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AN ACT
RELATING TO TAXATION; ENACTING THE FILM PRODUCTION TAX CREDIT
ACT; PROVIDING TRACKING REQUIREMENTS FOR THE FILM PRODUCTION
TAX CREDITS.

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) 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 in an amount equal to the percentage specified in Subsection B of this section of:

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

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

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

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

1 (2) postproduction expenditures made in New
2 Mexico that:

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

5 (b) are for services performed in New
6 Mexico;

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

9 (d) exclude postproduction expenditures
10 for which another taxpayer claims the film production tax
11 credit.

12 B. Except as provided in Subsections C and J 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
18 tax credit pursuant to the federal new markets tax credit
19 program, the percentage to be applied in calculating the film
20 production tax credit is twenty percent.

21 D. The film production tax credit shall not be
22 claimed with respect to direct production expenditures or
23 postproduction expenditures for which the film production
24 company has delivered a nontaxable transaction certificate
25 pursuant to Section 7-9-86 NMSA 1978.

1 E. A long-form narrative film production for which
2 the film production tax credit is claimed pursuant to
3 Paragraph (1) of Subsection A of this section shall contain
4 an acknowledgment that the production was filmed in New
5 Mexico.

6 F. To be eligible for the film production tax
7 credit, a film production company shall submit to the
8 division information required by the division to demonstrate
9 conformity with the requirements of the Film Production Tax
10 Credit Act and shall agree in writing:

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

13 (2) to post a notice at completion of
14 principal photography on the web site of the division that:

15 (a) contains production company
16 information, including the name of the production, the
17 address of the production company and contact information
18 that includes a working phone number, fax number and email
19 address for both the local production office and the
20 permanent production office to notify the public of the need
21 to file creditor claims against the film production company;
22 and

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

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

3 (4) to delay filing of a claim for the film
4 production tax credit until the division delivers written
5 notification to the taxation and revenue department that the
6 film production company has fulfilled all requirements for
7 the credit; and

8 (5) to submit a completed application for
9 the film production tax credit and supporting documentation
10 to the division within one year of making the final
11 expenditures in New Mexico that are included in the credit
12 claim.

13 G. The division shall determine the eligibility of
14 the company and shall report this information to the taxation
15 and revenue department in a manner and at times the division
16 and the taxation and revenue department shall agree upon.

17 H. To receive a film production tax credit, a film
18 production company shall apply to the taxation and revenue
19 department on forms and in the manner the department may
20 prescribe. The application shall include a certification of
21 the amount of direct production expenditures or
22 postproduction expenditures made in New Mexico with respect
23 to the film production for which the film production company
24 is seeking the film production tax credit. If the
25 requirements of this section have been complied with, the

1 taxation and revenue department shall approve the film
2 production tax credit and issue a document granting the tax
3 credit.

4 I. The film production company may apply all or a
5 portion of the film production tax credit granted against
6 personal income tax liability or corporate income tax
7 liability. If the amount of the film production tax credit
8 claimed exceeds the film production company's tax liability
9 for the taxable year in which the credit is being claimed,
10 the excess shall be refunded.

11 J. As applied to direct production expenditures
12 for the services of performing artists, the film production
13 tax credit authorized by this section shall not exceed five
14 million dollars (\$5,000,000) for services rendered by all
15 performing artists in a production for which the film
16 production tax credit is claimed."

17 SECTION 2. A new section of Chapter 7, Article 2F NMSA
18 1978 is enacted to read:

19 "SHORT TITLE.--Chapter 7, Article 2F NMSA 1978 may be
20 cited as the "Film Production Tax Credit Act"."

21 SECTION 3. Section 7-2F-2 NMSA 1978 (being Laws 2003,
22 Chapter 127, Section 2, as amended) is amended to read:

23 "7-2F-2. DEFINITIONS.--As used in the Film Production
24 Tax Credit Act:

25 A. "commercial audiovisual product" means a film

1 or a videogame intended for commercial exploitation;

2 B. "direct production expenditure" means a
3 transaction that is subject to taxation in New Mexico,
4 including:

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

8 (2) payment to a personal services
9 corporation for the services of a performing artist if:

10 (a) the personal services corporation
11 pays gross receipts tax in New Mexico on the portion of those
12 payments qualifying for the tax credit; and

13 (b) the film production company deducts
14 and remits or causes to be deducted and remitted income tax
15 at the maximum rate in New Mexico on the portion of those
16 payments qualifying for the tax credit; and

17 (3) any of the following provided by a
18 vendor that has a physical presence in New Mexico at which
19 the laborers employed by the vendor include New Mexico
20 residents as that term is defined in the Income Tax Act:

21 (a) the story and scenario to be used
22 for a film;

23 (b) set construction and operations,
24 wardrobe, accessories and related services;

25 (c) photography, sound synchronization, SB 44
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1 lighting and related services;

2 (d) editing and related services;

3 (e) rental of facilities and equipment;

4 (f) leasing of vehicles, not including
5 the chartering of aircraft for out-of-state transportation;

6 however, New Mexico-based chartered aircraft for in-state
7 transportation directly attributable to the production shall
8 be considered a direct production expenditure;

9 (g) food or lodging;

10 (h) commercial airfare if purchased
11 through a New Mexico-based travel agency or travel company
12 for travel to and from New Mexico or within New Mexico that
13 is directly attributable to the production;

14 (i) insurance coverage and bonding if
15 purchased through a New Mexico-based insurance agent, broker
16 or bonding agent;

17 (j) other direct costs of producing a
18 film in accordance with generally accepted entertainment
19 industry practice; and

20 (k) related digital content;

21 C. "division" means the New Mexico film division
22 of the economic development department;

23 D. "federal new markets tax credit program" means
24 the tax credit program codified as Section 45D of the United
25 States Internal Revenue Code of 1986, as amended;

1 E. "film" means a single medium or multimedia
2 program, excluding advertising messages other than national
3 or regional advertising messages intended for exhibition,
4 that:

5 (1) is fixed on film, digital medium,
6 videotape, computer disc, laser disc or other similar
7 delivery medium;

8 (2) can be viewed or reproduced;

9 (3) is not intended to and does not violate
10 a provision of Chapter 30, Article 37 NMSA 1978; and

11 (4) is intended for reasonable commercial
12 exploitation for the delivery medium used;

13 F. "film production company" means a person that
14 produces one or more films or any part of a film;

15 G. "physical presence" means a physical address in
16 New Mexico, not a post office box or other mail drop
17 enterprise unless the business is providing mail services to
18 a film production company, from which a vendor conducts
19 business, stores inventory or otherwise creates, assembles or
20 offers for sale the product purchased or leased by a film
21 production company; and

22 H. "postproduction expenditure" means an
23 expenditure for editing, Foley recording, automatic dialogue
24 replacement, sound editing, special effects, including
25 computer-generated imagery or other effects, scoring and

1 music editing, beginning and end credits, negative cutting,
2 soundtrack production, dubbing, subtitling or addition of
3 sound or visual effects, but not including an expenditure for
4 advertising, marketing, distribution or expense payments."

5 SECTION 4. A new section of Chapter 7, Article 2F
6 NMSA 1978 is enacted to read:

7 "PURPOSES--GOALS.--The purposes and goals of the film
8 production tax credit are to:

9 A. establish the film industry as a permanent
10 component of the economic base of New Mexico;

11 B. develop a pool of trained professionals and
12 businesses in New Mexico to supply and support the film
13 industry in the state;

14 C. increase employment of New Mexico residents;

15 D. improve the economic success of existing
16 businesses in New Mexico; and

17 E. develop the infrastructure in the state
18 necessary for a thriving film industry."

19 SECTION 5. A new section of Chapter 7, Article 2F
20 NMSA 1978 is enacted to read:

21 "REPORTING--ACCOUNTABILITY.--

22 A. The economic development department shall:

23 (1) collect data to be used in an
24 econometric tool that objectively assesses the effectiveness
25 of the film production tax credit;

1 (2) track the direct expenditures for the
2 film production tax credit;

3 (3) with the support and assistance of the
4 legislative finance committee staff and the taxation and
5 revenue department, review and assess the analysis developed
6 in Paragraph (1) of this subsection and create a report for
7 presentation to the revenue stabilization and tax policy
8 committee and the legislative finance committee that provides
9 an objective assessment of the effectiveness of the film
10 production tax credit; and

11 (4) report annually to the revenue
12 stabilization and tax policy committee and the legislative
13 finance committee on aggregate approved tax credits made
14 pursuant to the Film Production Tax Credit Act.

15 B. The division shall develop a form on which the
16 taxpayer claiming a film production tax credit pursuant to
17 the Film Production Tax Credit Act shall submit a report to
18 accompany the taxpayer's application for that credit.

19 C. With respect to the film on which the
20 application for a film production tax credit is based, the
21 film production company shall report to the division at a
22 minimum the following information:

23 (1) the total aggregate wages of the members
24 of the New Mexico resident crew;

25 (2) the number of New Mexico residents

1 employed;

2 (3) the total amount of gross receipts taxes
3 paid;

4 (4) the total number of hours worked by New
5 Mexico residents;

6 (5) the total expenditures made in New
7 Mexico that do not qualify for the film production tax
8 credit;

9 (6) the aggregate wages paid to the members
10 of the nonresident crew while working in New Mexico; and

11 (7) other information deemed necessary by
12 the division and economic development department to determine
13 the effectiveness of the film production tax credit.

14 D. For purposes of assessing the effectiveness of
15 the film production tax credit, the inability of the economic
16 development department to aggregate data due to sample size
17 shall not relieve the department of the requirement to report
18 all relevant data to the legislature. The division shall
19 provide notice to a film production company applying for the
20 film production tax credit that information provided to the
21 division may be revealed by the department in reports to the
22 legislature."

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