
The original instrument and the following digest, which constitutes no part of the legislative instrument, were prepared by Riley Boudreaux.

DIGEST

SB 100 Engrossed

2015 Regular Session

Morrell

Present law grants a motion picture investor tax credit as a percentage of the "base investment" made and used for "production expenditures" in the state for a "state-certified production". The term "production expenditures" is defined in present law.

Proposed law excludes from eligible "production expenditures" expenditures for "related party transactions" denied or limited by the office of entertainment industry development in the Department of Economic Development pursuant to the following provisions of proposed law.

Present law requires a motion picture production company to submit to the office and the secretary of LED a production audit report, after the review of which the office and the secretary must issue a tax credit certification letter indicating the amount of tax credits certified for the state-certified production to the investors for all qualifying expenditures verified by the office.

Present law requires the production audit report to be issued by a qualified accountant who is unrelated to the motion picture production company and to be a report of the accountant's audit of the motion picture production's cost report of "production expenditures". The production audit report must contain an opinion from the accountant stating that the production's cost report of production expenditures presents fairly, in all material aspects, the "production expenditures" expended in Louisiana.

Proposed law requires credits to be certified only upon receipt and approval by the Department of Economic Development of a "production expenditure verification report." Requires LED to directly engage and assign an independent CPA or tax attorney to prepare such reports. In addition, the LED must directly engage and assign the Louisiana Educational Television Authority to review expenditures for related party transactions of state-certified television productions to ensure that the transactions meet all the requirements of the proposed law. "State-certified television productions" is defined as productions which are television pilots, television series, television movies of the week, or animated television series. Applicants for the credit are to be responsible for any fee assessed for such reports, including an up-front deposit.

Proposed law provides for the qualifications of the CPA's engaged and requires production expenditure verification reports by CPA's to be subject to two levels of review either within a CPA firm or a second review through a cooperative endeavor with another CPA prior to their submission.

Proposed law requires the opinion of the accountant to also state that there are no "related party transactions" or that material transactions of related party relationships are properly reported and accounted for as required below, adequately disclosed, and explained in the audit.

"Related party transaction" is defined as a transaction between parties deemed to be related by common ownership or control according to generally accepted auditing standards (GAAS) and generally accepted auditing principles (GAAP).

Proposed law requires the production audit report or audit notes therein to verify that all "related party transactions" have been disclosed and explained, and that the production accounts include all of the following:

- (1) The name of the related party.
- (2) The nature of the relationship between the related party and the motion picture production company.
- (3) The nature of the transaction.
- (4) The amount of the transaction.
- (5) The capture and reporting of more than the functional expense classifications of "related party transactions", but also how they are a legitimate project expenditure, including reporting of Labor and Facility/Equipment "charge rates" related to production company personnel and facility and equipment used in the production of the state-certified production.

The office is authorized to request and use additional information in determining the extent to which expenditures for related party transactions will be certified by requesting and obtaining documentation, including but not limited to third-party contracts, notarized affidavits, tax records, W-2s, 1099s, and cancelled checks.

Proposed law requires the motion picture production company to submit to the office and the secretary a sworn affidavit by the individual responsible for providing the accounts, documents, records and any other information necessary to the accountant charged with preparing and filing the production audit report that such information was true and correct; that he has reviewed the production audit report and, except for any matter specified in the affidavit, the report is true and correct; and that all "related party transactions" were accurately reported in accordance with the proposed law; all to the best of the affiant's knowledge, information, and belief.

Any false statement under oath contained in the affidavit constitutes perjury and shall be punished as provided by R.S. 14:123(C)(4) - a fine of not more than \$10,000 or imprisonment at hard labor for not more than five years, or both.

Proposed law requires the production audit report to include information concerning the total number of people who were paid salary, wages, benefits, and other compensation in the production which was included as payroll for which a credit was claimed and the number of those who were Louisiana residents.

Proposed law further limits certification of tax credits certified for goods and services provided by

related parties as follows:

- (1) Qualifying "production expenditures" for "Above the Line (ATL) services" provided by related parties must be limited to 12% of total Louisiana "production expenditures".

"Above the Line (ATL) services" is defined as services such as those of a producer, executive producer, line producer, coproducer, assistant producer, actor, director, casting director, screenwriter, and other services of job positions that are associated with the creative or financial control of a production and customarily considered as Above the Line services in the film and television industry.

- (2) Qualifying production expenditures for "Below the Line" services provided by a related party must be limited to the actual compensation paid by the related party to its employee or employees who are actually performing the service, including employer-paid benefits, allocated to the production on an hourly basis.

"Below the Line (BTL) services" is defined as services which are not "Above the Line services".

- (3) Qualifying production expenditures for goods and services provided by a related party must be limited to fair market value as established through the related party's historic dealings with unrelated parties, or established by comparable transactions between other unrelated parties for substantially similar goods and services considering the geographic market and other pertinent variables. If the fair market value cannot be established in such a manner, qualifying production expenditures must be limited to the internal cost recovery rate consisting of actual acquisition cost plus ongoing maintenance and upgrade cost, divided by anticipated utilization over the real useful life of the property. However, qualifying production expenditures for visual effects packages must be limited to either the internal cost recovery rate and/or the actual compensation paid by the related party employer to its employee or employees actually performing the service, including employer-paid benefits, allocated to the production on an hourly basis as determined by the methodology selected and deemed most appropriate under the circumstances by the office.

- (4) No tax credits can be earned or certified for expenditures for finance fees, interest, or payments of a similar nature paid to related parties, investors in the production, or any other entities which the office determines will gain financial rewards based upon sale or exploitation of the product or success in procuring distribution agreements unless such expenditures are made to a Louisiana financial institution as defined in R.S. 6:2(8) or a Louisiana Business and Industrial Development Company (BIDCO) defined in and provided for in R.S. 51:2386 et seq. which are regulated by the office of financial institutions and which have one or more offices in the state.

Proposed law requires "related party transactions" to be referred to the office of the state inspector general for further review to determine whether the transaction is in accord with the above provisions. The office of the state inspector general may make such further audit, examination, and

investigation of all books and records and officers and employees of a movie production company earning, or of any entity or persons receiving, tax credits as is necessary to make such determination pursuant to any authority provided to it in present law. Such entities and people are deemed to consent to such audit, examination, and investigation and to any reasonable fees associated as a condition of earning or receiving the tax credits.

Applies to all productions certified on and after July 1, 2015.

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

(Amends R.S. 47:6007(B)(9), (10), and (11), (D)(2)(c) and (d), and (9); adds R.S. 36:104.1 and R.S. 47:6007(B)(17), (18), and (19), (C)(1)(e), and (D)(2)(f) and (g))

Summary of Amendments Adopted by Senate

Committee Amendments Proposed by Senate Committee on Revenue and Fiscal Affairs to the original bill

1. Requires the credits to be certified only upon receipt and approval by LED of a "production expenditure verification report."
2. Requires LED to engage independent CPA's or tax attorneys to prepare such reports and the LETA to review expenditures for related party transactions of state-certified television productions.
3. Provides for the qualifications of the CPA's engaged and requires production expenditure verification reports by CPA's to be subject to two levels of review either within a CPA firm or a second review through a cooperative endeavor with another CPA prior to their submission.