

2015 Regular Session

HOUSE BILL NO. 748

BY REPRESENTATIVE STOKES

1 AN ACT

2 To amend and reenact R.S. 47:1524(D)(2), and 6007(section heading), (B)(5), (10) through
3 (16), (C)(subsection heading), (1)(introductory paragraph), (a)(iii), and (b)(iii), (2)
4 and (4)(b) and (f), (D)(2)(d)(i), (E), and (F), to enact R.S. 47:6007(B)(17) and (18),
5 (C)(1)(c)(iii), (D)(1)(d)(iv) and (2)(d)(iii), (G), and (H), and to repeal R.S.
6 47:1524(D)(3), relative to income tax credits; to provide with respect to the motion
7 picture investor tax credit; to provide for definitions; to provide eligibility for certain
8 types of productions; to provide requirements for the completion of projects and
9 certification of expenditures; to authorize assignment of credits to a lender under
10 certain circumstances; to provide for recapture of tax credits; to provide for the final
11 certification of certain expenditures for state-certified infrastructure projects; to
12 provide for effectiveness; and to provide for related matters.

13 Be it enacted by the Legislature of Louisiana:

14 Section 1. R.S. 47:1524(D)(2), and 6007(section heading), (B)(5), (10) through (16),
15 (C)(subsection heading), (1)(introductory paragraph), (a)(iii) and (b)(iii), (2) and (4)(b) and
16 (f), and (D)(2)(d)(i) are hereby amended and reenacted and R.S. 47:6007(B)(17) and (18),
17 (C)(1)(c)(iii), (D)(1)(d)(iv) and (2)(d)(iii), and (G) are hereby enacted to read as follows:

18 §1524. Tax credit registry; requirements; limitations

19 * * *

20 D. Transfers.

21 * * *

22 (2) Notwithstanding any other provision of law to the contrary, no issuance,
23 sale, or transfer of tax credits after January 1, 2014, shall be effective as between the
24 transferor and transferee, or as to third parties ~~not recognized by~~ or the department
25 until it has been recorded in the registry.

26 * * *

1 §6007. Motion picture ~~investor~~ production tax credit

2 * * *

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

4 * * *

5 (5) "Motion picture" means a nationally or internationally distributed
6 feature-length film, video, television pilot, television series, television movie of the
7 week, animated feature film, animated television series, or commercial made in
8 Louisiana, in whole or in part, for theatrical or television viewing, or for viewing on
9 any digital online platform as may be further defined by the office through the
10 promulgation of rules. The term "motion picture" shall not include the production
11 of television coverage of news and athletic events.

12 * * *

13 (10) "Production expenditures" means preproduction, production, and
14 postproduction expenditures in this state directly relating to a state-certified
15 production, including without limitation the following: set construction and
16 operation; wardrobes, makeup, accessories, and related services; costs associated
17 with photography and sound synchronization, lighting, and related services and
18 materials; editing and related services; rental of facilities and equipment; leasing of
19 vehicles; costs of food and lodging; digital or tape editing, film processing, transfer
20 of film to tape or digital format, sound mixing, special and visual effects; and
21 payroll. ~~This~~ For all state-certified productions approved on or after January 1, 2004,
22 this term shall not include expenditures for marketing and distribution, non-
23 production related overhead, amounts reimbursed by the state or any other
24 governmental entity, costs related to the transfer of tax credits, amounts that are paid
25 to persons or entities as a result of their participation in profits from the exploitation
26 of the production, the application fee, or state, or local taxes, or any expenditures
27 occurring outside of Louisiana. For all state-certified productions approved on or
28 after January 1, 2016, marketing expenditures shall be considered "production
29 expenditures".

1 (11) "Project completion" means completion of principal photography, or as
 2 otherwise approved in writing by the office.

3 ~~(11)~~(12) "Qualified accountant" means an independent certified public
 4 accountant authorized to practice in this state who has sufficient knowledge of
 5 accounting principles and practices generally recognized in the film and television
 6 industry.

7 ~~(12)~~(13) "Resident" or "resident of Louisiana" means a natural person
 8 domiciled in the state. A person who maintains a permanent place of abode within
 9 the state and spends in the aggregate more than six months of each year within the
 10 state shall be presumed to be domiciled in the state.

11 ~~(13)~~(14) "Secretary" means the secretary of the Department of Economic
 12 Development.

13 ~~(14)~~(15) "Source within the state" means a physical facility in Louisiana,
 14 operating with posted business hours and employing at least one full-time equivalent
 15 employee.

16 ~~(15)~~(16) "State" means the state of Louisiana.

17 ~~(16)~~(17) "State-certified production" ~~shall mean~~ means a production
 18 approved by the office and the secretary which is produced by a motion picture
 19 production company domiciled and headquartered in Louisiana and which has a
 20 viable multi-market commercial distribution plan.

21 (18) "Taxpayer" means an investor in a production, a motion picture
 22 production company applicant, individual with an ownership interest in a motion
 23 picture production company applicant, or a subsequent transferee of the tax credit.

24 C. ~~Investor~~ Production tax credit; specific productions and projects.

25 (1) There is hereby authorized a tax credit against state income tax for
 26 Louisiana taxpayers for ~~investment in~~ expenditures related to state-certified
 27 productions. The tax credit shall be earned by ~~investors~~ a motion picture production
 28 company at the time expenditures are made by a motion picture production company
 29 in a state-certified production. However, credits cannot be applied against a tax or
 30 transferred until the expenditures are certified by the office and the secretary. For

1 state-certified productions, expenditures shall be certified no more than ~~twice during~~
 2 ~~the duration of a state-certified production unless the motion picture production~~
 3 ~~company agrees to reimburse the office for the costs of any additional certifications~~
 4 once per production, after project completion. However, if at the time of application
 5 for initial certification, the office is notified that post-production activities will take
 6 place in Louisiana, a supplemental request for certification of expenditures directly
 7 related to such post-production activity may be submitted for consideration by the
 8 office. The cost of any verification or audit of such expenditures shall be borne by
 9 the motion picture production company. The tax credit shall be calculated as a
 10 percentage of the total base investment dollars certified per project.

11 (a) For state-certified productions approved by the office and the secretary
 12 on or after January 1, 2004, but before January 1, 2006:

13 * * *

14 (iii) The initial certification shall be effective for qualifying expenditures
 15 made within a period twelve months prior to and twelve months after the date of
 16 initial certification, ~~unless the production has commenced, in which case the initial~~
 17 ~~certification shall be valid until the production is completed.~~

18 (b) For state-certified productions approved by the office and the secretary
 19 on or after January 1, 2006, but before July 1, 2009:

20 * * *

21 (iii) The initial certification shall be effective for qualifying expenditures
 22 made within a period twelve months prior to and twelve months after the date of
 23 initial certification, ~~unless the production has commenced, in which case the initial~~
 24 ~~certification shall be valid until the production is completed.~~

25 (c) For state-certified productions approved by the office and the secretary
 26 on or after July 1, 2009:

27 * * *

1 (iii) The initial certification shall be effective for qualifying expenditures
 2 made within a period twelve months prior to and twenty-four months after the date
 3 of the initial certification.

4 * * *

5 (2) The credit shall be allowed against the income tax for the taxable period
 6 in which the credit is earned or for the taxable period in which initial certification
 7 authorizes the credit to be taken. If the tax credit allowed pursuant to this Section
 8 exceeds the amount of such taxes due for such tax period, then any unused credit
 9 may be carried forward as a credit against subsequent tax liability for a period not
 10 to exceed ~~ten~~ five years.

11 * * *

12 (4) Transferability of the credit. Any motion picture tax credits not
 13 previously claimed by any taxpayer against its income tax may be transferred or sold
 14 to another Louisiana taxpayer or to the office, subject to the following conditions:(3)
 15 Application of the credit.

16 * * *

17 (b) Transferors and transferees shall submit to the Department of Revenue
 18 in writing, a notification of any transfer or sale of tax credits within ten business days
 19 after the transfer or sale of such tax credits. No transfer or sale of tax credits shall
 20 be effective until recorded in the tax credit registry in accordance with R.S. 47:1524.

21 The notification shall include the transferor's tax credit balance prior to transfer, a
 22 copy of any tax credit certification letter(s) issued by the office and the secretary of
 23 the Department of Economic Development the transferor's remaining tax credit
 24 balance after transfer, all tax identification numbers for both transferor and
 25 transferee, the date of transfer, the amount transferred, a copy of the credit
 26 certificate, price paid by the transferee to the transferor, in the case when the
 27 transferor is a state-certified production, for the tax credits, and any other
 28 information required by the office or the Department of Revenue. For the purpose
 29 of reporting transfer prices, the term "transfer" shall include allocations pursuant to
 30 Paragraph (2) of this Subsection as provided by rule. The tax credit transfer value

1 means the percentage as determined by the price paid by the transferee to the
 2 transferor divided by the dollar value of the tax credits that were transferred in
 3 return. The notification submitted to the Department of Revenue shall include a
 4 processing fee of up to two hundred dollars per transferee, and any information
 5 submitted by a transferor or transferee shall be treated by the office and the
 6 Department of Revenue as proprietary to the entity reporting such information and
 7 therefore confidential. However, this shall not prevent the publication of summary
 8 data that includes no fewer than three transactions.

9 * * *

10 (f)(i) Beginning on and after January 1, 2007, the investor who earned the
 11 motion picture investor tax credits may transfer the credits to the office for seventy-
 12 two percent of the face value of the credits. Beginning January 1, 2009, and every
 13 second year thereafter, the percent of the face value of the tax credits allowed for
 14 transferring credits to the office shall increase two percent until the percentage
 15 reaches eighty percent. ~~Upon the transfer, the Department of Economic~~
 16 ~~Development shall notify the Department of Revenue and shall provide it with a~~
 17 ~~copy of the transfer documentation. The Department of Revenue may require the~~
 18 ~~transferor to submit such additional information as may be necessary to administer~~
 19 ~~the provisions of this Section. The secretary of the Department of Revenue shall~~
 20 ~~make payment to the investor in the amount to which he is entitled from the current~~
 21 ~~collections of the taxes collected pursuant to Chapter 1 of Subtitle H, provided such~~
 22 ~~credits are transferred to the office within one calendar year of certification.~~

23 (ii) For projects which receive initial certification on and after July 1, 2009,
 24 the ~~investor who~~ motion picture production company that earned the motion picture
 25 investor production tax credits pursuant to such certification or the company's
 26 irrevocable designee, as provided for in Item (iv) of this Subparagraph, may transfer
 27 the credits to the ~~office~~ Department of Revenue for eighty-five percent of the face
 28 value of the credits in accordance with the procedures and requirements of Item ~~(i)~~
 29 (iii) of this Subparagraph.

1 motion picture production company applicant shall make a request to the office to
2 proceed to final certification by submitting to the office a cost report of production
3 expenditures to be formatted in accordance with instructions of the office. The
4 applicant shall make all records related to the cost report available for inspection by
5 the office and the qualified accountant selected by the office to prepare the
6 production expenditure verification report, after which time all such claims to tax
7 credits shall be deemed waived. After review and investigation of the cost report,
8 the accountant shall submit to the office and the secretary a production expenditure
9 verification report. The office and the secretary shall review the production ~~audit~~
10 expenditure verification report and may require additional information needed to
11 make a determination as to final certification of all tax credits for that production.
12 Within one hundred twenty days of the receipt of the production ~~audit~~ expenditure
13 verification report and all required supporting information, the office and the
14 secretary shall issue a tax credit certification letter indicating the amount of tax
15 credits certified for the state-certified production to the ~~investors~~ applicant for all
16 qualifying expenditures verified by the office. Any expenditures for which tax
17 credits were neither denied nor certified due to insufficient information or other
18 issues, the office and secretary shall diligently work to resolve the outstanding issues
19 in a timely manner, and the office and secretary may subsequently issue a
20 supplemental tax credit certification at the time of such resolution.

* * *

22 (iii) Only expenditures made during the initial certification period shall earn
23 credits.

* * *

25 G. Tax credits provided for in this Section shall not be considered
26 entitlements, and the taxpayer shall bear the burden of clearly and unequivocally
27 establishing eligibility for tax credits.

28 Section 2. R.S. 47:6007(section heading), (E) and (F) are hereby amended and
29 reenacted and R.S. 47:6007(H) is hereby enacted to read as follows:

1 H. Audit reports for certification of expenditures for state-certified motion
 2 picture infrastructure program tax credits shall be submitted in accordance with the
 3 provisions of this Subsection.

4 (1) State-certified infrastructure project applicants may submit to the office
 5 on or before December 31, 2015, all requests and required documentation for final
 6 certification of all tax credits granted by this provision, after which time all such
 7 claims to tax credits shall be deemed waived.

8 (2) Any request shall be accompanied by an audit performed by an
 9 independent certified public accountant.

10 (3) The office, the secretary, and the division shall review the audit, and may
 11 require additional information needed to make a determination as to certification.

12 (4) The office may request an additional audit report of expenditures
 13 submitted by the state-certified motion picture infrastructure project applicant, with
 14 the cost of the additional report paid by the applicant.

15 (5) Within three hundred and sixty five days after receipt of the audit report
 16 and all required supporting information, or December 31, 2016, whichever occurs
 17 first, the office, the secretary, and the division shall issue a denial letter or a tax
 18 credit certification letter to the investors indicating the amount of tax credits certified
 19 for the state-certified infrastructure project for all qualifying expenditures verified
 20 by the office.

21 (6) Tax credits provided for in this Section shall not be considered
 22 entitlements, and the state-certified motion picture infrastructure applicant shall bear
 23 the burden of clearly and unequivocally establishing eligibility for tax credits.

24 (7) In the event that a request for final certification is denied, an applicant
 25 may appeal the decision in accordance with program rules.

26 (8) No motion picture infrastructure tax credits shall be certified after July
 27 1, 2017.

28 Section 3. R.S. 47:1524(D)(3) is hereby repealed in its entirety.

29 Section 4. The provisions of Sections 1 and 3 of this Act shall become effective on
 30 January 1, 2016.

1 Section 5. The provisions of Sections 2, 4, and 5 of this Act shall become effective
2 on July 1, 2015.

SPEAKER OF THE HOUSE OF REPRESENTATIVES

PRESIDENT OF THE SENATE

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____