

Regular Session, 2013

HOUSE BILL NO. 695

BY REPRESENTATIVE HENRY

TAX CREDITS: Provides relative to the motion picture investor tax credit program

1 AN ACT

2 To amend and reenact R.S. 47:6007(B), (C)(1)(introductory paragraph), (c)(introductory
3 paragraph) and (d), (2)(introductory paragraph), (4)(f)(ii), (D)(1)(a),
4 (2)(b)(introductory paragraph), (c), and (d)(introductory paragraph), (3), (6), (7), and
5 (8), (E), and (F)(3) and to enact R.S. 47:6007(C)(1)(e), (D)(9), and (F)(4), relative
6 to income tax credits; to provide with respect to the motion picture investor tax credit
7 program; to provide for definitions; to provide for amounts of tax credits; to provide
8 for limitations; to provide for the application and certification process; to provide
9 with respect to rulemaking; to provide for effectiveness; and to provide for related
10 matters.

11 Be it enacted by the Legislature of Louisiana:

12 Section 1. R.S. 47:6007(B), (C)(1)(introductory paragraph), (c)(introductory
13 paragraph) and (d), (2)(introductory paragraph), (4)(f)(ii), (D)(1)(a), (2)(b)(introductory
14 paragraph), (c), and (d)(introductory paragraph), (3), (6), (7), and (8), (E), and (F)(3) are
15 hereby amended and reenacted and R.S. 47:6007(C)(1)(e), (D)(9), and (F)(4) are hereby
16 enacted to read as follows:

17 §6007. Motion picture investor tax credit

18 * * *

19 B. Definitions. For the purposes of this Section:

20 (1) "Base investment" means cash or cash equivalent investment made and
21 used for production expenditures in the state for a state-certified production.

1 (2) "Below the line crewmember" means a person employed by a motion
2 picture production company for a state-certified production that is not a producer,
3 associate producer, coproducer, line producer, executive producer, director, director
4 of photography, production designer, writer, actor, stunt performer, or other onscreen
5 performer with spoken lines.

6 (3) "Box rental" means private property owned by an employee or individual
7 contractor and leased to a state-certified production for use in Louisiana on a state-
8 certified production, which is designated as additional income on a W-2 or 1099
9 federal income tax form.

10 ~~(3)~~ (4) "Expenditure" means actual cash or cash equivalent exchanged for
11 goods or services.

12 ~~(2)~~ ~~"Expended~~ (5) "Expenditure in the state" means an expenditure to lease
13 immovable property located in the state; an expenditure as compensation for services
14 performed in the state; or an expenditure to purchase or lease tangible personal
15 property from a source within the state where the transaction is subject to the state
16 sales or lease tax provisions of Title 47 of the Louisiana Revised Statutes of 1950.
17 A transaction that is subject to the state sales or lease tax provisions of Title 47 of the
18 Louisiana Revised Statutes of 1950 shall include transactions which are also subject
19 to a statutory exclusion or exemption.

20 ~~(4)~~ (6) "Headquartered in Louisiana" means a corporation incorporated in
21 Louisiana or a partnership, limited liability company, or other business entity
22 domiciled ~~and~~ in Louisiana and having its principal place of business in Louisiana.
23 An entity shall not be deemed to be headquartered in Louisiana for the purpose of
24 producing nationally or internationally distributed motion pictures as defined in this
25 Section: if it is controlled, directly or indirectly, by a nonresident individual or entity.

26 ~~(5)~~ (7) "Motion picture" means a nationally or internationally distributed
27 feature-length film, video, television pilot, television series, television movie of the
28 week, animated feature film, animated television series, or commercial made in
29 Louisiana, in whole or in part, for theatrical or television viewing. The term "motion

1 picture" shall not include the production of television coverage of news and athletic
2 events.

3 ~~(6)~~ (8) "Motion picture production company" means a company engaged in
4 the business of producing nationally or internationally distributed motion pictures
5 as defined in this Section. Motion picture production company shall not mean or
6 include any company owned, affiliated, or controlled, in whole or in part, by any
7 company or person which is in default on a loan made by the state or a loan
8 guaranteed by the state, nor with any company or person who has ever declared
9 bankruptcy under which an obligation of the company or person to pay or repay
10 public funds or monies was discharged as a part of such bankruptcy.

11 ~~(7)~~ (9) "Office" means the Governor's Office of Film and Television
12 Development until August 15, 2006; thereafter, the term "office" means the office
13 of entertainment industry development in the Department of Economic Development
14 provided for in R.S. 51:938.1.

15 ~~(8)~~ (10) "Payroll" means all salary, wages, and other compensation, including
16 benefits paid to an employee for services relating to a state-certified production and
17 taxable in this state. However, "payroll" for purposes of the additional tax credit for
18 Louisiana-resident payroll shall exclude any portion of an individual salary in excess
19 of one million dollars.

20 ~~(9)~~ (11) "Production expenditures" means preproduction, production, and
21 postproduction expenditures in ~~this~~ the state directly relating to a state-certified
22 production, including without limitation the following: set construction and
23 operation; wardrobes, makeup, accessories, and related services; costs associated
24 with photography and sound synchronization, lighting, and related services and
25 materials; editing and related services; rental of facilities and equipment; leasing of
26 vehicles; costs of food and lodging; digital or tape editing, film processing, transfer
27 of film to tape or digital format, sound mixing, special and visual effects; financing
28 costs if obtained from a financier headquartered in Louisiana; and payroll. This term
29 shall include the cost of customization or custom development of a tangible good

1 specifically designed for use by a state-certified production in Louisiana if the
2 customization services are performed in Louisiana. This term shall not include
3 expenditures for marketing and distribution, ~~non-production~~ nonproduction related
4 overhead, amounts reimbursed by the state or any other governmental entity, costs
5 related to the transfer of tax credits, amounts that are paid to persons or entities as
6 a result of their participation in profits from the exploitation of the production, the
7 application fee, box or kit rentals paid to an individual who is not a Louisiana
8 resident for the use of property that does not originate from a source within the state,
9 airfare, or state or local taxes.

10 (12) "Qualified production facility" means a permanent facility located in the
11 state which meets all of the following criteria:

12 (a) A facility in which motion pictures are intended to be regularly produced;

13 (b) A facility which either contains at least one sound stage with a minimum
14 of three thousand square feet of contiguous production space or contains animation
15 or visual effects capabilities and employs on average a minimum of twenty full-time
16 employees;

17 (c) A facility for which there has been expended, excluding the purchase of
18 land, at least two million five hundred thousand dollars of private capital for
19 construction or improvement of space for the purpose of facilitating film or digital
20 media production.

21 (13) "Related party transaction" means a transaction between parties that are
22 deemed to be related by common ownership or control, under generally accepted
23 auditing principles. Related party transaction expenditures may be subject to
24 limitations provided by rules promulgated by the department in accordance with the
25 Administrative Procedure Act.

26 ~~(10)~~ (14) "Resident" or "resident of Louisiana" means a natural person
27 domiciled in the state who has a driver's license issued by the state of Louisiana, and
28 who can provide either a utility bill or real property lease which indicates the same
29 address as that on the driver's license, and which document is dated at least six

1 months and no more than one year prior to employment. A person who maintains
2 a permanent place of abode within the state and spends in the aggregate more than
3 six months of each year within the state shall be presumed to be domiciled in the
4 state.

5 ~~(11)~~ (15) "Secretary" means the secretary of the Department of Economic
6 Development.

7 ~~(12)~~ (16) "Source within the state" means a resident, corporation,
8 partnership, limited liability company, or other business entity, or division or
9 subsidiary thereof, with a physical facility in Louisiana, operating with posted
10 business hours and employing at least one full-time equivalent employee.

11 (17) "Special events" means an event that occurs irrespective of filming,
12 such as Mardi Gras, music festivals, concerts, or other similarly situated events.

13 (18) "Special event production expenditures" means only costs directly
14 related to filming the special event shall qualify for tax credits. Costs that are
15 indirectly related to filming shall not qualify for tax credits. Such indirect costs shall
16 include but not be limited to artist compensation for festival or concert appearances
17 or costs associated with the usual activities of a reality show or documentary.

18 ~~(13)~~ (19) "State" means the state of Louisiana.

19 ~~(14)~~ (20) "State-certified production" shall mean a production approved by
20 the office and the secretary which is produced by a motion picture production
21 company domiciled ~~and headquartered~~ in Louisiana and which has a viable ~~multi-~~
22 ~~market~~ multimarket commercial distribution plan.

23 C. Investor tax credit; specific productions and projects.

24 (1) There is hereby authorized a tax credit against state income tax for
25 Louisiana taxpayers for investment in state-certified productions. The tax credit
26 shall be earned ~~by investors~~ at the time expenditures are made by a motion picture
27 production company in a state-certified production. However, credits cannot be
28 applied against a tax or transferred until the expenditures are certified by the office
29 and the secretary. For state-certified productions, expenditures shall be certified no

1 more than twice during the duration of a state-certified production unless the motion
2 picture production company agrees to reimburse the office for the costs of any
3 additional certifications. The tax credit shall be calculated as a percentage of the
4 total base investment dollars certified per project.

5 * * *

6 (c) For state-certified productions approved by the office and the secretary
7 on or after July 1, 2009, but before January 1, 2014:

8 * * *

9 (d) For state-certified productions approved by the office and the secretary
10 on or after January 1, 2014:

11 (i) If the total base investment is greater than three hundred thousand dollars,
12 each motion picture production company shall be allowed a tax credit of thirty
13 percent of the base investment made by that motion picture production company
14 excluding any portion of the base investment that is expended on payroll for below
15 the line crewmembers that are not residents of Louisiana.

16 (ii) To the extent that base investment is expended on payroll for Louisiana
17 residents employed in connection with a state-certified production, each motion
18 picture production company shall be allowed an additional tax credit of five percent
19 of such payroll; however, if such payroll contains compensation to any individual
20 which exceeds one million dollars, this additional credit shall exclude any
21 compensation for that individual that exceeds one million dollars.

22 (iii) To the extent that base investment is expended on payroll for below the
23 line crewmembers that are not residents of Louisiana employed in connection with
24 a state-certified production, each motion picture production company shall be
25 allowed a tax credit of twenty percent of such payroll.

26 (iv) To the extent that base investment is expended on direct or indirect
27 payments to an individual other than a below the line crewmember, the limitations
28 established within this Item shall apply. For purposes of this Item, the payment of
29 compensation to an individual through a personal service company, loan-out,

1 D. Certification and administration.

2 (1)(a) The secretary of the Department of Economic Development and the
3 office shall determine through the promulgation of rules the minimum criteria that
4 a project must meet in order to qualify according to this Section. ~~The secretary, the~~
5 ~~office, and the division of administration shall determine through the promulgation~~
6 ~~of rules the minimum criteria that a project must meet in order to qualify according~~
7 ~~to this Section.~~ However, rulemaking authority shall not extend to the setting of
8 limits with respect to the qualification or proportion of specific production
9 expenditures as such term is defined by law. The qualification of production
10 expenditures shall be confirmed through the audit process associated with final
11 certification as provided for in Subparagraph (2)(d) of this Subsection.

12 * * *

13 (2)

14 * * *

15 (b) If the application is incomplete, additional information may be requested
16 ~~prior to further action~~ by the office or the secretary of the Department of Economic
17 Development. An application fee shall be submitted with the application based on
18 the following:

19 * * *

20 (c) The office and the secretary shall submit their initial certification within
21 twenty-one calendar days from the date of receipt of the application for initial
22 certification of a project as a state-certified production to ~~investors~~ both the motion
23 picture production company and to the secretary of the Department of Revenue
24 ~~indicating~~ . The initial certification shall indicate the total base investment which
25 shall be expended in the state on the state-certified production. ~~The initial~~
26 ~~certification~~ and shall include a unique identifying number for each state-certified
27 production. The twenty-one day period shall be tolled when the office requests
28 additional information; however, after the furnishing of the information requested
29 by the motion picture production company, the tolling shall cease and the period

1 through the audit process associated with final certification as provided for in
2 Subparagraph (2)(d) of this Subsection.

3 * * *

4 (6) Prior to any final certification of a state-certified production, the motion
5 picture production company applying for the credit must ensure and be able to
6 demonstrate that all taxes related to production expenditures paid to an individual,
7 or to a loan out, personal services corporation, professional employer organization,
8 or employee leasing company for the services of an individual that are performed in
9 this state are withheld and paid to this state pursuant to R.S. 47:112. Any amounts
10 so withheld shall be deemed to have been withheld by the loan out, personal services
11 corporation, professional employer organization, or employee leasing company on
12 wages paid to its employees for services performed in Louisiana.

13 ~~(6)~~ (7) With input from the Legislative Fiscal Office, the office shall prepare
14 a written report to be submitted to the Senate Committee on Revenue and Fiscal
15 Affairs and the House of Representatives Committee on Ways and Means no less
16 than sixty days prior to the start of the Regular Session of the Legislature in 2007,
17 and every second year thereafter. The report shall include the overall impact of the
18 tax credits, the amount of the tax credits issued, the number of net new jobs created,
19 the amount of Louisiana payroll created, the economic impact of the tax credits and
20 film industry, and any other factors that describe the impact of the program.

21 ~~(7)~~ (8) The Department of Economic Development may request an additional
22 audit of the expenditures submitted by the motion picture production company at the
23 cost of the motion picture production company.

24 ~~(8)~~ (9) As a condition for receiving certification of tax credits under this
25 Section, state-certified productions may be required to display ~~an animated~~ a state
26 brand or logo, or both, which includes a fleur de lis as prescribed by the secretary of
27 the Department of Economic Development as long as the ~~animated~~ state brand or
28 logo is not contrary to any rule or regulation of the Federal Communications
29 Commission.

Present law authorizes an income tax credit equal to 30% of production expenditures for all state-certified productions approved after July 1, 2009. Also provided is an additional tax credit equal to 5% of the base investment expended on payroll for La. residents employed in connection with all state-certified productions.

Proposed law retains present law with the exception of the following changes which apply to productions certified after Jan. 1, 2014.

Proposed law changes the definition of "qualified expenditures", and provides for other definitions for purposes of the tax credit program.

Proposed law changes the value of tax credits based on two types of expenditures:

- (1) Expenditures for payroll for below the line crewmembers who are not La. residents shall earn tax credits at the rate of 20%.
- (2) Expenditures for an "individual", who may be commonly referred to as "above-the-line" talent, shall earn tax credits at the rate of 30%, with the following limitations:
 - (a) No more than \$3 million in tax credits per production may be earned associated with this type of expenditure.
 - (b) If the production spends at least 10 days filming at a qualified production facility, the limit on tax credits associated with such expenditures is \$6 million per production.

Proposed law provides requirements relating to the application for initial and final certification.

Proposed law provides limits on rulemaking.

Proposed law provides that no tax credits transferred to another La. taxpayer shall be subject to recovery or recapture. Once tax credits are granted and issued, the office and Dept. of Revenue shall have no right, except in the case of possible material misrepresentation or fraud, to conduct any further or additional review, examination, or audit of the production expenditures for which such tax credits were granted. The sole and exclusive remedy of the office and Dept. of Revenue shall be to seek collection of the amount of such tax credits from the entity that committed the fraud or misrepresentation.

Effective July 1, 2013.

(Amends R.S. 47:6007(B), (C)(1)(intro. para.), (c)(intro. para.) and (d), (2)(intro. para.), (4)(f)(ii), (D)(1)(a), (2)(b)(intro. para.), (c), and (d)(intro. para.), (3), (6), (7), and (8), (E), and (F)(3); Adds R.S. 47:6007(C)(1)(e), (D)(9), and (F)(4))