
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.)