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## FISCAL IMPACT REPORT

**ORIGINAL DATE** 02/04/13  
**LAST UPDATED** 03/06/13    **HB** CS/379/aSCORC

**SPONSOR** HTRC

**SHORT TITLE** Film Production Tax Credit Increase    **SB** \_\_\_\_\_

**ANALYST** Smith

### REVENUE (dollars in thousands)

Estimated Revenue					Recurring or Nonrecurring	Fund Affected
FY13	FY14	FY15	FY16	FY17		
Negative See Narrative					Recurring	General Fund

(Parenthesis ( ) Indicate Revenue Decreases)

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Taxation and Revenue Department (TRD)-Original Bill  
 Economic Development Department (EDD)

### SUMMARY

#### Summary of SCORC Amendments

The Senate Corporations and Transportation Committee amendments include:

- revising the title to accurately reflect the intent of the legislation;
- adding an additional 5 percent credit for certain television productions;
- allow the film production tax credit to be claimed on an information return filed by a pass-through entity;
- allows for the carry-over of any amounts under the \$50 million cap up to \$10 million;
- removes the language allowing for the assignment of the film production tax credit;
- changes the definition of “direct production expenditure”; and
- adds to the definition of “vendor” designers and still photographers.

#### Synopsis of Original Bill

House Bill 379 amends Section 7-2F-1 NMSA 1978, to allow for an additional five percent film credit for television productions or projects with a total budget of less than \$30 million that shoots at least ten days in New Mexico. Additionally, language is added to allow for the carry-over of any amounts under the fifty million dollar annual limit not expended in a fiscal year, and these amounts will not count toward a subsequent years’ annual limitation. Language added to

the section also allows for a film production company to sell, transfer, or assign all or a portion of the film production tax credit to another entity. Section 7-2F-2 NMSA 1978, is amended to alter the definitions of “direct production expenditure” and “physical presence.” It also tightens the income tax provisions on performing artists by requiring withholding when the artist has an equity interest in the production. The bill also excludes expenditures from qualifying for the credit that are supplied by nonresidents whether hired or subcontracted by an in-state vendor.

Effective Date: Emergency Clause

**FISCAL IMPLICATIONS**

The bill mandates that the film credit to be constrained by the \$50 million annual cap. However, the richer credits for television and the \$10 million carry-over virtually guarantee that the credit would be greater than otherwise over a multiyear period. For example, there is some indication that the credit will not be fully expended in FY13 which will result in increased General Fund revenue of \$12 million. Given the provisions in this substitute, the FY 14 cap will be increased from \$50 million to \$60 million and General Fund revenue will decrease by \$10 million.

The Taxation and Revenue Department (TRD) researched the share of total approved and pending approval New Mexico film credits since FY 11 that can be identified as relating to eligible television series. On that basis, it is estimated that approximately 20 percent of the film credits approved or pending approval since FY11 are related to television series that could qualify for the enhanced credit. The New Mexico Film Office and the Consensus Revenue Estimating Group are forecasting that the \$50 million cap will be reached in each of the forecast period fiscal years. This would imply that approximately \$10 million of the total credits earned (determined based on 25 percent of production expense), or an addition \$2 million in film credits would be added to these television productions as a result of the enhanced credit opportunity. However, the \$50 million cap would still constrain the film credits offered, so no additional fiscal impact is forecast.

Estimating the cost of tax expenditures is difficult. Confidentiality requirements surrounding certain taxpayer information create uncertainty, and analysts must frequently interpret third-party data sources. The statutory criteria for tax expenditure may be ambiguous, further complicating the initial cost estimate of the expenditure’s fiscal impact. Once a tax expenditure has been approved, information constraints continue to create challenges in tracking the real costs (and benefits) of tax expenditures.

**Table 1: SUMMARY OF FILM CREDITS — MATRIX OF YEAR AWARDED VERSUS YEAR CREDIT DISTRIBUTED**

FY FILM CREDIT DISTRIBUTED												
(in thousands of dollars)												
FY FILM CREDIT AWARD APPROVED	FY03	FY04	FY05	FY06	FY07	FY08	FY09	FY10	FY11	FY12	Grand Total	
	FY03	\$1,116.2	\$103.3									\$1,219.5
	FY04		\$1,633.3	\$1,771.6								\$3,405.0
	FY05			\$333.0	\$1,446.9	\$285.5						\$2,065.3
	FY06				\$4,274.2	\$4,320.4	\$6.3					\$8,600.8
	FY07					\$13,917.8	\$2,250.5	\$477.2				\$16,645.6
	FY08						\$40,312.5	\$5,248.1	\$6.4			\$45,567.1
	FY09							\$76,336.8	\$86.6		\$1.1	\$76,424.4
	FY10								\$45,274.5	\$20,632.6	\$0.2	\$65,907.3
	FY11									\$75,559.6	\$1,411.5	\$76,971.2
	FY12										\$8,081.6	\$8,081.6
	Grand Total	\$1,116.2	\$1,736.7	\$2,104.6	\$5,721.1	\$18,523.7	\$42,569.3	\$82,062.1	\$45,367.4	\$96,192.3	\$9,494.5	\$304,887.8

## PERFORMANCE IMPLICATIONS

The film office will reports that it will require more information from productions submitting for the credit to confirm the proposed in-state and withholding requirements have been met.

## TECHNICAL ISSUES

The TRD notes the following technical issues:

- “New Mexico resident crew expenses” needs definition.
- Page 5, lines 1 through 9, seem to conflict with page 5, lines 9 through 15. The first referenced section says the cap cannot be exceeded in any one fiscal year, while the second says the unused portion under the cap can be rolled over, which would effectively raise the credit above the cap in the following year assuming the full amount of the cap would be otherwise reached.
- Page 8, lines 9 through 14, “reasonable effort” is vague and renders this new language ineffective.
- Section 7-2F-1 P – this subsection is not clear on how the film production company will assign the refund. It states that upon application, the credit may be assigned. However, it is not clearly set out if this assignment must be made with the Film Office before coming to the TRD as all of the other information required in the application process.
- Section 2, Subsection (C)(b) – Requires a direct hire actor that is acting as a contractor to deduct withholding tax on themselves. A direct hire actor working as an employee (W-2) will have withholding from the payroll processing company but the bill is requiring the performing artist to deduct withholding not the production company or the payroll processing company.
- Section 1, Subsection P, page 11, lines 13-18, - It is not clear why anyone would want to sell a refundable credit. This will allow the production to assign the credit to the entity financing the production.
- Subsection C (b) –The language on direct hire of the performing artist will provide a loop hole to avoid the GRT. The actors with personal service entities could easily avoid the GRT by working on a film as a direct hire and the productions will likely pressure them to work as direct hires to avoid the GRT since the production companies are ultimately responsible for the GRT.
- Based on a conversation with the film office, these are direct hires of the film production company that are employees and get W-2s, however, they are in the state less than 15 days and there was a question on whether the film production company could withhold on them. Since the statute states that they are required to withhold after 15 days, but does not preclude them from withholding for less than 15 days, the film production company can still withhold which would qualify these payments for the credit.

- Subsection C (c) – limits the qualifying direct production expenditures to payments to a personal services business for the services of a performing artist who is not a NM resident. This language excludes payments to a personal services business for the services of a performing artist who is a NM resident.
- In Section 4, under the applicability provisions, subsection A is allowing the carry forward of the excess of the credit not paid for FY13 to qualify.
- Subsection E is allowing for the credit to be claimed on an informational return by a pass-through entity. Since the pass-through entity is NOT the taxpayer, there would be no mechanism to ensure that it is passed down to the taxpayer that is required to file an income tax return and pay the appropriate amount of tax.

Does the bill meet the Legislative Finance Committee tax policy principles?

1. **Adequacy:** Revenue should be adequate to fund needed government services.
2. **Efficiency:** Tax base should be as broad as possible and avoid excess reliance on one tax.
3. **Equity:** Different taxpayers should be treated fairly.
4. **Simplicity:** Collection should be simple and easily understood.
5. **Accountability:** Preferences should be easy to monitor and evaluate

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