

## RÉSUMÉ DIGEST

ACT 129 (HB 748)

2015 Regular Session

Stokes

Existing law authorizes a tax credit against state income tax based on certain production expenditures for state-certified productions. A "*state-certified production*" is a motion picture production that has applied for and received the *approval* of the office of entertainment industry development within the Dept. of Economic Development ("DED") for *initial certification* of its production expenditures ("initial certification"). The amount of the tax credit is 30% of a production's total expenditures that receive final certification by DED ("certified production expenditures"). There is an additional tax credit equal to 5% of the production expenditures for payroll for La. residents employed in connection with a state-certified production.

New law makes a variety of changes with some provisions effective July 1, 2015, and others Jan. 1, 2016, as follows.

### **New law effective July 1, 2015** **Motion Picture Production Investor Tax Credit**

Prior law established procedures and timing regarding the recapture of tax credits by DED in the case of an ineligible expense that had been certified for a tax credit, known as a "disallowed credit".

Prior law authorized the secretary of the Dept. of Revenue ("DOR") to recover a tax credit which had been disallowed, using any remedy provided by existing law. The prescriptive period for DOR's authority to recover a credit was three years from Dec. 31<sup>st</sup> of the year in which the 24 month period in which production expenditures could be eligible for final certification had ended.

New law repeals prior law and establishes various new provisions governing recapture and recovery of disallowed tax credits.

New law prohibits the claim for or transfer of tax credits by a "bad faith holder", who 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 is a legal entity owned or controlled by such a person. Upon a determination of bad faith by DOR, tax credits shall be deemed disallowed as to the bad faith holder.

New law provides that if a disallowed tax credit is claimed by a person who received the credits through a transfer from a bad faith holder, the DOR shall have the right of recourse against a bad faith holder.

New law establishes the following provisions regarding the prescription of authority to recover a disallowed tax credit. Recovery shall be initiated within the later of any of the following:

- (1) Two years from Dec. 31<sup>st</sup> of the year in which the tax credit is paid in accordance with new law.
- (2) Three years from Dec. 31<sup>st</sup> of the year in which the taxes for the filing period are due, or in which the final tax credit certification letter is issued.
- (3) The time period for which prescription is extended, as provided in existing law.

### **New law effective July 1, 2015** **Motion Picture Infrastructure Investor Tax Credit**

New law adds requirements regarding submission and consideration of audit reports for final certification of state-certified expenditures for the motion picture *infrastructure* investor tax credits.

New law requires the submission of all requests and required documentation for final certification of motion picture infrastructure investor tax credits by Dec. 31, 2015, after which time all claims for such credits shall be deemed waived.

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

New law requires DED to issue a denial or a tax credit certification within 365 days of receipt of an audit report, or before Dec. 31, 2016, whichever comes first. In the event of a denial, the applicant may appeal the decision in accordance with program rules. The certification of tax credits is prohibited after July 1, 2017.

### **New law effective Jan. 1, 2016** **Motion Picture Production Investor Tax Credit**

New law makes a variety of programmatic, procedural, and timing changes and changes definitions, with certain provisions effective for purposes of productions granted initial certification for specific time periods.

Prior law defined "motion picture" as a nationally or internationally distributed feature-length film, video, television pilot, television series, television movie of the week, animated feature film, animated television series, or commercial made in La., for theatrical or television viewing.

New law revises the definition of "motion picture" to include material made for viewing on any digital online platform, which may be further defined by DED through the promulgation of administrative rule.

Prior law defined "production expenditure", which definition specified various types of expenses customarily associated with motion picture productions, specifically excluding marketing expenses.

New law changes the definition of "production expenditure" as follows:

- (1) *For state-certified productions granted initial certification on or after Jan. 1, 2004, expenses occurring outside of La. are specifically excluded from the definition.*
- (2) *For state-certified productions granted initial certification on or after Jan. 1, 2016, marketing expenses are included in the definition.*

New law adds definitions for "taxpayer" and "project completion".

Prior law provided that *for state-certified productions approved on or after Jan. 1, 2004, but before July 1, 2009*, the initial certification period for qualifying expenditures was 12 months prior to and 12 months after the date of initial certification, unless the production had commenced, in which case the initial certification would be valid until the production was completed.

New law specifies, *for purposes of all state-certified productions*, that a project's initial certification shall be effective for qualifying expenditures made within 12 months before and 24 months after the date of initial certification.

Prior law provided that production expenditures could receive final certification no more than twice over the duration of a state-certified production, unless the motion picture production company agreed to reimburse DED for the cost of additional certifications.

New law changes provisions governing the timing and frequency of final certifications of production expenditures. The number of times expenditures may be certified is reduced from twice to once. The timing of certification is changed from during a production to after completion of production.

New law provides that if at the time of application for initial certification, the motion picture production company notifies DED that post-production activities will occur in La., then a

supplemental request for final certification of expenditures may be submitted for consideration by DED, with the cost of any verification of those post-production expenditures being borne by the company.

Prior law required submission of a production audit report by a motion picture production company for purposes of DED's final certification of expenditures for tax credits.

New law changes the document used as the basis for DED's final consideration of expenditures for certification for tax credits from a production audit report to a production expenditure verification report based on the production company's cost report of production expenditures. The production expenditure verification report shall be prepared by a qualified accountant selected by DED.

New law adds a requirement that no later than six months after the expiration of the initial certification period for the applicable state-certified production, a taxpayer is required to submit to the office all requests and required documentation for final certification of all tax credits or the claims to such tax credits shall be deemed waived.

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

New law authorizes a motion picture production company to name a bank or other lender as an irrevocable designee at the time of initial certification or thereafter. A designee may elect to have tax credits issued directly to it.

Prior law authorized the motion picture production company that earned the tax credits to transfer the credits to DED for 85% of the face value.

New law authorizes the transfer of credits by an irrevocable designee as well as the motion picture production company, and by changing the agency to which the credits may be transferred for 85% of face value from DED to DOR.

Prior law authorized a 10 year carryforward period during which time unused tax credits could be used against future tax liabilities.

New law reduces the authorized carryforward period from 10 to 5 years.

Existing law authorizes the transfer or sale of a tax credit from one person to another, and establishes a tax credit registry for maintenance of information on transferrable tax credits.

Prior law provided specific requirements for notice to DOR regarding transfers of tax credits. DOR was required to keep specific records with regard to the transfer. Prior law provisions were obsolete in light of existing law pursuant to the Louisiana Tax Credit Registry Act.

New law repeals prior law.

New law specifies that the transfer or sale of a tax credit shall be effective upon recordation of the transaction in the tax credit registry established by existing law.

The Act contains new law which became effective July 1, 2015, as well as new law which will become effective Jan. 1, 2016, as reflected above.

(Amends R.S. 47:1524(D)(2), 6007(B)(5), (10)-(16), (C)(1)(intro. para.), (a)(iii) and (b)(iii), (2), and (4)(b) and (f), and (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); Repeals R.S. 47:1524(D)(3))