

2015 Regular Session

HOUSE BILL NO. 678

BY REPRESENTATIVE STOKES

TAX CREDITS: Requirements for inclusion of a Louisiana promotional graphic or activity for productions eligible for certain entertainment industry tax credits

1 AN ACT

2 To amend and reenact R.S. 47:6007(B)(1) through (8), (9)(intro.para.) and (10) through (16),
3 (C)(1)(c)(i), and (D)(6), 6022(C)(1) through (3), (4)(introductory paragraph), (5)(a)
4 (introductory paragraph), (6) through (9), 10(a), (11) through (14), and (D)(2)(a), and
5 to enact R.S. 47:6007(B)(17) and (18), 6022(B)(15) and (16), and (L), and to repeal
6 R.S. 47:6007(D)(8), relative to tax credits; to establish requirements for inclusion of
7 certain Louisiana promotional content or activity related to productions eligible for
8 certain entertainment industry tax credits; to provide with respect to the motion
9 picture investor tax credit; to provide with respect to the digital interactive media and
10 software tax credit; and to provide for related matters.

11 Be it enacted by the Legislature of Louisiana:

12 Section 1. R.S. 47:6007(B)(1) through (8), (9)(introductory paragraph), (10) through
13 (16), (C)(1)(c)(i), and (D)(6), 6022(C)(1) through (3), (4)(introductory paragraph), (5)(a)
14 (introductory paragraph), (6) through (9), 10(a), (11) through (14), and (D)(2)(a) are hereby
15 amended and reenacted, and R.S. 47:6007(B)(17) and (18), 6022(B)(15) and (16), and (L)
16 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) "Alternative marketing opportunity" means an alternative marketing
21 mechanism which has been approved by the office for a production as an alternative
22 to a Louisiana promotional graphic.

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

3 ~~(2)~~(3) "Expended in the state" means an expenditure to lease immovable
4 property located in the state; an expenditure as compensation for services performed
5 in the state; or an expenditure to purchase or lease tangible personal property within
6 the state where the transaction is subject to the state sales or lease tax provisions of
7 Title 47 of the Louisiana Revised Statutes of 1950. A transaction that is subject to
8 the state sales or lease tax provisions of Title 47 of the Louisiana Revised Statutes
9 of 1950 shall include transactions which are also subject to a statutory exclusion or
10 exemption.

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

13 ~~(4)~~(5) "Headquartered in Louisiana" means a corporation incorporated in
14 Louisiana or a partnership, limited liability company, or other business entity
15 domiciled and headquartered in Louisiana for the purpose of producing nationally
16 or internationally distributed motion pictures as defined in this Section.

17 ~~(5)~~(6) "Motion picture" means a nationally or internationally distributed
18 feature-length film, video, television pilot, television series, television movie of the
19 week, animated feature film, animated television series, or commercial made in
20 Louisiana, in whole or in part, for theatrical or television viewing. The term "motion
21 picture" shall not include the production of television coverage of news and athletic
22 events.

23 ~~(6)~~(7) "Motion picture production company" means a company engaged in
24 the business of producing nationally or internationally distributed motion pictures
25 as defined in this Section. Motion picture production company shall not mean or
26 include any company owned, affiliated, or controlled, in whole or in part, by any
27 company or person which is in default on a loan made by the state or a loan
28 guaranteed by the state, nor with any company or person who has ever declared

1 bankruptcy under which an obligation of the company or person to pay or repay
2 public funds or monies was discharged as a part of such bankruptcy.

3 (8) "Louisiana promotional graphic" means a graphical brand or logo for
4 promotion of the state which has been approved by the office for a production,
5 consisting of either of the following:

6 (a) A five-second long static or animated graphic that promotes Louisiana
7 in the end credits before the below-the-line crew crawl for the life of the production,
8 and which includes a link to Louisiana on the production's website and online
9 promotions.

10 (b) An embedded five-second long static or animated graphic that promotes
11 Louisiana during each broadcast worldwide for the life of the production, and which
12 includes a link to Louisiana on the production's website and online promotions.

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

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

22 ~~(9)~~(11) "Production audit report" means an audit report issued by a qualified
23 accountant who is unrelated to the motion picture production company and that is a
24 report of the qualified accountant's audit of the motion picture production's cost
25 report of production expenditures. The production audit report shall contain an
26 opinion from the qualified accountant stating that the production's cost report of
27 production expenditures presents fairly, in all material aspects, the production
28 expenditures expended in Louisiana pursuant to the provisions of this Section. The
29 production audit shall require:

1 ~~(10)~~(12) "Production expenditures" means preproduction, production, and
2 postproduction expenditures in this state directly relating to a state-certified
3 production, including without limitation the following: set construction and
4 operation; wardrobes, makeup, accessories, and related services; costs associated
5 with photography and sound synchronization, lighting, and related services and
6 materials; editing and related services; rental of facilities and equipment; leasing of
7 vehicles; costs of food and lodging; digital or tape editing, film processing, transfer
8 of film to tape or digital format, sound mixing, special and visual effects; and
9 payroll. This term shall not include expenditures for marketing and distribution, non-
10 production related overhead, amounts reimbursed by the state or any other
11 governmental entity, costs related to the transfer of tax credits, amounts that are paid
12 to persons or entities as a result of their participation in profits from the exploitation
13 of the production, the application fee, or state or local taxes.

14 ~~(11)~~(13) "Qualified accountant" means an independent certified public
15 accountant authorized to practice in this state who has sufficient knowledge of
16 accounting principles and practices generally recognized in the film and television
17 industry.

18 ~~(12)~~(14) "Resident" or "resident of Louisiana" means a natural person
19 domiciled in the state. A person who maintains a permanent place of abode within
20 the state and spends in the aggregate more than six months of each year within the
21 state shall be presumed to be domiciled in the state.

22 ~~(13)~~(15) "Secretary" means the secretary of the Department of Economic
23 Development.

24 ~~(14)~~(16) "Source within the state" means a physical facility in Louisiana,
25 operating with posted business hours and employing at least one full-time equivalent
26 employee.

27 ~~(15)~~(17) "State" means the state of Louisiana.

28 ~~(16)~~(18) "State-certified production" shall mean a production approved by
29 the office and the secretary which is produced by a motion picture production

1 company domiciled and headquartered in Louisiana and which has a viable multi-
2 market commercial distribution plan.

3 C. Investor tax credit; specific productions and productions.

4 (1) There is hereby authorized a tax credit against state income tax for
5 Louisiana taxpayers for investment in state-certified productions. The tax credit
6 shall be earned by investors at the time expenditures are made by a motion picture
7 production company in a state-certified production. However, credits cannot be
8 applied against a tax or transferred until the expenditures are certified by the office
9 and the secretary. For state-certified productions, expenditures shall be certified no
10 more than twice during the duration of a state-certified production unless the motion
11 picture production company agrees to reimburse the office for the costs of any
12 additional certifications. The tax credit shall be calculated as a percentage of the
13 total base investment dollars certified per production.

14 * * *

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

17 (i) If the total base investment is greater than three hundred thousand dollars,
18 each investor shall be allowed a tax credit of thirty percent of the base investment
19 made by that investor. However, if a state-certified production does not include a
20 Louisiana promotional graphic or an alternative marketing opportunity which has
21 been approved by the department for that specific production, the tax credit shall be
22 twenty-five percent of the base investment made by the investor.

23 * * *

24 D. Certification and administration.

25 * * *

26 (6) Reports.

27 (a) With input from the Legislative Fiscal Office, the office shall prepare a
28 written report to be submitted to the Senate Committee on Revenue and Fiscal
29 Affairs and the House of Representatives Committee on Ways and Means no less

1 than sixty days prior to the start of the Regular Session of the Legislature in 2007,
2 and every second year thereafter. The report shall include the overall impact of the
3 tax credits, the amount of the tax credits issued, the number of net new jobs created,
4 the amount of Louisiana payroll created, the economic impact of the tax credits and
5 film industry, and any other factors that describe the impact of the program.

6 (b) The office shall prepare an annual report detailing the alternative
7 marketing opportunities it has approved in the most recently ended calendar year for
8 tax credits earned for productions which employed an alternative marketing
9 opportunity in lieu of a Louisiana promotional graphic, as provided in Item (i) of
10 Subparagraph (c) of Paragraph (1) of Subsection C of this Section. The report shall
11 be provided annually on or before the first day of February to each member of the
12 House Committee on Ways and Means and the Senate Committee on Revenue and
13 Fiscal Affairs. The report shall include, but not be limited to, the following:

14 (i) The goals and strategy behind each alternative marketing opportunity
15 approved for state-certified productions.

16 (ii) The names of all motion picture production companies approved by the
17 office to provide alternative marketing opportunities.

18 (iii) The estimated value to the state of each approved alternative marketing
19 opportunity compared to the estimated value of a Louisiana promotional graphic.

20 (iv) The names of all motion picture production companies who chose to
21 include a Louisiana promotional graphic instead of offering the state an alternative
22 marketing opportunity.

23 * * *

24 §6022. Digital interactive media and software tax credit

25 * * *

26 C. Definitions. For the purposes of this Section:

27 (1) "Alternative marketing opportunity" means an alternative marketing
28 mechanism which has been approved by the office as an alternative to a Louisiana
29 promotional graphic for a production.

1 provisions of Title 47 of the Louisiana Revised Statutes of 1950. A transaction that
2 is subject to the state sales or lease tax provisions of Title 47 of the Louisiana
3 Revised Statutes of 1950 shall include transactions which are also subject to a
4 statutory exclusion or exemption.

5 (8) "Louisiana promotional graphic" means a graphical brand or logo for
6 promotion of the state which has been approved by the department for a production,
7 consisting of an embedded five-second long static or animated graphic that promotes
8 Louisiana and which includes a link to Louisiana on the production's website and
9 online promotions.

10 ~~(7)~~(9) "Office" means the office of entertainment industry development in
11 the Department of Economic Development as provided in R.S. 51:938.1.

12 ~~(8)~~(10) "Payroll" includes all salary, wages, and other compensation sourced
13 or apportioned to Louisiana, including related benefits.

14 ~~(9)~~(11) "Person" means a natural person, corporation, partnership, limited
15 partnership, limited liability company, joint venture, trust, estate, or association.

16 ~~(10)~~(a)(12)(a) "Production expenses" means preproduction and production
17 expenditures in the state directly relating to a state-certified production including
18 without limitation the following: testing software, source code development, patches,
19 updates, sprites, three-dimensional models, and level design; costs associated with
20 photography and sound synchronization, lighting and related services; rental of
21 Louisiana facilities and equipment; purchase of prepackaged audio files, video files,
22 photographic, or libraries; purchase of licenses to use pre-recorded audio files, video,
23 or photographic files; development costs associated with producing audio files and
24 video files to be used in the production of the end product under development.

25 * * *

26 ~~(11)~~(13) "Resident" or "resident of Louisiana" means a natural person and,
27 for the purpose of determining eligibility for the tax incentives provided by this
28 Section, any person domiciled in the state of Louisiana and any other person who

1 maintains a permanent place of abode within the state and spends in the aggregate
2 more than six months of each year within the state.

3 ~~(12)~~(14) "Secretary" means the secretary of the Louisiana Department of
4 Economic Development.

5 ~~(13)~~(15) "State-certified production" shall mean a digital interactive media
6 production or a component part thereof approved by the office.

7 ~~(14)~~(16) "Tax credit" means the digital interactive media and software
8 development tax credit authorized by this Section.

9 D. Tax credit; specific productions.

10 * * *

11 (2) For applications for state-certified productions submitted to the office on
12 or after July 1, 2009, and subsequently approved by the office and secretary, there
13 are hereby authorized tax credits which shall be earned by a company at the time
14 funds are expended in Louisiana on a state-certified production as follows:

15 (a) Credits shall be earned at the rate of twenty-five percent of the base
16 investment. However, if a state-certified production does not include a Louisiana
17 promotional graphic or an alternative marketing opportunity which has been
18 approved by the department for that specific production, the tax credit shall be
19 twenty percent of the base investment.

20 * * *

21 L. Report. The office shall prepare an annual report detailing the alternative
22 marketing opportunities it has approved in the most recently ended calendar year for
23 tax credits earned for productions which employed an alternative marketing
24 opportunity in lieu of a Louisiana promotional graphic, as provided in Subparagraph
25 (a) of Paragraph (2) of Subsection D of this Section. The report shall be provided
26 annually on or before the first day of February to each member of the House
27 Committee on Ways and Means and the Senate Committee on Revenue and Fiscal
28 Affairs. The report shall include, but not be limited to, the following:

1 (1) The goals and strategy behind each alternative marketing opportunity
2 approved for state-certified productions.

3 (2) The names of all companies approved by the office to provide alternative
4 marketing opportunities.

5 (3) The estimated value to the state of each approved alternative marketing
6 opportunity compared to the estimated value of a Louisiana promotional graphic.

7 (4) The names of all companies who chose to include a Louisiana
8 promotional graphic instead of offering the state an alternative marketing
9 opportunity.

10 Section 2. R.S. 47:6007(D)(8) is hereby repealed in its entirety.

11 Section 3. The provisions of this Act shall be applicable to productions receiving
12 initial certification on or after August 1, 2015.

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 678 Original

2015 Regular Session

Stokes

Abstract: Establishes requirements for inclusion of La. promotional content or activity for productions eligible for the motion picture investor tax credit and the digital interactive media and software tax credit.

Motion Picture Investor Tax Credit

Present law establishes a tax credit for investors in state-certified motion picture productions filmed in La. The credit is equal to 30% of the "base amount" of "production related expenditures", as such terms are defined by present law.

Proposed law retains present law and requires that a production use a La. promotional graphic or employ approved alternative marketing opportunities in order to receive the 30% tax credit. Specifically, if a state-certified production does not include a La. promotional graphic or an alternative marketing opportunity which has been approved by the office of entertainment industry development, Dept. of Economic Development ("office") for that specific production , the tax credit shall be reduced from 30% to 25% of the base investment.

Proposed law adds the following definitions for the required promotional content and activity:

- (1) "Alternative marketing opportunity" means an alternative marketing mechanism which has been approved by the Dept. of Economic Development ("DED") as an alternative to a La. promotional graphic for purposes of a production.

- (2) "Louisiana promotional graphic" means a graphical brand or logo for promotion of the state, which has been approved by DED for a production consisting of either of the following:
- (a) A graphic that promotes La. in the end credits before the below-the-line crew crawl for the life of the production and which includes a link to La. on the production's website and online promotions.
 - (b) An embedded graphic that promotes La. during each broadcast worldwide for the life of the production and which includes a link to La. on the production's website and online promotions.

Proposed law requires annual reporting by the DED regarding the specific use and comparative value of the alternative marketing opportunities it has approved for productions in the most recently ended calendar year. The report is to be provided on or before February 1st to each member of the House Committee on Ways and Means and the Senate Committee on Revenue and Fiscal Affairs.

Digital Interactive Media and Software Tax Credit

Present law establishes a tax credit for investors in state-certified digital interactive media and software productions created in La. The credit is equal to 25% of the "base amount" of "production expenses", as such terms are defined by present law.

Proposed law retains present law and requires that a production use a La. promotional graphic or employ approved alternative marketing opportunity in order to receive the 25% tax credit. Specifically, if a state-certified production does not include a La. promotional graphic or an alternative marketing opportunity, the tax credit shall be reduced from 25% to 20% of the base investment.

Proposed law adds the following definitions for the required promotional content and activity:

- (1) "Alternative marketing opportunity" means an alternative marketing mechanism which has been approved by DED as an alternative to a La. promotional graphic for purposes of a production.
- (2) "Louisiana promotional graphic" means a graphical brand or logo for promotion of the state, which has been approved by DED for purposes of a production, consisting of either of an embedded graphic that promotes La. for the life of the production and which includes a link to La. on the production's website and online promotions.

Proposed law requires annual reporting by the DED regarding the specific use and comparative value of the alternative marketing opportunities it has approved for productions in the most recently ended calendar year. The report is to be provided by on or before February 1st to each member of the House Committee on Ways and Means and the Senate Committee on Revenue and Fiscal Affairs.

Effective Aug. 1, 2015, and applicable for productions receiving initial certification on or after that date.

(Amends R.S. 47:6007(B)(1) through (8), (9)(intro.para.), (10) through (16), (C)(1)(c)(i), and (D)(6), 6022(C)(1) through (3), (4)(intro.para.), (5)(a)(intro.para.), (6) through (9), 10(a), (11) through (14), and (D)(2)(a); Adds R.S. 47:6007(B)(17) and (18), 6022(B)(15) and (16), and (L); Repeals R.S. 47:6007(D)(8))