

## RÉSUMÉ DIGEST

ACT 144 (SB 106)

2015 Regular Session

Morrell

New law, relative to the motion picture investor tax credit, prohibits, after January 1, 2014, 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 prior 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.

Prior law defined 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" did not include the production of television coverage of news and athletic events.

New law expands the definition of an eligible "motion picture" to include viewing on any digital online platform as may be further defined by the Governor's Office of Film and Television Development (office) through the promulgation of rules.

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

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

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

New 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.

New 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.

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

New law reduces the time unused tax credit may be carried forward from 10 years to 5 years.

New law requires the Department of Revenue (DOR) to make a payment of a refund to a motion picture production company's irrevocable designee provided tax credits are transferred to the DOR 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 DOR.

New 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.

Prior law provided that prior to any final certification of the state-certified production, the motion picture production company shall submit to the office and the secretary a production

audit report. Provided that the office and the secretary shall review the report and may require additional information needed to make a determination. Provides that within 120 days of the receipt of the report and all required supporting information, the office and the secretary shall issue a tax credit certification letter indicating the amount of tax credits certified for the state-certified production to the investors for all qualifying expenditures verified by the office.

New law provides that no later than six months after the expiration of the initial certification period for the applicable state-certified production, a state-certified motion picture production company applicant shall make a request to the office to proceed to final certification by submitting to the office a cost report of production expenditures to be formatted in accordance with instructions of the office. Provides that the applicant shall make all records related to the cost report available for inspection by the office and the qualified accountant selected by the office to prepare the production expenditure verification report, after which time all such claims to tax credits shall be deemed waived. Provides that after review and investigation of the cost report, the accountant shall submit to the office and the secretary a production expenditure verification report. The office and the secretary shall review the report and may require additional information needed to make a determination as to final certification of all tax credits for that production. Within 120 days of the receipt of the report and all required supporting information, the office and the secretary shall issue a tax credit certification letter indicating the amount of tax credits certified for the state-certified production to the applicant for all qualifying expenditures verified by the office.

New 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.

Prior law required 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. Authorized the secretary of the DOR to initiate collection of tax credits disallowed within three 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, new 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 prior 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 DOR such tax credits shall be deemed disallowed as to the bad faith holder.

Authorizes the DOR 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 DOR shall have the same right of recourse against a previous bad faith holder as provided to transferees in prior law.

New law authorizes the secretary of the DOR 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.

New 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.

New 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 Senate president, the House speaker, and the La. State Law Institute that they have determined that an Act or Acts were enacted in the 2015 RS sufficient to offset any tax increases provided for in the Acts of such Session over a five-year period.

(Amends R.S. 47:1524(D)(2) and (3) and 6007(B)(5), (10)-(16), (C)(1)(intro para), (a)(iii), and (b)(iii), (2) and (4)(b) and (f), (D)(2)(d)(i), (E), and (F); adds R.S. 47:6007(B)(17) and (18), (C)(1)(c)(iii), (D)(1)(d)(iv) and (2)(d)(iii), (G), and (H))