

SENATE BILL NO. 100

BY SENATOR MORRELL AND REPRESENTATIVE TALBOT

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AN ACT

To amend and reenact R.S. 47:6007(B)(9), (10), and (11) and (D)(2)(c) and (d) and (9), and to enact R.S. 47:6007(B)(17), (18), and (19), (C)(1)(e), and (D)(2)(f) and (g), relative to motion picture investor tax credits; to provide for definitions; to regulate and limit production expenditures between related parties; to subject related party transactions to review by the office of the state inspector general; to require certain sworn affidavits and provide for criminal penalties; to provide for the powers and duties of the Department of Economic Development; to require an independent verification of expenditures for certification of such tax credits; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

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

§6007. Motion picture investor tax credit

* * *

B. Definitions. For the purposes of this Section:

* * *

(9) "Production ~~audit~~ **expenditure verification** report" means ~~an audit a~~ report issued by a qualified accountant who is unrelated to the motion picture production company and that is a report of the qualified accountant's ~~audit~~ **verification** of the motion picture production's cost report of production expenditures. The production ~~audit~~ **expenditure verification** report shall contain an opinion from the qualified accountant stating that **there are no related party 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 report 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, with a copy addressed to the motion picture
 11 production company or motion picture investor tax credit applicant.

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

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

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

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

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

1 job positions that are associated with the creative or financial control of a
2 production and customarily considered as Above the Line services in the film
3 and television industry.

4 (18) "Below the Line services" or "BTL services" means services which
5 are not Above the Line services.

6 (19) "Related party transaction" means a transaction between parties
7 deemed to be related by common ownership or control according to generally
8 accepted accounting standards, or "GAAS", and generally accepted accounting
9 principles, or "GAAP".

10 * * *

11 C. Investor tax credit; specific productions and projects.

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

22 * * *

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

27 * * *

28 D. Certification and administration.

29 * * *

30 (2)

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2 **(c)(i) In order to protect the integrity of the motion picture investor tax**
3 **credit program by ensuring that tax credits are certified only for eligible**
4 **expenditures and to provide for uniformity in expenditure verification**
5 **reporting, the department shall directly engage and assign an independent**
6 **certified public accountant, hereinafter referred to as "CPA", to prepare, for**
7 **the department, the required production expenditure verification report on a**
8 **tax credit applicant's cost report of expenditures or claims. The applicant shall**
9 **be responsible for and assessed any production expenditure verification report**
10 **fee which may be required by law, including any up-front deposit of the fee.**
11 **For purposes of the report, the applicant shall make all records related to the**
12 **tax credit application available to the CPA.**

13 **(ii)** The office and the secretary shall submit their initial certification or
14 written denial of a project as a state-certified production to investors and to the
15 secretary of the Department of Revenue indicating the total base investment which
16 shall be expended in the state on the state-certified production within sixty days of
17 their receipt of all required information. The initial certification shall include a
18 unique identifying number for each state-certified production.

19 ~~(d)(i) Prior to any final certification of the state-certified production, the~~
20 ~~motion picture production company~~ **Upon project completion or at any time after**
21 **project costs are deemed final by the motion picture production company or**
22 **applicant, the applicant shall make a request to the office to proceed to final**
23 **certification by submitting to the office a cost report of production expenditures**
24 **to be formatted in accordance with instructions of the office promulgated in**
25 **compliance with the Administrative Procedure Act. The applicant shall make**
26 **all records related to the cost report available for inspection by the office and**
27 **the qualified accountant selected by the office to prepare the production**
28 **expenditure verification report. After review and investigation of the cost**
29 **report, and after two levels of review within a CPA firm or a second review**
30 **through a cooperative endeavor with another CPA, the accountant** shall submit

1 to the office, ~~and the secretary,~~ **and the motion picture production company or**
 2 **motion picture investor tax credit applicant** a production ~~audit~~ **expenditure**
 3 **verification** report **and the affidavit required by Subparagraph (g) of this**
 4 **Paragraph.** The office and the secretary shall review the production ~~audit~~
 5 **expenditure verification** report and may require additional information needed to
 6 make a determination. Within one hundred twenty days of the receipt of the
 7 production ~~audit~~ **expenditure verification** report and all required supporting
 8 information, the office and the secretary shall issue a tax credit certification letter
 9 indicating the amount of tax credits certified for the state-certified production to the
 10 investors for all qualifying expenditures verified by the office. Any expenditures for
 11 which tax credits were neither denied nor certified due to insufficient information or
 12 other issues, the office and secretary shall diligently work to resolve the outstanding
 13 issues in a timely manner, and the office and secretary may subsequently issue a
 14 supplemental tax credit certification at the time of such resolution.

15 (ii) The department may request an additional production ~~audit~~ **expenditure**
 16 **verification** report of the expenditures submitted by the motion picture production
 17 company with the cost of the additional report paid by the motion picture production
 18 company. The motion picture production company may submit an amended
 19 ~~production-audit cost~~ report **of production expenditures** if additional expenditures
 20 are incurred or discovered after the ~~approval~~ **submission** of the initial production
 21 ~~audit reports~~ **expenditure verification report** issued pursuant to Item (i) of this
 22 Subparagraph, and the office and secretary may issue a supplemental tax credit
 23 certification if so warranted.

24 * * *

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

30 **(g)(i) In addition to any other requirements of this Paragraph, the**

1 production expenditure verification report shall include a sworn affidavit by the
 2 individual responsible for providing the accounts, documents, records and any
 3 other information necessary to the accountant charged with preparing and
 4 filing the production expenditure verification report that such accounts,
 5 documents, records, and other information were true and correct; and that all
 6 related party transactions were accurately reported in accordance with
 7 Paragraph (9) of this Subsection; all to the best of the affiant's knowledge,
 8 information, and belief.

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

12 * * *

13 (9)(a) It is recognized that, while legitimate related party transactions often
 14 occur as production expenditures, some related party transactions may be conducted
 15 in such a manner as to abuse the purpose and intent of the program. **Therefore, the**
 16 **production expenditure verification report required by Subparagraph (D)(2)(d)**
 17 **of this Section shall verify that all related party transactions have been disclosed**
 18 **and explained, and that the production accounts include all of the following:**

19 **(i) The name of the related party.**

20 **(ii) The nature of the relationship between the related party and the**
 21 **motion picture production company.**

22 **(iii) The nature of the transaction.**

23 **(iv) The amount of the transaction.**

24 **(v) The capture and reporting of the functional expense classifications**
 25 **of related party transactions and an explanation of how each is a legitimate**
 26 **project expenditure, including reporting of labor and facility/equipment charge**
 27 **rates related to production company personnel and facility and equipment used**
 28 **in the production of the state-certified production.**

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

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

4 (ii) Qualifying production expenditures for Below the Line, or "BTL",
5 services provided by a related party shall be limited to the actual compensation
6 including the value of employer-funded benefits paid by the related party to its
7 employee or employees who are actually performing the service, allocated to the
8 production on an hourly basis.

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

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

27 (iv) No tax credits shall be earned or certified for expenditures for
28 finance fees, interest, or payments of a similar nature paid to related parties,
29 investors in the production, or any other entities which the office determines
30 will gain financial rewards based upon sale or exploitation of the product or

1 success in procuring distribution agreements unless such expenditures are for
2 payments made to a Louisiana resident licensed insurance producer that has its
3 principal place of business in this state as required by R.S. 22:1543, or to a
4 Louisiana financial institution as defined in R.S. 6:2(8), or to a Louisiana
5 Business and Industrial Development Company defined in and provided for in
6 Chapter 39-B of Title 51 of the Louisiana Revised Statutes of 1950, R.S. 51:2386
7 et seq., that is regulated by the office of financial institutions and that has one
8 or more offices in the state.

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

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

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

30 * * *

1 Section 2. The provisions of this Act shall apply to all productions receiving initial
2 certification on and after December 31, 2015.

3 Section 3. The Louisiana State Law Institute is directed to renumber the Paragraphs
4 within R.S. 47:6007(B).

5 Section 4. This Act shall become effective on January 1, 2016, if and when the
6 commissioner of administration and the Legislative Auditor provide written notice to the
7 President of the Senate, the Speaker of the House of Representatives, and the Louisiana State
8 Law Institute that they have determined that an Act or Acts were enacted in the 2015
9 Regular Session of the Legislature sufficient to offset any tax increases provided for in the
10 Acts of such Session over a five-year period.

PRESIDENT OF THE SENATE

SPEAKER OF THE HOUSE OF REPRESENTATIVES

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____