



**Mike Kadas**  
Director

# Montana Department of Revenue

EXHIBIT 7  
DATE 2-22-13  
HB 480



**Steve Bullock**  
Governor

February 21, 2013

To: Chairman Mike Miller  
House Taxation Committee

From: Gene Walborn  
Business and Income Taxes Division Administrator

RE: House Bill 480 – Film Production Credits

At the House Bill 480 hearing on February 21, 2013, the committee requested information on the amount of the film production credits claimed. The attached pages from the Department's Biennial Report contains the information the committee requested

If you have any questions, please feel free to contact me at (406) 444-0908.

## Credits-Film Employment Credit

### Film Employment Credit

**Code:** 15-31-901, MCA through 15-31-911, MCA

**Legislation:** HB 584, 2005 Session

Taxpayers are allowed a credit against income or corporation license tax for 14 percent of the first \$50,000 of compensation paid to each Montana resident employed on a state-certified film production. Employee compensation for which the credit is claimed may not be deducted from gross revenue in calculating taxable income.

If the credit is more than the taxpayer's liability, the taxpayer must make an irreversible election to either have the credit refunded or to carry it forward for up to four years.

If the Department of Commerce determines that the production has not met the conditions of certification, the taxpayer must repay any credits already received.

The credit originally had a limit of \$1 million in credits per production and a sunset date of January 1, 2010. The 2007 Legislature removed the \$1 million limit (HB 40). The 2009 Legislature extended the sunset date to January 1, 2015 (HB 163).

An individual may claim the credit for expenditures made directly by a sole-proprietor business or may claim a share of the credit for expenditures made by a pass-through entity.

A taxpayer who takes this credit reduces taxes by 14 percent of compensation paid to a Montana resident but gives up the deduction for the expense, which increases taxes by 6.9 percent of the compensation (assuming the taxpayer is in the top rate bracket) for a net reduction of 7.1 percent. This gives a cost advantage to hiring Montana residents rather than non-residents. For employees paid less than \$50,000, the advantage is 7.1 percent of compensation. For employees who would be paid more than \$50,000, the advantage is \$3,550.

A taxpayer who itemizes deductions and claims the credit will have a smaller federal deduction for state taxes, which will result in higher federal taxes. This may result in a larger state deduction for federal taxes, further reducing state taxes. The following table shows the net changes in state and federal taxes and the net taxpayer subsidy from a credit based on \$100 of compensation paid to a Montana resident working on a film produced by a taxpayer in the top state and federal rate brackets.

<b>\$100 Film Employment Expenditure</b>		
<b>Difference When Taxpayer Claims Federal Expense Deduction and State Credit Instead of Deduction</b>		
	<b>Deduction for Federal Taxes</b>	
	<b>Capped</b>	<b>Not Capped</b>
Federal Tax Subsidy	<b>(\$2.49)</b>	<b>(\$2.55)</b>
State Tax Subsidy	\$7.10	\$7.28
Net Taxpayer Subsidy	\$4.62	\$4.73

## Credits-Film Employment Credit

The following tables show credits claimed on timely-filed individual income tax returns for 2005 through 2011<sup>4</sup>. The first shows credits claimed by taxpayers who either had tax liability greater than their credits or chose the carry-over option for any excess credits. The second table shows credits claimed by taxpayers who chose to have excess credits refunded.

Film Production Employment Credit									
	Residents		Non-Residents		Part-Year Residents		Total		
	N	\$	N	\$	N	\$	N	\$	
2005	0	\$0	0	\$0	0	\$0	0	\$0	\$0
2006	0	\$0	0	\$0	0	\$0	0	\$0	\$0
2007	*	\$2,290	0	\$0	0	\$0	*	\$2,290	\$2,290
2008	0	\$0	0	\$0	0	\$0	0	\$0	\$0
2009	0	\$0	0	\$0	0	\$0	0	\$0	\$0
2010	0	\$0	0	\$0	0	\$0	0	\$0	\$0
2011	0	\$0	0	\$0	0	\$0	0	\$0	\$0

Refundable Film Production Employment Credit									
	Residents		Non-Residents		Part-Year Residents		Total		
	N	\$	N	\$	N	\$	N	\$	
2005	0	\$0	*	\$115	*	\$13	*	\$128	\$128
2006	0	\$0	0	\$0	0	\$0	0	\$0	\$0
2007	24	\$14,516	*	\$2,046	0	\$0	*	\$16,562	\$16,562
2008	0	\$0	*	\$3,470	0	\$0	*	\$3,470	\$3,470
2009	0	\$0	0	\$0	0	\$0	0	\$0	\$0
2010	*	\$11,480	0	\$0	0	\$0	*	\$11,480	\$11,480
2011	*	\$5,316	0	\$0	0	\$0	*	\$5,316	\$5,316

In effect, this credit has the state general fund pay 7.1 percent of the compensation of Montana residents employed in a certified film production. In 2011, film employment credits claimed against individual income tax cost the state general fund \$5,316. This is \$0.009 per full-year resident taxpayer.

<sup>4</sup> Additional credits have been claimed on late returns.

\* Counts less than 10 and row totals including counts less than 10 are not shown to protect taxpayer confidentiality.

## Credits-Film Expenditure Credit

### Film Expenditure Credit

**Code:** 15-31-901, MCA through 15-31-911, MCA

**Legislation:** HB 584, 2005 Session

A taxpayer can claim a credit against individual income tax or corporation license tax for 9 percent of purchases in Montana for the making of a film that has met the criteria to be certified by the Department of Commerce. A taxpayer may not deduct any expenses for which a credit was claimed.

If a taxpayer claims a credit that is more than his or her tax liability, the excess credit will be refunded. If the Department of Commerce determines that the production has not met the conditions of certification, the taxpayer must repay any credits already received.

An individual may claim the credit directly for expenditures by a sole-proprietor business or may claim a share of the credit for expenditures by a pass-through entity.

The credit was enacted with a limit of \$1 million in credits per production. The 2007 Legislature removed this limit (HB 40).

A taxpayer who claims the credit has taxes reduced by 9 percent of Montana purchases for a film, but must give up the deduction for those expenses. For a taxpayer in the top tax bracket, this increases taxes by 6.9 percent of the amount of purchases. The net result is that the taxpayer's cost of Montana purchases for a film made in Montana are reduced by 2.1 percent.

A taxpayer who itemizes deductions and claims the credit will have a smaller federal deduction for state taxes, which will result in higher federal taxes. This may result in a larger state deduction for federal taxes, further reducing state taxes. The following table shows the net changes in state and federal taxes and the taxpayer's cost from \$100 of Montana purchases for a film produced by a taxpayer in the top state and federal rate brackets.

\$100 Film Expenditure		
Difference When Taxpayer Claims Federal Expense Deduction and State Credit Instead of Deduction		
	Deduction for Federal Taxes	
	Capped	Not Capped
Federal Tax Subsidy	(\$0.73)	(\$0.75)
State Tax Subsidy	\$2.10	\$2.15
Net Taxpayer Subsidy	\$1.37	\$1.40

Fewer than ten individuals have claimed the credit on timely-filed returns each year<sup>5</sup>. The following table shows the total value of credits claimed on timely-filed individual income tax returns for 2005 through 2011.

Film Expenditures Credit									
	Residents		Non-Residents		Part-Year Residents		Total		
	N	\$	N	\$	N	\$	N	\$	
2005	0	\$0	*	\$669	*	\$793	*		\$1,462
2006	*	\$2,337	0	\$0	0	\$0	*		\$2,337
2007	*	\$26,486	0	\$0	0	\$0	*		\$26,486
2008	*	\$29,230	*	\$8,397	0	\$0	*		\$37,627
2009	*	\$19,047	*	\$6,188	0	\$0	*		\$25,235
2010	*	\$17,217	0	\$0	0	\$0	*		\$17,217
2011	*	\$20,067	*	\$2,389	0	\$0	*		\$22,456

In effect, this credit has the state general fund pay 2.1 percent of the cost of all Montana purchases for a certified film production. In 2011, film expenditure credits against the income tax cost the state general fund \$22,456. Without the credit, this amount would have been available to spend on other state programs or for tax reductions. The cost was \$0.04 per full-year resident taxpayer.

<sup>5</sup> Additional credits have been claimed on late returns

\* Counts less than 10 and row totals including counts less than 10 are not shown to protect taxpayer confidentiality.