

| | |
|----------------------------|--|
| FOR OFFICE USE ONLY | |
| | |

HOUSE FLOOR AMENDMENTS

2015 Regular Session

Amendments proposed by Representative Robideaux to Reengrossed Senate Bill No. 105 by Senator Morrell

1 AMENDMENT NO. 1

2 On page 1, line 2, after "reenact" and before "relative" delete "R.S. 47:6007(F)," and insert
3 "R.S. 47:6007(B)(2) through (16), (E), and (F) and to enact R.S. 47:6007(B)(17) through
4 (21) and (D)(10),"

5 AMENDMENT NO. 2

6 On page 1, line 3, after "entities;" and before "and to" insert "to provide for definitions;"

7 AMENDMENT NO. 3

8 On page 1, line 6, after "Section 1." delete the remainder of the line and insert the following:

9 "R.S. 47:6007(B)(2) through (16), (E), and (F) are hereby amended and
10 reenacted and R.S. 47:6007(B)(17) through (21) and (D)(10) are hereby
11 enacted to read as follows:"

12 AMENDMENT NO. 4

13 On page 1, delete lines 9 through 14 in their entirety and insert the following:

14 "B. Definitions. For the purposes of this Section:

15 * * *

16 **(2) "Good Faith Transferee" shall mean a transferee of a tax**
17 **credit pursuant to this Section who relied on the validity of the credit**
18 **recorded in the tax credit registry pursuant to the provisions of R.S.**
19 **47:1524.**

20 ~~(2)~~ **(3)** "Expended in the state" means an expenditure to lease
21 immovable property located in the state; an expenditure as compensation for
22 services performed in the state; or an expenditure to purchase or lease
23 tangible personal property within the state where the transaction is subject to
24 the state sales or lease tax provisions of Title 47 of the Louisiana Revised
25 Statutes of 1950. A transaction that is subject to the state sales or lease tax
26 provisions of Title 47 of the Louisiana Revised Statutes of 1950 shall include
27 transactions which are also subject to a statutory exclusion or exemption.

28 ~~(3)~~ **(4)** "Expenditure" means actual cash or cash equivalent exchanged
29 for goods or services.

30 ~~(4)~~ **(5)** "Headquartered in Louisiana" means a corporation
31 incorporated in Louisiana or a partnership, limited liability company, or other
32 business entity domiciled and headquartered in Louisiana for the purpose of

1 producing nationally or internationally distributed motion pictures as defined
 2 in this Section.

3 ~~(5)~~ (6) "Motion picture" means a nationally or internationally
 4 distributed feature-length film, video, television pilot, television series,
 5 television movie of the week, animated feature film, animated television
 6 series, or commercial made in Louisiana, in whole or in part, for theatrical
 7 or television viewing. The term "motion picture" shall not include the
 8 production of television coverage of news and athletic events.
 9

10 ~~(6)~~ (7) "Motion picture production company" means a company
 11 engaged in the business of producing nationally or internationally distributed
 12 motion pictures as defined in this Section. Motion picture production
 13 company shall not mean or include any company owned, affiliated, or
 14 controlled, in whole or in part, by any company or person which is in default
 15 on a loan made by the state or a loan guaranteed by the state, nor with any
 16 company or person who has ever declared bankruptcy under which an
 17 obligation of the company or person to pay or repay public funds or monies
 18 was discharged as a part of such bankruptcy, **nor with any company or**
 19 **person who has been convicted of a criminal violation related to the tax**
 20 **credits as provided for in this Section.**
 21

22 ~~(7)~~ (8) "Office" means the Governor's Office of Film and Television
 23 Development until August 15, 2006; thereafter, the term "office" means the
 24 office of entertainment industry development in the Department of Economic
 25 Development provided for in R.S. 51:938.1.
 26

27 ~~(8)~~ (9) "Payroll" means all salary, wages, and other compensation,
 28 including benefits paid to an employee for services relating to a state-
 29 certified production and taxable in this state. However, "payroll" for
 30 purposes of the additional tax credit for Louisiana-resident payroll shall
 31 exclude any portion of an individual salary in excess of one million dollars.

32 **(10) "Post-Certification Remedy" shall mean disallowance,**
 33 **recapture, recovery, reduction, repayment, forfeiture, decertification, or**
 34 **any other remedy that would have the effect of prohibiting, reducing, or**
 35 **otherwise limiting the certification or use of the tax credits.**
 36

37 ~~(9)~~ (11) "Production audit report" means an audit report issued by a
 38 qualified accountant who is unrelated to the motion picture production
 39 company and that is a report of the qualified accountant's audit of the motion
 40 picture production's cost report of production expenditures. The production
 41 audit report shall contain an opinion from the qualified accountant stating
 42 that the production's cost report of production expenditures presents fairly,
 43 in all material aspects, the production expenditures expended in Louisiana
 44 pursuant to the provisions of this Section. The production audit shall require:

45 * * *

46 **(g) Under all circumstances, a production audit report shall**
 47 **mean an audit as required by Subparagraph (D)(2)(d)(i) of this provision**
 48 **that does not contain a material or fraudulent misrepresentation.**
 49

50 ~~(10)~~ (12) "Production expenditures" means preproduction,
 51 production, and postproduction expenditures in this state directly relating to
 52 a state-certified production, including without limitation the following: set
 53 construction and operation; wardrobes, makeup, accessories, and related
 54 services; costs associated with photography and sound synchronization,
 55 lighting, and related services and materials; editing and related services;
 56 rental of facilities and equipment; leasing of vehicles; costs of food and

CODING: Words in ~~struck through~~ type are deletions from existing law; words underscored are additions.

1 lodging; digital or tape editing, film processing, transfer of film to tape or
2 digital format, sound mixing, special and visual effects; and payroll. This
3 term shall not include expenditures for marketing and distribution, non-
4 production related overhead, amounts reimbursed by the state or any other
5 governmental entity, costs related to the transfer of tax credits, amounts that
6 are paid to persons or entities as a result of their participation in profits from
7 the exploitation of the production, the application fee, or state or local taxes.

8 ~~(11)~~ **(13)** "Qualified accountant" means an independent certified
9 public accountant authorized to practice in this state who has sufficient
10 knowledge of accounting principles and practices generally recognized in the
11 film and television industry.

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

16 ~~(13)~~ **(15)** "Secretary" means the secretary of the Department of
17 Economic Development.

18 ~~(14)~~ **(16)** "Source within the state" means a physical facility in
19 Louisiana, operating with posted business hours and employing at least one
20 full-time equivalent employee.

21 ~~(15)~~ **(17)** "State" means the state of Louisiana.

22
23 ~~(16)~~ **(18)** "State-certified production" shall mean a production approved by
24 the office and the secretary which is produced by a motion picture production
25 company domiciled and headquartered in Louisiana and which has a viable multi-
26 market commercial distribution plan.

27 **(19) "Tax Credit Certification Letter" shall mean a letter issued**
28 **by the office granting and certifying tax credits pursuant to the**
29 **provisions of this Section.**

30 **(20) "Wrongful Tax Credits" shall mean either a specific amount**
31 **of tax credits reflected on a tax credit certification letter issued in**
32 **response to a wrongful production audit report that would not have**
33 **otherwise been so reflected or tax credits that would otherwise be subject**
34 **to a post-certification remedy.**

35 **(21) "Wrongful Production Audit Report" shall mean a**
36 **production audit report that contains a material misrepresentation or**
37 **fraud on the part of a person in connection with the submission of such**
38 **audit report.**

39 * * *

40
41 D. Certification and administration.

42 * * *

43 **(10) If at any time prior to the issuance of a tax credit**
44 **certification letter the office is notified that an investor has been charged**
45 **with a crime related to tax credits provided for in this Section, the office**
46 **shall not issue any credits for the project related to the crime charged**
47 **until conviction or acquittal of the charge. For purposes of this**
48 **Subsection, "investor" shall mean any investor, applicant production**
49 **company, or any individual with an ownership interest.**

1 E. Recapture of credits. ~~If the office finds that monies for which an~~
 2 ~~investor received tax credits according to this Section are not invested in and~~
 3 ~~expended with respect to a state-certified production within twenty-four~~
 4 ~~months of the date that such credits are earned, then the investor's state~~
 5 ~~income tax for such taxable period shall be increased by such amount~~
 6 ~~necessary for the recapture of credit provided by this Section.~~

7 **(1) If the office or Department of Revenue finds that a person**
 8 **has obtained a tax credit in violation of the provisions of this Chapter,**
 9 **including but not limited to convictions related to material**
 10 **misrepresentation or fraud, that person shall be assessed by the**
 11 **Department of Revenue for the tax period in which the tax credits are**
 12 **invalidated in an amount necessary for the recapture of the tax credits**
 13 **pursuant to the provisions of Subsection (F).**

14 **(2) Recapture in the Event of Fraud or Material**
 15 **Misrepresentation. (a) If at any time after the issuance of a tax credit**
 16 **certification letter, the office makes a final determination that there was**
 17 **a material misrepresentation or fraud on the part of a person in**
 18 **connection with the submission of a production audit report, that**
 19 **auditor's report will be deemed to be a wrongful production audit**
 20 **report. If the office further determines that the result of the material**
 21 **misrepresentation or fraud was that a specific amount of tax credits**
 22 **were reflected on the tax credit certification letter issued in response to**
 23 **the wrongful production audit report that would not have otherwise**
 24 **been so reflected and the tax credits would otherwise be subject to a**
 25 **post-certification remedy, then the sole and exclusive remedy for the**
 26 **office, by request to the Department of Revenue, as provided for in**
 27 **Subsection (F), shall be against the individual or entity that committed**
 28 **the material misrepresentation or fraud. Neither the office, nor the**
 29 **Department of Revenue, shall have a remedy against a good faith**
 30 **transferee for the wrongful tax credits. In the case of wrongful tax**
 31 **credits, the office shall not request that the Department of Revenue**
 32 **pursue a post-certification remedy against any good faith transferee of**
 33 **the wrongful tax credits or approve the Department of Revenue's**
 34 **pursuing a post-certification remedy against any good faith transferee**
 35 **of the wrongful tax credits.**

36 **(b) The office shall immediately notify the Department of**
 37 **Revenue of the requirement to recapture wrongful tax credits from the**
 38 **individual or entity that committed the material misrepresentation or**
 39 **fraud.**

40 F. Recovery of credits by Department of Revenue. ~~(1) Credits~~
 41 ~~previously granted to a taxpayer, but later disallowed, may be recovered by~~
 42 ~~the secretary of the Department of Revenue through any collection remedy~~
 43 ~~authorized by R.S. 47:1561 and initiated within three years from December~~
 44 ~~thirty-first of the year in which the twenty-four-month investment period~~
 45 ~~specified in Subsection E of this Section ends.~~

46 ~~(2) The only interest that may be assessed and collected on recovered~~
 47 ~~credits is interest at a rate three percentage points above the rate provided in~~
 48 ~~R.S. 9:3500(B)(1), which shall be computed from the original due date of the~~
 49 ~~return on which the credit was taken.~~

50 **(1) Except as provided for in Paragraphs (2) and (4) of this**
 51 **Subsection, credits previously granted, certified, claimed or obtained by**
 52 **a taxpayer, but later disallowed, may be recovered by the secretary of**

1 the Department of Revenue through any collection remedy authorized
2 by R.S. 47:1561, plus interest and penalties provided by law for the
3 delinquent payment of taxes.

4 (2) Recovery of Credits; Material Misrepresentation or Fraud.
5 With respect to wrongful tax credits, any and all individuals or entities
6 that have made a material misrepresentation or committed fraud
7 resulting in the issuance of wrongful tax credits shall be assessed for the
8 tax periods in question in the amount necessary to recover the wrongful
9 tax credits. The secretary of the Department of Revenue shall initiate an
10 action to recover wrongful tax credits from any and all individuals or
11 entities that have committed fraud or made a material misrepresentation
12 resulting in the issuance of wrongful tax credits through any collection
13 remedy authorized by 47:1561, and shall assess interest and penalties as
14 provided for in connection with the fraudulent and delinquent
15 nonpayment of taxes. The statute of limitations that shall apply to any
16 such action by the Department is the statute of limitations applicable
17 upon failure to file a return for the applicable tax period.

18 (3) The provisions of this Subsection are in addition to and shall not
19 limit the authority of the secretary of the Department of Revenue to assess
20 or to collect under any other provision of law.

21 (4) No post-certification remedy shall be pursued against a good
22 faith transferee who acquired the credits through a transfer authorized
23 pursuant to this Section.

24 (5) Notwithstanding any other provision of law to the contrary,
25 if a"