

Regular Session, 2009

SENATE BILL NO. 330

BY SENATOR RISER AND REPRESENTATIVE MCVEA

TAX/TAXATION. Provides with regard to the motion picture investor tax credit. (8/15/09)

1 AN ACT
2 To amend and reenact R.S. 47:6007(A)(1)(a), (B)(1), (3), (9), (12), and (13), (C)(1) and
3 (1)(b)(i) and (ii), (2), the introductory paragraph of (5), (5)(b), (d), and (f), and (6),
4 (D)(1), the introductory paragraph of (2)(a), the introductory paragraph of (b), (c),
5 the introductory paragraph of (d), and (d)(v), and (3), (4), (6), and (7), (E), and
6 (F)(1), and Section 4 of Act 456 of the 2007 Regular Session of the Legislature, to
7 enact R.S. 47:6007(A)(1)(d), and to repeal R.S. 47:6007(C)(1)(c) and Sections 3(B)
8 and (C) of Act 456 of the 2007 Regular Session of the Legislature, relative to motion
9 picture investor tax credits; to extend the credit; to provide for the amount of such
10 credits and for the investments and expenditures upon which the credits are based;
11 to provide for when such credits are earned, when they shall be issued, how they
12 shall be transferred, and which agencies shall administer the credit; to provide for
13 rules and an appeal process and for recapture of the credits; and to provide for related
14 matters.

15 Be it enacted by the Legislature of Louisiana:

16 Section 1. R.S. 47:6007(A)(1)(a), (B)(1), (3), (9), (12), and (13), (C)(1) and (1)(b)(i)
17 and (ii), (2), the introductory paragraph of (5), (5)(b), (d), and (f), and (6), (D)(1), the

1 introductory paragraph of (2)(a), the introductory paragraph of (b), (c), the introductory
2 paragraph of (d), and (d)(v), and (3), (4), (6), and (7), (E), and (F)(1) are hereby amended
3 and reenacted to read as follows:

4 §6007. Motion picture investor tax credit

5 A. Purpose. The primary objective of this Section is to encourage
6 development in Louisiana of a strong capital and infrastructure base for motion
7 picture film, videotape, digital, and television program productions in order to
8 achieve an independent, self-supporting industry. This objective is divided into
9 immediate and long-term objectives as follows:

10 (1) Immediate objectives are to:

11 (a) Attract private investment for the production of motion pictures,
12 videotape **or digital** productions, and television programs in Louisiana.

13 * * *

14 **(d) Develop a tax and infrastructure system within approved state**
15 **infrastructure projects to create a financially viable and independent motion**
16 **picture production industry.**

17 * * *

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

19 (1) "Base investment" shall mean the ~~actual investment made and~~ **amount**
20 expended **in the state** by:

21 (a) A ~~state-certified production in the state as production expenditures~~
22 ~~incurred in this state that are~~ **motion picture production company that is** directly
23 used in a state-certified production or productions **or in a state-certified motion**
24 **picture.**

25 (b) A person **or entity** in the development of a state-certified infrastructure
26 project.

27 * * *

28 (3) "Expended in the state" in the case of tangible property shall mean
29 property which is acquired from a source within the state and, in the case of services,

1 shall mean services procured and performed in the state. **"Expended" or**
 2 **"expenditure" shall mean the payment of cash or cash equivalents, or the giving**
 3 **of promissory notes or other promises to pay cash or cash equivalents in the**
 4 **future, in exchange for property or services.**

5 * * *

6 (9) "Production expenditures" means pre-production, production, and post-
 7 production expenditures directly incurred in this state that are directly used in a
 8 state-certified production, including without limitation the following: set
 9 construction and operation; wardrobes, make-up, accessories, and related services;
 10 costs associated with photography and sound synchronization, lighting, and related
 11 services and materials; editing and related services; rental of facilities and
 12 equipment; leasing of vehicles; costs of food and lodging; digital or tape editing, film
 13 processing, transfer of film to tape or digital format, sound mixing, special and visual
 14 effects; total aggregate payroll; music, if performed, composed, or recorded by a
 15 Louisiana musician, or released or published by a Louisiana-domiciled and
 16 headquartered company; **script procurement or procurement of film rights if**
 17 **procured by a Louisiana-domiciled or headquarter company;** airfare, if
 18 purchased through a Louisiana-based travel agency or travel company; insurance
 19 costs or bonding, if purchased through a Louisiana-based insurance agency;
 20 **financing or leasing costs;** or other similar production expenditures as determined
 21 by rule. This term shall not include post-production expenditures for marketing and
 22 distribution, any indirect costs, any amounts that are later reimbursed, any costs
 23 related to the transfer of tax credits, or any amounts that are paid to persons or
 24 entities as a result of their participation in profits from the exploitation of the
 25 production.

26 * * *

27 (12)(a) "State-certified infrastructure project" shall mean a film, video,
 28 television, and digital production ~~and~~ **or** post-production facility, and movable and
 29 immovable property and equipment related thereto, or any other facility which

1 supports and is a necessary component of such proposed state-certified infrastructure
2 project, **including, without limitation, to the following:**

3 **(i) Land acquisition.**

4 **(ii) Roads and utilities.**

5 **(iii) Acquisition or construction of offices and/or facilities.**

6 **(iv) Equipment and systems for pre-production, production, and/or**
7 **post-production.**

8 **(v) Transportation and shipping equipment and systems.**

9 **(vi) Food preparation and commissary facilities.**

10 **(vii) Fixtures.**

11 **(viii) Furniture.**

12 **(ix) Equipment.**

13 **(x) Project-related services.**

14 **(xi) Financing and closing costs.**

15 ~~all as determined and approved by the office, the secretary of the Department of~~
16 ~~Economic Development, and the division of administration under such terms and~~
17 ~~conditions as are authorized by this Section.~~

18 **(b)** The term "infrastructure project" shall not include movie theaters or other
19 commercial exhibition facilities.

20 (13) "State-certified production" shall mean a production approved by the
21 office and the secretary ~~of the Department of Economic Development~~ produced by
22 a motion picture production company domiciled and headquartered in Louisiana
23 which has a viable multi-market commercial distribution plan.

24 C. Investor tax credit; specific productions and projects.

25 (1) There is hereby authorized a tax credit against state income tax for
26 Louisiana taxpayers for state-certified productions; ~~other than motion picture~~
27 ~~production companies.~~ The tax credit shall be earned ~~by investors~~ at the time
28 expenditures are made by a motion picture production company in a state-certified
29 production. However, credits cannot be **issued and** applied against a tax or

1 transferred until the expenditures are certified by the office and the secretary ~~of the~~
 2 ~~Department of Economic Development~~ **for state-certified productions**. For
 3 state-certified productions, expenditures shall be certified no more than twice during
 4 the duration of a state-certified production unless the motion picture production
 5 company agrees to reimburse the office for the costs of any additional certifications.
 6 The tax credit shall be calculated as a percentage of the total base investment dollars
 7 certified per project.

8 * * *

9 (b) For state-certified productions approved by the office and the secretary
 10 on or after January 1, 2006, ~~but before July 1, 2010:~~

11 (i) If the total base investment is greater than three hundred thousand dollars,
 12 ~~each investor shall be allowed~~ a tax credit of twenty-five percent of the base
 13 investment ~~made by that investor~~ **shall be earned**.

14 (ii) To the extent that base investment is expended on payroll for Louisiana
 15 residents employed in connection with a state-certified production, ~~each investor~~
 16 ~~shall be allowed~~ an additional tax credit of ten percent of such payroll **is earned**.
 17 However, if the payroll to any one person exceeds one million dollars, this additional
 18 credit shall exclude any salary for that person that exceeds one million dollars.

19 * * *

20 (2)(a)(i) ~~Beginning July 1, 2005, and ending on January 1, 2009, there shall~~
 21 ~~be allowed a credit against state income tax for state-certified infrastructure projects~~
 22 ~~which meet the criteria provided for in this Paragraph and which are approved by the~~
 23 ~~office, the secretary of the Department of Economic Development, and the division~~
 24 ~~of administration:~~ **There is hereby authorized a tax credit, beginning July 1,**
 25 **2005 and ending on January 1, 2009, for state-certified infrastructure projects**
 26 **as approved by the division. The tax credit shall be earned at the time**
 27 **expenditures are made. The tax credit shall be calculated as** ~~The tax credit shall~~
 28 ~~be equal to~~ forty percent of the base investment expended in this state on such ~~a~~
 29 project which is in excess of three hundred thousand dollars.

1 **(ii) For approved infrastructure projects, the independent audit verifying**
 2 **the expenditure in the state and the request for tax credits may be submitted to**
 3 **and certified by the division at any time after the first expenditure is made, and**
 4 **quarterly thereafter.**

5 **(iii) Any infrastructure project which received a pre-certification letter**
 6 **and was issued an infrastructure ID number prior to August 1, 2007 is eligible**
 7 **to receive tax credits up to the amount cited in their pre-certification letter. The**
 8 **projects which have received an infrastructure ID number and a pre-**
 9 **certification letter before August 1, 2007 shall have five years after**
 10 **promulgation of the rules to make expenditures on the approved projects.**

11 **(iv) Tax credits are earned upon expenditure. For infrastructure**
 12 **projects which have been approved and were issued a pre-certification letter**
 13 **and infrastructure ID number after August 1, 2007, but before January 1, 2009,**
 14 ~~the~~ ~~The total tax credit allowed for any state-certified infrastructure project shall not~~
 15 ~~exceed twenty-five million dollars, and the tax credit shall be earned and may be~~
 16 ~~structured as provided for in this Paragraph.~~

17 (b)(i) An infrastructure project shall be approved if it is a film, video,
 18 television, or digital **pre-production, production,** or post-production facility.

19 (ii) However, if all or a portion of an infrastructure project is a facility which
 20 may be used for other purposes unrelated to **pre-production,** production, or post-
 21 production activities, then the project shall be approved only if a determination is
 22 made that the multiple-use facility will support and will be necessary to secure **pre-**
 23 **production,** production, or post-production activity for the **pre-production,**
 24 production, ~~and~~ **or** post-production facility and the applicant provides sufficient
 25 contractual assurances that:

26 (aa) The facility will be used as a state-of-the-art **pre-production,**
 27 production, or post-production facility, or as a support and component thereof, for
 28 the useful life of the facility **or for such other length of time as provided for in the**
 29 **pre-certification letter and related documents.**

1 (bb) No tax credits shall be ~~earned on~~ **certified by the division for any**
2 **portion of the acquisition of** such multiple-use facilities until ~~either~~ the **conversion**
3 **of the facility for use as a pre-production,** production or post-production facility
4 is complete **has been completed or a completion bond is provided by a Louisiana**
5 **licensed construction company for the associated pre-production, production,**
6 **or post-production facilities. Tax credits shall be certified for the expenditures**
7 **related to the construction of approved new multi-use facilities only after a**
8 **completion bond is provided by a Louisiana licensed construction company or,**
9 **if a completion bond is not provided, the construction is completed on the pre-**
10 **production, production, or post-production facilities.**

11 (c) Tax credits for infrastructure projects shall be earned only as follows:

12 (i) ~~Construction of the infrastructure project shall begin within six months~~
13 ~~of the initial pre-certification provided for in Subparagraph (D)(2)(c) of this Section.~~

14 (ii) ~~Expenditures shall be certified by the office, the secretary, and the~~
15 ~~division as provided for in Paragraph (D)(2) of this Section, and credits are not~~
16 ~~earned until such certification.~~

17 (iii) ~~Twenty-five percent of the total base investment provided for in the~~
18 ~~initial certification of an infrastructure project pursuant to Subparagraph (D)(2)(d)~~
19 ~~of this Section shall be certified as expended before any credits may be earned.~~

20 (iv) ~~No tax credit shall be allowed for expenditures made for any~~
21 ~~infrastructure project after December 31, 2008, unless fifty percent of total base~~
22 ~~investment provided for in the initial certification of the project pursuant to~~
23 ~~Subparagraph (D)(2)(d) of this Section has been expended prior to that date. The~~
24 ~~expenditures may be finally certified at a later date. **For infrastructure projects**~~
25 **which were approved and were issued a pre-certification letter and**
26 **infrastructure ID number after August 1, 2007, but before January 1, 2009, the**
27 **tax credits shall not be certified by the division until twenty-five percent (25%)**
28 **of the total base investment indicated in the pre-certification letter has been**
29 **expended in the state and the expenditure has been audited and certified by an**

1 **independent certified public accountant in accordance with Paragraph (D)(2)(d)**
2 **of this Section.**

3 ~~(v) For purposes of allowing tax credits against state income tax liability and~~
4 ~~transferability of the tax credits, the tax credits shall be deemed earned at the time~~
5 ~~the expenditures are made, provided that all requirements of this Subsection have~~
6 ~~been met and after the tax credits have been certified.~~

7 (d) ~~The office, the secretary, and the division may require the tax credits to~~
8 ~~be taken and/or transferred in the tax period in which the credit is earned or may~~
9 ~~structure the tax credit in the initial certification of the project to provide that only~~
10 ~~a portion of the tax credit be taken over the course of two or more tax years.~~

11 **(e) If the approved infrastructure is for specific locations, the company**
12 **which submitted the project may move all or part of the approved project to**
13 **another location in the state provided there is no change to the scope of the**
14 **project, there is no change in the terms and conditions in the original pre-**
15 **certification letter and there is no increase in the total project cost or the**
16 **amount of approved tax credits proscribed in the original pre-certification**
17 **letter. The company shall notify the division of the movement of location of all**
18 **or part of the approved project. If a change of location changes the scope of the**
19 **project and/or increases the total project cost and/or increases the amount of**
20 **approved tax credits, the state-certified infrastructure project shall obtain**
21 **approval from the division for the relocation.**

22 * * *

23 (5) Transferability of the credit. Any motion picture tax credits not previously
24 claimed by any taxpayer against its income tax may be transferred or sold to another
25 Louisiana taxpayer or to the office **or the division**, subject to the following
26 conditions:

27 * * *

28 (b) Transferors and transferees **of motion picture production credits and**
29 **infrastructure credits, respectively**, shall submit to the office, **or to the division**,

1 and to the Department of Revenue ~~in writing~~, **a written** a notification of any transfer
 2 or sale of tax credits within thirty days after the transfer or sale of such tax credits.
 3 The notification shall include the transferor's tax credit balance prior to transfer, a
 4 copy of any tax credit certification letter(s) issued by the office **or the division** and
 5 ~~the secretary of the Department of Economic Development and, in the case of an~~
 6 ~~infrastructure project, to the office, the secretary, and the division of administration,~~
 7 the name of the state-certified production or infrastructure project, the transferor's
 8 remaining tax credit balance after transfer, all tax identification numbers for both
 9 transferor and transferee, the date of transfer, the amount transferred, a copy of the
 10 credit certificate, price paid by the transferee to the transferor, in the case when the
 11 transferor is a state-certified production or state-certified infrastructure project, for
 12 the tax credits, and any other information required by the office **or, the division**, or
 13 the Department of Revenue. For the purpose of reporting transfer prices, the term
 14 "transfer" shall include allocations pursuant to Paragraph (3) of this Subsection as
 15 provided by rule. The office **or the division**, may post on its web site an average tax
 16 credit transfer value, as determined by the office and the secretary ~~of the Department~~
 17 ~~of Economic Development~~ **for motion picture production tax credits, and, in the**
 18 **case of infrastructure credits, the division**, to reflect adequately the current
 19 average tax credit transfer value. The tax credit transfer value means the percentage
 20 as determined by the price paid by the transferee to the transferor divided by the
 21 dollar value of the tax credits that were transferred in return. The notification
 22 submitted to the office **or the division** shall include a processing fee of up to two
 23 hundred dollars per transferee, and any pricing information submitted by a transferor
 24 or transferee shall be treated by the office **or the division** and the Department of
 25 Revenue as proprietary to the entity reporting such information and therefore
 26 confidential. However, this shall not prevent the publication of summary data that
 27 includes no fewer than three transactions.

28 * * *

29 (d) The transfer or sale of this credit does not extend the time in which the

1 credit can be used. The ~~carryforward~~ **carry-forward** period for credit that is
 2 transferred or sold begins on the date on which the credit was originally earned or,
 3 in the case of a structured infrastructure credit, the date upon which the credit is
 4 allowed to be taken.

5 * * *

6 (f) Beginning on and after January 1, 2007, the ~~investor who earned the~~
 7 ~~motion picture investor~~ **person or entity which earned** tax credits may transfer the
 8 ~~credits~~ **elect to transfer the tax credits** to the office **or the division, respectively,**
 9 **in exchange** for **a payment of** seventy-two percent of the face value of the credits.
 10 Beginning January 1, 2009, and every second year thereafter, the percent of the face
 11 value of the tax credits allowed for transferring credits to the office **or the division**
 12 shall increase two percent until the percentage reaches eighty percent. Upon the
 13 transfer, the **office and the secretary, Department of Economic Development or the**
 14 **division,** shall notify the Department of Revenue and shall provide it with a copy of
 15 the transfer documentation. The Department of Revenue may require the transferor
 16 to submit such additional information as may be necessary to administer the
 17 provisions of this Section. The secretary of the Department of Revenue shall make
 18 payment to the ~~investor~~ **transferor** in the amount to which he is entitled from the
 19 current collections of the taxes collected pursuant to Chapter 1 of Subtitle II,
 20 provided such credits are transferred to the office **or the division** within one calendar
 21 year of certification.

22 (6) The transferee shall apply such credits in the same manner and against the
 23 same taxes as the ~~taxpayer originally awarded the credit~~ **transferor of the credit**
 24 **and may transfer the credit, all as is provided for in Paragraphs (3), (4), and (5)**
 25 **of this Subsection. Additionally, the transferee may elect to transfer the credits**
 26 **to the office or division, as specifically provided for in Subparagraph (5)(f) of**
 27 **this Subsection.**

28 * * *

29 D. Certification and administration.

1 (1)(a) The secretary ~~of the Department of Economic Development~~ and the
2 office shall determine through the promulgation of rules, **no later than December**
3 **31, 2009**, the minimum criteria that a **motion picture** project must meet in order to
4 qualify according to this Section. The ~~secretary, the office, and the division of~~
5 ~~administration~~ shall **similarly** determine through the promulgation of rules, **by the**
6 **same date**, the minimum criteria that a **an infrastructure** project must meet in order
7 to qualify according to this Section.

8 (b)The ~~secretary, the office, and the division of administration~~ shall **also**
9 determine, through the promulgation of rules **not later than December 31, 2009**, an
10 appeals process in the event that an application for ~~or the~~ **precertification** of a
11 **motion picture or infrastructure project or the application for** certification of
12 motion picture ~~production~~ or infrastructure tax credits is denied, **in compliance with**
13 **the following**: ~~The office shall promptly provide written notice of such denial to the~~
14 ~~Senate Committee on Revenue and Fiscal Affairs and the House Committee on Ways~~
15 ~~and Means.~~

16 (i) **Written notice by certified mail of either approval or denial by the**
17 **office or the division of an application for pre-certification of a motion picture**
18 **project or an infrastructure project shall be provided to the applicant within**
19 **sixty days after all documentation is submitted for review. If such an**
20 **application is denied, the office or the division shall provide written notice of the**
21 **denial by certified mail to the Senate Committee on Revenue and Fiscal Affairs**
22 **and the House Committee on Ways and Means on the same day as the applicant**
23 **is issued a written notice of the denial. If no action is taken by the office or the**
24 **division by the end of the sixty day period, which shall have the same effect as**
25 **a denial, the applicant may inform the Senate Committee on Revenue and Fiscal**
26 **Affairs and the House Committee on Ways and Means of the inaction of the**
27 **office or the division, and request an appeal hearing in writing. The applicant**
28 **shall submit a certified letter to either committee requesting an appeal hearing,**
29 **and the date of the postmark of the certified letter must be within sixty days of**

1 the issuance of a denial or sixty days after the deadline for review of such
2 decision.

3 (ii) The office or the division shall certify or deny an application for the
4 certification of tax credits within forty-five days of the receipt of the
5 independent audit verifying the expenditures. If such an application for
6 certification of tax credits is denied, the office or the division shall provide
7 written notice by certified mail of the denial to the Senate Committee on
8 Revenue and Fiscal Affairs and the House Committee on Ways and Means on
9 the same day as the applicant is notified of the denial. If the office or the
10 division fails to either issue a written certification or a written denial of the
11 certification of tax credits within forty-five days of the receipt of the
12 independent audit, the applicant may inform the Senate Committee on Revenue
13 and Fiscal Affairs and the House Committee on Ways and Means of the inaction
14 of the office or the division and request an appeal hearing. The applicant shall
15 submit a certified letter to either committee requesting an appeal hearing and
16 the date of the postmark of the certified letter shall be within sixty days of the
17 issuance of a denial or sixty days after the deadline for review of such decision.

18 (iii) The Department of Revenue shall issue a written notice by certified
19 mail to an applicant regarding the issuance of tax credits which have been
20 certified by the office or the division within forty-five days of the receipt of the
21 written notice of certification by the office or the division. If the issuance of tax
22 credits is denied, the Department of Revenue shall provide written notice of the
23 denial to the Senate Committee on Revenue and Fiscal Affairs and the House
24 Committee on Ways and Means on the same day as the applicant is notified of
25 the denial. If the Department of Revenue fails to either issue a written notice
26 of issuance or a written denial of the issuance of tax credits within forty-five
27 days of the receipt of the certification from the office or the division, the
28 applicant may inform the Senate Committee on Revenue and Fiscal Affairs and
29 the House Committee on Ways and Means of the inaction of the office or the

1 division and request an appeal hearing. The applicant must submit a certified
2 letter to either committee requesting an appeal hearing and the date of the
3 postmark of the certified letter must be within sixty days of the issuance of a
4 denial or sixty days after the deadline for review of such decision.

5 (iv) Within ninety days of the receipt of any written notice of a denial
6 issued by the office, the division, or the applicant regarding a pre-certification
7 of a project or a certification or issuance of tax credits, a joint meeting of the
8 Senate Committee on Revenue and Fiscal Affairs and the House Committee on
9 Ways and Means, or a special committee appointed by the chairmen of both
10 committees, shall be called to hear the appeal. The committee shall be the final
11 arbiter of the administrative appeals process. If by majority vote members
12 attending the joint meeting or of the members of the special committee, the
13 committee rules in favor of the applicant in regard to pre-certification,
14 certification, or issuance of tax credits, then the applied-for tax credits shall be
15 deemed pre-certified, or certified and issued and no other disallowance,
16 forfeiture, or recapture of such tax credits by the state is provided for under
17 this statute. An applicant which is denied pre-certification, certification, or
18 issuance of tax credits, is required to exhaust the administrative appeal
19 remedies provided in this Subsection as a prerequisite to initiating a civil
20 appeal.

21 (c) Prior to adoption, these rules shall be approved by the House Committee
22 on Ways and Means and the Senate Committee on Revenue and Fiscal Affairs. The
23 secretary, the office and the division shall submit proposed rules to both
24 committees with sufficient time for review, and redrafting, and resubmittal, as
25 may be necessary, and with sufficient time for subsequent committee approval,
26 in order that the final rules will be promulgated no later than December 31,
27 2009.

28 (d) When determining which motion picture productions and infrastructure
29 projects qualify, the office and the secretary of the ~~Department of Economic~~

1 (d) Prior to any final certification of the **tax credits for a** state-certified
 2 production or infrastructure project, the ~~motion picture production company or~~
 3 applicant for the infrastructure project shall submit to the office and the secretary
 4 and, in the case of infrastructure projects, to the office, the secretary, and division,
 5 **respectively**, a cost report of **the** production or infrastructure project expenditures
 6 audited and certified by an independent certified public accountant as determined by
 7 rule. The office and the secretary and, in the case of infrastructure projects, the
 8 office, the secretary, and the division, **respectively**, shall review the production or
 9 infrastructure project expenses and ~~will~~ **shall** issue a final tax credit certification
 10 letter indicating the amount of tax credits certified for the state-certified production
 11 or state-certified infrastructure project to the investors **applicant**. The rules required
 12 by this Subparagraph shall, at a minimum, require that:

13 * * *

14 (v) The audit shall be performed in accordance with **generally accepted**
 15 **United States accounting and auditing standards and the** ~~auditing standards~~
 16 ~~generally accepted in the United States of America~~ and the auditor shall have
 17 ~~sufficient knowledge of~~ accounting principles and practices generally recognized in
 18 the film and television industry. **All expenditures verified by the independent**
 19 **audit shall be approved or denied in accordance with these standards.**

20 (3) The secretary of the Department of Revenue, in consultation with the
 21 office and the secretary of the Department of Economic Development and, in the
 22 case of infrastructure projects also the division of administration, shall promulgate
 23 such rules and regulations as are necessary to carry out the intent and purposes of
 24 this Section in accordance with the general guidelines provided herein.

25 (4)(i) **(a)** Any taxpayer **applicant for tax credits** ~~applying for the credit~~ shall
 26 be required to reimburse the office **or the division** for any audits required in relation
 27 to granting the credit.

28 ~~(ii)(aa)~~ **(b)(i)** The production or infrastructure project application fee
 29 provided for in Subparagraph (2)(b) of this Subsection received by the office **or the**

1 **division** shall be deposited upon receipt in the state treasury. After compliance with
 2 the requirements of Article VII, Section 9(B) of the Constitution of Louisiana
 3 relative to the Bond Security and Redemption Fund and prior to any money being
 4 placed into the general fund or any other fund, an amount equal to that deposited as
 5 required by this Item shall be credited by the treasurer to a special fund hereby
 6 created in the state treasury to be known as the Entertainment Promotion and
 7 Marketing Fund. The money in the fund shall be appropriated by the legislature to
 8 be used solely for promotion and marketing of Louisiana's entertainment industry.

9 ~~(b)~~(ii) The money in the fund shall be invested by the treasurer in the same
 10 manner as money in the state general fund and interest earned on the investment of
 11 the money shall be credited to the fund after compliance with the requirements of
 12 Article VII, Section 9(B) of the Constitution of Louisiana relative to the Bond
 13 Security and Redemption Fund. All unexpended and unencumbered money in the
 14 fund at the end of the year shall remain in the fund.

15 * * *

16 (6) With input from the Legislative Fiscal Office, the office shall prepare a
 17 written report to be submitted to the Senate Committee on Revenue and Fiscal
 18 Affairs and the House of Representatives Committee on Ways and Means no less
 19 than sixty days prior to the start of the Regular Session of the Legislature in 2007,
 20 and every second year thereafter. The report shall include the overall impact of the
 21 **motion picture production** tax credits, the amount of the tax credits issued, the
 22 number of net new jobs created, the amount of Louisiana payroll created, the
 23 economic impact of the tax credits and film industry, ~~the amount of new~~
 24 ~~infrastructure that has been developed in the state~~, and any other factors that describe
 25 the impact of the program. **The division shall also prepare and submit a similar**
 26 **report on the status of the infrastructure tax credits.**

27 (7) ~~Either the~~ ~~The~~ office ~~Department of Economic Development or the~~
 28 ~~Department of Revenue~~ may audit the cost report submitted by the motion picture
 29 production company. **The division may audit the cost report submitted on an**

1 which the division of administration ~~and the Department of Economic Development~~
2 deems unrelated to the acquisition and construction of a film, video, television, or
3 video production or post-production facility.

4 Section 3. R.S. 47:6007(C)(1)(c) and Sections (3)(B) and (C) of Act 456 of the 2007
5 Regular Session of the Legislature are hereby repealed.

6 Section 4. It is hereby declared by the Legislature of Louisiana that House
7 Concurrent Resolution 181 of the 2008 Regular Session represents the will of the legislature
8 relative to various methods by which tangible property may be acquired for an infrastructure
9 project and be eligible for tax credits under this Act.

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

DIGEST

Proposed law provides with regards to the motion picture investor tax credit.

MOTION PICTURE PRODUCTION PROJECTS

Present law grants an income tax credit for state-certified productions approved by the office of entertainment industry development of DED, and DED's secretary, on or after January 1, 2006, but before July 1, 2010 of 25% of the "base investment" over \$300,000. Also grants an additional 10% credit for payroll for Louisiana residents employed in connection with the state-certified production. The percentage is reduced to 20% for state-certified productions approved on or after July 1, 2010, but before July 1, 2012. After July 1, 2012, the percentage is 15%.

Proposed law eliminates the phase-out, making the credit 25% for all productions.

Proposed law includes as "production expenditure" for which tax credits may be granted financing and leasing costs and script procurement or procurement of film rights if procured by a company domiciled or headquartered in Louisiana.

INFRASTRUCTURE PROJECTS

Present law granted until January 1, 2009, an income tax credit of 40% of the base investment expended on a state-certified infrastructure project approved by the office of entertainment industry development in DED, the secretary of DED, and the division of administration which is in excess of \$300,000.

Proposed law retains the January 1, 2009 termination date, but eliminates the office of entertainment industry development and the secretary from approval and administration of infrastructure projects.

Present law prohibited a tax credit for expenditures made on an infrastructure project after December 31, 2008, unless 50% of the "total base investment" had been expended prior to that date and required 25% of the "total base investment" to be certified as expended before any credits were earned. Also required construction to begin within 6 months of the initial certification.

However, present law [Act 456 of 2007, §3(C)] required infrastructure projects for which an application was filed on or before August 1, 2007," to qualify for the forty percent tax credits earned on expenditures" by December 31, 2009, and further provided that the tax credits on infrastructure projects were to be considered earned in the year in which expenditures were made, provided that a minimum of 20% or \$10 million of the "total base investment" that is unique to film production infrastructure must have been expended before tax credits could have been earned on expenditures. The payment of tax credits could extend beyond or have been made after the year expenditures were made.

Present law limited the total tax credit allowed for any state-certified infrastructure project to \$25 million.

Proposed law retains the \$25 million per project limit on infrastructure projects which have been approved and were issued a pre-certification letter and infrastructure ID number after August 1, 2007, but before January 1, 2009.

Proposed law provides that infrastructure projects which received a pre-certification letter and were issued an infrastructure ID number before August 1, 2007 are eligible to receive tax credits up to the amount cited in their pre-certification letter and have 5 years after promulgation of the rules required in the proposed law to make expenditures on the projects.

Proposed law prohibits tax credits for projects issued a pre-certification letter and infrastructure ID number after August 1, 2007, but before January 1, 2009, from being certified by the division until 25% of the total base investment indicated in the pre-certification letter has been "expended in the state" and the expenditure has been audited and certified by an independent CPA in accordance with generally accepted U.S. accounting and auditing standards. Requires the certification to be issued within 45 days after the submission of the independent audit.

Proposed law authorizes tax credits for approved infrastructure projects to be earned upon expenditure and authorizes the request for tax credits to be submitted to and certified by the division at any time after the first expenditure is made, and quarterly thereafter.

Present law allowed approval of "multipurpose facilities" [i.e. a facility which may be used for other purposes unrelated to pre-production, production, or post-production activities] only if the applicant provided sufficient contractual assurances that the facility would be used as a state-of-the-art production or post-production facility, or as a support and component thereof, for the useful life of the facility.

Proposed law allows an assurance of use for other such length of time as provided for in the pre-certification letter and related documents.

Present law prohibited earning tax credits on multiple-use facilities until the facility was complete.

Proposed law authorizes the certification of tax credits by DOA for "a portion of the acquisition" of multiple-use facilities until either:

1. The "conversion" of the facility for use as a pre-production, production, or post-production facility.
2. The completion of the facility or the applicant provides a completion bond by a Louisiana licensed construction company for the facility.

Further requires tax credits to be certified for expenditures related to the construction of new multi-use facilities only after approval by the division through the issuance of a pre-certification letter, the provision of the completion bond, and the beginning of construction.

Proposed law authorizes a company to move all or part of an infrastructure project approved for "specific locations" to another location in the state if:

1. There is no change in the terms and conditions in the original pre-certification letter.
2. There is no increase in the scope, total project cost or the amount of approved tax credits unless approved by the division.
3. The company notifies the division of the movement or location of all or part of the approved project.

Proposed law specifically includes pre-production facilities as parts of infrastructure projects.

Proposed law specifically includes as components of infrastructure projects:

1. Financing and closing costs.
2. Transportation and shipping equipment and systems.
3. Food preparation and commissary facilities.
4. Project-related services.
5. Land acquisition.
6. Roads and utilities.
7. Acquisition or construction of offices or facilities.
8. Equipment and systems for pre-production, production, and post-production.
9. Fixtures, furniture, and equipment.

APPLICABLE TO BOTH PRODUCTION AND INFRASTRUCTURE PROJECTS

Present law defined "base investment" as expenditures in productions or infrastructure projects.

Proposed law specifically defines "expended" and "expenditure" as payments of cash or cash equivalents, or the giving of promissory notes or other promises to pay cash or cash equivalents in the future, in exchange for property or services.

Proposed law declares that HCR181 of 2008 represents the will of the legislature relative to various methods by which tangible property may be acquired for an infrastructure project and be eligible for tax credits. HCR181 provides that whereas the legislature provided for in the movie investor tax credits for infrastructure projects which included tangible property acquired by means of cash, bonds, exchange, or by loans made from a lender, regardless of who holds the promissory note, including the property owner; and that the Act provides for an independent auditor to certify if the expenditures are valid in accordance with the definitions and standards of the auditing industry, and these standards allow for multiple methods of acquiring tangible property, therefore DED, DOA, and the office of entertainment industry development were urged to move quickly and effectively to review and approve the infrastructure projects in the St. Francisville area.

Proposed law authorizes transferees of tax credits to, in turn, transfer the credit.

Present law required the secretary of DED and the office to determine through the promulgation of rules the minimum criteria that a production project must have met in order to qualify, and required the secretary, the office, and the division to do the same for infrastructure projects. Required the rules to contain an appeal process in case of the denial of an applicant, and further required a notice of such denial to be sent to Senate Revenue and Fiscal Affairs and House Ways and Means committees.

Proposed law requires the promulgation of rules no later than December 31, 2009, and

requires the rules to contain the following:

1. Written notice of approval or denial to an applicant within 60 days after documentation is submitted for approval of a project, 45 days for applications for the certification and issuance of tax credits from receipt of the independent audit verifying expenditures, and 45 days from certification for the issuance of the tax credits.
2. Requires notice of a denial to be sent by certified mail to Senate Revenue and Fiscal Affairs and the House Ways and Means on the same day as the applicant is issued the denial by certified mail. No action taken by the end of the 60 days is a denial.
3. The applicant must submit an appeal by certified letter to either committee within 60 days of denial or after the 60-day deadline for review of such decision.
4. Requires the calling of a joint meeting of the committees, or a special committee appointed by the chairmen of both committees, to hear the appeal within 90 days of receipt of notice of denial.
5. If a majority of members attending the joint meeting, or a majority of members of the special committee rule in favor of the applicant in regards to pre-certification of a project, or the certification or issuance of tax credits, then the applied-for tax credits are deemed pre-certified, or certified and issued, and no other disallowance, forfeiture, or recapture of such tax credits by the state is provided for under this statute.
6. An applicant is required to exhaust such administrative appeal remedies as a prerequisite to initiating a civil appeal.

Present law requires the rules to be approved by the committees prior to adoption.

Proposed law retains such requirement and requires the rules to be submitted to both committees with sufficient time for review, redrafting, and re-submittal in sufficient time for final rules to be promulgated no later than December 31, 2009.

Present law authorizes disallowed credits to be recaptured by the Department of Revenue within 3 years from December 31st of the year in which the 24 months from the date that such credits are earned ends.

Proposed law prohibits "disallowance, forfeiture, or recapture" of tax credits for which an applicant has received a favorable ruling from the committees in the process set forth above and, if recapture of credits is allowed, additionally authorizes it to be initiated within 3 years from December 31st of the year in which the various time periods provided for infrastructure projects above ends.

Effective August 15, 2009.

(Amends R.S. 47:6007(A)(1)(a), (B)(1), (3), (9), (12), and (13), (C)(1) and (1)(b)(i) and (ii), (2), the introductory paragraph of (5), (5)(b), (d), and (f), and (6), (D)(1), the introductory paragraph of (2)(a), the introductory paragraph of (b), (c), the introductory paragraph of (d), and (d)(v), and (3), (4), (6), and (7), (E), and (F)(1) and Sec. 4 of Act 456 of 2007 R.S.; adds R.S. 47:6007(A)(1)(d); repeals R.S. 47:6007(C)(1)(c) and Secs. 3(B) and (C) of Act 456 of 2007 R.S.)