

AN ACT

RELATING TO TAXATION; INCREASING THE FILM PRODUCTION TAX CREDIT; REPEALING THE NEW MEXICO FILMMAKER TAX CREDIT.

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 are directly attributable to the production in New Mexico of a film or commercial audiovisual product and that are subject to taxation by the state of New Mexico; and

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

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

(b) for services performed in New Mexico; and

(c) subject to taxation by the state of

New Mexico.

B. Except as provided in Subsection C of this section, the percentage to be applied in calculating the amount of the film production tax credit is:

(1) twenty percent; and

(2) for taxable years beginning prior to January 1, 2009, an additional five percent.

C. The additional five percent tax credit amount pursuant to Paragraph (2) of Subsection B of this section shall not be available with respect to expenditures attributable to a production for which the film production company receives a tax credit pursuant to the federal new markets tax credit program.

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

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

F. To be eligible for the film production tax credit, a film production company shall submit to the New Mexico film division of the economic development department

information required by the division to demonstrate conformity with the requirements of this section and shall agree in writing:

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

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

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

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

G. The New Mexico film division shall determine the eligibility of the company and shall report this information to the taxation and revenue department in a manner and at times the economic development department and the taxation and revenue department shall agree upon.

H. To receive a film production tax credit, a film

production company shall apply to the taxation and revenue department on forms and in the manner the department may prescribe. The application shall include a certification of the amount of direct production expenditures or postproduction expenditures made in New Mexico with respect to the film production for which the film production company is seeking the film production tax credit. If the requirements of this section have been complied with, the taxation and revenue department shall approve the film production tax credit and issue a document granting the tax credit.

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

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

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

A. "commercial audiovisual product" means a film or a videogame intended for commercial exploitation;

B. "direct production expenditure" means a transaction that is subject to taxation in New Mexico,

including:

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

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

(a) the personal services corporation pays gross receipts tax in New Mexico on those payments; and

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

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

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

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

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

(d) editing and related services;

(e) rental of facilities and equipment;

(f) leasing of vehicles;

(g) food or lodging;

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

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

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

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

D. "film" means a single media or multimedia program, excluding advertising messages other than national or regional advertising messages intended for exhibition, that:

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

(2) can be viewed or reproduced;

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

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

E. "film production company" means a person that produces one or more films; and

F. "postproduction expenditure" means an expenditure that occurs after the completion of principal and ongoing photography, including an expenditure for editing, Foley recording, automatic dialogue replacement, sound

editing, special effects, including computer-generated imagery or other effects, scoring and music editing, beginning and end credits, negative cutting, soundtrack production, dubbing, subtitling or addition of sound or visual effects; but not including an expenditure for advertising, marketing, distribution or expense payments."

Section 3. REPEAL.--Section 7-2G-1 NMSA 1978 (being Laws 2005, Chapter 337, Section 1) is repealed.

Section 4. APPLICABILITY.--The provisions of this act apply to taxable years beginning on or after January 1, 2006.

Section 5. EFFECTIVE DATE.--The effective date of the provisions of Section 3 of this act is July 1, 2006.