

Regular Session, 2013

SENATE BILL NO. 165

BY SENATOR MARTINY

TAX/TAXATION. Requires a qualified cost report prior to issuance of a motion picture investor tax credit. (8/1/13)

1 AN ACT
2 To amend and reenact R.S. 47:6007(B)(10), (11), (12), (13), (14), the introductory paragraph
3 of R.S. 47:6007(D)(2)(a) and (D)(2)(c) and (d) and to enact R.S. 47:6007(B)(15) and
4 (16), (G) and 6007.1, relative to the motion picture investor tax credit; to provide for
5 submission of a qualified cost report prior to being certified as a state-certified
6 production for application for the credit; to provide for a qualified cost report; and
7 to provide for related matters.

8 Be it enacted by the Legislature of Louisiana:

9 Section 1. R.S. 47:6007(B)(10), (11), (12), (13), (14), the introductory paragraph of
10 R.S. 47:6007(D)(2)(a) and (D)(2)(c) and (d) are hereby amended and reenacted and R.S.
11 47:6007(B)(15) and (16), (G) and 6007.1 are hereby enacted to read as follows:

12 §6007. Motion picture investor tax credit

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

14 * * *

15 **(10) "Qualified accountant" means an independent certified public**
16 **accountant licensed in this state who has sufficient knowledge of accounting**
17 **principles and practices generally recognized in the film and television industry.**

1 **(11) "Qualified cost report" is a report of the production expenditures**
2 **produced by a qualified accountant who is unrelated to the motion picture**
3 **production company and which report is subject to an agreed-upon procedures**
4 **engagement by a certified public accountant in accordance with Statement on**
5 **Standards for Attestation Engagements established by the American Institute**
6 **of Certified Public Accountants. The qualified cost report shall be addressed to**
7 **the party which has engaged the qualified accountant; contain the qualified**
8 **accountant's name, address, telephone number; be dated as of the date of**
9 **completion of the qualified accountant's filed work; and contain a statement of**
10 **acknowledgment by the qualified account that the state is relying on the**
11 **qualified cost report in the issuance of the tax credits under the provisions of**
12 **this Section. The qualified cost report shall be performed pursuant to the**
13 **qualified sampling and verification procedures provided in R.S. 47:6007.1.**

14 ~~(10)~~ **(12)** "Resident" or "resident of Louisiana" means a natural person
15 domiciled in the state. A person who maintains a permanent place of abode within
16 the state and spends in the aggregate more than six months of each year within the
17 state shall be presumed to be domiciled in the state.

18 ~~(11)~~ **(13)** "Secretary" means the secretary of the Department of Economic
19 Development.

20 ~~(12)~~ **(14)** "Source within the state" means a physical facility in Louisiana,
21 operating with posted business hours and employing at least one full-time equivalent
22 employee.

23 ~~(13)~~ **(15)** "State" means the state of Louisiana.

24 ~~(14)~~ **(16)** "State-certified production" shall mean a production approved by
25 the office and the secretary which is produced by a motion picture production
26 company domiciled and headquartered in Louisiana and which has a viable multi-
27 market commercial distribution plan.

28 * * *

29 D. Certification and administration.

1 * * *

2 (2)(a) Application. An applicant for the motion picture investor credit shall
3 submit an application for initial certification to the office and the secretary of the
4 Department of Economic Development that includes **a qualified cost report and** the
5 following information:

6 * * *

7 (c) The office and the secretary shall submit their initial certification of a
8 project as a state-certified production to investors and to the secretary of the
9 Department of Revenue indicating the total base investment which shall be expended
10 in the state on the state-certified production **within thirty days of their receipt of**
11 **all required information**. The initial certification shall include a unique identifying
12 number for each state-certified production.

13 (d)(i) Prior to any final certification of the state-certified production, the
14 motion picture production company shall submit to the office and the secretary ~~an~~
15 ~~audit of the production expenditures certified by an independent certified public~~
16 ~~accountant as determined by rule~~ **a qualified cost report**. The office and the
17 secretary shall review the audit, ~~the production expense details,~~ **the qualified cost**
18 **report** and may require additional information needed to make a determination.
19 ~~Upon approval of the audit~~ **Within sixty days of the receipt of the qualified cost**
20 **report**, the office and the secretary shall issue a ~~final~~ tax credit certification letter
21 indicating the amount of tax credits certified for the state-certified production to the
22 investors **for all amounts that are uncontested. If there remains a contested**
23 **amount, the office and secretary shall diligently work to resolve the outstanding**
24 **issues in a timely manner and the office and secretary may subsequently issue**
25 **a supplemental tax credit certification at the time of such resolution, if so**
26 **warranted**.

27 (ii) **The department may request an additional qualified cost report of**
28 **the expenditures submitted by the motion picture production company with the**
29 **cost of the additional report paid by the motion picture production company.**

1 **The motion picture production company may submit an amended qualified cost**
2 **report if additional expenditures are incurred or discovered after the approval**
3 **of the initial qualified cost reports issued pursuant to Item (i) of this**
4 **Subparagraph and the office and secretary may issue a supplemental tax credit**
5 **certification if so warranted.** ~~The rules required by this Subparagraph shall, at a~~
6 ~~minimum, require that:~~

7 ~~(i) The auditor shall be a certified public accountant licensed in the state of~~
8 ~~Louisiana and shall be an independent third party, not related to the producer.~~

9 ~~(ii) The auditor's opinion shall be addressed to the party which has engaged~~
10 ~~the auditor (e.g., directors of the production company, producer of the production).~~

11 ~~(iii) The auditor's name, address, and telephone number shall be evident on~~
12 ~~the report.~~

13 ~~(iv) The auditor's opinion shall be dated as of the completion of the audit~~
14 ~~fieldwork.~~

15 ~~(v) The audit shall be performed in accordance with auditing standards~~
16 ~~generally accepted in the United States of America and the auditor shall have~~
17 ~~sufficient knowledge of accounting principles and practices generally recognized in~~
18 ~~the film and television industry.~~

19 * * *

20 **G. Notwithstanding any other law to the contrary, no motion picture**
21 **investor tax credit shall be allowed for fees, interest, or payments of a similar**
22 **nature paid to related parties but shall only be allowed if received by investors**
23 **in the production who own twenty percent or less of the financial rewards based**
24 **on sales, exploitation of the product, or the success in lining up distribution**
25 **agreements, provided no motion picture investor tax credit shall be allowed for**
26 **any percentage of the financial rewards but shall only be allowed for financing**
27 **fees and interest.**

28 **§6007.1. Motion picture investor tax credit; qualified sampling and verification**
29 **procedures**

1 **A. A qualified accountant, as defined in R.S. 47:6007, shall perform the**
2 **following sampling procedures when producing a qualified cost report required**
3 **under the provisions of R.S. 47:6007:**

4 **(1) Obtain the cost report of all production expenditures for the**
5 **production of the motion picture production company and verify the**
6 **mathematical accuracy of the report.**

7 **(2) Obtain the bank statements from the motion picture production**
8 **company relevant to the applicable production for the period covered by the**
9 **cost report of production expenditures.**

10 **(3) Obtain the detailed payroll registers applicable to the production.**
11 **This report should indicate the name, address, taxpayer identification number,**
12 **permanent address, the amount of compensation, and the employee's state of**
13 **residence.**

14 **(4) Foot the payroll registers mentioned in Paragraph (3) of this**
15 **Subsection for mathematical accuracy and agree the total to the cost report of**
16 **production expenditures mentioned in Paragraph (1) of this Subsection.**

17 **(5) Obtain the detailed listing of non-payroll expenditures for production**
18 **of the motion picture production company. This report should indicate the**
19 **payee, the date of payment, the date that the payment cleared the bank, and**
20 **amount of the payment.**

21 **(6) Foot the detailed listing of non-payroll expenditures mentioned in**
22 **Paragraph (5) of this Subsection for mathematical accuracy and agree the total**
23 **to the cost report of production expenditures mentioned in Paragraph (1) of this**
24 **Subsection.**

25 **B. A qualified accountant shall perform the following verification**
26 **procedures when producing a qualified cost report under the provisions of R.S.**
27 **47:6007:**

28 **(1) From the detailed payroll registers referenced in Paragraph (A)(3)**
29 **of this Section, segregate the gross payroll for all Louisiana residents and agree**

1 the total to the Louisiana payroll and salaries indicated on either the cost report
2 of production expenditures or the footnotes to the cost report of production
3 expenditures.

4 (2) From the payroll registers for Louisiana residents contained in
5 Paragraph (1) of this Subsection, select all disbursements to those individuals
6 whose gross salaries during the period in question exceeded five percent of the
7 total disbursements indicated on the cost report of production expenditures for
8 the production for further testing.

9 (3) Excluding those individuals already selected for further testing in
10 Paragraph (2) of this Subsection, select an additional sample consisting of the
11 lesser of sixty individual payroll disbursements or fifty percent of the payroll
12 disbursements not already selected in Paragraph (2) of this Subsection from the
13 payroll registers for Louisiana residents for further testing.

14 (4) For each employee selected for testing in Paragraphs (2) and (3) of
15 this Subsection, perform the following analysis, detailing any exceptions noted:

16 (a) If the employee is a salaried employee, verify that the gross salary for
17 the selected disbursement is supported by and agrees to an employment
18 contract or other form of approved pay documentation.

19 (b) If the employee is an hourly employee, verify that the hourly wage
20 rate for the selected transaction is supported by and agrees to the approved pay
21 rate documentation in the employee's personnel file.

22 (c) If the employee is an hourly employee, verify that the hours paid for
23 the selected transaction is supported by approved timesheets.

24 (d) Verify that the disbursement of such funds is a qualifying
25 expenditure given the operations of the motion picture production company.

26 (e) Verify that the payroll expenditures were actually made by the
27 motion picture production company as evidenced by deductions in the bank
28 account statements maintained by the motion picture production company and
29 that the disbursement cleared the bank during the period in question.

1 (f) Review employee's personnel file, verifying that the individual is a
2 natural person domiciled in or who maintains a permanent place of abode
3 within this state and spends in the aggregate more than six months of each year
4 within this state.

5 (5) From the detailed payroll registers referenced in Paragraph (A)(3)
6 of this Section, segregate the gross payroll for all non-Louisiana residents and
7 agree the total to the non-Louisiana payroll indicated on either the cost report
8 of production expenditures or the footnotes to the cost report of production
9 expenditures.

10 (6) From the payroll registers for non-Louisiana residents, select all
11 disbursements to those individuals whose gross salaries during the period in
12 question exceeded five percent of the total disbursements indicated on the cost
13 report of production expenditures for the period in question for further testing.

14 (7) Excluding those individuals already selected for further testing in
15 Paragraph (6) of this Subsection, select an additional sample consisting of the
16 lesser of sixty individual payroll disbursements or fifty percent of the payroll
17 disbursements not already selected in Paragraph (6) of this Subsection from the
18 payroll registers for non-Louisiana residents, for further testing.

19 (8) For each employee selected for testing in Paragraphs (6) and (7) of
20 this Subsection, perform the following procedures, detailing any exceptions
21 noted:

22 (a) If the employee is a salaried employee, verify that the gross salary for
23 the selected disbursement is supported by and agrees to an employment
24 contract or other form of approved pay documentation.

25 (b) If the employee is an hourly employee, verify that the hourly wage
26 rate for the selected transaction is supported by and agrees to the approved pay
27 rate documentation in the employee's personnel file.

28 (c) If the employee is an hourly employee, verify that hours paid for the
29 selected transaction is supported by approved timesheets.

1 (d) Verify that the disbursement of such funds is a qualifying
2 expenditure given the operations of the motion picture production company.

3 (e) Verify that the payroll expenditures were actually made by the
4 motion picture production company as evidenced by deductions in the bank
5 account statements maintained by the motion picture production company and
6 that the disbursement cleared the bank during the period in question.

7 (9) From the detailed listing of non-payroll expenditures referenced in
8 Paragraph (A)(5) of this Section, select all disbursements for a particular
9 contract of purchase that exceeded five percent of the total disbursements
10 indicated on the cost report of production expenditures for the period in
11 question for further testing.

12 (10) Excluding those expenditures already selected for further testing in
13 Paragraph (9) of this Subsection, select an additional sample consisting of the
14 lesser of sixty individual disbursements or fifty percent of the non-payroll
15 disbursements not already selected in Paragraph (9) of this Subsection from the
16 detailed listing of non-payroll expenditures for further testing.

17 (11) For each disbursement selected for testing in Paragraphs (9) and
18 (10) of this Subsection, perform the following procedures, detailing any
19 exceptions noted:

20 (a) Verify that the transaction is supported by an original invoice or
21 receipt and that the amounts are in agreement.

22 (b) Verify that the expense category to which the disbursement was
23 coded appears reasonable based on the invoice documentation.

24 (c) Verify that the disbursement of such funds is a qualifying expenditure
25 given the operations of the motion picture production company.

26 (d) Verify that the expenditures were actually made by the motion
27 picture production company as evidenced by deductions in the bank account
28 statements maintained by the motion picture production company and that the
29 disbursement cleared the bank during the period in question.

- 1 **C. Before submission of the qualified cost report, the qualified**
 2 **accountant shall ensure that these steps have been taken:**
- 3 **(1) Redact all but the last four digits of any employee's social security**
 4 **number.**
- 5 **(2) Separate expenditures by calendar year, as well as the aggregate**
 6 **project totals.**
- 7 **(3) Submit detailed list of all expenditures as a spreadsheet.**

The original instrument and the following digest, which constitutes no part of the legislative instrument, were prepared by Thomas L. Tyler.

DIGEST

Present law provides for motion picture investor tax credits for certain state-certified productions by a motion picture production company.

Proposed law defines a "qualified cost report" as a report of the production expenditures produced by a qualified accountant who is unrelated to the motion picture production company and which report is subject to an agreed-upon procedures engagement by a certified public accountant in accordance with Statement on Standards for Attestation Engagements established by the American Institute of Certified Public Accountants. Requires that the report be addressed to the party which has engaged the qualified accountant; that it contain the qualified accountant's name, address, telephone number; that it be dated as of the date of completion of the qualified accountant's filed work; and that it contain a statement of acknowledgment by the qualified account that the state is relying on the qualified cost report in issuing the tax credit.

Present law requires the office of entertainment industry development and the secretary of the Department of Economic Development (DED) submit their initial certification of a project as a state-certified production to investors and to the secretary of the Department of Revenue indicating the total base investment which is to be expended in the state on the state-certified production. Proposed law retains these provisions but requires that the initial certification be submitted within 30 days of receipt of all required information.

Present law requires that prior to any final certification of the state-certified production, the motion picture production company submit to the office of entertainment industry development and the secretary of DED an audit of the production expenditures certified by an independent certified public accountant. Requires that the office and the secretary review the audit, the production expense details, and may require additional information needed to make a determination.

Proposed law requires a qualified cost report by a qualified accountant.

Present law requires that upon approval of the audit, that a final tax credit certification letter be sent to the investors indicating the amount of tax credits certified for the state-certified production. Proposed law requires that this letter be issued within 60 days after receipt of the qualified cost report and that it indicate the credits certified which are uncontested and if there is a contested amount, then the office and the secretary of DED are required to diligently work to resolve the outstanding issues in a timely manner.

Proposed law provides DED to request an additional qualified cost report of the expenditures

submitted by the motion picture production company with the cost of the additional report paid by the motion picture production company. Authorizes the motion picture production company to submit an amended qualified cost report if additional expenditures are incurred or discovered after the approval of the initial qualified cost report.

Proposed law provides that no motion picture investor tax credit be allowed for fees, interest, or payments of a similar nature paid to related parties and that it only be allowed if received by investors in the production who own 20% or less of the financial rewards based on sales, exploitation of the product, or the success in lining up distribution agreements. Further provides that no motion picture investor tax credit shall be allowed for any percentage of the financial awards but shall only be allowed for actually paid financing fees and interest.

Proposed law requires that when producing the qualified cost report, the qualified accountant perform certain sampling and verification procedures enumerated in proposed law.

Effective August 1, 2013.

(Amends R.S. 47:6007(B)(10), (11), (12), (13), (14), (D)(2)(a)(intro para) and (D)(2)(c) and (d); adds R.S. 47:6007(B)(15) and (16), (G) and 6007.1)