

2015 Regular Session

HOUSE BILL NO. 748

BY REPRESENTATIVE STOKES

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

1 AN ACT

2 To amend and reenact R.S. 47:6007(B)(5), (10) through (16), (C)(1)(introductory
3 paragraph), (a)(iii) and (b)(iii), and (4)(e), (D)(2)(d)(i), (E), and (F)(1), and to enact
4 R.S. 47:6007(17) and (18), (C)(1)(c)(iii), (D)(1)(d)(iv) and (v) and (2)(d)(iii), (F)(4),
5 G, and H, relative to income tax credits; to provide with respect to the motion picture
6 investor tax credit; to provide for definitions; to provide eligibility for certain types
7 of productions; to provide requirements for the completion of projects and
8 certification of expenditures; to authorize assignment of credits to a lender under
9 certain circumstances; to provide for recapture of tax credits; to provide for the final
10 certification of certain expenditures for state-certified infrastructure projects; to
11 provide for effectiveness; and to provide for related matters.

12 Be it enacted by the Legislature of Louisiana:

13 Section 1. R.S. 47:6007(B)(5), (10) through (16), (C)(1)(introductory paragraph),
14 (a)(iii) and (b) (iii), and (4)(e), (D)(2)(d)(i), (E), and (F)(1) are hereby amended and
15 reenacted, and R.S. 47:6007(B)(17) and (18), (C)(1)(c)(iii) , (D)(1)(d)(iv) and (v) and
16 (2)(d)(iii), (F)(4), G, and H are hereby enacted, to read as follows:

17 §6007. Motion picture investor tax credit

18 * * *

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

20 * * *

1 ~~(12)~~(13) "Resident" or "resident of Louisiana" means a natural person
 2 domiciled in the state. A person who maintains a permanent place of abode within
 3 the state and spends in the aggregate more than six months of each year within the
 4 state shall be presumed to be domiciled in the state.

5 ~~(13)~~(14) "Secretary" means the secretary of the Department of Economic
 6 Development.

7 ~~(14)~~(15) "Source within the state" means a physical facility in Louisiana,
 8 operating with posted business hours and employing at least one full-time equivalent
 9 employee.

10 ~~(15)~~(16) "State" means the state of Louisiana.

11 ~~(16)~~(17) "State-certified production" ~~shall mean~~ means a production
 12 approved by the office and the secretary which is produced by a motion picture
 13 production company domiciled and headquartered in Louisiana and which has a
 14 viable multi-market commercial distribution plan.

15 (18) "Taxpayer" means an investor in a production, a motion picture
 16 production company applicant, individual with an ownership interest in a motion
 17 picture production company applicant, or a subsequent transferee of the tax credit.

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

19 (1) There is hereby authorized a tax credit against state income tax for
 20 Louisiana taxpayers for investment in state-certified productions for initial
 21 certifications issued on or after January 1, 2016. The tax credit shall be earned ~~by~~
 22 ~~investors at the time expenditures are made by a motion picture production company~~
 23 ~~in a state-certified production~~ when certified by the office, according to the total base
 24 investment certified per calendar year, as set forth in the final certification issued to
 25 the motion picture production company. ~~However, credits~~ Credits cannot be applied
 26 against a tax or transferred until the expenditures are certified by the office and the
 27 secretary. For state-certified productions, expenditures shall be certified no more
 28 than ~~twice during the duration of a state-certified production unless the motion~~
 29 ~~picture production company agrees to reimburse the office for the costs of any~~

1 ~~additional certifications once per production, after project completion.~~ The tax credit
2 shall be calculated as a percentage of the total base investment dollars certified per
3 project.

4 (a) For state-certified productions approved by the office and the secretary
5 on or after January 1, 2004, but before January 1, 2006:

6 * * *

7 (iii) The initial certification shall be effective for qualifying expenditures
8 made within a period twelve months prior to and twelve months after the date of
9 initial certification, ~~unless the production has commenced, in which case the initial~~
10 ~~certification shall be valid until the production is completed.~~

11 (b) For state-certified productions approved by the office and the secretary
12 on or after January 1, 2006, but before July 1, 2009:

13 * * *

14 (iii) The initial certification shall be effective for qualifying expenditures
15 made within a period twelve months prior to and twelve months after the date of
16 initial certification, ~~unless the production has commenced, in which case the initial~~
17 ~~certification shall be valid until the production is completed.~~

18 (c) For state-certified productions approved by the office and the secretary
19 on or after July 1, 2009:

20 * * *

21 (iii) The initial certification shall be effective for qualifying expenditures
22 made within a period twelve months prior to and twenty-four months after the date
23 of the initial certification.

24 * * *

25 (4) Transferability of the credit. Any motion picture tax credits not
26 previously claimed by any taxpayer against its income tax may be transferred or sold
27 to another Louisiana taxpayer or to the office, subject to the following conditions:(3)
28 Application of the credit.

29 * * *

1 the state-certified production to the investors for all qualifying expenditures verified
2 by the office. Any expenditures for which tax credits were neither denied nor
3 certified due to insufficient information or other issues, the office and secretary shall
4 diligently work to resolve the outstanding issues in a timely manner, and the office
5 and secretary may subsequently issue a supplemental tax credit certification at the
6 time of such resolution.

7 * * *

8 (iii) Only expenditures made during the initial certification period shall earn
9 credits.

10 * * *

11 E. Recapture of credits. If the office finds that ~~monies for which an investor~~
12 ~~received tax credits according to this Section are not invested in and expended with~~
13 ~~respect to a state-certified production within twenty-four months of the date that such~~
14 ~~credits are earned, then the investor's state income tax for such taxable period a~~ a
15 taxpayer has obtained a tax credit in violation of the provisions of this Chapter,
16 including but not limited to shall be increased by such amount necessary for the
17 recapture of credit provided by this Section convictions related to fraud or
18 misrepresentation, the taxpayer shall be assessed by the Department of Revenue for
19 the tax period in which the tax credits are invalidated in an amount necessary for the
20 recapture of tax credits.

21 F. Recovery of credits by Department of Revenue. (1) ~~Credits~~ Except as
22 provided in Paragraph (4) of this Subsection, credits previously granted to certified
23 and paid, claimed, or obtained by a taxpayer, but later disallowed, may be recovered
24 by the secretary of the Department of Revenue through any collection remedy
25 authorized by R.S. 47:1561, plus interest and penalties provided by law for the
26 delinquent payment of taxes, and initiated within three years from December thirty-
27 first of the year in which the twenty-four-month investment period specified in
28 Subsection E of this Section ends. by the latter of any of the following:

1 (5) Within three hundred and sixty five days after receipt of the audit report
2 and all required supporting information, or December 31, 2016, whichever occurs
3 first, the office, the secretary, and the division shall issue a denial letter or a tax
4 credit certification letter to the investors indicating the amount of tax credits certified
5 for the state-certified infrastructure project for all qualifying expenditures verified
6 by the office.

7 (6) Tax credits provided for in this Section shall not be considered
8 entitlements, and the state-certified motion picture infrastructure applicant shall bear
9 the burden of establishing eligibility for tax credits by a preponderance of the
10 evidence.

11 (7) In the event that a request for final certification is denied, an applicant
12 may appeal the decision in accordance with program rules.

13 (8) No motion picture infrastructure tax credits shall be certified after July
14 1, 2017.

15 Section 2. This Act shall become effective upon signature by the governor
16 or, if not signed by the governor, upon expiration of the time for bills to become law without
17 signature by the governor, as provided by Article III, Section 18 of the Constitution of
18 Louisiana. If vetoed by the governor and subsequently approved by the legislature, this Act
19 shall become effective on the day following such approval.

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

HB 748 Reengrossed

2015 Regular Session

Stokes

Abstract: Numerous procedural changes to the motion picture *investor* tax credit program, also includes addition of eligibility for online productions, and requirements specific to final certifications of project expenditures for motion picture *infrastructure investor* tax credits.

Present law authorizes a tax credit against state income tax based on motion picture production expenditures for state-certified productions. The tax credit is calculated as a percentage of the total base investment dollars certified per project.

Present law authorizes an income tax credit equal to 30% of production expenditures for all state-certified productions approved after July 1, 2009. Also provides 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 for productions granted initial certification on or after Jan. 1, 2016, makes several changes regarding the procedures and time periods involved with initial certification of expenditures.

Proposed law changes the present law definition for motion picture to include eligibility for motion pictures developed for viewing online, and adds a definition for "taxpayer".

Present law provides that the tax credit is earned when production expenditures are "certified" by the office of entertainment industry development within the Dept. of Economic Development (DED). Expenditures may be certified no more than twice during the duration of a state-certified production, unless the motion picture production company agrees to reimburse DED for the cost of additional certifications.

Proposed law changes present law by reducing the number of times expenditures can be certified and changes the timing of certifications for expenditures from twice during the production to once after the project is completed.

Proposed law specifies that the initial certification shall be effective for qualifying expenditures made within 12 months before and 24 months after the date of initial certification.

Proposed law adds a requirement that no later than six months after the expiration of the initial certification period for the applicable state-certified production, a taxpayer is required to submit to the office all requests and required documentation for final certification of all tax credits or the claims to such tax credits shall be deemed waived.

Proposed law changes the time period within which the Dept. of Revenue may recapture credits which were granted and then disallowed, providing for specific time periods based upon whether the credit was paid, claimed, or registered with the La. Tax Credit Registry.

Present law with respect to the transfer of tax credits from one owner to another, provides that in the event the transferor did not have rights or claim to use the credit at the time of transfer, the Dept. of Revenue shall either disallow or recapture the credit from the transferee. The transferee's recourse is against the transferor.

Proposed law changes present law by providing that in such case the Dept. of Revenue shall have recourse against the transferror.

Present law authorizes the recapture of the value of any tax credits if DED finds that the credits were obtained through fraud or misrepresentation. The Dept. of Revenue is authorized to assess the taxpayer in an amount equal to the value of the tax credits. Present law further provides for the collection of amounts associated with credits which have been disallowed by DED.

Proposed law prohibits the disallowance or recapture of a tax credit that is claimed by a good faith purchaser who acquired the credit through a transfer authorized by present law.

Prior law sunsets the motion picture *infrastructure* investor tax credit on Dec. 31, 2008, by repealing the authority to issue credits for any state-certified project for which less than 50% of the base investment provided for in the initial certification had been expended by Dec. 31, 2008.

Proposed law adds requirements regarding submission and consideration of audit reports for final certification of state-certified expenditures for the motion picture *infrastructure* investor tax credits.

Effective upon signature of governor or lapse of time for gubernatorial action.

(Amends R.S. 47:6007(B)(5), (10)-(16), (C)(1)(intro. para.), (a)(iii) and (b)(iii), and (4)(e), (D)(2)(d)(i), (E), and (F)(1); Adds R.S. 47:6007(B)(17) and (18), (C)(1)(c)(iii), (D)(1)(d)(iv) and (v) and (2)(d)(iii), (F)(4) (G), and (H))

Summary of Amendments Adopted by House

The Committee Amendments Proposed by House Committee on Ways and Means to the original bill:

1. Add a starting date for provisions of proposed law with regard to the motion picture investor tax credit.
2. Add a definition for "taxpayer" for purposes of the motion picture investor tax credit.
3. Add provisions governing the time period authorized for the recovery of disallowed tax credits by the Dept. of Revenue.

The House Floor Amendments to the engrossed bill:

1. Change provisions governing transfers of tax credits when a credit is sold by a transferor with no right to claim or use the credit.
2. Add prohibition on the disallowance or recapture of a tax credit claimed by a good faith purchaser.