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**HOUSE BILL 469**

**46TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2004**

**INTRODUCED BY**

**Ben Lujan**

**AN ACT**

**RELATING TO FINANCING OF FILMS; EXPANDING ELIGIBILITY AND  
ADDING REQUIREMENTS FOR THE FILM PRODUCTION TAX CREDIT; ADDING  
A REQUIREMENT TO THE PURCHASE BY THE STATE INVESTMENT OFFICER  
OF AN EXPECTED FILM PRODUCTION TAX CREDIT; PROVIDING FOR TAX  
REFUND INTERCEPT OF THE CREDIT.**

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

**Section 1. Section 7-2C-2 NMSA 1978 (being Laws 1985,  
Chapter 106, Section 2, as amended) is amended to read:**

**"7-2C-2. PURPOSE. --**

**A. The purpose of the Tax Refund Intercept Program  
Act is to comply with federal law:**

**(1) by enhancing the enforcement of child  
support and medical support obligations;**

**(2) to aid collection of outstanding debts**

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1 owed for overpayment of public assistance and overissuance of  
2 food stamps and overpayment of unemployment compensation  
3 benefits and nonpayment of contributions or payments in lieu of  
4 contributions or other amounts due under the Unemployment  
5 Compensation Law;

6 (3) to promote repayment of educational loans;

7 (4) to aid collection of fines, fees and costs  
8 owed to the district, magistrate and municipal courts; ~~and~~

9 (5) to aid collection of fines, fees and costs  
10 owed to the Bernalillo county metropolitan court; and

11 (6) to aid in the payment to the state  
12 investment officer of film production tax credit amounts owed  
13 to the state investment officer due to purchase of the credit  
14 pursuant to Subsection D of Section 7-27-5.26 NMSA 1978.

15 B. Efforts to accomplish the purpose of the Tax  
16 Refund Intercept Program Act may be enhanced by establishing a  
17 system to collect debts, in particular, outstanding child  
18 support obligations, educational loans, amounts due under the  
19 Unemployment Compensation Law, fines, fees and costs owed to  
20 the district, magistrate and municipal courts, ~~and~~ fines,  
21 fees and costs owed to the Bernalillo county metropolitan court  
22 and film production tax credit amounts owed to the state  
23 investment officer, by setting off the amount of such debts  
24 against the state income tax refunds or film production tax  
25 credit amounts due the debtors. "

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

3           "7-2F-1.   FILM PRODUCTION TAX CREDIT. --

4           A.   The tax credit created by this section may be  
5 referred to as the "film production tax credit".   An eligible  
6 film production company may apply for, and the taxation and  
7 revenue department may allow, a tax credit in an amount equal  
8 to fifteen percent of:

9                   (1) direct production expenditures made in New  
10 Mexico that are directly attributable to the production in New  
11 Mexico of a film and that are subject to taxation by the state  
12 of New Mexico; or

13                   (2) technology expenditures made in New Mexico  
14 that are directly attributable to the production of a  
15 commercial audiovisual product are for services performed in  
16 New Mexico and are subject to taxation by the state of New  
17 Mexico.

18           B.   The film production tax credit shall not be  
19 claimed with respect to expenditures for which the film  
20 production company has delivered a nontaxable transaction  
21 certificate pursuant to Section 7-9-86 NMSA 1978.

22           C.   A long-form narrative film production for which  
23 the film production tax credit is claimed pursuant to the  
24 provisions of Paragraph (1) of Subsection A of this section  
25 shall contain an acknowledgment that the production was filmed

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1 in New Mexico, and the film production company shall provide  
2 access to a print of the film to the New Mexico film museum for  
3 the purpose of a New Mexico premiere.

4 D. Where applicable, a film production company  
5 shall agree to name the New Mexico film division of the  
6 economic development department and the state investment  
7 council as its agents with authority to file an application for  
8 the film production tax credit to which the film production  
9 company is entitled, as provided in Subsection D of Section  
10 7-27-5.26 NMSA 1978.

11 [~~D-~~] E. To be eligible for the film production tax  
12 credit, a film production company shall submit to the New  
13 Mexico film division [~~of the economic development department~~]  
14 information required by the division to demonstrate conformity  
15 with the requirements of this section. The division shall  
16 determine the eligibility of the company and shall report this  
17 information to the taxation and revenue department in a manner  
18 and at times the economic development department and the  
19 taxation and revenue department shall agree upon.

20 [~~E-~~] F. To receive a film production tax credit, a  
21 film production company shall apply to the taxation and revenue  
22 department on forms and in the manner the department may  
23 prescribe. The application shall include a certification of  
24 the amount of direct production expenditures or technology  
25 expenditures made in New Mexico with respect to the film

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1 production for which the film production company is seeking the  
2 film production tax credit. If the requirements of this section  
3 have been complied with, the taxation and revenue department  
4 shall approve the film production tax credit and issue a  
5 document granting the tax credit.

6 ~~[F-]~~ G. The film production company may apply all  
7 or a portion of the film production tax credit granted against  
8 personal income tax liability or corporate income tax  
9 liability. If the amount of the film production tax credit  
10 claimed exceeds the film production company's tax liability for  
11 the taxable year in which the credit is being claimed, the  
12 excess shall be refunded. "

13 Section 3. Section 7-2F-2 NMSA 1978 (being Laws 2003,  
14 Chapter 127, Section 2) is amended to read:

15 "7-2F-2. DEFINITIONS. --As used in Chapter 7, Article 2F  
16 NMSA 1978:

17 A. "commercial audiovisual product" means a film or  
18 a videogame or other interactive video product intended for  
19 commercial exploitation;

20 ~~[A-]~~ B. "direct production expenditure" means a  
21 transaction that is subject to taxation in New Mexico,  
22 including:

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

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

3 (a) the personal services corporation  
4 pays gross receipts tax in New Mexico on those payments; ~~[or]~~  
5 and

6 (b) the performing artist receiving  
7 payments from the personal services corporation pays New Mexico  
8 income tax; and

9 (3) any of the following provided by a vendor:

10 (a) the story and scenario to be used  
11 for a film;

12 (b) set construction and operations,  
13 wardrobe, accessories and related services;

14 (c) photography, sound synchronization,  
15 lighting and related services;

16 (d) editing and related services;

17 (e) rental of facilities and equipment;

18 (f) leasing of vehicles;

19 (g) food or lodging;

20 (h) airfare if purchased through a New  
21 Mexico-based travel agency or travel company;

22 (i) insurance coverage and bonding if  
23 purchased through a New Mexico-based insurance agent; and

24 (j) other direct costs of producing a  
25 film in accordance with generally accepted entertainment

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1 industry practice;

2 [B-] C. "film" means a single media or multimedia  
3 program, excluding advertising messages other than national or  
4 regional advertising messages intended for exhibition, that:

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

8 (2) can be viewed or reproduced;

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

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

13 [C-] D. "film production company" means a person  
14 that produces one or more films; and

15 E. "technology expenditure" means a transaction  
16 that is subject to taxation in New Mexico and is made to obtain  
17 technological services related to the process of creating a  
18 commercial audiovisual product, including expenditures for  
19 editing, music, sound, foley, computer-generated imaging,  
20 animation, three-dimensional modeling, motion capture,  
21 compositing, storyboarding, DVD and multimedia authoring,  
22 automatic dialogue replacement, miniatures, visual effects,  
23 mixing, color correction, credits, graphics, duplication film  
24 lab, distribution and other industry standard technological  
25 services. "

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1           Section 4. Section 7-27-5.26 NMSA 1978 (being Laws 2000  
2 (2nd S.S.), Chapter 6, Section 2, as amended) is amended to  
3 read:

4           "7-27-5.26. INVESTMENT IN FILMS TO BE PRODUCED IN NEW  
5 MEXICO. --

6           A. No more than two and one-half percent of the  
7 market value of the severance tax permanent fund may be  
8 invested in New Mexico film private equity funds or a New  
9 Mexico film project under this section.

10           B. If an investment is made under this section, not  
11 more than seven million five hundred thousand dollars  
12 (\$7,500,000) of the amount authorized for investment pursuant  
13 to Subsection A of this section shall be invested in any one  
14 New Mexico film private equity fund or any one New Mexico film  
15 project.

16           C. The state investment officer shall make  
17 investments pursuant to this section only upon approval of the  
18 state investment council after a review by the private equity  
19 investment advisory committee and the New Mexico film division  
20 of the economic development department. The state investment  
21 officer may make debt or equity investments pursuant to this  
22 section only in New Mexico film projects or New Mexico film  
23 private equity funds that invest only in film projects that:

24                   (1) are filmed wholly or substantially in New  
25 Mexico;

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1 (2) have shown to the satisfaction of the New  
2 Mexico film division that a distribution contract is in place  
3 with a reputable distribution company;

4 (3) have agreed that, while filming in  
5 New Mexico, a majority of the production crew will be  
6 New Mexico residents;

7 (4) have posted a completion bond that has  
8 been approved by the New Mexico film division; provided that a  
9 completion bond shall not be required if the fund or project is  
10 guaranteed pursuant to Paragraph (5) of this subsection; and

11 (5) have obtained a full, unconditional and  
12 irrevocable guarantee of repayment of the invested amount in  
13 favor of the severance tax permanent fund:

14 (a) from an entity that has a credit  
15 rating of not less than Baa or BBB by a national rating agency;

16 (b) from a substantial subsidiary of an  
17 entity that has a credit rating of not less than Baa or BBB by  
18 a national rating agency;

19 (c) by providing a full, unconditional  
20 and irrevocable letter of credit from a United States  
21 incorporated bank with a credit rating of not less than A by a  
22 national rating agency; or

23 (d) from a substantial and solvent  
24 entity as determined by the state investment council in  
25 accordance with its standards and practices; or

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1 (6) if not guaranteed pursuant to Paragraph  
2 (5) of this subsection, have obtained no less than one-third of  
3 the estimated total production costs from other sources as  
4 approved by the state investment officer.

5 D. The state investment officer may purchase at a  
6 discount, from an eligible New Mexico film project, up to  
7 eighty percent of an expected and estimated film production tax  
8 credit available to a film production company pursuant to the  
9 provisions of Section 7-2F-1 NMSA 1978; provided that the film  
10 production company agrees to name the New Mexico film division  
11 of the economic development department and the state investment  
12 council as its agents with authority to file an application for  
13 the film production tax credit to which the company is  
14 entitled, should the company fail to apply for the credit. The  
15 New Mexico film division of the economic development department  
16 shall determine the estimated amount of a film production tax  
17 credit. The state investment council shall establish  
18 guidelines for the state investment officer's initiation of a  
19 purchase and the terms of the purchase.

20 E. As used in this section:  
21 (1) "committed capital" means the sum of the  
22 fixed amounts of money that accredited investors have obligated  
23 for investment in a New Mexico film private equity fund, which  
24 fixed amounts may be invested in that fund in one or more  
25 payments over time;

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1 (2) "film project" means a single media or  
2 multimedia program, including advertising messages, fixed on  
3 film, videotape, computer disc, laser disc or other similar  
4 delivery medium from which the program can be viewed or  
5 reproduced and that is intended to be exhibited in theaters;  
6 licensed for exhibition by individual television stations,  
7 groups of stations, networks, cable television stations or  
8 other means; or licensed for the home viewing market; and

9 (3) "New Mexico film private equity fund"  
10 means any limited partnership, limited liability company or  
11 corporation organized and operating in the United States that:

12 (a) has as its primary business activity  
13 the investment of funds in return for equity in film projects  
14 produced wholly or partly in New Mexico;

15 (b) holds out the prospects for capital  
16 appreciation from such investments; and

17 (c) accepts investments only from  
18 accredited investors as that term is defined in Section 2 of  
19 the federal Securities Act of 1933, as amended, and rules  
20 promulgated pursuant to that section. "

21 Section 5. EFFECTIVE DATE. --The effective date of the  
22 provisions of this act is July 1, 2004.