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)]

CONFERENCE COMMITTEE REPORT DIGEST

HB 748 **2015 Regular Session** **Stokes**

Keyword and oneliner of the instrument as it left the House

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

Report adopts Senate amendments to:

1. Add authorization for the certification of additional supplemental expenditures related to post-production activities in La. under certain circumstances.

2. Add authorization for a bank or other lender to be named as an irrevocable designee in an initial tax credit certification.

3. Delete authority for the denial of an application for initial certification at the discretion of the secretary of the Dept. of Economic Development.

4. Delete certain revisions regarding the authority of the Dept. of Revenue to disallow and recapture tax credits.

Report rejects Senate amendments which would have:

1. Add marketing expenditures to the definition of "production expenditures" beginning July 1, 2015.

2. Change the timing for the earning of tax credits.

3. Authorize the use of tax credits against a prior year's tax liability.

4. Technical amendments.

Report amends the bill to:

1. Change the name of the program <u>from</u> motion picture investor tax credit <u>to</u> motion picture

production tax credit.

2. Add marketing expenditures to the definition of "production expenditures" beginning Jan. 1, 2016.

3. Conform provisions of this bill with those of House Bill No. 604 regarding changes in the basis for the office's consideration of production expenditures for certification from a production audit report to a cost report of production expenditures and a production expenditure verification report.

4. Substantially revises present law regarding the disallowance and recapture of tax credits in cases of fraud, including provisions specific to a "bad faith holder" of tax credits.

5. With respect to recovery of tax credits that have been disallowed deletes provisions limiting interest and changes the prescriptive periods for the authority of the Dept. of Revenue to initiate collection.

6. Add specific effectiveness provisions.

Digest of the bill as proposed by the Conference Committee

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 changes the name of the program from motion picture investor tax credit to motion picture production tax credit.

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, changes present law definition for production expenditures to include marketing expenses, and adds a definition for "taxpayer".

Proposed law further 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 provides that if at the time of application for initial certification, the production company notifies the office of entertainment industry development of the Dept. of Economic Development ("office") that post-production activities will occur in La., a supplemental request for certification of expenditures may be submitted for consideration and the cost of any verification will be paid by the production company.

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 authorizes a motional picture production company to name a bank or other lender as an irrevocable designee in the initial certification under certain circumstances, and provides for the rights and protections of such an irrevocable designee. As an irrevocable designee, a bank or other lender may elect to have the tax credits issued directly to it from the office, and in addition to the rights of a transferee may also elect to transfer the credits to the Dept. of Revenue in accordance with the proposed law.

Present law requires a motion picture production company applicant to submit to the office a production audit report before final certification of expenditures for a state-certified production. The audit report is reviewed by the office and within 120 days of receipt the office shall issue a tax credit certification letter indicating the amount of the tax credits certified for the production.

Proposed law retains present law, but changes the documents submitted for substantiation of qualifying expenditures, as well as the review of such information. Within 6 months of the end of the initial certification period a motion picture production company shall make a request to the office to proceed to final certification by submitting a cost report of production expenditures. The applicant shall make all records related to the cost report available for inspection by the office and the qualified accountant selected by the office to prepare the production expenditure verification report, after which time all such claims to tax credits shall be deemed waived. After review and investigation of the cost report, the accountant shall submit to the office and the secretary a production expenditure verification report. The office and the secretary shall review the production expenditure verification report for determinations relative to the certification of tax credits based upon qualifying expenditures.

Proposed law substitutes the expenditure verification report for the production audit report as the basis for the office's review of a state-certified production's cost report of production expenditures.

Present law requires an investor's state income tax to be increased by the amount necessary for the recapture of tax credits if the office finds that monies for which an investor received tax credits were not invested in and expended with respect to a state-certified production within 24 months of the date that the credits were earned. Authorizes the secretary of the Dept. of Revenue to initiate collection of tax credits disallowed within 3 years from Dec. 31st of the year in which the 24 month investment period ended. Interest which may be recovered on recaptured tax credits is limited to three percentage points above the rate established in R.S. 9:3500(B)(1).

Proposed law repeals present law with respect the recapture and recovery of tax credits. Proposed law prohibits the transfer or claiming of a tax credit by a "bad faith holder", which is defined as a person who participated in material misrepresentation or fraudulent acts in connection with the certification of tax credits, or who prior to or at the time of certification of such tax credits knew or reasonably should have known of such material misrepresentation or fraudulent acts, or a legal entity owned or controlled by such a person. Upon a determination of bad faith by the Dept. of Revenue such tax credits shall be deemed disallowed as to the bad faith holder.

Proposed law further provides that previously transferred or claimed tax credits by a bad faith holder which are subsequently disallowed may be recovered by the secretary of the Dept. of Revenue through any collection remedy authorized under present law specific to the authority of the Dept. of Revenue, plus interest and penalties provided by present law specific to the Dept. of Revenue for the delinquent payment of taxes. The Dept. of Revenue is authorized to recapture any amounts and other damages from a bad faith holder using any collection remedy authorized by law.

Proposed law provides that in the event tax credits obtained through material misrepresentation or fraudulent acts are claimed by a taxpayer who is not a bad faith holder, the Dept of Revenue shall have the right of recourse against a bad faith holder as provided to a transferee pursuant to present law.

Proposed law establishes a schedule of prescriptive periods for the initiation of recovery of disallowed tax credits by the Dept. of Revenue, as follows: 2 years from Dec. 31^{st} in the year in which a tax credit was transferred to the office; 3 years from Dec. 31^{st} of the year in which the taxes for the filing period were due, or in which the final tax credit certification letter was issued; and a time period for which prescription has been extended, as provided by R.S. 47:1580.

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.

Proposed law concerning motion picture infrastructure investor tax credit becomes effective July 1, 2015.

Proposed law governing disallowance, recapture, and recovery of tax credits becomes effective July 1, 2015.

All other provisions of proposed law become effective Jan. 1, 2016.

(Amends R.S. 47:1524(D)(2) and (3), and 6007(section heading), (B)(5), (10) through (16), (C)(subsection heading), (1)(intro. para.), (a)(iii), and (b)(iii), (2), and (4)(b) and (f), (D)(2)(d)(i), (E), and (F); Adds R.S. 47:6007(B)(17) and (18), (C)(1)(c)(iii), (D)(1)(d)(iv) and (2)(d)(iii), (G), and (H); Repeals R.S. 47:1524(D)(3))