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ARIZONA TAX RESEARCH ASSOCIATION

ATRA OPPOSES HB2156

*Lawmakers Should Question the Policy & Constitutionality of
this Refundable Tax Credit*

HB2156 establishes \$125 million in annual refundable income tax credits for the motion picture industry once fully phased in.

The tax credits are based on a percentage of each company's level of spending. For a motion picture production company that spends \$35 million for instance, the tax credit is equal to 20%, or \$7 million. The tax credits can climb even higher with additional spending. Credits are first used to offset the production company's tax liability, if any. **In the event the production company has no tax liability, the Department of Revenue (DOR) must "write a check" to the company for the outstanding credit.**

ATRA is strongly opposed to the refundable tax credits under HB2156 for several reasons.

Refundable tax credits are the "first draw" on state revenues. These credits appropriate state funds ahead of funding for schools, health care, and prisons, among many other state funding needs. This statutory refundable tax credit allows the beneficiaries to avoid the annual public process of having to compete with others for state appropriations.

Furthermore, a "refundable" tax credit may not be a credit against any tax liability at all. If a company isn't profitable and therefore doesn't have any tax liability, DOR must still issue a check to the company for the full amount of the credit - \$7 million in the example above.

Lastly, ATRA believes these refundable tax credits are unconstitutional under the Arizona Constitution. An analysis by the Goldwater Institute describes how Arizona's Gift Clause prohibits the disproportionate gift of public resources to private enterprises. Goldwater reinforced that "government may only give public resources to a private entity in exchange for direct, obligatory consideration, and that consideration must not be disproportionate to the cost to the public." Under HB2156, the company is only required to satisfy the location requirements for production and filming and any other benefits associated with production activities are "indirect" benefits, and therefore, would not be considered as offsets to the public benefit received by the private entity. Because HB2156 provides significant refundable tax credits to companies without receiving a direct benefit in return, the tax credit scheme under HB2156 would likely be in violation of the Arizona Constitution's Gift Clause.

ATRA ASKS LAWMAKERS TO VOTE NO ON HB2156!