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HOUSE BILL 85

50TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2012

INTRODUCED BY

Al Park

AN ACT

RELATING TO TAXATION; REPEALING THE CAP ON THE FILM PRODUCTION TAX CREDIT; RECONCILING MULTIPLE AMENDMENTS TO THE SAME SECTION OF LAW IN LAWS 2011.

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 by Laws 2011, Chapter 165, Section 1 and by Laws 2011, Chapter 177, Section 2) 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 [~~subject to the limitation in Subsection D of this section~~], a tax credit in an amount equal

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1 to the percentage specified in Subsection B of this section of:

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

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

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

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

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

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

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

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

25 (c) are subject to taxation by the state

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1 of New Mexico;

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

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

12 B. Except as provided in Subsections C and [P] Q of
13 this section, the percentage to be applied in calculating the
14 amount of the film production tax credit is twenty-five
15 percent.

16 C. With respect to expenditures attributable to a
17 production for which the film production company receives a tax
18 credit pursuant to the federal new markets tax credit program,
19 the percentage to be applied in calculating the film production
20 tax credit is twenty percent.

21 D. A claim for film production tax credits shall be
22 filed as part of a return filed pursuant to the Income Tax Act
23 or the Corporate Income and Franchise Tax Act. The date a
24 credit claim is received by the department shall determine the
25 order that a credit claim is authorized for payment by the

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1 department. ~~[The aggregate amount of the film production tax~~
2 ~~credit claims that may be authorized for payment in any fiscal~~
3 ~~year is fifty million dollars (\$50,000,000) with respect to the~~
4 ~~direct production expenditures or postproduction expenditures~~
5 ~~made on film or commercial audiovisual products. A film~~
6 ~~production company that submits a claim for a film production~~
7 ~~tax credit that is unable to receive the tax credit because the~~
8 ~~claims for the fiscal year exceed the limitation in this~~
9 ~~subsection shall be placed for the subsequent fiscal year at~~
10 ~~the front of a queue of film production tax credit claimants~~
11 ~~submitting claims in the subsequent fiscal year in the order of~~
12 ~~the date on which the credit was authorized for payment.]~~

13 E. Credit claims authorized for payment pursuant to
14 the Film Production Tax Credit Act shall be paid pursuant to
15 provisions of the Tax Administration Act to the taxpayer as
16 follows:

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

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

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1 first payment; and

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

9 ~~[F. Any amount of a credit claim that is carried~~
10 ~~forward pursuant to Subsection E of this section shall be~~
11 ~~subject to the limit on the aggregate amount of credit claims~~
12 ~~that may be authorized for payment pursuant to Subsection D of~~
13 ~~this section in the fiscal year in which that amount is paid.~~

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

23 ~~[H.]~~ G. For purposes of determining the payment of
24 credit claims pursuant to Subsection E of this section, the
25 secretary of taxation and revenue may require that credit

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1 claims of affiliated persons be combined into one claim if
2 necessary to accurately reflect closely integrated activities
3 of affiliated persons.

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

9 ~~[J.]~~ I. A long-form narrative film production for
10 which the film production tax credit is claimed pursuant to
11 Paragraph (1) of Subsection A of this section shall contain an
12 acknowledgment that the production was filmed in New Mexico.

13 ~~[K.]~~ J. To be eligible for the film production tax
14 credit, a film production company shall submit to the division
15 information required by the division to demonstrate conformity
16 with the requirements of the Film Production Tax Credit Act,
17 including detailed information on each direct production
18 expenditure and each postproduction expenditure. A film
19 production company shall provide to the division a projection
20 of the film production tax credit claim the film production
21 company plans to submit in the fiscal year. In addition, the
22 film production company shall agree in writing:

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

25 (2) to post a notice at completion of

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1 principal photography on the web site of the division that:

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

9 (b) remains posted on the web site until
10 all financial obligations incurred in the state by the film
11 production company have been paid;

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

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

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

23 [~~H.~~] K. The division shall determine the
24 eligibility of the company and shall report this information to
25 the taxation and revenue department in a manner and at times

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1 the economic development department and the taxation and
2 revenue department shall agree upon. The division shall also
3 post on its web site all information provided by the film
4 production company that does not reveal revenue, income or
5 other information that may jeopardize the confidentiality of
6 income tax returns, including that the division shall report
7 monthly the projected amount of credit claims for the fiscal
8 year.

9 [M-] L. To provide guidance to film production
10 companies regarding the amount of credit capacity remaining in
11 the fiscal year, the taxation and revenue department shall post
12 monthly on that department's web site the aggregate amount of
13 credits claimed and processed for the fiscal year.

14 [N-] M. To receive a film production tax credit, a
15 film production company shall apply to the taxation and revenue
16 department on forms and in the manner the department may
17 prescribe. The application shall include a certification of
18 the amount of direct production expenditures or postproduction
19 expenditures made in New Mexico with respect to the film
20 production for which the film production company is seeking the
21 film production tax credit; provided that for the film
22 production tax credit, the application shall be submitted
23 within one year of the date of the last direct production
24 expenditure in New Mexico or the last postproduction
25 expenditure in New Mexico. If the amount of the requested tax

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1 credit exceeds five million dollars (\$5,000,000), the
2 application shall also include the results of an audit,
3 conducted by a certified public accountant licensed to practice
4 in New Mexico, verifying that the expenditures have been made
5 in compliance with the requirements of this section. If the
6 requirements of this section have been complied with [~~subject~~
7 ~~to the provisions of Subsection D of this section~~], the
8 taxation and revenue department shall approve the film
9 production tax credit and issue a document granting the tax
10 credit.

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

18 [~~P-~~] O. As applied to direct production
19 expenditures for the services of performing artists, the film
20 production tax credit authorized by this section shall not
21 exceed five million dollars (\$5,000,000) for services rendered
22 by all performing artists in a production for which the film
23 production tax credit is claimed."

24 **SECTION 2. EFFECTIVE DATE.**--The effective date of the
25 provisions of this act is July 1, 2012.

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