

2015 Regular Session

SENATE BILL NO. 100

BY SENATOR MORRELL AND REPRESENTATIVE TALBOT

TAX/TAXATION. Requires: LED to engage independent auditors to prepare production expenditure verification reports for motion picture investor tax credits; sworn affidavits of those submitting information for the reports; regulates and limits expenditures between related parties and subjects them to review by the state inspector general. (gov sig)

1 AN ACT

2 To amend and reenact R.S. 47:6007(B)(9), (10), and (11) and (D)(2)(c) and (d) and (9), and

3 to enact R.S. 36:104.1 and R.S. 47:6007(B)(17), (18), (19), and (20), (C)(1)(e), and

4 (D)(2)(f) and (g), relative to motion picture investor tax credits; to regulate and limit

5 production expenditures between related parties; to subject related party transactions

6 to review by the office of the state inspector general; to require certain sworn

7 affidavits and provide for criminal penalties; to provide for the powers and duties of

8 the Department of Economic Development; to require an independent verification

9 of expenditures for certification of such tax credits; and to provide for related

10 matters.

11 Be it enacted by the Legislature of Louisiana:

12 Section 1. R.S. 36:104.1 is hereby enacted to read as follows:

13 **§104.1. Independent certified public accountant or tax attorney verification**

14 **reports required for motion picture investor tax credit program**

15 **A. In order to protect the integrity of the motion picture investor tax**

16 **credit program by ensuring that the tax credits are certified only for eligible**

17 **expenditures, and to provide for uniformity in expenditure verification**

1 reporting, the Department of Economic Development shall directly engage and
2 assign an independent certified public accountant, hereinafter referred to as
3 "CPA", or a tax attorney to prepare for the department the required
4 production expenditure verification report on a tax credit applicant's cost
5 report of expenditures or claimed expenditures for the motion picture investor
6 tax credit program. In addition, the department shall directly engage and assign
7 the Louisiana Educational Television Authority to review expenditures for
8 related party transactions of state-certified television productions to ensure that
9 the transactions meet all the requirements of R.S. 47:6007(D)(9). For purposes
10 of this Section, "state-certified television productions" means state-certified
11 productions which are television pilots, television series, television movies of the
12 week, or animated television series.

13 B. For purposes of this Section, the term "certified public accountant",
14 or "CPA", shall mean a person who meets all of the following qualifications:

15 (1) He maintains an active unrestricted original certified public account
16 license.

17 (2) He maintains a current Louisiana certified public account firm
18 permit.

19 (3) He actively participates in a Peer Review Program approved by the
20 State Board of Certified Public Accountants of Louisiana.

21 (4) He completes eight hours of continuing professional education in
22 approved Department of Economic Development tax credit attestation courses
23 per reporting cycle.

24 (5) He is capable of conducting two levels of review within the CPA firm
25 or, if not within the firm, then through a cooperative endeavor with another
26 CPA for the review of a verification report prior to its issuance.

27 C. The applicant seeking certification of motion picture investor tax
28 credits shall be responsible for and assessed any production expenditure
29 verification report fee which may be provided by law and any applicant seeking

1 certification of such tax credits shall be required to submit the up-front deposit
2 of the fee, which may be required by law.

3 D. The applicant seeking motion picture investor tax credits shall make
4 all records related to the tax credit application available to the CPA, tax
5 attorney, or, in the case of review of related party transactions of state-certified
6 television productions, the auditor of the Louisiana Educational Television
7 Authority assigned by the department to prepare and submit to the department
8 a production expenditure verification report or to review related party
9 transactions of state-certified television productions.

10 E. The term "production expenditure verification report" shall include
11 any agreed-upon procedure, tax opinion, attestation, or other report required
12 by statute or department rule. Prior to submission to the department, a
13 production expenditure verification report shall require two levels of review
14 either within a CPA firm or a second review through a cooperative endeavor
15 with another CPA.

16 Section 2. R.S. 47:6007(B)(9), (10), and (11) and (D)(2)(c) and (d) and (9) are hereby
17 amended and reenacted and R.S. 47:6007(B)(17), (18), (19), and (20), (C)(1)(e), and
18 (D)(2)(f) and (g) are hereby enacted to read as follows:

19 §6007. Motion picture investor tax credit

20 * * *

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

22 * * *

23 (9) "Production ~~audit~~ **expenditure verification** report" means ~~an audit a~~
24 report issued by a qualified accountant who is unrelated to the motion picture
25 production company and that is a report of the qualified accountant's ~~audit~~
26 **verification** of the motion picture production's cost report of production
27 expenditures. The production ~~audit~~ **expenditure verification** report shall contain an
28 opinion from the qualified accountant stating that **there are no related party**
29 **transactions or that material transactions of related party relationships are**

1 properly reported and accounted for as required by Paragraph (D)(9) of this
2 Section, adequately disclosed, and explained in the audit and that the
3 production's cost report of production expenditures presents fairly, in all material
4 aspects, the production expenditures expended in Louisiana pursuant to the
5 provisions of this Section. The production ~~audit~~ expenditure verification
6 report shall require:

7 (a) ~~The production audit report to be~~ Be performed in accordance with the
8 ~~auditing~~ accounting standards generally accepted in the United States.

9 (b) ~~The production cost report to be~~ Be addressed to the party which has
10 engaged the qualified accountant.

11 (c) ~~The production cost report to contain~~ Contain the qualified accountant's
12 name, address, and telephone number.

13 (d) ~~The production cost report to contain~~ Contain a certification that the
14 qualified accountant is unrelated to the motion picture production company.

15 (e) ~~The production cost report to be~~ Be dated as of the date of completion of
16 the qualified accountant's field work.

17 (f) ~~The production cost report to contain~~ Contain a statement of
18 acknowledgment by the qualified accountant that the state is relying on the qualified
19 ~~cost~~ production expenditure verification report in the issuance of the tax credits
20 under the provisions of this Section.

21 (10)(a) "Production expenditures" means preproduction, production, and
22 postproduction expenditures in this state directly relating to a state-certified
23 production, including without limitation the following: set construction and
24 operation; wardrobes, makeup, accessories, and related services; costs associated
25 with photography and sound synchronization, lighting, and related services and
26 materials; editing and related services; rental of facilities and equipment; leasing of
27 vehicles; costs of food and lodging; digital or tape editing, film processing, transfer
28 of film to tape or digital format, sound mixing, special and visual effects; and
29 payroll. ~~This term~~

* * *

C. Investor tax credit; specific productions and projects.

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

* * *

(e) Motion picture investor tax credits shall be certified only upon the receipt and approval by the office of a production expenditure verification report submitted by a qualified accountant in accordance with the provisions of Subparagraph (D)(2)(c) of this Section.

* * *

D. Certification and administration.

* * *

(2)

* * *

(c)(i) The office shall directly engage and assign a qualified accountant or tax attorney to prepare a production expenditure verification report on an applicant's cost report on production expenditure, and 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 Paragraph (D)(9) of this Section. The applicant shall be responsible for payment of any production expenditure

1 verification report fee which may be due in accordance with law and shall make
2 all records related to the tax credit application available to the department, the
3 accountant, or the LETA auditor.

4 (ii) The office and the secretary shall submit their initial certification or
5 written denial of a project as a state-certified production to investors and to the
6 secretary of the Department of Revenue indicating the total base investment which
7 shall be expended in the state on the state-certified production within sixty days of
8 their receipt of all required information. The initial certification shall include a
9 unique identifying number for each state-certified production.

10 (d)(i) ~~Prior to any final certification of the state-certified production, the~~
11 ~~motion picture production company~~ Upon project completion, the applicant shall
12 make a request to the office to proceed to final certification by submitting to the
13 office a cost report of production expenditures to be formatted in accordance
14 with instructions of the office. The applicant shall make all records related to
15 the cost report available for inspection by the office and the qualified
16 accountant, tax attorney, or LETA auditor selected by the office to prepare the
17 production expenditure verification report or review expenditures for related
18 party transactions of state-certified television productions. After review and
19 investigation of the cost report, the accountant, tax attorney, or Louisiana
20 Educational Television Authority shall submit to the office and the secretary a
21 production ~~audit~~ expenditure verification report and the affidavit required by
22 Subparagraph (g) of this Paragraph. The office and the secretary shall review the
23 production ~~audit~~ expenditure verification report and may require additional
24 information needed to make a determination. Within one hundred twenty days of
25 the receipt of the production ~~audit~~ expenditure verification report and all required
26 supporting information, the office and the secretary shall issue a tax credit
27 certification letter indicating the amount of tax credits certified for the state-certified
28 production to the investors for all qualifying expenditures verified by the office. Any
29 expenditures for which tax credits were neither denied nor certified due to

1 insufficient information or other issues, the office and secretary shall diligently work
2 to resolve the outstanding issues in a timely manner, and the office and secretary
3 may subsequently issue a supplemental tax credit certification at the time of such
4 resolution.

5 (ii) The department may request an additional production ~~audit~~ **expenditure**
6 **verification** report of the expenditures submitted by the motion picture production
7 company with the cost of the additional report paid by the motion picture production
8 company. The motion picture production company may submit an amended
9 ~~production audit cost~~ report **of production expenditures** if additional expenditures
10 are incurred or discovered after the approval of the initial production ~~audit reports~~
11 **expenditure verification report** issued pursuant to Item (i) of this Subparagraph,
12 and the office and secretary may issue a supplemental tax credit certification if so
13 warranted.

14 * * *

15 **(f) In addition to any other requirements of this Paragraph, the**
16 **production expenditure verification report shall include information concerning**
17 **the total number of people who were paid salary, wages, benefits, and other**
18 **compensation in the production which was included as payroll for which a**
19 **credit was claimed and the number of those who were Louisiana residents.**

20 **(g)(i) In addition to any other requirements of this Paragraph, the**
21 **production expenditure verification report shall include a sworn affidavit by the**
22 **individual responsible for providing the accounts, documents, records and any**
23 **other information necessary to the accountant charged with preparing and**
24 **filing the production expenditure verification report that such accounts,**
25 **documents, records, and other information were true and correct; that he has**
26 **reviewed the production expenditure verification report and, except for any**
27 **matter specified in the affidavit, the report is true and correct; and that all**
28 **related party transactions were accurately reported in accordance with**
29 **Paragraph (9) of this Subsection; all to the best of the affiant's knowledge,**

1 information, and belief.

2 (ii) Any false statement under oath contained in the affidavit required
3 by this Subparagraph shall constitute perjury and shall be punished as provided
4 by R.S. 14:123(C)(4).

5 * * *

6 (9)(a) It is recognized that, while legitimate related party transactions often
7 occur as production expenditures, some related party transactions may be conducted
8 in such a manner as to abuse the purpose and intent of the program. Therefore, the
9 production expenditure verification report required by Subparagraph (D)(2)(d)
10 of this Section or audit notes therein shall verify that all related party
11 transactions have been disclosed and explained, and that the production
12 accounts include all of the following:

13 (i) The name of the related party.

14 (ii) The nature of the relationship between the related party and the
15 motion picture production company.

16 (iii) The nature of the transaction.

17 (iv) The amount of the transaction.

18 (v) The capture and reporting of the functional expense classifications
19 of related party transactions and an explanation of how each is a legitimate
20 project expenditure, including reporting of labor and facility/equipment charge
21 rates related to production company personnel and facility and equipment used
22 in the production of the state-certified production.

23 (b) Tax credits certified for goods and services provided by related
24 parties to a state-certified production shall be further limited as follows:

25 (i) Qualifying production expenditures for Above the Line, or "ATL",
26 services provided by related parties shall be limited to twelve percent of total
27 Louisiana production expenditures.

28 (ii) Qualifying production expenditures for Below the Line, or "BTL",
29 services provided by a related party shall be limited to the actual compensation

1 including the value of employer-funded benefits paid by the related party to its
2 employee or employees who are actually performing the service, allocated to the
3 production on an hourly basis.

4 (iii)(aa) Qualifying production expenditures for goods and services such
5 as equipment, supplies, studio rental, and visual effects packages provided by
6 a related party shall be limited to fair market value as established through the
7 related party's historic dealings with unrelated parties, or established by
8 comparable transactions between other unrelated parties for substantially
9 similar goods and services considering the geographic market and other
10 pertinent variables.

11 (bb) If the fair market value cannot be established in the manner
12 provided for in Subitem (aa) of this Item, qualifying production expenditures
13 shall be limited to the internal cost recovery rate to be determined by dividing
14 the actual acquisition cost plus ongoing maintenance and upgrade cost by
15 anticipated utilization over the real useful life of the property. However,
16 qualifying production expenditures for visual effects packages shall be limited
17 to either the internal cost recovery rate or the actual compensation including
18 the value of employer-funded benefits paid by the related party employer to its
19 employee or employees actually performing the service, allocated to the
20 production on an hourly basis as determined by the methodology selected and
21 deemed most appropriate under the circumstances by the office.

22 (iv) No tax credits shall be earned or certified for expenditures for
23 finance fees, interest, or payments of a similar nature paid to related parties,
24 investors in the production, or any other entities which the office determines
25 will gain financial rewards based upon sale or exploitation of the product or
26 success in procuring distribution agreements unless such expenditures are made
27 to a Louisiana financial institution as defined in R.S. 6:2(8) or a Louisiana
28 Business and Industrial Development Company defined in and provided for in
29 Chapter 39-B of Title 51 of the Louisiana Revised Statutes of 1950 (R.S. 51:2386

1 et seq.) that is regulated by the office of financial institutions and that has one
2 or more offices in the state.

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

8 (d) Any related party transaction shall be referred by the office and the
9 secretary to the office of the state inspector general for further review to
10 determine whether the transaction is in accord with the provisions of this
11 Paragraph. The office of the state inspector general may make such further
12 audit, examination, and investigation of all books and records and officers and
13 employees of a movie production company earning, or of any entity or persons
14 receiving, tax credits pursuant to this Section as are necessary to make the
15 determination pursuant to any authority provided for in Part VI of Chapter 2
16 of Title 49 of the Louisiana Revised Statutes of 1950. The movie production
17 companies, entities, and persons earning or receiving such credits are hereby
18 deemed to consent to the audit, examination, and investigation and any
19 reasonable fees associated with the examination and investigation as a condition
20 of earning or receiving the tax credits.

21 (e) The secretary of the Department of Economic Development and the office
22 shall promulgate rules regarding related party transactions in accordance with the
23 Administrative Procedure Act.

24 * * *

25 Section 3. The provisions of this Act shall apply to all productions receiving initial
26 certification on and after December 31, 2015.

27 Section 4. This Act shall become effective upon signature by the governor or, if not
28 signed by the governor, upon expiration of the time for bills to become law without signature
29 by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If

1 vetoed by the governor and subsequently approved by the legislature, this Act shall become
 2 effective on the day following such approval.

The original instrument was prepared by Riley Boudreaux. The following digest, which does not constitute a part of the legislative instrument, was prepared by Thomas L. Tyler.

DIGEST

SB 100 Reengrossed

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 the 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) and (D)(2)(c) and (d) and (9); adds R.S. 36:104.1 and R.S. 47:6007(B)(17), (18), (19), and (20), (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.

Senate Floor Amendments to engrossed bill

1. Technical amendments