
The legislative instrument and the following digest, which constitutes no part of the legislative instrument, were prepared by Riley Boudreaux.

CONFERENCE COMMITTEE REPORT DIGEST

SB 106

2015 Regular Session

Morrell

Keyword and summary of the bill as proposed by the Conference Committee

TAX/TAXATION. Provides relative to the motion picture investor tax credit and the motion picture infrastructure investor tax credit.

Report rejects House amendments which would have:

1. Incorporated certain content of HB829 into the proposed law relative to the motion picture investor tax credit program.
2. Made a request to the Department of Revenue by the office of entertainment industry development in LED of the office to take action against an individual or entity that committed material misrepresentation or fraud the "sole and exclusive remedy" if the office determined that there was a material misrepresentation or fraud on the part of an individual or entity in connection with the submission of a production audit report and tax credits were issued based on the wrongful report.
3. Specifically provided that neither the office nor the department would have a remedy against a "good faith transferee" for the wrongfully issued tax credits. Defined "good faith transferee" as a transferee of a tax credit who relied on the validity of the credit recorded in the tax credit registry pursuant to the provisions of R.S. 47:1524.

Report amends the bill to:

1. Provides relative to the motion picture investor tax credit and the motion picture infrastructure investor tax credit.

Digest of the bill as proposed by the Conference Committee

Proposed law prohibits a transfer or sale of tax credits from being effective until recorded in the tax credit registry in R.S. 47:1524. Deletes a provision of present law providing that the effectiveness of a tax credit transfer between the transferor and the transferee could be provided by agreement of the parties or, in the absence of an agreement, in accordance with the provisions of the Louisiana Civil Code and its ancillaries.

Present law defines a "motion picture" to include nationally or internationally distributed feature-length film, video, television pilot, and television series made in La. The term "motion picture" does not include the production of television coverage of news and athletic events.

Proposed law expands the definition of an eligible "motion picture" to include viewing on any digital online platform as may be further defined by the office through the promulgation of rules.

Present law defines "production expenditures" to include preproduction, production, and postproduction expenditures in this state directly relating to a state-certified production. However, the term specifically excludes expenditures for marketing and distribution.

Proposed law adds eligibility for marketing expenditures for all state-certified productions approved on or after January 1, 2016.

Present law provides that expenditures shall be certified no more than twice during the duration of a state-certified production unless the motion picture production company agrees to reimburse the office for the costs of any additional certifications .

Proposed law limits such certifications to once per production, but, if at the time of application for initial certification, the office is notified that post-production activities will take place in Louisiana, a supplemental request for certification of expenditures directly related to such post-production activity may be submitted for consideration by the office. The cost of any verification or audit of such expenditures must be borne by the motion picture production company.

Proposed law deletes the exception for productions approved up to July 1, 2009 to the provision that qualifying expenditures must be made within 12 months of initial certification allowing a production which had commenced to have a valid initial certification until the production was completed. Specifically limits earning of credits to expenditures made during the initial certification period.

Proposed law provides that such initial certification is within a period 12 months prior to and 24 months after the date of the initial certification.

Proposed law reduces the time unused tax credit may be carried forward from10 years to 5 years.

Proposed law requires the Department of Revenue to make a payment of a refund to a motion picture production company's irrevocable designee provided tax credits are transferred to the Department of Revenue within one calendar year of certification. Allows a bank or other lender to be named as an irrevocable designee in the initial tax credit certification or other document submitted thereafter by a motion picture production company to the office. As an irrevocable designee, a bank or other lender may elect to have the tax credits issued directly to it from the office, and in addition to having the rights of a transferee, it may also elect to transfer the credits to the Department of Revenue.

Proposed law makes conviction for a criminal offense as an incident to obtaining or attempting to obtain motion picture investor tax credits a criterion for determining who qualifies for a credit.

ry shall issue a tax credit certification letter indicating the amount of tax credits certified for the state-certified production to the ~~investors~~ applicant for all qualifying expenditures verified by the office. Any expenditures for which tax credits were neither denied nor certified due to insufficient information or other issues, the office and secretary shall diligently work to resolve the outstanding issues in a timely manner, and the office and secretary may subsequently issue a supplemental tax credit certification at the time of such resolution.

Proposed law provides that tax credits shall not be considered entitlements, and the taxpayer must bear the burden of clearly and unequivocally establishing eligibility for tax credits.

Present law requires an investor's state income tax to be increased by the amount necessary for the recapture of tax credits if the office finds that monies for which an investor received tax credits were not invested in and expended with respect to a state-certified production within 24 months of the date that such credits were earned. Authorizes the secretary of the Department of Revenue to initiate collection of tax credits disallowed within 3 years from December 31st of the year in which the 24-month investment period ended. Limited the interest that may be assessed and collected on recovered credits to a rate three percentage points above the rate provided in R.S. 9:3500(B)(1).

Effective January 1, 2016, proposed law deletes these provisions and prohibits a "bad faith holder" from claiming tax credits, transferring tax credits to the office for 85% of value as provided in present law, or transferring or selling tax credits. A "bad faith holder" is defined as a person who participated in material misrepresentation or fraudulent acts in connection with the certification of tax credits, or who prior to or at the time of certification of such tax credits knew or reasonably should have known of such material misrepresentation or fraudulent acts, or a legal entity owned or controlled by such a person. Upon a determination of bad faith by the Department of Revenue such tax credits shall be deemed disallowed as to the bad faith holder.

Authorizes the Department of Revenue to recover subsequently disallowed tax credits previously transferred to LED or claimed by a bad faith holder through any collection remedy authorized by law, plus interest and penalties provided by law for the delinquent payment of taxes, and authorizes the department to recapture any amounts and other damages from a bad faith holder. Additionally, In the event tax credits obtained through material misrepresentation or fraudulent acts are claimed by a taxpayer who is not a bad faith holder, the Department of Revenue shall have the same right of recourse against a previous bad faith holder as provided to transferees in present law.

Proposed law authorizes the secretary of the Department of Revenue to recover disallowed tax credits through any collection remedy authorized by R.S. 47:1561 and initiated within the latter of any of the following:

1. Two years from December 31st of the year in which the tax credit was paid.
2. Three years from December 31st of the year in which the taxes for the filing period were due.
3. Three years from December 31st of the year in which the final tax credit certification letter was issued.

4. The time period for which prescription has been extended, as provided for the suspension and interruption of prescription against taxes by R.S. 47:1580.

Proposed law establishes standards for audit reports for certification of expenditures for state-certified motion picture infrastructure program tax credits. Requires infrastructure project applicants to submit all requests and required documentation for final certification on or before December 31, 2015, after which time all such claims to tax credits are deemed to be waived. Requires the request to be accompanied by an audit performed by an independent certified public accountant. Within 365 days after receipt, or December 31, 2016, whichever occurs first, the office, the secretary, and the division must issue a denial letter or a tax credit certification letter to the investors indicating the amount of tax credits certified for the project. The applicant is authorized to appeal a denial.

Proposed law prohibits motion picture infrastructure tax credits to be certified after July 1, 2017.

Effective July 1, 2015, but only if the commissioner of administration and the Legislative Auditor provide written notice to the President of the Senate, the Speaker of the House of Representatives, and the Louisiana State Law Institute that they have determined that an Act or Acts were enacted in the 2015 Regular Session of the Legislature sufficient to offset any tax increases provided for in the Acts of such Session over a five year period.

(R.S. 47:1524(D)(2) and (3), and 6007(section heading), (B)(5), (10) through (16), (C)(subsection heading), (1)(introductory paragraph), (a)(iii), and (b)(iii), (2) and (4)(b) and (f), (D)(2)(d)(i), (E), and (F), and to enact R.S. 47:6007(B)(17) and (18), (C)(1)(c)(iii), (D)(1)(d)(iv) and (2)(d)(iii), (G), and (H))