

**ACT No. 425**

2015 Regular Session

HOUSE BILL NO. 735

BY REPRESENTATIVE STOKES

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AN ACT

To amend and reenact R.S. 47:164(D) and 6007(B)(8) and (D)(5), relative to individual income tax; to provide with respect to the motion picture investor tax credit; to provide for employee compensation eligible as a production expense for purposes of the tax credit; to require withholding for purposes of individual income tax; to authorize the imposition of a fee by the Department of Revenue for purposes of administration of reporting related thereto; to authorize the exchange of certain specific information between the Department of Revenue and the Department of Economic Development; to require the reporting of certain payments and other information; to provide for applicability; to provide for effectiveness; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. R.S. 47:164(D) and 6007(B)(8) and (D)(5) are hereby amended and reenacted to read as follows:

§164. Information at source

\* \* \*

D. Withholding of tax at source. (1) The ~~collector~~ secretary, whenever it is deemed necessary to ~~insure~~ ensure compliance with the provisions of this Chapter, may require the United States, the state of Louisiana or any other state or any political subdivision, agency or instrumentality of the foregoing, or any person

1           having control, receipt, custody, disposal or payment of interest, other than interest  
2           coupon payable to the bearer, rent, salaries, wages, premiums, annuities,  
3           compensation, remunerations, emoluments, or other fixed or determinable annual or  
4           periodical gains, profits, and income, paid or payable to any person, to deduct and  
5           withhold as tax an amount determined by the ~~collector~~ secretary, to be payable from  
6           such person and make return thereof and pay the tax to the ~~collector~~ secretary.

7                     (2)(a) The motion picture investor tax credit pursuant to R.S. 47:6007 awards  
8                     a tax credit for investments made and used for production expenditures in this state  
9                     for state-certified productions. Therefore, any individual receiving any payments for  
10                    the performance of services used directly in a production activity, which payments  
11                    shall be claimed as a production expenditure for purposes of certification of tax  
12                    credits, is deemed to be receiving Louisiana taxable income whether directly or  
13                    indirectly through an agent or agency, loan-out company, a personal service  
14                    company, an employee leasing company, or other entity.

15                    (b) Any motion picture production company, motion picture payroll services  
16                    company, or other entity making or causing to be made payments as provided in  
17                    Subparagraph (a) of this Paragraph, to an individual, or to an agent or agency, loan-  
18                    out company, personal service company, employee leasing company, or other entity  
19                    is considered to be paying compensation taxable by the state of Louisiana. For  
20                    purposes of eligibility as a production expenditure, the company or other entity shall  
21                    withhold taxes from those payments at the highest individual rate of six percent, or  
22                    the highest individual rate in effect at the time.

23                    (c) The motion picture production company, motion picture payroll services  
24                    company, or other entity required to withhold income taxes as required by this  
25                    Paragraph shall electronically report and remit such withholdings to the Department  
26                    of Revenue quarterly. The information reported as required by this Subparagraph  
27                    may be provided to the Department of Economic Development and if provided, shall  
28                    be subject to the confidentiality provisions of R.S. 47:1508(B)(20). The reports shall  
29                    contain the following information:

1                   (i) Name, address, and taxpayer identification number of the loan-out  
2                   company or other entity.

3                   (ii) Identification of entity type: C Corporation, S Corporation, or Limited  
4                   Liability Company with tax type specified.

5                   (iii) Name, address, and social security number of the payee.

6                   (iv) An affirmative statement of whether or not the production company is  
7                   a related party to the loan-out company or other entity, and if so, provision of an  
8                   affidavit stating under penalty of perjury that the transaction is valued at the same  
9                   value that an unrelated party would value the same transaction. If the production  
10                   company is a related party to the loan-out company, the report shall also include all  
11                   of the following information:

12                   (aa) The ownership structure of the loan-out company or other entity.

13                   (bb) An estimate amount of what the loan-out company or other entity will  
14                   pay the payee.

15   \*       \*       \*

16                   §6007. Motion picture investor tax credit

17   \*       \*       \*

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

19   \*       \*       \*

20                   (8) "Payroll" means all salary, wages, and other compensation of any kind  
21                   whatsoever, including ~~benefits paid to an employee~~ but not limited to services,  
22                   benefits, per diem, housing, box rentals and any other type of benefit paid, provided,  
23                   or rendered to an individual for services relating to a state-certified production ~~and~~  
24                   taxable in this state and for which taxes are withheld and remitted to the Department  
25                   of Revenue in accordance with R.S. 47:164(D)(2). However, "payroll" for purposes  
26                   of the additional tax credit for Louisiana-resident payroll shall exclude any portion  
27                   of an individual salary in excess of one million dollars.

28   \*       \*       \*

29                   D. Certification and administration.

30   \*       \*       \*

1           (5) A motion picture production company applying for ~~the additional a tax~~  
 2           credit ~~for the employment of Louisiana residents~~ based upon payroll for any  
 3           individuals must remit a schedule to the Department of Revenue, in a machine-  
 4           sensible format approved by the secretary of the Department of Revenue, that  
 5           includes the following information: ~~the names of all persons who received salary,~~  
 6           ~~wages, or other compensation for services performed in Louisiana in connection with~~  
 7           ~~the state-certified production, and the address, taxpayer identification number,~~  
 8           ~~permanent address of, and the amount of compensation for services performed in~~  
 9           ~~Louisiana received by each such person.~~

10           (a) Name, address, and taxpayer identification number of the loan-out  
 11           company or other entity, if any.

12           (b) Identification of entity type: C Corporation, S Corporation, Limited  
 13           Liability Company, or other entity type with tax type specified, if applicable.

14           (c) Name, address, and social security number of the payee.

15           (d) An affirmative statement of whether or not the production company is  
 16           a related party to the loan-out company or other entity, and if so, provision of an  
 17           affidavit stating under penalty of perjury that the transaction is valued at the same  
 18           value that an unrelated party would value the same transaction. If the production  
 19           company is a related party to the loan-out company, the schedule shall also include  
 20           all of the following information:

21           (i) The ownership structure of the loan-out company or other entity.

22           (ii) An estimate amount of what the loan-out company or other entity will  
 23           pay the payee.

24           (e) The secretary of the Department of Revenue shall, for purposes of  
 25           administering the reporting provisions required under this Subsection, collect an  
 26           administrative fee in the amount of two hundred dollars per motion picture  
 27           production for which reports and payroll withholding information are mandated.

28   \*       \*       \*

1           Section 2. The provisions of this Act shall be applicable to productions which  
2 receive initial certification on or after January 1, 2016.

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SPEAKER OF THE HOUSE OF REPRESENTATIVES

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PRESIDENT OF THE SENATE

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GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: \_\_\_\_\_