affiliated persons be combined into one claim if necessary to

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1 accurately reflect closely integrated activities of affiliated
2 persons.

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

8 ~~[M-]~~ N. A production for which the film production
9 tax credit is claimed pursuant to Paragraph (1) of Subsection B
10 of this section shall contain an acknowledgment to the state of
11 New Mexico in the end screen credits that the production was
12 filmed in New Mexico, and a state logo provided by the division
13 shall be included and embedded in the end screen credits of
14 long-form narrative film productions and television episodes,
15 unless otherwise agreed upon in writing by the film production
16 company and the division.

17 ~~[N-]~~ O. To be eligible for the film production tax
18 credit, a film production company shall submit to the division
19 information required by the division to demonstrate conformity
20 with the requirements of the Film Production Tax Credit Act,
21 including detailed information on each direct production
22 expenditure and each postproduction expenditure. A film
23 production company shall make reasonable efforts, as determined
24 by the division, to contract with a specialized vendor that
25 provides goods and services, inventory or services directly

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1 related to that vendor's ordinary course of business. A film
2 production company shall provide to the division a projection
3 of the film production tax credit claim the film production
4 company plans to submit in the fiscal year. In addition, the
5 film production company shall agree in writing:

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

8 (2) to post a notice at completion of
9 principal photography on the [~~web site~~] website of the division
10 that:

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

18 (b) remains posted on the [~~web site~~]
19 website until all financial obligations incurred in the state
20 by the film production company have been paid;

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

23 (4) to delay filing of a claim for the film
24 production tax credit until the division delivers written
25 notification to the taxation and revenue department that the

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1 film production company has fulfilled all requirements for the
2 credit; and

3 (5) to submit a completed application for the
4 film production tax credit and supporting documentation to the
5 division within one year of making the final expenditures in
6 New Mexico that were incurred for the registered project and
7 that are included in the credit claim.

8 [~~Q-~~] P. The division shall determine the
9 eligibility of the company and shall report this information to
10 the taxation and revenue department in a manner and at times
11 the economic development department and the taxation and
12 revenue department shall agree upon. The division shall also
13 post on its [~~web site~~] website all information provided by the
14 film production company that does not reveal revenue, income or
15 other information that may jeopardize the confidentiality of
16 income tax returns, including that the division shall report
17 quarterly the projected amount of credit claims for the fiscal
18 year.

19 [~~P-~~] Q. To provide guidance to film production
20 companies regarding the amount of credit capacity remaining in
21 the fiscal year, the taxation and revenue department shall post
22 monthly on that department's [~~web site~~] website the aggregate
23 amount of credits claimed and processed for the fiscal year.

24 [~~Q-~~] R. To receive a film production tax credit, a
25 film production company shall apply to the taxation and revenue

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1 department on forms and in the manner the department may
2 prescribe. The application shall include a certification of
3 the amount of direct production expenditures or postproduction
4 expenditures made in New Mexico with respect to the film
5 production for which the film production company is seeking the
6 film production tax credit; provided that for the film
7 production tax credit, the application shall be submitted
8 within one year of the date of the last direct production
9 expenditure in New Mexico or the last postproduction
10 expenditure in New Mexico. If the amount of the requested tax
11 credit exceeds five million dollars (\$5,000,000), the
12 application shall also include the results of an audit,
13 conducted by a certified public accountant licensed to practice
14 in New Mexico, verifying that the expenditures have been made
15 in compliance with the requirements of this section. If the
16 requirements of this section have been complied with, subject
17 to the provisions of Subsection ~~[E]~~ F of this section, the
18 taxation and revenue department shall approve the film
19 production tax credit and issue a document granting the tax
20 credit.

21 ~~[R-]~~ S. The film production company may apply all
22 or a portion of the film production tax credit granted against
23 personal income tax liability or corporate income tax
24 liability. If the amount of the film production tax credit
25 claimed exceeds the film production company's tax liability for

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1 the taxable year in which the credit is being claimed, the
2 excess shall be refunded.

3 ~~[\S-]~~ T. That amount of a film production tax credit
4 for total payments as applied to direct production expenditures
5 for the services of performing artists shall not exceed five
6 million dollars (\$5,000,000) for services rendered by
7 nonresident performing artists and featured resident principal
8 performing artists in a production. This limitation shall not
9 apply to the services of background artists and resident
10 performing artists who are not cast in industry standard
11 featured principal performer roles.

12 ~~[\F-]~~ U. As used in this section, "direct production
13 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 for wages and per diem for a
21 performing artist who is not a New Mexico resident and who is
22 directly employed by the film production company; provided that
23 the film production company deducts and remits, or causes to be
24 deducted and remitted, income tax from the first day of
25 services rendered in New Mexico at the maximum rate pursuant to

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1 the Withholding Tax Act;

2 (c) payment to a personal services
3 business for the services of a performing artist if: 1) the
4 personal services business pays gross receipts tax in New
5 Mexico on the portion of those payments qualifying for the tax
6 credit; and 2) the film production company deducts and remits,
7 or causes to be deducted and remitted, income tax at the
8 maximum rate in New Mexico pursuant to Subsection H of Section
9 7-3A-3 NMSA 1978 on the portion of those payments qualifying
10 for the tax credit paid to a personal services business where
11 the performing artist is a full or part owner of that business
12 or subcontracts with a personal services business where the
13 performing artist is a full or part owner of that business; and

14 (d) any of the following provided by a
15 vendor: 1) the story and scenario to be used for a film; 2)
16 set construction and operations, wardrobe, accessories and
17 related services; 3) photography, sound synchronization,
18 lighting and related services; 4) editing and related services;
19 5) rental of facilities and equipment; 6) leasing of vehicles,
20 not including the chartering of aircraft for out-of-state
21 transportation; however, New Mexico-based chartered aircraft
22 for in-state transportation directly attributable to the
23 production shall be considered a direct production expenditure;
24 provided that only the first one hundred dollars (\$100) of the
25 daily expense of leasing a vehicle for passenger transportation

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1 on roadways in the state may be claimed as a direct production
2 expenditure; 7) food or lodging; provided that only the first
3 one hundred fifty dollars (\$150) of lodging per individual per
4 day is eligible to be claimed as a direct production
5 expenditure; 8) commercial airfare if purchased through a New
6 Mexico-based travel agency or travel company for travel to and
7 from New Mexico or within New Mexico that is directly
8 attributable to the production; 9) insurance coverage and
9 bonding if purchased through a New Mexico-based insurance
10 agent, broker or bonding agent; 10) services for an external
11 audit upon submission of an application for a film production
12 tax credit by an accounting firm that submits the application
13 pursuant to this section; and 11) other direct costs of
14 producing a film in accordance with generally accepted
15 entertainment industry practice; and

16 (2) does not include an expenditure for:

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

19 (b) artwork or jewelry, except that a
20 work of art or a piece of jewelry may be a direct production
21 expenditure if: 1) it is used in the film production; and 2)
22 the expenditure is less than two thousand five hundred dollars
23 (\$2,500);

24 (c) entertainment, amusement or
25 recreation;

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

5 (e) a service provided by a person who
6 is not a New Mexico resident and is employed in an industry
7 crew position, excluding a performing artist, where it is the
8 standard entertainment industry practice for the film
9 production company to employ a person for that industry crew
10 position, except when the person who is not a New Mexico
11 resident is hired or subcontracted by a vendor; and when the
12 film production company, as determined by the division and when
13 applicable in consultation with industry, provides: 1)
14 reasonable efforts to hire resident crew; and 2) financial or
15 promotional contributions toward education or [~~work-force~~
16 workforce development efforts in New Mexico, including at least
17 one of the following: a payment to a New Mexico public
18 education institution that administers at least one industry-
19 recognized film or multimedia program, as determined by the
20 division, in an amount equal to two and one-half percent of
21 payments made to nonresidents in approved positions employed by
22 the vendor; promotion of the New Mexico film industry by
23 directors, actors or executive producers affiliated with the
24 production company's project through social media that is
25 managed by the state; radio interviews facilitated by the

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1 division; enhanced screen credit acknowledgments; or related
2 events that are facilitated, conducted or sponsored by the
3 division.

4 ~~[U-]~~ V. As used in this section, "film production
5 company" means a person that produces one or more films or any
6 part of a film and that commences principal photography prior
7 to January 1, 2016.

8 ~~[V-]~~ W. As used in this section, "vendor" means a
9 person who sells or leases goods or services that are related
10 to standard industry craft inventory, who has a physical
11 presence in New Mexico and is subject to gross receipts tax
12 pursuant to the Gross Receipts and Compensating Tax Act and
13 income tax pursuant to the Income Tax Act or corporate income
14 tax pursuant to the Corporate Income and Franchise Tax Act but
15 excludes a personal services business and services provided by
16 nonresidents hired or subcontracted if the tasks and
17 responsibilities are associated with:

- 18 (1) the standard industry job position of:
19 (a) a director;
20 (b) a writer;
21 (c) a producer;
22 (d) an associate producer;
23 (e) a co-producer;
24 (f) an executive producer;
25 (g) a production supervisor;

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- 1 (h) a director of photography;
2 (i) a motion picture driver whose sole
3 responsibility is driving;
4 (j) a production or personal assistant;
5 (k) a designer;
6 (l) a still photographer; or
7 (m) a carpenter and utility technician
8 at an entry level; and

9 (2) nonstandard industry job positions and
10 personal support services."

11 SECTION 2. Section 7-2F-12 NMSA 1978 (being Laws 2015,
12 Chapter 143, Section 11) is amended to read:

13 "7-2F-12. CREDIT CLAIMS--AGGREGATE AMOUNT OF CLAIMS
14 ALLOWED.--

15 A. A claim for a film and television tax credit
16 shall be filed as part of a return filed pursuant to the Income
17 Tax Act or the Corporate Income and Franchise Tax Act or an
18 information return filed by a pass-through entity. The date a
19 credit claim is received by the taxation and revenue department
20 shall determine the order that a credit claim is authorized for
21 payment by the department.

22 B. The aggregate amount of claims for a credit
23 provided by the Film Production Tax Credit Act that may be
24 authorized for payment [~~in any fiscal year is fifty million~~
25 ~~dollars (\$50,000,000)~~] with respect to the direct production

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1 expenditures or postproduction expenditures made on film or
2 commercial audiovisual products is:

3 (1) for a fiscal year that begins prior to
4 July 1, 2016, fifty million dollars (\$50,000,000);

5 (2) for a fiscal year that begins July 1, 2016
6 and ends June 30, 2017, twenty-five million dollars
7 (\$25,000,000); and

8 (3) for a fiscal year that begins on or after
9 July 1, 2017, fifty million dollars (\$50,000,000).

10 C. A film production company that submits a claim
11 for a film and television tax credit that is unable to receive
12 the tax credit because the claims for the fiscal year exceed
13 the limitation in [~~this~~] Subsection B of this section shall be
14 placed for the subsequent fiscal year at the front of a queue
15 of credit claimants submitting claims in the subsequent fiscal
16 year in the order of the date on which the credit was
17 authorized for payment.

18 [~~B-~~] D. Except as otherwise provided in this
19 section, credit claims authorized for payment pursuant to the
20 Film Production Tax Credit Act shall be paid pursuant to
21 provisions of the Tax Administration Act to the taxpayer as
22 follows:

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

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1 (2) a credit claim amount of two million
2 dollars (\$2,000,000) or more but less than five million dollars
3 (\$5,000,000) per taxable year shall be divided into two equal
4 payments, with the first payment to be made immediately upon
5 authorization of the payment of the credit claim and the second
6 payment to be made twelve months following the date of the
7 first payment; and

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

15 [~~G.~~] E. For a fiscal year in which the amount of
16 total credit claims authorized for payment is less than the
17 aggregate amount of credit claims that may be authorized for
18 payment pursuant to this section, the next scheduled payments
19 for credit claims authorized for payment pursuant to Subsection
20 [B] D of this section shall be accelerated for payment for that
21 fiscal year and shall be paid to a taxpayer pursuant to the Tax
22 Administration Act and in the order in which outstanding
23 payments are scheduled in the queue established pursuant to
24 Subsections [~~A and B~~] C and D of this section; provided that
25 the total credit claims authorized for payment shall not exceed

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1 the aggregate amount of credit claims that may be authorized
2 for payment pursuant to this section. If a partial payment is
3 made pursuant to this subsection, the difference owed shall
4 retain its original position in the queue.

5 ~~[D-]~~ F. Any amount of a credit claim that is
6 carried forward pursuant to Subsection [B] D of this section
7 shall be subject to the limit on the aggregate amount of credit
8 claims that may be authorized for payment pursuant to
9 Subsection A of this section in the fiscal year in which that
10 amount is paid.

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

20 ~~[F-]~~ H. For purposes of determining the payment of
21 credit claims pursuant to this section, the secretary of
22 taxation and revenue may require that credit claims of
23 affiliated persons be combined into one claim if necessary to
24 accurately reflect closely integrated activities of affiliated
25 persons."

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