F I S C A L I M P A C T R E P O R T

ORIGINAL DATE 03/03/11
SPONSOR Rue **LAST UPDATED** 03/04/11 **HB**

SHORT TITLE Film Production Tax Credit Reporting **SB** 555

ANALYST Burrows

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Non-Rec	Fund Affected
FY11	**FY12**	**FY13**		
	NFI	NFI		

(Parenthesis ( ) Indicate Revenue Decreases)

Relates to HB161, SB47, SB44, and HB405

SOURCES OF INFORMATION
LFC Files

Responses Received From
Taxation and Revenue Department (TRD)
Economic Development Department (EDD)

SUMMARY

Synopsis of Bill

Senate Bill 555 would require film production companies to report all direct production and postproduction expenditures as defined in Section 7-2F-2 NMSA 1978 to the Economic Development Department (EDD) to be eligible to receive the film production tax credit.

“Direct production expenditures” are defined in current law to include payments of wages to New Mexico residents, payments for the services of performing artists and any of a variety of goods and services purchased from a vendor.

“Postproduction expenditures” are defined in current law to include expenditures for editing, recording, sound editing, special effects, computer-generated imagery, sound and visual effects but not including advertising, distribution or expense payments.

Because no effective date is provided in the bill, its provisions will become effective 90 days after the 2011 Legislative Session adjourns, on June 17, 2011.

FISCAL IMPLICATIONS

There is no fiscal impact.

SIGNIFICANT ISSUES

TRD notes the film production tax credit is the most generous economic development incentive offered by the state. The credit amounts to 25 percent of most expenditure undertaken by film production companies operating in the state. This amount is not a return of taxes due, but rather a rebate based on expenditures. Proponents of the tax credit cite the increased level of economic activity in the state associated with the credit. However, most studies of the issue have concluded that the return of state dollars associated with the credits is significantly less than credits paid out, even when "multiplier" effects are taken into account. The proposal would lead to publication of more information about the expenditures for which a credit is being claimed, which could help to resolve some of the uncertainty about the effectiveness of the program.

Many states that offer film production tax credits also establish expenditure limits or other reporting requirements to ensure efficacy of the program (see Attachment). Senate Bill 555 could provide greater transparency, tax equity and tax efficiency.

RELATIONSHIP

Senate Bill 47 and House Bill 161 would require TRD to provide annual reporting of tax expenditures and dedicated revenues.

Senate Bill 44 would require film companies to report aggregate expenditures, in addition to other reporting requirements deemed necessary to analyze the effectiveness of the film production tax credit.

House Bill 405 would allow TRD to reveal tax information of taxpayers who claim certain credits to assess the effectiveness of the credit.

TECHNICAL ISSUES

According to EDD, the amended language on page 3, lines 14-16 is vague. The bill appears to require a production company to submit *records* of its expenditures to the Film Division, not the expenditures themselves. Records of "all direct production expenditures and postproduction expenditures" are already submitted to the Film Division.

OTHER SUBSTANTIVE ISSUES

TRD and EDD both report that production companies already provide these departments with the expenditure information that would be required under Senate Bill 555. However, due to confidentiality provisions of the tax code, neither department is allowed to publish this information. EDD's Film Division receives the expenditure ledgers to ensure that film production companies do not have any outstanding financial obligations in the state.

EDD notes that revealing confidential information could discourage film companies from performing work in New Mexico.

ALTERNATIVES

EDD suggests that Senate Bill 44, which requires a production company to provide “other information deemed necessary by the Division and Economic Development Department,” could provide sufficient reporting on film company expenditures without running the risk of revealing confidential taxpayer information.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

The film production tax credit will continue to lack transparency, and no mechanism will exist to determine the efficiency of the film production tax credit program.

LKB/bym:svb

The Legislative Finance Committee has adopted the following principles to guide responsible and effective tax policy decisions:

1. ***Adequacy:*** *revenue should be adequate to fund government services.*
2. ***Efficiency:*** *tax base should be as broad as possible to minimize rates and the structure should minimize economic distortion and avoid excessive reliance on any single tax.*
3. ***Equity****: taxes should be fairly applied across similarly situated taxpayers and across taxpayers with different income levels.*
4. ***Simplicity***: *taxes should be as simple as possible to encourage compliance and minimize administrative and audit costs.*
5. ***Accountability/Transparency:*** *Deductions, credits and exemptions should be easy to monitor and evaluate and be subject to periodic review.*

More information about the LFC tax policy principles will soon be available on the LFC website at www.nmlegis.gov/lcs/lfc

Limitations and Conditions on Film Production Credits by State*

Statewide annual maximum	Missouri caps total credits to no more than $4.5 million annually
	Alabama caps total credits to no more than $10 million annually
Maximum per taxpayer	Missouri caps credits per taxpayer at $1 million
Limit number of qualifying films	Missouri allows only one film production per production company per year
Minimum qualifying production expenditure	Missouri limits credit to projects with an expected in-state expenditure budget in excess of $50,000 for productions under 30 minutes, or $100,000 for productions over 30 minutes
Exclude certain productions	New York excludes documentary films, news programs, talk shows, sporting programs, game shows, soap operas, etc.
Minimum qualifying postproduction expenditure	New York excludes postproduction costs unless the costs attributable to the use of tangible property or performance of services in New York exceed 75% of total postproduction costs
Exclude wages paid to "highly compensated individuals"	Missouri excludes wages paid to individuals who receive compensation in excess of $1 million on one project
	New Mexico allows up to $5 million in credit for compensation paid to performing artists
Credit contingent upon reporting	Arizona requires preapproval contingent upon the submission of documentation including the lesser of 10% of the estimated total state budget of the production or $250,000
Employment requirements	Arizona requires at least 50% of full-time employees in production to be residents of Arizona

*This is not a complete list of states that place limits or conditions on film production credits.