

1 SENATE CORPORATIONS AND TRANSPORTATION COMMITTEE SUBSTITUTE FOR  
2 SENATE BILL 613

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11 **50TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2011**

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AN ACT

RELATING TO THE PUBLIC PEACE, HEALTH, SAFETY AND WELFARE;  
DISTRIBUTING REFUNDABLE FILM PRODUCTION TAX CREDITS OVER  
MULTIPLE YEARS; SPECIFYING, FOR A LIMITED PERIOD, THE MAXIMUM  
ANNUAL PAYOUT OF ACCRUED FILM PRODUCTION TAX CREDITS; IMPOSING  
A REFUNDABLE APPLICATION FEE FOR FILM PRODUCTION COMPANIES  
DESIRING A FILM PRODUCTION TAX CREDIT.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. Section 7-1-68 NMSA 1978 (being Laws 1965,  
Chapter 248, Section 69, as amended) is amended to read:

"7-1-68. INTEREST ON OVERPAYMENTS.--

A. As provided in this section, interest shall be  
allowed and paid on the amount of tax overpaid by a person that  
is subsequently refunded or credited to that person.

B. Interest on overpayments of tax shall accrue and

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1 be paid at the rate established for individuals pursuant to  
2 Section 6621 of the Internal Revenue Code, computed on a daily  
3 basis; provided that if a different rate is specified by a  
4 compact or other interstate agreement to which New Mexico is a  
5 party, that rate shall apply to amounts due under the compact  
6 or other agreement.

7 C. Unless otherwise provided by this section,  
8 interest on an overpayment not arising from an assessment by  
9 the department shall be paid from the date of the claim for  
10 refund until a date preceding by not more than thirty days the  
11 date of the credit or refund to any person; interest on an  
12 overpayment arising from an assessment by the department shall  
13 be paid from the date of overpayment until a date preceding by  
14 not more than thirty days the date of the credit or refund to  
15 any person.

16 D. No interest shall be allowed or paid with  
17 respect to an amount credited or refunded if:

18 (1) the amount of interest due is less than  
19 one dollar (\$1.00);

20 (2) the credit or refund is made within:

21 (a) fifty-five days of the date of the  
22 claim for refund of income tax, pursuant to either the Income  
23 Tax Act or the Corporate Income and Franchise Tax Act for the  
24 tax year immediately preceding the tax year in which the claim  
25 is made;

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1 (b) seventy-five days of the date of the  
2 claim for refund of gasoline tax to users of gasoline off the  
3 highways; or

4 (c) one hundred twenty days of the date  
5 of the claim for refund of tax imposed pursuant to the  
6 Resources Excise Tax Act, the Severance Tax Act, the Oil and  
7 Gas Severance Tax Act, the Oil and Gas Conservation Tax Act,  
8 the Oil and Gas Emergency School Tax Act, the Oil and Gas Ad  
9 Valorem Production Tax Act, the Natural Gas Processors Tax Act  
10 or the Oil and Gas Production Equipment Ad Valorem Tax Act;

11 (3) the credit or refund is made within one  
12 hundred twenty days of the date of the claim for refund of  
13 income tax, pursuant to the Income Tax Act or the Corporate  
14 Income and Franchise Tax Act, for any tax year more than one  
15 year prior to the year in which the claim is made;

16 (4) Sections 6611(f) and 6611(g) of the  
17 Internal Revenue Code, as those sections may be amended or  
18 renumbered, prohibit payment of interest for federal income tax  
19 purposes;

20 (5) the credit or refund is made within sixty  
21 days of the date of the claim for refund of any tax other than  
22 income tax;

23 (6) the credit results from overpayments found  
24 in an audit of multiple reporting periods and applied to  
25 underpayments found in that audit or refunded as a net

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1 overpayment to the taxpayer pursuant to Section 7-1-29 NMSA  
2 1978;

3 (7) the department applies the credit or  
4 refund to an intercept program, to the taxpayer's estimated  
5 payment prior to the due date for the estimated payment or to  
6 offset prior liabilities of the taxpayer pursuant to Subsection  
7 E of Section 7-1-29 NMSA 1978; [~~or~~]

8 (8) the credit or refund results from  
9 overpayments the department finds pursuant to Subsection F of  
10 Section 7-1-29 NMSA 1978 that exceed the refund claimed by the  
11 taxpayer on the return; or

12 (9) the refund results from a film production  
13 tax credit pursuant to Section 7-2F-1 NMSA 1978.

14 E. Nothing in this section shall be construed to  
15 require the payment of interest upon interest."

16 SECTION 2. Section 7-2F-1 NMSA 1978 (being Laws 2002,  
17 Chapter 36, Section 1, as amended) is amended to read:

18 "7-2F-1. FILM PRODUCTION TAX CREDIT.--

19 A. The tax credit created by this section may be  
20 referred to as the "film production tax credit". An eligible  
21 film production company may apply for, and the taxation and  
22 revenue department may allow, subject to the limitations and  
23 requirements of this section, a tax credit in an amount equal  
24 to the percentage specified in Subsection B of this section of:

25 (1) direct production expenditures made in New

1 Mexico that:

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

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

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

10 (2) postproduction expenditures made in New  
11 Mexico that:

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

14 (b) are for services performed in New  
15 Mexico;

16 (c) are subject to taxation by the state  
17 of New Mexico; and

18 (d) exclude postproduction expenditures  
19 for which another taxpayer claims the film production tax  
20 credit.

21 B. Except as provided in Subsections C and J of  
22 this section, the percentage to be applied in calculating the  
23 amount of the film production tax credit is twenty-five  
24 percent.

25 C. With respect to expenditures attributable to a

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1 production for which the film production company receives a tax  
2 credit pursuant to the federal new markets tax credit program,  
3 the percentage to be applied in calculating the film production  
4 tax credit is twenty percent.

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

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

14 F. To be eligible for the film production tax  
15 credit:

16 (1) a film production company shall submit to  
17 the New Mexico film division of the economic development  
18 department information required by the division to demonstrate  
19 conformity with the requirements of this section and shall  
20 agree in writing:

21 [~~(1)~~] (a) to pay all obligations the  
22 film production company has incurred in New Mexico;

23 [~~(2)~~] (b) to publish, at completion of  
24 principal photography, a notice at least once a week for three  
25 consecutive weeks in local newspapers in regions where filming

1 has taken place to notify the public of the need to file  
 2 creditor claims against the film production company by a  
 3 specified date;

4 ~~[(3)]~~ (c) that outstanding obligations  
 5 are not waived should a creditor fail to file by the specified  
 6 date; and

7 ~~[(4)]~~ (d) to delay filing of a claim for  
 8 the film production tax credit until the New Mexico film  
 9 division delivers written notification to the taxation and  
 10 revenue department that the film production company has  
 11 fulfilled all requirements for the credit; and

12 (2) prior to making any expenditures that may  
 13 qualify for the film production tax credit, a film production  
 14 company shall reserve a tax credit by submitting a filing fee  
 15 and application to the taxation and revenue department pursuant  
 16 to the following provisions:

17 (a) the filing fee shall be based on the  
 18 anticipated film production tax credit that the film production  
 19 company will request for the development of a commercial  
 20 audiovisual product. The amount of the anticipated tax credit  
 21 shall be specified in the application;

22 (b) a tax credit shall be reserved for  
 23 the film production company in the amount of the tax credit  
 24 specified in the application. Upon compliance with the  
 25 requirements of this section, the film production company shall

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1 have priority in the amount of the reserved tax credit over all  
2 other applications for a reserved tax credit subsequently filed  
3 pursuant to this paragraph;

4 (c) for a commercial audiovisual product  
5 for which the anticipated film production tax credit is two  
6 million dollars (\$2,000,000) or less, there is no filing fee;

7 (d) for a commercial audiovisual product  
8 for which the anticipated film production tax credit is greater  
9 than two million dollars (\$2,000,000) and less than or equal to  
10 five million dollars (\$5,000,000), the filing fee is ten  
11 thousand dollars (\$10,000);

12 (e) for a commercial audiovisual product  
13 for which the anticipated film production tax credit is greater  
14 than five million dollars (\$5,000,000), the filing fee is fifty  
15 thousand dollars (\$50,000); and

16 (f) a filing fee submitted pursuant to  
17 this paragraph is fully refundable if: 1) the development of  
18 the commercial audiovisual product in New Mexico begins within  
19 twelve months after the filing fee is submitted; or 2) the  
20 development of the commercial audiovisual product in New Mexico  
21 is cancelled or delayed by an event of force majeure,  
22 including, but not limited to, war, riot, civil disturbance,  
23 natural disaster, or the death or incapacity of the director,  
24 producer or a leading performing artist.

25 G. The New Mexico film division shall determine the

1 eligibility of the company and shall report this information to  
2 the taxation and revenue department in a manner and at times  
3 the economic development department and the taxation and  
4 revenue department shall agree upon.

5 H. To receive a film production tax credit, a film  
6 production company shall apply to the taxation and revenue  
7 department on forms and in the manner the department may  
8 prescribe. The application shall include a certification of  
9 the amount of direct production expenditures or postproduction  
10 expenditures made in New Mexico with respect to the film  
11 production for which the film production company is seeking the  
12 film production tax credit. If the requirements of this  
13 section have been complied with, the taxation and revenue  
14 department shall approve the film production tax credit and  
15 issue a document granting the tax credit; provided that:

16 (1) the application for the tax credit shall  
17 be submitted within one year of the date of the last direct  
18 production expenditure in New Mexico or the last postproduction  
19 expenditure in New Mexico; and

20 (2) the amount of the approved film production  
21 tax credit shall not exceed one hundred twenty percent of the  
22 anticipated film production tax credit specified in the  
23 application submitted pursuant to Paragraph (2) of Subsection F  
24 of this section.

25 I. The film production company may apply all or a

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1 portion of the film production tax credit granted against  
2 personal income tax liability or corporate income tax  
3 liability. If the amount of the film production tax credit  
4 claimed exceeds the film production company's tax liability for  
5 the taxable year in which the credit is being claimed, the  
6 excess shall be refunded pursuant to the following provisions:

7 (1) refunds in amounts of less than two  
8 million dollars (\$2,000,000) shall be distributed in the twelve  
9 months following the date on which the initial refund claim was  
10 received;

11 (2) refunds in amounts of two million dollars  
12 (\$2,000,000) or more but less than five million dollars  
13 (\$5,000,000) shall be divided into two equal allocations, with  
14 the first allocation being distributed in the twelve months  
15 following the date on which the initial refund claim was  
16 received and the second allocation being distributed twelve  
17 months following the date of the first distribution; and

18 (3) refunds in amounts of five million dollars  
19 (\$5,000,000) or more shall be divided into three equal  
20 allocations, with the first allocation being distributed in the  
21 twelve months following the date on which the initial refund  
22 claim was received, the second allocation being distributed  
23 twelve months following the date of the first distribution and  
24 the third allocation being distributed twenty-four months  
25 following the date of the first distribution.

1 J. As applied to direct production expenditures for  
2 the services of performing artists, the film production tax  
3 credit authorized by this section shall not exceed five million  
4 dollars (\$5,000,000) for services rendered by all performing  
5 artists in a production for which the film production tax  
6 credit is claimed.

7 K. In fiscal years 2012 and 2013, the maximum  
8 aggregate amount of film production tax credits that may be  
9 claimed against personal income tax liability or corporate  
10 income tax liability in a fiscal year shall not exceed forty-  
11 five million dollars (\$45,000,000). The following provisions  
12 govern how the limitation of this subsection shall be  
13 administered:

14 (1) if the total claims submitted exceed the  
15 limitation of this subsection, the claims shall be processed in  
16 the following priority:

17 (a) refunds not made in the previous  
18 fiscal year because of the limitations of Subsection I of this  
19 section shall have the highest priority;

20 (b) claims not processed in the previous  
21 fiscal year because of the limitation of this subsection shall  
22 have the next highest priority; and

23 (c) the priority for the remainder of  
24 the claims shall be in the order that the applications and  
25 filing fees were submitted pursuant to Paragraph (2) of

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1 Subsection F of this section; and

2 (2) the limitation of this subsection does not  
3 apply to film production tax credits for direct production  
4 expenditures or postproduction expenditures for a production  
5 created to run multiple production seasons on television with  
6 an estimated order of at least seven episodes per season and  
7 qualified expenditures of at least five hundred thousand  
8 dollars (\$500,000) per episode."

9 SECTION 3. APPLICABILITY.--

10 A. The limitation of Subsection K of Section 7-2F-1  
11 NMSA 1978 does not apply to film production tax credits for  
12 which an agreement has been entered into prior to July 1, 2011  
13 pursuant to Subsection F of Section 7-2F-1 NMSA 1978, as that  
14 subsection existed prior to the amendment made by this act.

15 B. A project for a commercial audiovisual product  
16 for which an agreement has been entered into prior to July 1,  
17 2011 pursuant to Subsection F of Section 7-2F-1 NMSA 1978, as  
18 that subsection existed prior to the amendment made by this  
19 act, is not required to submit an application and a filing fee  
20 pursuant to Paragraph (2) of that subsection.

21 SECTION 4. EFFECTIVE DATE.--The effective date of the  
22 provisions of this act is July 1, 2011.