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

		ORIGINAL DATE	2/14/07		
SPONSOR	B. Lujan	**LAST UPDATED**	3/14/07	**HB**	757/aHBIC/aSCORC
SHORT TITLE	Film Production Tax Credit Applicability			**SB**	
				ANALYST	Francis

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Non-Rec	Fund Affected
FY07	**FY08**	**FY09**		
	$2,200.0	$3,000.0	Recurring	General Fund
	See Narrative for Negative Out Year Impacts			

(Parenthesis ( ) Indicate Revenue Decreases)

Relates to SB 802

SOURCES OF INFORMATION
LFC Files
Taxation and Revenue Department (TRD)

Responses Received From
New Mexico Film Office (NMFO)
Taxation and Revenue Department

SUMMARY

Synopsis of SCORC Amendment

The Senate Corporations and Transportation Committee amended House Bill 757 adding an additional credit of 5 percent for wages and salaries if 75 percent of the key below-the-line employees are New Mexican residents and if the project is covered by a collective bargaining agreement. This makes HB757 identical to SB802 as amended.

Synopsis of HBIC Amendment

The House Business and Industry Committee amended House Bill 757 by delineating between direct production expenditures and postproduction expenditures. Post production expenditures for which another taxpayer has claimed the credit are ineligible for the credit. HBIC also modified the definition of "film production company" to allow producers who only work on a part of a film rather than the whole film to be eligible and the definition of "postproduction expenditures" by removing the requirement that the expenditures have to be made following principal photography.

Synopsis of Original Bill

House Bill 757 amends the film production tax credit to set the credit at 25 percent permanently except for those productions that qualify for the federal new markets tax credit which remain at 20 percent, limits the credit for services of performing artists to $5 million, and makes technical corrections. Under current law, 5 percent of the 25 percent credit expires beginning tax year 2009.

HB 757 also makes three technical changes:

1. clarifies that the credit only goes to taxpayers for productions that have not already received the credit.
2. clarifies that qualified personal services corporation expenditures are those that are subject to gross receipts tax.
3. clarifies that qualified expenditures does not include chartering airplanes for out of state transportation or non-commercial airfare booked by an NM travel agent.

FISCAL IMPLICATIONS

Film Production Tax Credit: House Bill 757a Impacts

(thousands of dollars)	2007	2008	2009	2010	2010	2010
Assumptions:						
Total Qualified expenditures by tax year	133,000	146,300	160,900	177,000	195,000	215,000
Share due to performing artists > $20 million	12,000	13,200	14,500	16,000	17,600	19,400
Present law:						
Credit rate	25.0%	25.0%	20.0%	20.0%	20.0%	20.0%
Film Production credit approved by tax year	**(33,250)**	**(36,575)**	**(32,180)**	**(35,400)**	**(39,000)**	**(43,000)**
Credit s claimed by year from approval	**0%**	**80%**	**20%**			
Film Production credit claimed by fiscal year	**(15,000)**	**(26,600)**	**(35,910)**	**(33,059)**	**(34,756)**	**(38,280)**
HB 757:						
Credit Base	121,000	133,100	146,400	161,000	177,400	195,600
Credit rate	25.0%	25.0%	25.0%	25.0%	25.0%	25.0%
Credit	(30,300)	(33,300)	(36,600)	(40,300)	(44,400)	(48,900)
Increased credit for expenditures on films with NM keys	(210)	(230)	(250)	(275)	(300)	(330)
Film Production credit approved by tax year	**(30,510)**	**(33,530)**	**(36,850)**	**(40,575)**	**(44,700)**	**(49,230)**
Credit s claimed by year from approval	**0%**	**80%**	**20%**			
Film Production credit claimed by fiscal year	**(15,000)**	**(24,408)**	**(32,926)**	**(36,186)**	**(39,830)**	**(43,875)**
Impacts of HB757a (Rounded)	**-**	**2,200**	**3,000**	**(3,100)**	**(5,100)**	**(5,600)**

Source: TRD

In 2006, there were 21 films with $96.8 million in qualified expenditures or $4.6 million per project. Using the NM Film Office's estimate that 10 films will qualify for the 30 percent credit on wages and salaries, the impact of this provision is a roughly $200 thousand reduction in revenues.

The cap on the services of performing artists (e.g. actors) will reduce the amount of the credit for large productions. The Taxation and Revenue Department (TRD) estimates this impact is a reduction in the credit amount of $3.3 million in FY08 and $3.6 million in FY09. This is based on information provided by the NM Film Office. They report that this is the reduction of credit for a major film, similar to one last year, and they expect at least one of these films per year.

In FY10 and beyond, the fiscal impact will include the 5 percent credit that had been scheduled to expire on January 1, 2009. That impact is estimated to be a reduction in revenues of $8 million in FY09 and growing roughly $1 million per year if current trends continue.

It is important to note that the amount of film expenditures has grown dramatically. Last year, House Bill 358 was passed adding an additional 10 percent credit for film expenditures. That bill was scored as having a $1.5 million impact, based on information provided by NM Film Office. It is now estimated that the impact was closer to $10 million for that bill. The film credit under current law will reduce general fund revenues $23 million in FY08 growing to $34 million by FY10.

SIGNIFICANT ISSUES

The clarification regarding air charters and commercial air travel closes a loophole in the credit that currently allows an in-state travel agent to arrange travel for film productions using charter planes. This was the subject of some controversy in the fall of 2006 when a film production claimed $25,000 for the charter of a plane for one of the lead actors.

NM Film Office:

> With significant infrastructure investments being made by private companies, and more investments being contemplated in the next several years, removing the end date of December 31, 2007 for the additional five percent (enacted last session, bringing the tax credit to 25%) will encourage these investments to come to fruition. Other states have lost film infrastructure opportunities due to sunset clauses, and a general lack of confidence in the longevity of a state's incentive program.

TECHNICAL ISSUES:

TRD:

> **Allowing credit only once for each activity:**
> As amended, the bill clarifies that the credit can be claimed only once for a given amount of direct production expenditures or postproduction expenditures. This is helpful because present law is not clear on this issue. The remaining problem is how should credits be allocated between two otherwise eligible taxpayers for expenditures related to the same services? For example, one film production company could provide services to another film production company in such a way that both companies would otherwise be eligible for the credit for their expenditures. As amended, the statute does not specify which company has the priority in claiming the credits. This could lead to disputes and litigation. One possible solution would be to stipulate that the company selling the services is the one entitled to the credit. The Department may be able to address this issue through regulations.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

SB 802 as amended is identical to HB 757 as amended.

NF/nt