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HOUSE BILL 325

**52ND LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2015**

INTRODUCED BY

Brian Egolf

AN ACT

RELATING TO TAXATION; REMOVING SERIES TELEVISION PRODUCTIONS  
FROM THE AGGREGATE CAP ON FILM PRODUCTION TAX CREDITS.

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, subject to the limitation in this  
section, 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:

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1 (a) are directly attributable to the  
2 production in New Mexico of a film or commercial audiovisual  
3 product;

4 (b) are subject to taxation by the state  
5 of New Mexico;

6 (c) exclude direct production  
7 expenditures for which another taxpayer claims the film  
8 production tax credit; and

9 (d) do not exceed the usual and  
10 customary cost of the goods or services acquired when purchased  
11 by unrelated parties. The secretary of taxation and revenue  
12 may determine the value of the goods or services for purposes  
13 of this section when the buyer and seller are affiliated  
14 persons or the sale or purchase is not an arm's length  
15 transaction; and

16 (2) postproduction expenditures made in New  
17 Mexico that:

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

20 (b) are for services performed in New  
21 Mexico;

22 (c) are subject to taxation by the state  
23 of New Mexico;

24 (d) exclude postproduction expenditures  
25 for which another taxpayer claims the film production tax

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1 credit; and

2 (e) do not exceed the usual and  
3 customary cost of the goods or services acquired when purchased  
4 by unrelated parties. The secretary of taxation and revenue  
5 may determine the value of the goods or services for purposes  
6 of this section when the buyer and seller are affiliated  
7 persons or the sale or purchase is not an arm's length  
8 transaction.

9 B. Except as otherwise provided in this section,  
10 the percentage to be applied in calculating the amount of the  
11 film production tax credit is twenty-five percent.

12 C. In addition to the percentage applied pursuant  
13 to Subsection B of this section, another five percent shall be  
14 applied in calculating the amount of the film production tax  
15 credit to direct production expenditures:

16 (1) on series television productions intended  
17 for commercial distribution with an order for at least six  
18 episodes in a single season; provided that the budget per  
19 episode is fifty thousand dollars (\$50,000) or more; or

20 (2) that are directly attributable to the  
21 wages and fringe benefits paid to a New Mexico resident  
22 directly employed in an industry crew position, excluding a  
23 performing artist, on a production with a total budget of:

24 (a) not more than thirty million dollars  
25 (\$30,000,000) that shoots at least ten principal photography

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1 days at a qualified production facility in New Mexico; or

2 (b) thirty million dollars (\$30,000,000)  
3 or more that shoots at least fifteen principal photography days  
4 at a qualified production facility in New Mexico.

5 D. With respect to expenditures attributable to a  
6 production for which the film production company receives a tax  
7 credit pursuant to the federal new markets tax credit program,  
8 the percentage to be applied in calculating the film production  
9 tax credit is twenty percent.

10 E. A claim for film production tax credits shall be  
11 filed as part of a return filed pursuant to the Income Tax Act  
12 or the Corporate Income and Franchise Tax Act or an information  
13 return filed by a pass-through entity. The date a credit claim  
14 is received by the department shall determine the order that a  
15 credit claim is authorized for payment by the department.

16 Except as otherwise provided in this section, the aggregate  
17 amount of the film production tax credit claims that may be  
18 authorized for payment in any fiscal year is fifty million  
19 dollars (\$50,000,000) with respect to the direct production  
20 expenditures or postproduction expenditures made on film or  
21 commercial audiovisual products that are not series television  
22 productions. Amounts of credits for series television  
23 productions shall not be counted toward that limit and are not  
24 subject to an aggregate limit. A film production company that  
25 submits a claim for a film production tax credit that is unable

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1 to receive the tax credit because the claims for the fiscal  
2 year exceed the limitation in this subsection shall be placed  
3 for the subsequent fiscal year at the front of a queue of film  
4 production tax credit claimants submitting claims in the  
5 subsequent fiscal year in the order of the date on which the  
6 credit was authorized for payment.

7 F. If, in fiscal years 2013 through 2015, the  
8 aggregate amount in each fiscal year of the film production tax  
9 credit claims authorized for payment is less than fifty million  
10 dollars (\$50,000,000), then the difference in that fiscal year  
11 or ten million dollars (\$10,000,000), whichever is less, shall  
12 be added to the aggregate amount of the film production tax  
13 credit claims that may be authorized for payment pursuant to  
14 Subsection E of this section in the immediately following  
15 fiscal year.

16 G. Except as otherwise provided in this section,  
17 credit claims authorized for payment pursuant to the Film  
18 Production Tax Credit Act shall be paid pursuant to provisions  
19 of the Tax Administration Act to the taxpayer as follows:

20 (1) a credit claim amount of less than two  
21 million dollars (\$2,000,000) per taxable year shall be paid  
22 immediately upon authorization for payment of the credit claim;

23 (2) a credit claim amount of two million  
24 dollars (\$2,000,000) or more but less than five million dollars  
25 (\$5,000,000) per taxable year shall be divided into two equal

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1 payments, with the first payment to be made immediately upon  
2 authorization of the payment of the credit claim and the second  
3 payment to be made twelve months following the date of the  
4 first payment; and

5 (3) a credit claim amount of five million  
6 dollars (\$5,000,000) or more per taxable year shall be divided  
7 into three equal payments, with the first payment to be made  
8 immediately upon authorization of payment of the credit claim,  
9 the second payment to be made twelve months following the date  
10 of the first payment and the third payment to be made twenty-  
11 four months following the date of the first payment.

12 H. For a fiscal year in which the amount of total  
13 credit claims that are not for series television productions  
14 and that are authorized for payment is less than the aggregate  
15 amount of the film production tax credit claims for non-series  
16 television productions that may be authorized for payment  
17 pursuant to this section, the next scheduled payments for those  
18 credit claims authorized for payment pursuant to Subsection G  
19 of this section shall be accelerated for payment for that  
20 fiscal year and shall be paid to a taxpayer pursuant to the Tax  
21 Administration Act and in the order in which outstanding  
22 payments are scheduled in the queue established pursuant to  
23 Subsections E and G of this section; provided that the total of  
24 those credit claims authorized for payment shall not exceed the  
25 aggregate amount of the film production tax credit claims for

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1 non-series television productions that may be authorized for  
2 payment pursuant to this section. If a partial payment is made  
3 pursuant to this subsection, the difference owed shall retain  
4 its original position in the queue.

5 I. Any amount of a credit claim for non-series  
6 television productions that is carried forward pursuant to  
7 Subsection G of this section shall be subject to the limit on  
8 the aggregate amount of credit claims that may be authorized  
9 for payment pursuant to Subsections E and F of this section in  
10 the fiscal year in which that amount is paid.

11 J. A credit claim shall only be considered received  
12 by the department if the credit claim is made on a complete  
13 return filed after the close of the taxable year. All direct  
14 production expenditures and postproduction expenditures  
15 incurred during the taxable year by a film production company  
16 shall be submitted as part of the same income tax return and  
17 paid pursuant to this section. A credit claim shall not be  
18 divided and submitted with multiple returns or in multiple  
19 years.

20 K. For purposes of determining the payment of  
21 credit claims pursuant to this section, the secretary of  
22 taxation and revenue may require that credit claims of  
23 affiliated persons be combined into one claim if necessary to  
24 accurately reflect closely integrated activities of affiliated  
25 persons.

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

6           M. A production for which the film production tax  
7 credit is claimed pursuant to Paragraph (1) of Subsection A of  
8 this section shall contain an acknowledgment in the end screen  
9 credits that the production was filmed in New Mexico, and a  
10 state logo provided by the division shall be included in the  
11 end screen credits of long-form narrative film productions,  
12 unless otherwise agreed upon in writing by the film production  
13 company and the division.

14           N. To be eligible for the film production tax  
15 credit, a film production company shall submit to the division  
16 information required by the division to demonstrate conformity  
17 with the requirements of the Film Production Tax Credit Act,  
18 including detailed information on each direct production  
19 expenditure and each postproduction expenditure. A film  
20 production company shall make reasonable efforts, as determined  
21 by the division, to contract with a vendor that provides goods,  
22 inventory or services directly related to that vendor's  
23 ordinary course of business. A film production company shall  
24 provide to the division a projection of the film production tax  
25 credit claim the film production company plans to submit in the

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1 fiscal year. In addition, the film production company shall  
2 agree in writing:

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

5 (2) to post a notice at completion of  
6 principal photography on the web site of the division that:

7 (a) contains production company  
8 information, including the name of the production, the address  
9 of the production company and contact information that includes  
10 a working phone number, fax number and email address for both  
11 the local production office and the permanent production office  
12 to notify the public of the need to file creditor claims  
13 against the film production company; and

14 (b) remains posted on the web site until  
15 all financial obligations incurred in the state by the film  
16 production company have been paid;

17 (3) that outstanding obligations are not  
18 waived should a creditor fail to file;

19 (4) to delay filing of a claim for the film  
20 production tax credit until the division delivers written  
21 notification to the taxation and revenue department that the  
22 film production company has fulfilled all requirements for the  
23 credit; and

24 (5) to submit a completed application for the  
25 film production tax credit and supporting documentation to the

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1 division within one year of making the final expenditures in  
2 New Mexico that are included in the credit claim.

3 O. The division shall determine the eligibility of  
4 the company and shall report this information to the taxation  
5 and revenue department in a manner and at times the economic  
6 development department and the taxation and revenue department  
7 shall agree upon. The division shall also post on its web site  
8 all information provided by the film production company that  
9 does not reveal revenue, income or other information that may  
10 jeopardize the confidentiality of income tax returns, including  
11 that the division shall report monthly the projected amount of  
12 credit claims for the fiscal year.

13 P. To provide guidance to film production companies  
14 regarding the amount of credit capacity remaining in the fiscal  
15 year, the taxation and revenue department shall post monthly on  
16 that department's web site the aggregate amount of credits that  
17 are subject to the limit on the aggregate amount of credit  
18 claims that may be authorized for payment, claimed and  
19 processed for the fiscal year.

20 Q. To receive a film production tax credit, a film  
21 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 postproduction  
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; provided that for the film  
3 production tax credit, the application shall be submitted  
4 within one year of the date of the last direct production  
5 expenditure in New Mexico or the last postproduction  
6 expenditure in New Mexico. If the amount of the requested tax  
7 credit exceeds five million dollars (\$5,000,000), the  
8 application shall also include the results of an audit,  
9 conducted by a certified public accountant licensed to practice  
10 in New Mexico, verifying that the expenditures have been made  
11 in compliance with the requirements of this section. If the  
12 requirements of this section have been complied with, subject  
13 to the provisions of Subsection E of this section, the taxation  
14 and revenue department shall approve the film production tax  
15 credit and issue a document granting the tax credit.

16 R. The film production company may apply all or a  
17 portion of the film production tax credit granted against  
18 personal income tax liability or corporate income tax  
19 liability. If the amount of the film production tax credit  
20 claimed exceeds the film production company's tax liability for  
21 the taxable year in which the credit is being claimed, the  
22 excess shall be refunded.

23 S. As applied to direct production expenditures for  
24 the services of performing artists, the film production tax  
25 credit authorized by this section shall not exceed five million

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1 dollars (\$5,000,000) for services rendered by all performing  
2 artists in a production for which the film production tax  
3 credit is claimed."

4 SECTION 2. EFFECTIVE DATE.--The effective date of the  
5 provisions of this act is July 1, 2015.

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