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

		ORIGINAL DATE	2/27/15		
SPONSOR	HBEC	**LAST UPDATED**	3/11/15	**HB**	216/HBECS
SHORT TITLE	Assignment of Film Production Tax Credits			**SB**	
				ANALYST	Graeser

REVENUE (dollars in thousands)

Estimated Revenue					**Recurring or Nonrecurring**	**Fund Affected**
FY15	**FY16**	**FY17**	**FY18**	**FY19**		
	See Fiscal Impact				Recurring	General Fund

(Parenthesis ( ) indicate revenue decreases

SOURCES OF INFORMATION
LFC Files

Responses Received From
Office of State Auditor (OSA)
Taxation and Revenue Department (TRD)
Economic Development Department/Film Office (EDD/FO)

SUMMARY

Synopsis of Bill

House Business and Employee Committee Substitute House Bill 216 adds a new section to the Film Production Tax Credit Act, which would allow a film production company which is eligible to receive a film production tax credit, to assign that tax credit to a third-party financial institution or to an investment fund that is not a bank or similar financial institution. The substitute bill includes some provisions that are not clear or may cause administrative difficulties:

- The credit may be assigned to a State Chartered or National Chartered bank, savings institution or credit union, provided that the financial institution files a New Mexico income tax return. This provision is straight forward and administrable.
- The credit may be assigned to a “fund purposely created to produce a film.” It is uncertain how this assignment would be administered, because a fund is not required in the bill to file a New Mexico income tax return.
- The credit may be assigned “to an authorized third party, one time in a full or partial amount,” where the authorized third party holds the rights to a film eligible for a film production tax credit and initiates the film’s production. It is uncertain how partial credit would be administered, nor is there a definition of “one time”.
- The assignees would not be required to file any sort of New Mexico tax return. This

might discriminate against New Mexico banks in favor of a non-resident bank for the financing of films.
- The bill allows TRD to establish procedures for the allocation and assignment of the film production tax credit, but may not be able to promulgate regulations that have the force of law.

The effective date is not specified -- assume 90 days following adjournment (June 19, 2015); applicable to taxable years beginning on or after January 1, 2015.

FISCAL IMPLICATIONS

TRD notes in its review that this bill would have no fiscal impact. Under current law, the film production tax credit is already at the maximum level allowed by statute, and is forecasted to remain so going forward, which makes any increase impossible without raising the maximum amount allowed.

The underlying film production credit may be counter to the LFC tax policy principles of adequacy, efficiency, accountability and equity. There is controversy whether the film production credit has been an economic benefit to the State. The first phase of a three-year study of the film production credit was delivered in July 2014. This report highlights the difficulties (and costs) encountered in estimating the cost of tax expenditures.

SIGNIFICANT ISSUES

The substitute bill drops the requirement that the assignee must have some tax filing obligation with the state. This may expand the entities that can benefit from the assignment if TRD implements procedures where the credit is approved pursuant to an income tax return, but the refund/rebate check is assigned to someone other than the entity that filed the tax return. This is most likely to occur when an out-of-state bank loans the producer money. The out-of-state bank might insist that the film production credit be directly remitted to that bank by TRD. This could be a condition for the out-of-state bank to grant the loan. However, if the New Mexico tax filing obligation were reinstated, then a New Mexico bank (that would receive a direct distribution of earned film production credits) would earn the interest paid by the producer on the loan.

Because of federal banking rules, there are only a limited number of New Mexico banks that could bankroll a major production.

PERFORMANCE IMPLICATIONS

The LFC tax policy of accountability is largely met for the underlying film production credit. TRD is 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. Interpreting the data and modeling the economic and revenue impacts of the underlying credit are neither assisted nor impeded by requiring additional data on the amount of credits assigned to third-party financial institutions.

ADMINISTRATIVE IMPLICATIONS

TRD notes in its analysis, “The bill will require the department to either promulgate regulations, or adopt new forms and instructions to set forth the procedures for assigning the credit. There would be a minimal impact to IT systems, as some system changes would be required that could be handled together with regular year-end changes."

TECHNICAL ISSUES

Because of the lack of clarity of the provisions of this bill, LFC staff suggest that the bill be amended to provide explicit regulatory (rule-making) authority to the Secretary of TRD.

OTHER SUBSTANTIVE ISSUED

The OSA notes that the underlying film production tax credit requires accountability:

> "In 2010, Senate Bill 47 was enacted and was compiled as Section 9-15-56 NMSA 1978. This state law provides guidelines for the provisions of an economic development tax incentive. "Economic development tax incentive" is defined as 'a credit, deduction, rebate, exemption or other tax benefit for the primary purpose of promoting economic development or offering an advantage to a particular industry or type of business to do business in New Mexico.'"
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> "Section 9-15-56 NMSA 1978 requires language appear in tax incentive legislation that states a purpose for the incentive, so there is some benchmark to determine if the results expected are being achieved. In addition, reporting is required and a lead agency must be identified that should be collecting information about the use of the incentive. Other requirements are that job creation resulting from the incentive be tracked, provisions be set out that describe financial obligations of taxpayers if they fail to meet all of the requirements of an ongoing incentive, and that a mandatory review of the credit be required at least every seven years."
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> "Although not all of these requirements are necessary in every tax incentive and because some credits have limited time periods in which they will apply, nonetheless there are some of these provisions that should appear in every tax incentive that passes the Legislature. Therefore, the Office of the State Auditor suggests the following amendment be added to this bill to satisfy the requirements of Section 9-15-56 NMSA 1978:"
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> "The taxation and revenue department shall compile an annual report on the ____________________________ (name of tax credit or deduction) created pursuant to Section __ (Section/Subsection) that shall include the number of taxpayers approved by the department to receive the tax credit/deduction, the aggregate amount of credits/deductions approved and any other information necessary to evaluate the effectiveness of the tax credit/deduction. Beginning in ______ (year) and every ___ (number of years) thereafter that the tax credit/deduction is in effect, the department shall compile and present the annual reports to the revenue stabilization and tax policy committee and the legislative finance committee with an analysis of the effectiveness and cost of the tax credit/deduction and whether the tax credit/deduction is performing the purpose/purposes for which it was created."

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