

First Extraordinary Session, 2002

SENATE BILL NO. 108 (SUBSTITUTE FOR SENATE BILL NO. 86 BY
SENATORS DARDENNE, BARHAM AND
HOLLIS)

BY SENATORS DARDENNE, BARHAM, HOLLIS, IRONS AND
SCHEDLER

TAX/TAXATION. Changes the Motion Picture Investment Tax Credit.
(7/1/02)

1 AN ACT

2 To amend and reenact R.S. 47:6007, relative to the motion picture investor tax
3 credit; to provide for definitions; to provide for productions eligible for
4 the credit and the amount of such credit; and to provide for related
5 matters.

6 Be it enacted by the Legislature of Louisiana:

7 Section 1. R.S. 47:6007 is hereby amended and reenacted to read as
8 follows:

9 §6007. Motion picture investor tax credit

10 A. Purpose. The primary objective of this Section is to
11 encourage development in Louisiana of a strong capital base for motion
12 picture film, videotape, and television program productions, in order to
13 achieve a more independent, self-supporting industry. This objective
14 is divided into immediate and long-term objectives as follows:

15 (1) Immediate objectives are to:

16 (a) Attract private investment for the production of motion

1 pictures, videotape productions, and television programs which contain
2 substantial Louisiana content as defined herein.

3 (b) Develop a tax infrastructure which encourages private
4 investment. This infrastructure will provide for state participation in
5 the form of tax credits to ~~offset~~ **encourage** investment ~~base losses for~~
6 **in** state-certified productions.

7 (c) Develop a tax infrastructure utilizing tax credits which
8 encourage investments in multiple state-certified production projects.

9 (2) Long-term objectives are to:

10 (a) Encourage increased employment opportunities within this
11 sector and increased competition with other states in fully developing
12 economic development options within the film and video industry.

13 (b) Encourage new education curricula in order to provide a
14 labor force trained in all aspects of film production.

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

16 ~~(1) "Actual revenues received" shall mean monies~~
17 ~~constructively received by an investor for the investor's investment in~~
18 ~~a state-certified production.~~

19 ~~(2) (1)~~ "Base investment" shall mean eighty-five percent of the
20 funds actually invested and expended within the state in a
21 state-certified production.

22 ~~(3) "Financial institutions or institution" shall mean any bank~~
23 ~~or savings and loan which is insured by the FDIC or FSLIC.~~

24 ~~(4) (2)~~ "Headquartered in Louisiana" shall mean a corporation
25 incorporated in Louisiana **or a partnership, limited liability company,**
26 **or other business entity domiciled and headquartered in Louisiana**

1 for the purpose of producing **nationally distributed** motion pictures or
2 commercials intended for a theatrical release or for television viewing
3 **as defined in this Section.**

4 ~~(5)~~ "Investor loss" shall mean the difference between the
5 investor's base investment and actual revenues received in the projected
6 payback period if an investor's base investment exceeds the actual
7 revenues received in the projected payback period.

8 ~~(6)~~ "Investor profit" shall mean the difference between actual
9 revenues received in the projected payback period and the investor's
10 base investment in those instances where actual revenues received in
11 the projected payback period exceed the investor's base investment.

12 **(3) "Motion picture" means a nationally distributed feature-**
13 **length film, video, television series, or commercial made in**
14 **Louisiana, in whole or in part for theatrical or television viewing or**
15 **as a television pilot. The term "motion picture" shall not include the**
16 **production of television coverage of news and athletic events.**

17 ~~(7)~~**(4)** "Motion picture production company" shall mean a
18 company engaged in the business of producing **nationally distributed**
19 motion pictures or commercials intended for a theatrical release or for
20 television viewing **as defined in this Section. Motion picture**
21 **production company shall not mean or include any company owned,**
22 **affiliated, or controlled, in whole or in part, by any company or**
23 **person which is in default on a loan made by the state or a loan**
24 **guaranteed by the state, not with any company or person who has**
25 **ever declared bankruptcy under which an obligation of the company**
26 **or person to pay or repay public funds or monies was discharged as**

1 **a part of such bankruptcy.**

2 ~~(8) "Multiple certified projects" shall mean motion picture or~~
3 ~~television productions which have been certified within a ten-year~~
4 ~~period from the certification date of a previously certified production,~~
5 ~~thereby qualifying for the investment loss tax credit.~~

6 ~~(9) "Projected payback period" shall mean the three-year~~
7 ~~period, beginning with the release date, whereby investors are expected~~
8 ~~to recover their investment. The investment not recovered on~~
9 ~~state-certified productions during the projected payback period is~~
10 ~~eligible for the investment loss tax credit.~~

11 * * *

12 ~~(10)~~(5) "State-certified production" shall mean a production
13 approved by the ~~commission and lieutenant governor~~ **Louisiana Film**
14 **and Video Commission and the Department of Economic**
15 **Development** produced by a motion picture production company
16 domiciled and headquartered in Louisiana which ~~contains substantial~~
17 Louisiana content and **has signed** a distribution agreement with either
18 a major theatrical exhibitor, television network, or cable television
19 programmer.

20 ~~(11) "Substantial Louisiana content" shall mean a production~~
21 ~~certified by the Louisiana Film Commission or its designated affiliate,~~
22 ~~hereinafter referred to as "the commission" as having a substantial~~
23 ~~Louisiana content according to guidelines provided herein for the~~
24 ~~investment loss tax credit.~~

25 C. Investment loss tax credit; specific projects. (1) There is
26 hereby authorized a tax credit against state income tax for taxpayers

1 domiciled in the state of Louisiana. The tax credit shall be **earned by**
2 **investors at the time of such investment in such state-certified**
3 **productions and** calculated as a percentage of the investor loss
4 **investment** according to the total base investment dollars certified per
5 project.

6 (a) If total base investment is greater than ~~two million~~ **three**
7 **hundred thousand** dollars and less than or equal to ~~ten~~ **one** million
8 dollars, ~~the~~ **each** taxpayer shall be allowed a tax credit of fifty ~~ten~~
9 percent of the actual investor loss **investment made by that taxpayer.**

10 (b) If the total base investment is greater than ~~ten~~ **one** million
11 dollars ~~and less than or equal to twenty-five million dollars,~~ ~~the~~ **each**
12 taxpayer shall be allowed a tax credit of ~~sixty~~ **fifteen** percent of the
13 investor loss **investment made by that taxpayer.**

14 ~~(c) If the total base investment is greater than twenty-five~~
15 ~~million dollars, the taxpayer shall be allowed a tax credit of sixty-seven~~
16 ~~percent of the investor loss.~~

17 (2) In the event that the entire credit cannot be used in the year
18 earned, ~~the credit may be~~ **any remaining credit may be carried**
19 **forward and** applied against income tax liabilities for the subsequent
20 ten years.

21 **(3) Application of the credit.**

22 **(a) All entities taxed as corporations for Louisiana income tax**
23 **purposes shall claim any credit allowed under this Section on their**
24 **corporation income tax return.**

25 **(b) Individuals shall claim any credit allowed under this**
26 **Section on their individual income tax return.**

1 **(c) Entities not taxed as corporations shall claim any credit**
2 **allowed under this Section on the returns of the partners or**
3 **members as follows:**

4 **(i) Corporate partners or members shall claim their share of**
5 **the credit on their corporation income tax returns.**

6 **(ii) Individual partners or members shall claim their share of**
7 **the credit on their individual income tax returns.**

8 **(iii) Partners or members that are estates or trusts shall**
9 **claim their share of the credit on their fiduciary income tax returns.**

10 ~~D. Investment loss tax credit; multiple projects. In the event~~
11 ~~that the taxpayer has participated in more than one state-certified~~
12 ~~production and at least one of those projects has generated an investor~~
13 ~~profit, seventy percent of the investment loss may be applied against~~
14 ~~any tax liability generated from other profitable state-certified~~
15 ~~productions on a dollar-per-dollar basis. Investment losses may be~~
16 ~~carried forward for a period of ten years.~~

17 ~~E.D. Certification and administration. (1) The lieutenant~~
18 ~~governor **secretary of the Department of Economic Development** and~~
19 ~~commission shall determine through the promulgation of rules what~~
20 ~~projects contain substantial Louisiana content **qualify according to this**~~
21 ~~**Section.** To this end, the commission shall establish a point system~~
22 ~~such that a minimum number of total points must exist in order for the~~
23 ~~commission to certify that the production contains substantial Louisiana~~
24 ~~content. Criteria shall be based on the utilization of talent and~~
25 ~~resources available in Louisiana. As availability of talent and resources~~
26 ~~increases over time, so shall the difficulty in receiving certification of~~

1 ~~substantial Louisiana content.~~ Prior to adoption, these rules shall be
2 approved by the House Committee on Ways and Means; **and** the Senate
3 Committee on Revenue and Fiscal Affairs, ~~the House Committee on~~
4 ~~Municipal, Parochial and Cultural Affairs,~~ and the Senate Committee
5 ~~on Commerce and Consumer Protection.~~

6 (2) Certification shall be submitted to investors and to the
7 secretary of the Department of Revenue.

8 (3) The secretary of the Department of Revenue, in consultation
9 with the ~~lieutenant governor~~ **Department of Economic Development**
10 and the director of the Louisiana Film Commission, shall promulgate
11 such rules and regulations as are necessary to carry out the intent and
12 purposes of this Section in accordance with the general guidelines
13 provided herein.

14 (4) Any taxpayer applying for the credit shall be required to
15 reimburse the Department of Revenue for any audits required in
16 relation to granting the credit.

17 **F.E.** Recapture of credits. ~~(1) If, during any taxable period~~
18 ~~which ends after the end of the projected payback period for a~~
19 ~~state-certified project, additional actual revenues attributable to the~~
20 ~~state-certified project are constructively received by an investor~~
21 ~~subsequent to the end of the projected payback period~~ **the commission**
22 **and the Department of Economic Development find that funds for**
23 **which an investor received credits according to this Section are not**
24 **invested in and expended with respect to a state-certified production**
25 **within twenty-four months of the date that such credits are earned,**
26 then the **investor's state** income tax for such taxable period shall be

1 increased by **such amount necessary for** the recapture of credit
2 provided by this Section.

3 **F. Recovery of credits by Department of Revenue. (1) Credits**
4 **previously granted to a taxpayer, but later disallowed, may be**
5 **recovered by the secretary of the Department of Revenue through**
6 **any collection remedy authorized by R.S. 47:1561 and initiated**
7 **within three years from December 31 of the year in which the**
8 **twenty-four month investment period specified in R.S. 47:6007(E).**

9 **(2) The only interest that may be assessed and collected on**
10 **recovered credits is interest at a rate three percentage points above**
11 **the rate provided in C.C. Art. 2924(B)(1), which shall be computed**
12 **from the original due date of the return on which the credit was**
13 **taken.**

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

17 **G. The provisions of this Section shall be effective until**
18 **January 1, 2007.**

19 ~~(2) The investor loss previously computed for the project shall~~
20 ~~be recomputed to include the additional actual revenue constructively~~
21 ~~received as if the additional revenue had been received during the~~
22 ~~payback period. The investor loss so determined shall be the investor~~
23 ~~loss for purposes of computing all current and future credit under this~~
24 ~~Section.~~

25 ~~(3) The taxpayer shall recompute his income tax liability for all~~
26 ~~prior taxable periods in which credit was taken attributable to the~~

1 ~~project from which additional actual revenues have been received. The~~
 2 ~~recomputed tax liabilities shall be computed based upon the investor~~
 3 ~~loss as recomputed to include additional actual revenues received. Any~~
 4 ~~excess of the sum of the tax liabilities after credits for years so~~
 5 ~~recomputed over the tax liabilities after credits for such years as~~
 6 ~~reported shall be the amount of recapture of credit provided by this~~
 7 ~~Section.~~

8 Section 2. This Act shall become effective on July 1, 2002; if vetoed by
 9 the governor and subsequently approved by the legislature, this Act shall
 10 become effective on July 1, 2002, or on the day following such approval by
 11 the legislature, whichever is later.

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

Dardenne (SB 108)

DIGEST

Proposed law provides a definition of "motion picture production company" eligible for the credit to require that their productions be for "national distribution" and includes companies engaged in the business of producing videos and television series. However, excludes any company owned, affiliated, or controlled, in whole or in part, by any company or person which is in default on a loan made by the state or a loan guaranteed by the state, not with any company or person who has ever declared bankruptcy under which an obligation of the company or person to pay or repay public funds or monies was discharged as a part of such bankruptcy.

Proposed law defines "motion picture" as a "nationally distributed" feature-length film, video, television series, or commercial made in Louisiana, in whole or in part for theatrical or television viewing or as a television pilot. The term "motion picture" does not include the production of television coverage of news and athletic events.

Proposed law retains the requirement in present law that a production company have a signed distribution agreement, but eliminates the requirement that a production have "substantial Louisiana content" in order to be certified and deletes the "point system" required to be established by the commission for such content-certification.

Present law grants an income tax credit calculated as a percentage of "investor

loss", that is the difference between:

Eighty-five percent of the funds actually invested and expended in the state in a qualifying production,

less

Revenues actually or constructively received by an investor for his investment in such production.

Proposed law grants the credit as a percentage of the "investment according to the total" of the "base investment", defined the same as above (that is, 85% of the funds actually invested and expended in the state in a qualifying production). The credit is "earned" at the time of investment.

Present law grants the credit as follows: If total "base investment" is greater than \$2 million and less than or equal to \$10 million, the tax credit is 10% of "investor loss"; if greater than \$10 million and less than or equal to \$25 million, 60%; and if greater than \$25 million, 67%. For a taxpayer participating in multiple projects, a credit of 70% of the investment loss may be applied against profit generated by a profitable qualifying production, with a 10 year carry-forward.

Proposed law grants only the credit as follows: If total "base investment" is greater than \$300,000 and less than or equal to \$1 million, a tax credit of 10% of the "actual investment"; if greater than \$1 million, 15% of the "investment."

Proposed law retains the 10 year carry-forward in present law.

Proposed law establishes procedures for application of the credit as follows:

1. Entities taxed as corporations shall claim the credit on their corporation income tax return.
2. Individuals shall claim the credit on their individual income tax return.
3. Entities not taxed as corporations shall claim the credit on the returns of the partners or members as follows:
 - a. Corporate partners or members shall claim on their corporation income tax returns.
 - b. Individual partners or members shall claim on their individual income tax returns.
 - c. Partners or members that are estates or trusts shall claim on their fiduciary income tax returns.

Proposed law replaces the lieutenant governor with the secretary of DED as the authority who, along with the Louisiana Film and Video Commission, certifies the production for the credit and promulgates the rules and regulations for the program.

Proposed law requires "recapture of credits" if the commission and DED "find" that funds for which an investor received credits are not invested in and

expended with respect to a state-certified production within 24 months of the date that such credits are earned. In that case, the investor's state income tax for "such taxable period" is increased by such amount necessary for the recapture of the credit.

Proposed law removes the House Committee on Municipal, Parochial and Cultural Affairs, and the Senate Committee on Commerce and Consumer Protection as oversight committees.

Proposed law provides for the recovery of credits by the Department of Revenue under the following conditions:

1. The department may recover any credits granted to a taxpayer and later disallowed through any statutorily authorized assessment and collection remedy procedure under the provisions of R.S. 47:1561 and initiated within 3 years from 12/31 of the year within the 24-month period by which the investor is statutorily required to invest and expend funds for which he has received credits.
2. Interest on recovered credits may be assessed and collected at a rate of 3% above the rates of judicial interest statutorily authorized under the provisions of R.S. 13:4202 through reference of the provisions of C.C. Art. 2924(B)(1).
3. The authority of the secretary of the department to statutorily assess and collect shall not be limited by any provisions of this authorization for recovery of credits.

Effective July 1, 2002.

The provision shall be effective until January 1, 2007.

(Amends R.S. 47:6007)

Summary of Amendments Adopted by Senate

Senate Floor Amendments to engrossed bill.

1. Adds the following provisions relative to the recover of credits by the department of Revenue:
 - a. The department may recover any credits granted to a taxpayer and later disallowed through any statutorily authorized assessment and collection procedure under R.S. 47:1561 and initiated within 3 years from 12/31 of the year within the 24-month investment period by which the investor is statutorily required to invest and expend funds for which he has received credits.
 - b. Interest on recovered credits may be assessed and collected at a rate of 3% above the rates of judicial

interest statutorily authorized under the provisions of R.S. 13:4202 through reference of the provisions of C.C. Art. 2924(B)(1).

- c. The statutory authority of the secretary of the department to assess and collect shall not be limited by any provisions of this authorization for recovery of credits.
2. Adds the following provisions for the application of credits:
 - a. Entities taxed as corporation - credit to be claimed on corporation income tax return.
 - b. Individuals - credit to be claimed on individual income tax return.
 - c. Entities not taxed as corporations - credit to be claimed on returns of the partners or members as follows:
 - i. Corporate partners or members - credit to be claimed on their corporation income tax returns.
 - ii. Individual partners or members - credit to be claimed on their individual income tax returns.
 - iii. Partners of members that are estate or trusts - credit to be claimed on their fiduciary income tax returns.
 3. Provides that provisions for the tax credit shall terminate on January 1, 2007.