

2017 Regular Session

SENATE BILL NO. 235

BY SENATOR MORRELL

TAX/TAXATION. Provides relative to the Motion Picture Production Tax Credit. (gov sig)

1 AN ACT

2 To amend and reenact R.S. 47:6007(B)(8) and (21), the introductory paragraph of R.S.
3 47:6007(C)(1), R.S. 47:6007(C)(1)(a) and (b), the introductory paragraph of R.S.
4 47:6007(C)(1)(c), R.S. 47:6007(C)(4)(f)(ii), (D)(1)(a), and (2)(d), to enact R.S.
5 47:6007(B)(28), (29), and (30), (D)(1)(d)(v), (2)(a)(ii), and (e)(iv), and (J), and to
6 repeal R.S. 47:6007(C)(1)(d), relative to the motion picture production tax credit;
7 and to provide for related matters.

8 Be it enacted by the Legislature of Louisiana:

9 Section 1. R.S. 47:6007(B)(8) and (21), the introductory paragraph of R.S.
10 47:6007(C)(1), R.S. 47:6007(C)(1)(a) and (b), the introductory paragraph of R.S.
11 47:6007(C)(1)(c), R.S. 47:6007(C)(4)(f)(ii), (D)(1)(a), and (2)(d) are hereby amended and
12 reenacted and R.S. 47:6007(B)(28), (29), and (30), (D)(1)(d)(v), (2)(a)(ii), and (e)(iv), and
13 (J) are hereby enacted to read as follows:

14 §6007. Motion picture production tax credit

15 * * *

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

17 * * *

1 (8) "Louisiana promotional graphic" means a graphical brand or logo for
2 promotion of the state which has been approved by the office ~~for a production,~~
3 ~~consisting of either of the following:~~

4 (a) ~~A five-second long static or animated graphic that promotes Louisiana in~~
5 ~~the end credits before the below-the-line crew crawl for the life of the production,~~
6 ~~and which includes a link to Louisiana on the production's website and online~~
7 ~~promotions.~~

8 (b) ~~An embedded five-second long static or animated graphic that promotes~~
9 ~~Louisiana during each broadcast worldwide for the life of the production, and which~~
10 ~~includes a link to Louisiana on the production's website and online promotions.~~

11 * * *

12 (21) "Resident" or "resident of Louisiana" means a natural person who is a
13 legal resident and who has been domiciled in the state and has maintained a
14 permanent place of abode in this state for no less than twelve consecutive months
15 required to file a Louisiana resident individual income tax return.

16 * * *

17 (28) "New jobs" means full-time employment in this state working an
18 average of thirty hours or more per week, filled by residents of the state, at the
19 project site designated in the contract, who was not previously on the QEC's
20 payroll in Louisiana, nor previously on the payroll of the QEC's parent entity,
21 subsidiary, or affiliate in Louisiana, or previously on the payroll of any business
22 whose physical location and employees are substantially the same as those of the
23 QEC in Louisiana, as approved by the secretary.

24 (29) "Qualified Entertainment Company (QEC)" means an entity
25 authorized to do business in the state of Louisiana, engaged in the development
26 and distribution of audio visual entertainment products for public consumption,
27 certified by the secretary as meeting the eligibility requirements of this Section,
28 and executing a contract providing the terms and conditions for its
29 participation.

1 **(30) "QEC Payroll" means W-2, box 1 wages.**

2 * * *

3 C. Production tax credit; specific productions and projects.

4 (1) There is hereby authorized a tax credit against state income tax for
5 Louisiana taxpayers for expenditures related to state-certified productions **and**
6 **qualified entertainment companies**. The tax credit shall be earned by a motion
7 picture production company at the time expenditures are certified by the office and
8 the secretary for a motion picture production company in a state-certified production.
9 However, credits cannot be applied against a tax or transferred until the expenditures
10 are certified by the office and the secretary. For state-certified productions,
11 expenditures shall be certified no more than once per production, after project
12 completion. However, if at the time of application for initial certification, the office
13 is notified that post-production activities will take place in Louisiana, a supplemental
14 request for certification of expenditures directly related to such post-production
15 activity may be submitted for consideration by the office. The cost of any
16 verification or audit of such expenditures shall be borne by the motion picture
17 production company. The tax credit shall be calculated as a percentage of the total
18 base investment dollars certified per project.

19 (a) ~~For state-certified productions approved by the office and the secretary~~
20 ~~on or after January 1, 2004, but before January 1, 2006:~~ **Project Based Production**
21 **tax credit. For applications for state-certified productions on or after July 1,**
22 **2017:**

23 (i) ~~If the total base investment is greater than three hundred thousand dollars~~
24 ~~and less than or equal to eight million dollars, each taxpayer shall be allowed a tax~~
25 ~~credit of ten percent of the actual investment made by that taxpayer.~~ **Base**
26 **investment credit. If the total base investment is greater than three hundred**
27 **thousand dollars, each investor shall be allowed a tax credit of thirty percent of**
28 **the base investment made by the investor. Investors may receive an increased**
29 **base investment credit rate by satisfying any of the following criteria:**

1 (aa) Out of zone filming. A five percent increase in the base investment
2 rate may be allowed for state-certified productions with their production office
3 and sixty percent of principal photography based and occurring outside of the
4 New Orleans Metro Statistical Area.

5 (bb) Visual effects. A five percent increase in the base investment rate
6 may be allowed for state-certified productions with at least seventy-five percent
7 of the visual effects budget expended for services performed in Louisiana by an
8 approved QEC, or a minimum of ten million dollars in qualified visual effects
9 expenditures in Louisiana.

10 (cc) Louisiana screenplay. A ten percent increase in the base investment
11 rate may be allowed for state-certified productions with a budget not to exceed
12 five million dollars, based upon either a screenplay created by a Louisiana
13 resident or a screenplay purchased, optioned, licensed, or otherwise acquired
14 from a Louisiana publisher, in each case, as evidenced by documents such as
15 certificate of authorship, a WGA registration certificate, the records of the
16 United States Copyright Office, or a reasonable legal opinion issued to the
17 office.

18 ~~(ii) If the total base investment is greater than eight million dollars, each~~
19 ~~taxpayer shall be allowed a tax credit of fifteen percent of the actual investment~~
20 ~~made by that taxpayer.~~ Additional payroll credit. To the extent that base
21 investment is expended on payroll for Louisiana residents employed in
22 connection with a state-certified production, each investor shall be allowed an
23 additional tax credit of ten percent of that payroll.

24 (iii) The initial certification shall be effective for qualifying expenditures
25 made within a period ~~of~~ of twelve months prior to ~~and twelve~~ the date of application,
26 and twenty-four months after the date of initial certification., except that:

27 (aa) State-certified productions for scripted episodic content, that
28 guarantee no less than ten million dollars in qualifying in state expenditures per
29 calendar year, for no less than five years, shall be issued an initial certification

1 effective for qualifying expenditures made until sixty months after the date of
2 initial certification, under terms and conditions approved by the office and the
3 secretary, as set forth in the initial certification.

4 (iv) As a condition of receiving tax credits under this Section,
5 state-certified productions shall be required to acknowledge the financial
6 assistance of the state of Louisiana, either through the inclusion of a Louisiana
7 promotional graphic, or an alternative marketing option, as approved by the
8 office.

9 ~~(b) For state-certified productions approved by the office and the secretary~~
10 ~~on or after January 1, 2006, but before July 1, 2009:~~ Company based QEC payroll
11 tax credit for Qualified Entertainment Companies approved by the office and
12 the secretary on or after July 1, 2017. To the extent that base investment is
13 expended on payroll for Louisiana residents in connection with a QEC, tax
14 credits shall be earned at the following rates:

15 ~~(i) If the total base investment is greater than three hundred thousand dollars,~~
16 ~~each investor shall be allowed a tax credit of twenty-five percent of the base~~
17 ~~investment made by that investor.~~ Tier 1. A payroll credit of ten percent shall be
18 earned for each new job whose QEC payroll is equal to or greater than forty-
19 five thousand dollars per year, up to sixty-six thousand dollars per year.

20 ~~(ii) To the extent that base investment is expended on payroll for Louisiana~~
21 ~~residents employed in connection with a state-certified production, each investor~~
22 ~~shall be allowed an additional tax credit of ten percent of such payroll. However, if~~
23 ~~the payroll to any one person exceeds one million dollars, this additional credit shall~~
24 ~~exclude any salary for that person that exceeds one million dollars.~~ Tier 2. A payroll
25 credit of twenty percent shall be earned for each new job whose QEC payroll
26 is equal to or greater than sixty-six thousand dollars per year, but no greater
27 than two hundred thousand dollars per year.

28 ~~(iii) The initial certification shall be effective for qualifying expenditures~~
29 ~~made within a period twelve months prior to and twelve months after the date of~~

1 ~~initial certification.~~

2 (c) For state-certified productions approved by the office and the secretary
3 on or after July 1, 2009, **and before July 1, 2017:**

4 * * *

5 (4) Transferability of the credit. Except as provided for in Item (f)(iii) of this
6 Paragraph, motion picture tax credits not previously claimed by any taxpayer against
7 its income tax may be transferred or sold to another Louisiana taxpayer or to the
8 office, subject to the following conditions:

9 * * *

10 (f) * * *

11 (ii) **(aa)** For projects ~~which~~ **that** receive initial certification on and after July
12 1, 2009, **and before July 1, 2017,** the motion picture production company that
13 earned the motion picture production tax credits pursuant to such certification or the
14 company's irrevocable designee, as provided for in Item (iv) of this Subparagraph,
15 may transfer the credits to the Department of Revenue for eighty-five percent of the
16 face value of the credits in accordance with the procedures and requirements of Item
17 (iii) of this Subparagraph.

18 **(bb) For projects that apply on and after July 1, 2017, the motion picture**
19 **production company that earned the motion picture production tax credits**
20 **pursuant to such certification or the company's irrevocable designee, as**
21 **provided for in Item (C)(4)(f)(iv) of this Section, may transfer the credits to the**
22 **Department of Revenue for ninety-two percent of the face value of the credits**
23 **in accordance with the procedures and requirements of Item (C)(4)(f)(iii) of this**
24 **Section.**

25 * * *

26 D. Certification and administration.

27 (1)(a)(i) **Company based QEC payroll tax credit. It is the intent of the**
28 **Louisiana Legislature that the tax credits provided in this Section should be**
29 **used primarily as an inducement for qualified entertainment businesses to**

1 permanently locate new operations in Louisiana. A business may be eligible for
2 participation in the program if it meets all of the following criteria:

3 (aa) The business is engaged in the development and distribution of
4 audio visual entertainment product for public consumption, as approved by the
5 secretary.

6 (bb) Creates a minimum of five new jobs meeting or exceeding the Tier
7 1 minimum wage requirements, in accordance with the provisions of Item(C)
8 (1)(b)(i) of this Section.

9 (cc) Is approved by the secretary.

10 (I) The following business types are ineligible:

11 (aaa) Telecommunication.

12 (bbb) Any other businesses as determined by rule promulgated by the
13 Department of Economic Development.

14 (ii) The secretary of the Department of Economic Development and the office
15 shall determine through the promulgation of rules the minimum criteria that a project
16 must meet in order to qualify according to this Section. The secretary, the office, and
17 the division of administration shall determine through the promulgation of rules the
18 minimum criteria that a project must meet in order to qualify according to this
19 Section.

20 * * *

21 (d) When determining which productions may qualify, the office and the
22 secretary of the Department of Economic Development shall take the following
23 factors into consideration:

24 * * *

25 (v) Filming location, project size, project type, and availability of tax
26 credits in any given year.

27 (2)(a) Application. An applicant for the motion picture investor credit shall
28 submit an application for initial certification to the office and the secretary of the
29 Department of Economic Development that includes the following information:

1 (i) For state-certified productions the application shall include:

2 * * *

3 (ii) Company based QEC payroll tax credit. Applications shall be
4 submitted to the office on a form prescribed by the department, or if available
5 submitted electronically, to include such information as may be required by the
6 department to determine if the applicant is qualified.

7 * * *

8 (d)(i) The Project based production tax credit. After application review
9 and consideration of all discretionary factors, the office and the secretary shall
10 submit their initial certification or written denial of a project as a state-certified
11 production to investors and to the secretary of the Department of Revenue indicating
12 the total base investment which shall be expended in the state on the state-certified
13 production within sixty days of their receipt of all required information. The initial
14 certification shall include a unique identifying number for each state-certified
15 production and shall provide for a tentative allocation of tax credits by year.

16 (ii) Company based QEC payroll tax credit. After application review and
17 consideration of all discretionary factors, the office and the secretary may
18 execute a contract with an applicant for a period of up to five years, providing
19 the terms and conditions for its participation. A five-year renewal contract may
20 be authorized if the applicant has complied with all the terms of the contract
21 and has not performed any act, nor failed to perform any act, which would have
22 made the applicant liable for suspension, and has complied with the provisions
23 of this Section. The contract shall set forth an estimate of jobs and payroll per
24 calendar year, which will be tentatively allocated to the QEC for annual cap
25 computation purposes.

26 * * *

27 (e) * * *

28 * * *

29 (iv) State-certified productions for scripted episodic content and

1 approved QEC's may submit more than one request for final certification of tax
2 credits, but no more frequently than once per calendar year, in accordance with
3 the terms of the initial certification letter or QEC contract and instructions by
4 the office.

5 * * *

6 J. Credit caps, structured pay outs and project size limitations.

7 (1) Department of Economic Development program issuance cap.

8 (a) The department shall by rule establish the method of provisionally
9 allocating available tax credits in initial certification letters, and the method for
10 granting tax credits in final tax credit certification letters, including but not
11 limited to a first-come, first-served system, reservation of tax credits for a
12 specific time period, or other method which the department, in its discretion,
13 may find beneficial to the program.

14 (b) For applications for state-certified productions and qualified
15 entertainment companies submitted on or after July 1, 2017, the total amount
16 of tax credits granted in a final certification letter by the department in any
17 fiscal year shall not exceed one hundred sixty-five million dollars. Five percent
18 of the annual program cap shall be reserved for qualified entertainment
19 companies. If the total amount of credits applied for in any particular year
20 exceeds the aggregate amount of tax credits allowed for that year, the excess
21 shall be treated as having been applied for on the first day of the subsequent
22 year. The amount of any residual unused tax credits shall carry forward to
23 subsequent years.

24 (c) If the total amount of credits granted to QEC's in any fiscal year is
25 less than the QEC cap, any residual amount of unused credits shall carry
26 forward for use in subsequent years and may be granted in addition to the QEC
27 cap for each year.

28 (d) The department shall make reasonable efforts to post a listing of
29 estimated amounts available under the cap on its website.

1 **(2) Department of Revenue taxpayer claim cap.**

2 **(a) Beginning July 1, 2017, claims against state income tax allowed on**
3 **returns for tax credits or transfers of such tax credits to the office as provided**
4 **for in Paragraph (J)(4) of this Section shall be limited to an aggregate total of**
5 **one hundred eighty million dollars each fiscal year. Claims for tax credits or**
6 **transfers of tax credits to the office shall be allowed on a first-come, first-served**
7 **basis. Any taxpayer whose claim for such tax credits or transfer to the office is**
8 **disallowed may use the tax credits against state income tax due in a return filed**
9 **in the next fiscal year or may transfer tax credits to the office the next fiscal**
10 **year, and his claim or transfer shall have priority over other claims filed or**
11 **transfers applied for after the date and time of his original claim or application**
12 **for transfer.**

13 **(b) If less than one hundred eighty million dollars of such tax credits and**
14 **transfers are allowed in a fiscal year, the remaining amount, plus any amounts**
15 **remaining from previous fiscal years, shall be added to the one hundred eighty**
16 **million dollar limit of subsequent fiscal years until that amount of tax credits**
17 **or tax credit transfers to the office are claimed and allowed.**

18 **(3) Department of Economic Development individual project issuance**
19 **cap.**

20 **(a) Project based production tax credit. For applications for**
21 **state-certified productions on or after July 1, 2017, the maximum amount of**
22 **credits that may be granted for a single state-certified production shall not**
23 **exceed twenty million dollars. The credit for these productions shall be**
24 **structured over two or more tax years as provided for in the initial certification**
25 **letter.**

26 **(b) Company based QEC payroll tax credit. For applications for**
27 **qualified entertainment company contracts on or after July 1, 2017, the**
28 **maximum amount of credits that may be granted for a single company shall not**
29 **exceed one million dollars per year.**

1 **(4) Department of Economic Development individual payroll cap.**

2 **(a) Project based production tax credit. For applications for**
3 **state-certified productions on or after July 1, 2017, the maximum amount of**
4 **credits that may be granted for payroll payments made for the services**
5 **rendered by an individual, whether directly to an individual, or indirectly**
6 **through a loan out company, shall be three million dollars per person.**

7 **(b) Company based QEC payroll tax credit. For applications for**
8 **qualified entertainment company contracts on or after July 1, 2017, the**
9 **maximum amount of credits that may be granted for QEC payroll shall be two**
10 **hundred thousand dollars per person, for each employee reported on a Form**
11 **W-2.**

12 **(5) Department of Economic Development structured pay outs.**

13 **(a) The department may, at its discretion, require credits for any size**
14 **production or approved QEC to be structured over the course of two or more**
15 **years, as provided for in the initial certification letter or QEC contract.**

16 **(b) The department shall by rule establish the circumstances under**
17 **which a structured pay out of credits may be required, including but not limited**
18 **to the availability of tax credits in any given year or the best interests of the**
19 **state.**

20 Section 2. R.S. 47:6007(C)(1)(d) is hereby repealed.

21 Section 3. The Louisiana Law Institute is hereby directed to alphabetize the
22 definitions contained in Subsection B of this Section.

23 Section 4. This Act shall become effective upon signature by the governor or, if not
24 signed by the governor, upon expiration of the time for bills to become law without signature
25 by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If
26 vetoed by the governor and subsequently approved by the legislature, this Act shall become
27 effective on the day following such approval.

The original instrument and the following digest, which constitutes no part of the legislative instrument, were prepared by Leonore Heavey.

DIGEST

SB 235 Original 2017 Regular Session Morrell

Present law authorizes five types of tax credits for state-certified motion picture productions:

- (1) A base investment credit of 30% for projects in excess of \$300,000.
- (2) A base investment credit of 30% for projects between \$50,000 and \$300,000, meeting certain hiring criteria.
- (3) An additional base investment credit of 15% for projects meeting certain Louisiana screenplay criteria.
- (4) An additional credit of 10% for Louisiana resident payroll expenditures.
- (5) An additional credit of 15% for certain Louisiana music expenditures.

Proposed law authorizes five types of tax credits for state-certified productions:

- (1) A base investment credit of 30% for projects in excess of \$300,000.
- (2) An additional base investment credit of 5% for projects filmed outside the New Orleans Metro Zone.
- (3) An additional 5% base investment credit for projects meeting certain visual effects criteria.
- (4) An additional base investment credit of 10% for projects meeting certain Louisiana screenplay criteria.
- (5) An additional credit of 10% for Louisiana resident payroll expenditures.

Proposed law also creates a new payroll tax credit for qualified entertainment companies. The tax credit is 10% for Tier 1 new jobs with payroll between \$45,000 and \$66,000 per year, or 20% for Tier 2 new jobs with payroll between \$66,000 and \$200,000 per year.

Proposed law adds numerous definitions, eligibility criteria, and procedural requirements for new qualified entertainment company payroll credit.

Proposed law requires all state-certified productions to participate in a career based learning and training program approved by the office.

Present law specifies that state-certified productions may only seek one final certification of tax credits after the expiration of the initial certification period, except for state-certified productions with Louisiana post production activities.

Proposed law adds an exception for state-certified productions for scripted episodic content and qualified entertainment credits, which may request final certification of tax credits more than once.

Present law provides that motion picture production companies may transfer credits to the Department of Revenue for 85% of the face value.

Proposed law retains present law for projects initially certified prior to July 1, 2017, and

provides that projects with an application date on or after July 1, 2017, may transfer credits to the Department of Revenue for 92% of the face value.

Present law provides that a single state-certified production shall not exceed \$30 million.

Proposed law provides that a single state-certified production shall not exceed \$20 million, except for state-certified productions for scripted episodic content which may grant up to \$25 million per season.

Present law specifies that for fiscal years 2015-2018, no more than \$180 million may be claimed on returns, and that there shall be no cap beginning in Fiscal Year 2018-2019.

Proposed law specifies that beginning July 1, 2017, no more than \$180 million may be claimed on tax returns per year. It also establishes an annual LED issuance cap of \$165 million.

Effective upon signature of the governor or lapse of time for gubernatorial action.

(Amends R.S. 47:6007(B)(8) and (21), (C)(1)(intro para), (1)(a), (b), and (c)(intro para), (4)(f)(ii), (D)(1)(a), and (2)(d); adds R.S. 47:6007(B)(28), (29), and (30), (D)(1)(d)(v), (2)(a)(ii), and (e)(iv), and (J); repeals R.S. 47:6007(C)(1)(d))