

HOUSE BUSINESS AND INDUSTRY COMMITTEE SUBSTITUTE FOR  
HOUSE BILL 469

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

AN ACT

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

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 a loan made against the  
14 credit 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 state investment council as its agent  
6 for the purpose of filing an application for the film  
7 production tax credit to which the film production company is  
8 entitled, as provided in Subsection D of Section 7-27-5.26 NMSA  
9 1978.

10 ~~[D.]~~ E. To be eligible for the film production tax  
11 credit, a film production company shall submit to the New  
12 Mexico film division of the economic development department  
13 information required by the division to demonstrate conformity  
14 with the requirements of this section and shall agree in  
15 writing:

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

18 (2) to publish, at completion of principal  
19 photography, a notice at least once a week for three  
20 consecutive weeks in local newspapers in regions where filming  
21 has taken place to notify the public of the need to file  
22 creditor claims against the film production company by a  
23 specified date;

24 (3) that outstanding obligations are not  
25 waived should a creditor fail to file by the specified date;

1 and

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

7 F. The New Mexico film division shall determine the  
8 eligibility of the film production company and shall report  
9 this information to the taxation and revenue department in a  
10 manner and at times the economic development department and the  
11 taxation and revenue department shall agree upon.

12 [~~F.~~] G. To receive a film production tax credit, a  
13 film production company shall apply to the taxation and revenue  
14 department on forms and in the manner the department may  
15 prescribe. The application shall include a certification of  
16 the amount of direct production expenditures or technology  
17 expenditures made in New Mexico with respect to the film  
18 production for which the film production company is seeking the  
19 film production tax credit. If the requirements of this  
20 section have been complied with, the taxation and revenue  
21 department shall approve the film production tax credit and  
22 issue a document granting the tax credit.

23 [~~F.~~] H. The film production company may apply all  
24 or a portion of the film production tax credit granted against  
25 personal income tax liability or corporate income tax

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1 liability. If the amount of the film production tax credit  
2 claimed exceeds the film production company's tax liability for  
3 the taxable year in which the credit is being claimed, the  
4 excess shall be refunded."

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

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

9 A. "commercial audiovisual product" means a film or  
10 a videogame or other interactive video product intended for  
11 commercial exploitation;

12 [~~A.~~] B. "direct production expenditure" means a  
13 transaction that is subject to taxation in New Mexico,  
14 including:

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

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

20 (a) the personal services corporation  
21 pays gross receipts tax in New Mexico on those payments; [~~or~~]

22 and

23 (b) the performing artist receiving  
24 payments from the personal services corporation pays New Mexico  
25 income tax; and

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

2 (a) the story and scenario to be used  
3 for a film;

4 (b) set construction and operations,  
5 wardrobe, accessories and related services;

6 (c) photography, sound synchronization,  
7 lighting and related services;

8 (d) editing and related services;

9 (e) rental of facilities and equipment;

10 (f) leasing of vehicles;

11 (g) food or lodging;

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

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

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

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

22 (1) is fixed on film, digital medium,  
23 videotape, computer disc, laser disc or other similar delivery  
24 medium;

25 (2) can be viewed or reproduced;

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

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

5 [~~E.~~] D. "film production company" means a person  
6 that produces one or more films; and

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

18 Section 4. Section 7-27-5.26 NMSA 1978 (being Laws 2000  
19 (2nd S.S.), Chapter 6, Section 2, as amended) is amended to  
20 read:

21 "7-27-5.26. INVESTMENT IN FILMS TO BE PRODUCED IN NEW  
22 MEXICO.--

23 A. No more than two and one-half percent of the  
24 market value of the severance tax permanent fund may be  
25 invested in New Mexico film private equity funds or a New

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1 Mexico film project under this section.

2 B. If an investment is made under this section, not  
3 more than seven million five hundred thousand dollars  
4 (\$7,500,000) of the amount authorized for investment pursuant  
5 to Subsection A of this section shall be invested in any one  
6 New Mexico film private equity fund or any one New Mexico film  
7 project.

8 C. The state investment officer shall make  
9 investments pursuant to this section only upon approval of the  
10 state investment council after a review by the private equity  
11 investment advisory committee and the New Mexico film division  
12 of the economic development department. The state investment  
13 officer may make debt or equity investments pursuant to this  
14 section only in New Mexico film projects or New Mexico film  
15 private equity funds that invest only in film projects that:

16 (1) are filmed wholly or substantially in New  
17 Mexico;

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

21 (3) have agreed that, while filming in  
22 New Mexico, a majority of the production crew will be  
23 New Mexico residents;

24 (4) have posted a completion bond that has  
25 been approved by the New Mexico film division; provided that a

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1 completion bond shall not be required if the fund or project is  
2 guaranteed pursuant to Paragraph (5) of this subsection; and

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

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

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

11 (c) by providing a full, unconditional  
12 and irrevocable letter of credit from a United States  
13 incorporated bank with a credit rating of not less than A by a  
14 national rating agency; or

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

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

22 D. The state investment officer may ~~[purchase at a~~  
23 ~~discount, from]~~ loan at a market rate of interest, in respect  
24 to an eligible New Mexico film project, up to eighty percent of  
25 an expected and estimated film production tax credit available

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1 to a film production company pursuant to the provisions of  
2 Section 7-2F-1 NMSA 1978; provided that the film production  
3 company agrees to name the state investment council as its  
4 agent for the purpose of filing an application for the film  
5 production tax credit to which the company is entitled, should  
6 the company fail to apply for the credit. The New Mexico film  
7 division of the economic development department shall determine  
8 the estimated amount of a film production tax credit. The  
9 state investment council shall establish guidelines for the  
10 state investment officer's initiation of a [~~purchase~~] loan and  
11 the terms of the [~~purchase~~] loan.

12 E. As used in this section:

13 (1) "committed capital" means the sum of the  
14 fixed amounts of money that accredited investors have obligated  
15 for investment in a New Mexico film private equity fund, which  
16 fixed amounts may be invested in that fund in one or more  
17 payments over time;

18 (2) "film project" means a single media or  
19 multimedia program, including advertising messages, fixed on  
20 film, videotape, computer disc, laser disc or other similar  
21 delivery medium from which the program can be viewed or  
22 reproduced and that is intended to be exhibited in theaters;  
23 licensed for exhibition by individual television stations,  
24 groups of stations, networks, cable television stations or  
25 other means; or licensed for the home viewing market; and

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

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

7                               (b) holds out the prospects for capital  
8 appreciation from such investments; and

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

13           Section 5. SEVERABILITY.--If any part or application of  
14 this act is held invalid, the remainder or its application to  
15 other situations or persons shall not be affected.

16           Section 6. EMERGENCY.--It is necessary for the public  
17 peace, health and safety that this act take effect immediately.