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HOUSE BILL 295

46TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2003

INTRODUCED BY

Ben Lujan

FOR THE REVENUE STABILIZATION AND TAX POLICY COMMITTEE

AN ACT

RELATING TO TAXATION; CLARIFYING AND CONFORMING TAX INCENTIVES
FOR THE FILM INDUSTRY; AMENDING AND ENACTING SECTIONS OF THE
NMSA 1978.

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) is amended to read:

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

A. The tax credit created by this section may be referred to as the "film production tax credit". An eligible film production company may apply for, and the taxation and revenue department may allow, a tax credit ~~[for]~~ in an amount equal to fifteen percent of direct production expenditures made in New Mexico that are directly attributable to the production in New Mexico of a film and that are subject to taxation by the

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1 state of New Mexico.

2 B. The film production tax credit shall not be
3 claimed with respect to expenditures for which the film
4 production company has delivered a nontaxable transaction
5 certificate pursuant to Section 7-9-86 NMSA 1978.

6 C. A long-form narrative film production for which
7 the film production tax credit is claimed shall contain an
8 acknowledgment that the production was filmed in New Mexico.

9 ~~D. As used in this section:~~

10 ~~(1) "direct production expenditure" includes:~~

11 ~~(a) the cost of a story and scenario to~~
12 ~~be used for a film;~~

13 ~~(b) wages or salaries for talent,~~
14 ~~management and labor paid to persons who are residents of New~~
15 ~~Mexico;~~

16 ~~(c) the cost of set construction and~~
17 ~~operations, wardrobe, accessories and related services;~~

18 ~~(d) the cost of photography, sound~~
19 ~~synchronization, lighting and related services;~~

20 ~~(e) the cost of editing and related~~
21 ~~services;~~

22 ~~(f) rental of facilities and equipment;~~

23 ~~(g) leasing of vehicles;~~

24 ~~(h) costs of food or lodging;~~

25 ~~(i) airfare if purchased through a New~~

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1 ~~Mexico-based travel agency or travel company;~~

2 ~~(j) insurance costs and bonding if~~
3 ~~purchased through a New Mexico-based insurance agent; and~~

4 ~~(k) other direct costs of producing the~~
5 ~~film in accordance with generally accepted entertainment~~
6 ~~industry practice;~~

7 ~~(2) "film" means a single media or multimedia~~
8 ~~program, including national advertising messages, that is fixed~~
9 ~~on film, videotape, computer disc, laser disc or other similar~~
10 ~~delivery medium, that can be viewed or reproduced and that is~~
11 ~~exhibited in theaters, licensed for exhibition by individual~~
12 ~~television stations, groups of stations, networks, cable~~
13 ~~television stations or other means or licensed for the home~~
14 ~~viewing market; and~~

15 ~~(3) "film production company" means a person~~
16 ~~that produces film for exhibition in theaters, on television or~~
17 ~~elsewhere.~~

18 ~~E.]~~ D. To be eligible for the film production tax
19 credit, a film production company shall submit to the New
20 Mexico film division of the economic development department
21 information required by the division to demonstrate conformity
22 with the requirements of this section. The division shall
23 determine the eligibility of the company and shall report this
24 information to the taxation and revenue department in a manner
25 and at times the economic development department and the

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1 taxation and revenue department shall agree upon.

2 ~~[F-]~~ E. To receive a film production tax credit, a
3 film production company shall apply to the taxation and revenue
4 department on forms and in the manner the department may
5 prescribe. The application shall include a certification of
6 the amount of direct production expenditures made in New Mexico
7 with respect to the film production for which the film
8 production company is seeking the film production tax credit.
9 If the requirements of this section have been complied with,
10 the taxation and revenue department shall approve the film
11 production tax credit and issue a document granting the tax
12 credit.

13 ~~[G-]~~ F. The film production company may apply all
14 or a portion of the film production tax credit granted ~~[by the~~
15 ~~document]~~ against personal income tax liability or corporate
16 income tax liability. If the amount of the film production tax
17 credit claimed exceeds the film production company's tax
18 liability for the taxable year in which the credit is being
19 claimed, the excess shall be refunded. "

20 Section 2. A new Section 7-2F-2 NMSA 1978 is enacted to
21 read:

22 "7-2F-2. [NEW MATERIAL] DEFINITIONS. -- As used in Chapter
23 7, Article 2F NMSA 1978:

24 A. "direct production expenditure" means a
25 transaction that is subject to taxation in New Mexico,

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1 including:

2 (1) payment of wages, fringe benefits or fees
3 for talent, management or labor to a person who is a New Mexico
4 resident for purposes of the Income Tax Act;

5 (2) payment to a personal services corporation
6 for the services of a performing artist, if:

7 (a) the personal services corporation
8 pays gross receipts tax in New Mexico on those payments; or

9 (b) the performing artist receiving
10 payments from the personal services corporation pays New Mexico
11 income tax; and

12 (3) any of the following provided by a vendor:

13 (a) the story and scenario to be used
14 for a film;

15 (b) set construction and operations,
16 wardrobe, accessories and related services;

17 (c) photography, sound synchronization,
18 lighting and related services;

19 (d) editing and related services;

20 (e) rental of facilities and equipment;

21 (f) leasing of vehicles;

22 (g) food or lodging;

23 (h) airfare if purchased through a New
24 Mexico-based travel agency or travel company;

25 (i) insurance coverage and bonding if

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1 purchased through a New Mexico-based insurance agent; and

2 (j) other direct costs of producing a
3 film in accordance with generally accepted entertainment
4 industry practice;

5 B. "film" means a single media or multimedia
6 program, excluding advertising messages other than national or
7 regional advertising messages intended for exhibition, that:

8 (1) is fixed on film, digital medium,
9 videotape, computer disc, laser disc or other similar delivery
10 medium;

11 (2) can be viewed or reproduced;

12 (3) is intended, where applicable, to have a
13 rating no more restrictive than "NC-17" or a comparable status
14 for projects intended for television; and

15 (4) is intended for reasonable commercial
16 exploitation for the delivery medium used; and

17 C. "film production company" means a person that
18 produces one or more films."

19 Section 3. Section 7-9-86 NMSA 1978 (being Laws 1995,
20 Chapter 80, Section 1) is amended to read:

21 "7-9-86. DEDUCTION--GROSS RECEIPTS TAX--SALES TO
22 QUALIFIED FILM PRODUCTION COMPANY.--

23 A. Receipts from selling or leasing property and
24 from performing services may be deducted from gross receipts or
25 from governmental gross receipts if the sale, lease or

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1 performance is made to a qualified production company [~~who~~
2 that delivers a nontaxable transaction certificate to the
3 seller, lessor or performer.

4 B. For the purposes of this section:

5 (1) "film" means a single media or multimedia
6 program, including an advertising [~~messages~~] message, that:

7 (a) is fixed on film, digital medium,
8 videotape, computer disc, laser disc or other similar delivery
9 medium [~~from which the program~~];

10 (b) can be viewed or reproduced [~~and~~
11 ~~which is exhibited in theaters, licensed for exhibition by~~
12 ~~individual television stations, groups of stations, networks,~~
13 ~~cable television stations or other means or licensed for the~~
14 ~~home viewing market~~];

15 (c) is intended, where applicable, to
16 have a rating no more restrictive than "NC-17" or a comparable
17 status for projects intended for television; and

18 (d) is intended for reasonable
19 commercial exploitation for the delivery medium used;

20 (2) "production company" means a person that
21 produces one or more films for exhibition in theaters, on
22 television or elsewhere;

23 (3) "production costs" [~~include~~] means the
24 costs of the following:

25 (a) [~~the cost of~~] a story and scenario

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1 to be used for a film;

2 (b) salaries of talent, management and
3 labor, including payments to personal services corporations
4 [~~with respect to~~] for the services of [~~qualified~~] a performing
5 [~~artists as determined under Section 62b(1)(A) of the Internal~~
6 ~~Revenue Code of 1986~~] artist;

7 (c) [~~cost of~~] set construction and
8 operations, wardrobe, accessories and related services;

9 (d) [~~costs of~~] photography, sound
10 synchronization, lighting and related services;

11 (e) [~~costs of~~] editing and related
12 services;

13 (f) rental of facilities and equipment;

14 [~~or~~]

15 (g) leasing of vehicles;

16 (h) food or lodging; or

17 [~~g~~] (i) other direct costs of
18 producing the film in accordance with generally accepted
19 entertainment industry practice; and

20 (4) "qualified production company" means a
21 production company that [~~produces a film or films~~] meets the
22 provisions of this section and has registered or will register
23 with the New Mexico film division of the economic development
24 department.

25 C. A qualified production company may deliver the

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1 nontaxable transaction certificates authorized by this section
2 only with respect to production costs. "

3 Section 4. APPLICABILITY. --The provisions of Section 1 of
4 this act apply to films produced in New Mexico on or after
5 January 1, 2003.

6 Section 5. EFFECTIVE DATE. --The effective date of the
7 provisions of Section 3 of this act is July 1, 2003.

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