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HOUSE BILL 192

53RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2017

INTRODUCED BY

Daymon Ely and Bill McCamley

AN ACT

RELATING TO THE FILM PRODUCTION TAX CREDIT ACT; INCREASING AND INDEXING THE AGGREGATE AMOUNT OF CREDITS ALLOWED IN A FISCAL YEAR; REQUIRING THE TAXATION AND REVENUE DEPARTMENT TO PROMULGATE RULES REGARDING DETERMINING RESIDENCY.

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

SECTION 1. Section 7-2F-12 NMSA 1978 (being Laws 2015, Chapter 143, Section 11) is amended to read:

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

A. A claim for a film and television tax credit 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 taxation and revenue department

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1 shall determine the order that a credit claim is authorized for
2 payment by the department. [~~The aggregate amount of claims for~~
3 ~~a credit provided by the Film Production Tax Credit Act that~~
4 ~~may be authorized for payment in any fiscal year is fifty~~
5 ~~million dollars (\$50,000,000) with respect to the direct~~
6 ~~production expenditures or postproduction expenditures made on~~
7 ~~film or commercial audiovisual products.~~]

8 B. The aggregate amount of claims for a credit
9 provided by the Film Production Tax Credit Act that may be
10 authorized for payment in any fiscal year with respect to the
11 direct production expenditures or postproduction expenditures
12 made on film or commercial audiovisual products is:

13 (1) for fiscal year 2018, fifty-three million
14 seven hundred sixty-eight thousand dollars (\$53,768,000); and

15 (2) for fiscal years after 2018, as calculated
16 by the taxation and revenue department on April 30, 2019 and
17 April 30 of each subsequent year, an amount equal to the
18 product, rounded down to the nearest whole dollar, of the
19 amount provided in Paragraph (1) of this subsection multiplied
20 by a fraction with a numerator equal to the consumer price
21 index for all urban consumers, as calculated by the United
22 States bureau of economic analysis, for the previous calendar
23 year and a denominator equal to the consumer price index for
24 all urban consumers for the most current calendar year
25 available; provided that the aggregate amount in any fiscal

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1 year shall not be less than the aggregate amount determined in
2 the fiscal year prior to that fiscal year.

3 C. A film production company that submits a claim
4 for a film and television tax credit that is unable to receive
5 the tax credit because the claims for the fiscal year exceed
6 the limitation in [~~this~~] Subsection B 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 [~~B-~~] D. Except as otherwise provided in this
12 section, credit claims authorized for payment pursuant to the
13 Film Production Tax Credit Act shall be paid pursuant to
14 provisions of the Tax Administration Act to the taxpayer as
15 follows:

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

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

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

8 [~~E.~~] E. For a fiscal year in which the amount of
9 total credit claims authorized for payment is less than the
10 aggregate amount of credit claims that may be authorized for
11 payment pursuant to this section, the next scheduled payments
12 for credit claims authorized for payment pursuant to Subsection
13 [~~B]~~ C of this section shall be accelerated for payment for that
14 fiscal year and shall be paid to a taxpayer pursuant to the Tax
15 Administration Act and in the order in which outstanding
16 payments are scheduled in the queue established pursuant to
17 [~~Subsections A and B]~~ Subsection C of this section; provided
18 that the total credit claims authorized for payment shall not
19 exceed the aggregate amount of credit claims that may be
20 authorized for payment pursuant to this section. If a partial
21 payment is made pursuant to this subsection, the difference
22 owed shall retain its original position in the queue.

23 [~~D.~~] F. Any amount of a credit claim that is
24 carried forward pursuant to Subsection [~~B]~~ D of this section
25 shall be subject to the limit on the aggregate amount of credit

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1 claims that may be authorized for payment pursuant to
2 Subsection ~~[A]~~ B of this section in the fiscal year in which
3 that amount is paid.

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

13 ~~[F-]~~ H. For purposes of determining the payment of
14 credit claims pursuant to this section, the secretary of
15 taxation and revenue may require that credit claims of
16 affiliated persons be combined into one claim if necessary to
17 accurately reflect closely integrated activities of affiliated
18 persons."

19 **SECTION 2.** A new section of the Film Production Tax
20 Credit Act is enacted to read:

21 "[NEW MATERIAL] TAXATION AND REVENUE DEPARTMENT TO
22 PROMULGATE RULES--DETERMINING RESIDENCY.--The taxation and
23 revenue department shall, in consultation with the division,
24 promulgate rules to determine the process of determining
25 residency for purposes of the Film Production Tax Credit Act."

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SECTION 3. APPLICABILITY.--The provisions of Section 1 of this act apply to film production companies that commence principal photography on or after July 1, 2017.

SECTION 4. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2017.