

2015 Regular Session

HOUSE BILL NO. 735

BY REPRESENTATIVE STOKES

TAX/INCOME TAX: Requires the withholding of individual income taxes from income earned by certain individuals for purposes of the motion picture investor tax credit

1 AN ACT

2 To amend and reenact R.S. 47:164(D) and 6007(B)(8) and (D)(5), relative to individual  
3 income tax; to provide with respect to the motion picture investor tax credit; to  
4 provide for employee compensation eligible as a production expense for purposes  
5 of the tax credit; to require withholding for purposes of individual income tax; to  
6 authorize the imposition of a fee by the Department of Revenue for purposes of  
7 administration of reporting related thereto; to authorize the exchange of certain  
8 specific information between the Department of Revenue and the Department of  
9 Economic Development; to require the reporting of certain payments and other  
10 information; to provide for applicability; to provide for effectiveness; and to provide  
11 for related matters.

12 Be it enacted by the Legislature of Louisiana:

13 Section 1. R.S. 47:164(D) and 6007(B)(8) and (D)(5) are hereby amended and  
14 reenacted to read as follows:

15 §164. Information at source

16 \* \* \*

17 D. Withholding of tax at source. (1) The ~~collector~~ secretary, whenever it is  
18 deemed necessary to insure compliance with the provisions of this Chapter, may  
19 require the United States, the state of Louisiana or any other state or any political  
20 subdivision, agency or instrumentality of the foregoing, or any person having

1 control, receipt, custody, disposal or payment of interest (other than interest coupon  
2 payable to the bearer), rent, salaries, wages, premiums, annuities, compensation,  
3 remunerations, emoluments, or other fixed or determinable annual or periodical  
4 gains, profits, and income, paid or payable to any person, to deduct and withhold as  
5 tax an amount determined by the ~~collector~~ secretary, to be payable from such person  
6 and make return thereof and pay the tax to the ~~collector~~ secretary.

7 (2)(a) The motion picture investor tax credit pursuant to R.S. 47:6007 awards  
8 a tax credit for investments made and used for production expenditures in this state  
9 for state-certified productions. Therefore, any individual receiving any payments for  
10 the performance of services used directly in a production activity, which payments  
11 shall be claimed as a production expenditure for purposes of certification of tax  
12 credits, is deemed to be receiving Louisiana taxable income whether directly, or  
13 indirectly through an agent or agency, loan out company, a personal service  
14 company, an employee leasing company, or other entity.

15 (b) Any motion picture production company, motion picture payroll services  
16 company, or other entity making or causing to be made payments as provided in  
17 Subparagraph (a) of this Paragraph, to an individual, or to an agent or agency, loan  
18 out company, personal service company, employee leasing company, or other entity  
19 is considered to be paying compensation taxable by the state of Louisiana. For  
20 purposes of eligibility as a production expenditure, the company or other entity shall  
21 withhold taxes from those payments at the highest individual rate of 6%, or the  
22 highest individual rate in effect at the time.

23 (c) The motion picture production company, motion picture payroll services  
24 company, or other entity required to withhold income taxes as required by this  
25 Paragraph shall electronically report and remit such withholdings to the Department  
26 of Revenue quarterly, and shall also annually report electronically a list of all payees  
27 in a format approved by the department. The information reported as required by  
28 this Subparagraph may be provided to the Department of Economic Development

1 and if provided, shall be subject to the confidentiality provisions of R.S.

2 47:1508(B)(20). The reports shall contain the following information:

3 (i) Name, address, ownership structure, and taxpayer identification number  
4 of the loan out company.

5 (ii) Identification of tax type: C Corporation, S Corporation, or Limited  
6 Liability Company with tax type specified.

7 (iii) Name, address, and social security number of the payee.

8 (iv) An estimated amount of what the loan out company will pay the payee.

9 (v) An affirmative statement of whether or not the payee is a related party  
10 to the loan out company, and if so, provision of an affidavit stating under penalty of  
11 perjury that the transaction is valued at the same value that an unrelated party would  
12 value the same transaction.

13 \* \* \*

14 §6007. Motion picture investor tax credit

15 \* \* \*

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

17 \* \* \*

18 (8) "Payroll" means all salary, wages, and other compensation, including  
19 ~~benefits paid to an employee~~ but not limited to services, benefits, per diem, housing,  
20 box rentals and any other type of benefit paid to an individual for services relating  
21 to a state-certified production ~~and~~ taxable in this state and for which taxes are  
22 withheld and remitted to the Department of Revenue in accordance with R.S.  
23 47:164(D)(2). However, "payroll" for purposes of the additional tax credit for  
24 Louisiana-resident payroll shall exclude any portion of an individual salary in excess  
25 of one million dollars.

26 \* \* \*

27 D. Certification and administration.

28 \* \* \*

1 (5) A motion picture production company applying for ~~the additional~~ a tax  
2 ~~credit for the employment of Louisiana residents~~ based upon payroll for any  
3 individuals must remit a schedule to the Department of Revenue, in a machine-  
4 sensible format approved by the secretary of the Department of Revenue, that  
5 includes the following information: ~~the names of all persons who received salary,~~  
6 ~~wages, or other compensation for services performed in Louisiana in connection with~~  
7 ~~the state-certified production, and the address, taxpayer identification number,~~  
8 ~~permanent address of, and the amount of compensation for services performed in~~  
9 ~~Louisiana received by each such person.~~

10 (a) Name, address, ownership structure, and taxpayer identification number  
11 of the loan out company, if any.

12 (b) Identification of tax type: C Corporation, S Corporation, or Limited  
13 Liability Company with tax type specified, if applicable.

14 (c) Name, address, and social security number of the payee.

15 (d) An estimated amount of what the loan out company will pay the payee,  
16 if applicable.

17 (e) An affirmative statement of whether or not the payee is a related party  
18 to the loan out company, and if so, provision of an affidavit stating under penalty of  
19 perjury that the transaction is valued at the same value that an unrelated party would  
20 value the same transaction, if applicable.

21 \* \* \*

22 Section 2. For each fiscal year after the implementation of this Act, the secretary of  
23 the Department of Revenue shall, for the purpose of administering the reporting provisions  
24 required by this Act, collect a fee of two hundred dollars per motion picture production for  
25 which reports and payroll withholding information are mandated by this Act.

26 Section 3. The provisions of this Act shall be applicable to productions which  
27 receive initial certification on or after January 1, 2016.

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**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)]

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HB 735 Engrossed

2015 Regular Session

Stokes

**Abstract:** Requires the withholding of income tax on payments to all individuals who are paid for the performance of services that are considered a production expenditure eligible for motion picture investor tax credits.

Present law allows a motion picture investor tax credit in an amount equal to a certain percentage of the "base investment" made in a state-certified production. The "base investment" is a cash or cash equivalent investment made and used for "production expenditures" in the state. "Production expenditures" includes compensation paid to employees for services related to the production.

Proposed law specifies that any individual receiving any payments for the performance of services used directly in a production activity, and claimed as a production expenditure for certification of a tax credit (individual), is deemed to be receiving La. taxable income whether directly, or indirectly through an agent or agency, loan out company, a personal service company, an employee leasing company, or other entity.

Proposed law provides that any motion picture production company, motion picture payroll services company, or other entity (company) making or causing to be made payments to an individual, or to an agent or agency, loan-out company, personal service company, employee leasing company, or other entity is considered to be paying compensation taxable by the state. For purposes of eligibility of payments for certification of tax credits, the company is required to withhold taxes from those payments at the rate of 6%.

Proposed law requires the company to electronically report and remit the withholdings made pursuant to proposed law to the Dept. of Revenue quarterly, and to annually electronically report a list of all individual payees in a format approved by the department. The Dept. of Revenue is authorized to share with the Dept. of Economic Development information contained in the report, in accordance with confidentiality requirements of present law regarding the exchange of information between these two departments. The report shall contain the following information:

- (1) Name, address, ownership structure, and taxpayer identification number of the loan out company, if any.
- (2) Identification of tax type: C Corp; S Corp; or L.L.C. with tax type specified, if applicable.
- (3) Name, address, and social security number of the payee.
- (4) An estimated amount of what the loan out company will pay the payee, if applicable.
- (5) An affirmative statement of whether the payee is a related party to the loan out company, and if so, provision of an affidavit stating that the transaction is valued at the same value that an unrelated party would value the same transaction, if applicable.

Proposed law authorizes the Dept. of Revenue to collect a one-time fee of \$200 per production for purposes of administering the reporting provisions required by proposed law.

Proposed law redefines "payroll" for purposes of the motion picture investor tax credit to include per diem, housing, box rentals, and any other type of benefit paid to an individual for the performance of services in a production. Proposed law further requires taxes to be withheld and remitted to the Dept. of Revenue in accordance with proposed law in order for the payroll to be qualified as "base investment" for purposes of the tax credit.

Applicable to productions receiving initial certification on or after Jan. 1, 2016.

Effective Aug. 1, 2015.

(Amends R.S. 47:164(D) and 6007(B)(8) and (D)(5))

Summary of Amendments Adopted by House

The Committee Amendments Proposed by House Committee on Ways and Means to the original bill:

1. Add authority for the Dept. of Revenue to share with the Dept. of Economic Development certain information contained in reports regarding income tax withholding for certain persons.
2. Change the amount of the fee to be charged by the Dept. of Revenue for administration of the reporting requirements relative to income tax withholding for certain persons from 30% of the tax credit transfer fee to \$200 per production.