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

		ORIGINAL DATE	1/28/22		
SPONSOR	Padilla	**LAST UPDATED**		**HB**	
SHORT TITLE	Film Company Security Gross Receipts			**SB**	60
				ANALYST	Graeser

REVENUE (dollars in thousands)

Estimated Revenue					Recurring or Nonrecurring	Fund Affected
FY22	**FY23**	**FY24**	**FY25**	**FY26**		
	Up to ($270.0)	Up to ($270.0)	Up to ($270.0)	Up to ($270.0)	Recurring	General Fund (direct GRT)
	Up to $1,600.0	Up to $1,600.0	Up to $1,600.0	Up to $1,600.0	Recurring	General Fund (CIT – film production tax credits)
	Up to ($180.0)	Up to ($180.0)	Up to ($180.0)	Up to ($180.0)	Recurring	Local Governments

Parenthesis ( ) indicate revenue decreases

See FISCAL IMPLICATIONS. In practice, film production companies would forego a 25 percent to 35 percent film production tax credit in favor of granting security contractors relief from a 7.5 percent to 8.5 percent gross receipts tax liability and would likely be highly reluctant to lose this tax credit.

SOURCES OF INFORMATION
LFC Files

Responses Received From
Economic Development Department (EDD)

SUMMARY

Synopsis of Bill

Senate Bill 60 provides a gross receipts tax (GRT) deduction for security services sold to a film production company. The deduction does not require the film production company to issue non-taxable transaction certificates (NTTCs) or similar documents to acknowledge the deduction would disqualify the security services costs from the film production company's eligibility for the film production tax credit. Film production receipts at the time of shooting are minimal, so a NTTC may be inappropriate.

The effective date of the bill is July 1, 2022. The provisions of the bill expire July 1, 2027.

FISCAL IMPLICATIONS

Industry sources estimate contract security services average about $6 million per year, but the total gross receipts rise and fall with the number of film productions and the in-state shooting days. Some productions use contract security services and others use in-house security.

Qualified film production expenses are eligible for a 25 percent to 35 percent film production tax credit. Production companies can only claim the film production tax credit on qualified New Mexico expenses that are taxable. If the security company takes this deduction and does not pay taxes, the seller of that service would no longer be a qualified vendor for film tax credit purposes. The value of the deduction would be significantly less than the value of the film production tax credit, so taking this new deduction at the expense of losing the credit would offer no advantage to the film production company.

However, this proposed deduction does not require the film production company to issue a non-taxable transaction certificate (NTTF) or similar document. The NTTF would allow the film production company to acknowledge that the security company claiming the proposed deduction would disqualify the film production company from claiming a film production tax credit.

Without such acknowledgment, there could be instances of film production companies claiming, with honest and reasonable intent, the costs for security services provided, not knowing if the security company took the deduction. This could potentially result in the deduction and the credit being invalidly taken for the same expense.

The table on page 1 exhibits the unlikely possibility the film production company would forego the film production tax credit in favor of granting a tax abatement of a far less amount to the security contractor.

SIGNIFICANT ISSUES

This proposed gross receipts tax (GRT) deduction, if actually claimed, would narrow the GRT tax base. Many of the efforts over the last few years to reform New Mexico's taxes focused on broadening the GRT base and lowering the rates. Narrowing the base leads to rising GRT rates, increasing volatility in the state's largest general fund revenue source. Higher rates compound tax pyramiding issues and force consumers and businesses to pay higher taxes on all other purchases without an exemption, deduction, or credit.

The intent of this bill is unclear, but it does not appear to provide any benefit to the film production tax company. This deduction would likely create confusion, auditing issues, and has the potential to, unintentionally, allow a security company and a production company to claim a deduction and a credit for the same expense.

ADMINISTRATIVE IMPLICATIONS

Possible auditing issues could necessitate additional staff to research the taxable or nontaxable nature of each sale of security services to film production companies.

PERFORMANCE IMPLICATIONS

The LFC tax policy of accountability is not met since TRD is not required in the bill to report annually to an interim legislative committee regarding the data compiled from the reports from taxpayers taking the deduction and other information to determine whether the deduction is meeting its purpose. Industry sources indicate the purpose of the deduction is to allow the security companies to increase the wages of their employees and retain the pre-deduction profit margins.

ADMINISTRATIVE IMPLICATIONS

Because this deduction is unlikely to be utilized, except by mistake or miscommunication, TRD and EDD might have to increase audit resources to verify that both the credit and the deduction were erroneously claimed on the same receipts.

TECHNICAL ISSUES

LFC staff suggest that an NTTC or similar document be required to be given to the security contractor by the film production company. This would acknowledge that the film production company would not be claiming the film production tax credit on the because the security services would not be eligible expenses. Requiring this NTTC would then prevent the inadvertent of both the deduction and the credit being claimed on the same expenses.

POSSIBLE QUESTIONS

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.

Does the bill meet the Legislative Finance Committee tax expenditure policy principles?
1. **Vetted**: The proposed new or expanded tax expenditure was vetted through interim legislative committees, such as LFC and the Revenue Stabilization and Tax Policy Committee, to review fiscal, legal, and general policy parameters.
2. **Targeted**: The tax expenditure has a clearly stated purpose, long-term goals, and measurable annual targets designed to mark progress toward the goals.
3. **Transparent**: The tax expenditure requires at least annual reporting by the recipients, the Taxation and Revenue Department, and other relevant agencies.
4. **Accountable**: The required reporting allows for analysis by members of the public to determine progress toward annual targets and determination of effectiveness and efficiency. The tax expenditure is set to expire unless legislative action is taken to review the tax expenditure and extend the expiration date.
5. **Effective**: The tax expenditure fulfills the stated purpose. If the tax expenditure is designed to alter behavior – for example, economic development incentives intended to increase economic growth – there are indicators the recipients would not have performed the desired actions "but for" the existence of the tax expenditure.
6. **Efficient:** The tax expenditure is the most cost-effective way to achieve the desired results.

LFC Tax Expenditure Policy Principle	Met?	Comments
Vetted	✗	
Targeted		The purpose of this deduction is not clear; there are no goals and no measurable targets.
Clearly stated purpose	✗	
Long-term goals	✗	
Measurable targets	✗	
Transparent	✗	TRD is not required to report utilization of the deduction
Accountable		
Public analysis	✗	
Expiration date	✓	The deduction has a five-year life and has a delayed repeal
Effective		No purpose is stated
Fulfills stated purpose	✗	
Passes "but for" test	✗	
Efficient	✗	Not efficient and will not be utilized.
Key: ✓ Met ✗ Not Met ? Unclear		

LG/rl