

Regular Session, 2009

HOUSE BILL NO. 898 (Substitute for House Bill No. 142 by Representative Henry)

BY REPRESENTATIVE HENRY

TAX CREDITS: Provides relative to the maximum amount of the tax credit for state certified productions and repeals the phase-down of such tax credits

1 AN ACT

2 To amend and reenact R.S. 47:6007, relative to tax credits; to provide relative to the motion
3 picture investor tax credit; to provide for issuance of the tax credit for state-certified
4 productions; to provide for the amount of the tax credit; to provide relative to certain
5 definitions; to provide for certain requirements and limitations; to provide relative
6 to the promulgation of rules; to delete certain provisions relative to the tax credit for
7 state-certified infrastructure projects; to provide for an effective date; and to provide
8 for related matters.

9 Be it enacted by the Legislature of Louisiana:

10 Section 1. R.S. 47:6007 is hereby amended and reenacted to read as follows:

11 §6007. Motion picture investor tax credit

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

17 (1) Immediate objectives are to:

18 (a) Attract private investment for the production of motion pictures;
19 ~~videotape productions, and television programs~~ in Louisiana.

1 (b) Develop a tax and capital infrastructure which encourages private
2 investment. This infrastructure will provide for state participation in the form of tax
3 credits to encourage investment in state-certified productions ~~and infrastructure~~
4 ~~projects~~.

5 (c) Develop a tax infrastructure utilizing tax credits which encourage
6 investments in multiple state-certified ~~production and infrastructure projects~~
7 productions.

8 (2) Long-term objectives are to:

9 (a) Encourage increased employment opportunities within this sector and
10 increased global ~~competition~~ competitiveness with other states in fully ~~developing~~
11 utilizing economic development options within the ~~film and video~~ motion picture
12 industry.

13 (b) Encourage new education curricula in order to provide a labor force
14 trained in all aspects of film and digital production.

15 ~~(c) Encourage development of a Louisiana film, video, television, and digital~~
16 ~~production and postproduction infrastructure with state-of-the-art facilities.~~

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

18 (1) "Base investment" ~~shall mean the actual investment made and expended~~
19 ~~by:~~

20 ~~(a) A state-certified production in the state as production expenditures~~
21 ~~incurred in this state that are directly used in a state-certified production or~~
22 ~~productions:~~

23 ~~(b) A person in the development of a state-certified infrastructure project~~
24 means cash or cash equivalent investment made and used for production
25 expenditures in the state for a state-certified production.

26 ~~(2) "Division" means the division of administration of the office of the~~
27 ~~governor:~~

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~~ or an "expenditure in the
2 state" means an expenditure to acquire property from a source within the state which
3 is subject to state sales and use tax, or an expenditure as compensation for services
4 performed within the state which is subject to state income tax.

5 (3) "Expenditure" shall mean actual cash or cash equivalent exchanged for
6 goods or services.

7 (4) "Headquartered in Louisiana" shall mean a corporation incorporated in
8 Louisiana or a partnership, limited liability company, or other business entity
9 domiciled and headquartered in Louisiana for the purpose of producing nationally
10 or internationally distributed motion pictures as defined in this Section.

11 (5) "Motion picture" means a nationally or internationally distributed
12 feature-length film, video, television pilot, television series, television movie of the
13 week, animated feature film, animated television series, or commercial made in
14 Louisiana, in whole or in part, for theatrical or television viewing ~~or as a television~~
15 ~~pilot~~. The term "motion picture" shall not include the production of television
16 coverage of news and athletic events.

17 (6) "Motion picture production company" ~~shall mean~~ means a company
18 engaged in the business of producing nationally or internationally distributed motion
19 pictures as defined in this Section. Motion picture production company shall not
20 mean or include any company owned, affiliated, or controlled, in whole or in part,
21 by any company or person which is in default on a loan made by the state or a loan
22 guaranteed by the state, nor with any company or person who has ever declared
23 bankruptcy under which an obligation of the company or person to pay or repay
24 public funds or monies was discharged as a part of such bankruptcy.

25 (7) "Office" means the Governor's Office of Film and Television
26 Development until August 15, 2006; thereafter, the term "office" means the office
27 of entertainment industry development in the Department of Economic Development
28 provided for in R.S. 51:938.1.

1 (8) "~~Payroll~~" ~~shall include all salary, wages, and other compensation,~~
2 ~~including related benefits sourced or apportioned to Louisiana~~ means all salary,
3 ~~wages, and other compensation, including benefits paid to an employee for services~~
4 ~~relating to a state-certified production and taxable in this state. However, "payroll"~~
5 ~~for purposes of the additional ten percent tax credit for Louisiana-resident payroll~~
6 ~~shall exclude any portion of an individual salary in excess of one million dollars.~~

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

27 (10) "Resident" or "resident of Louisiana" means a natural person ~~and, for~~
28 ~~the purpose of determining eligibility for the tax incentives provided by this Chapter,~~
29 ~~any person domiciled in the state of Louisiana and any other person.~~ A person who

1 maintains a permanent place of abode within the state and spends in the aggregate
2 more than six months of each year within the state shall be presumed to be domiciled
3 in the state.

4 (11) "Secretary" means the secretary of the Department of Economic
5 Development.

6 (12) "Source within the state" means a physical facility in Louisiana,
7 operating with posted business hours and employing at least one full-time equivalent
8 employee.

9 (13) "State" means the state of Louisiana.

10 ~~(12) (14) "State-certified infrastructure project" shall mean a film, video,~~
11 ~~television, and digital production and postproduction facility, and movable and~~
12 ~~immovable property and equipment related thereto, or any other facility which~~
13 ~~supports and is a necessary component of such proposed state-certified infrastructure~~
14 ~~project, all as determined and approved by the office, the secretary of the Department~~
15 ~~of Economic Development, and the division of administration under such terms and~~
16 ~~conditions as are authorized by this Section. The term "infrastructure project" shall~~
17 ~~not include movie theaters or other commercial exhibition facilities.~~

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

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

23 (1) There is hereby authorized a tax credit against state income tax for
24 Louisiana taxpayers for investment in state-certified productions, ~~other than motion~~
25 ~~picture production companies.~~ The tax credit shall be earned by investors at the time
26 expenditures are made by a motion picture production company in a state-certified
27 production. However, credits cannot be applied against a tax or transferred until the
28 expenditures are certified by the office and the secretary ~~of the Department of~~
29 ~~Economic Development.~~ For state-certified productions, expenditures shall be

1 certified no more than twice during the duration of a state-certified production unless
2 the motion picture production company agrees to reimburse the office for the costs
3 of any additional certifications. The tax credit shall be calculated as a percentage of
4 the total base investment dollars certified per project.

5 (a) For state-certified productions approved by the office and the secretary
6 on or after January 1, 2004, but before January 1, 2006:

7 (i) If the total base investment is greater than three hundred thousand dollars
8 and less than or equal to eight million dollars, each taxpayer shall be allowed a tax
9 credit of ten percent of the actual investment made by that taxpayer.

10 (ii) If the total base investment is greater than eight million dollars, each
11 taxpayer shall be allowed a tax credit of fifteen percent of the actual investment
12 made by that taxpayer.

13 (iii) The initial certification shall be effective for a period twelve months
14 prior to and twelve months after the date of initial certification, unless the production
15 has commenced, in which case the initial certification shall be valid until the
16 production is completed.

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

19 (i) If the total base investment is greater than three hundred thousand dollars,
20 each investor shall be allowed a tax credit of twenty-five percent of the base
21 investment made by that investor.

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

27 (iii) The initial certification shall be effective for a period twelve months
28 prior to and twelve months after the date of initial certification, unless the production

1 has commenced, in which case the initial certification shall be valid until the
2 production is completed.

3 ~~(c) For state-certified productions approved by the office and the secretary~~
4 ~~on or after July 1, 2010, but before July 1, 2012:~~

5 ~~(i) If the total base investment is greater than three hundred thousand dollars,~~
6 ~~each investor shall be allowed a tax credit of twenty percent of the base investment~~
7 ~~made by that investor:~~

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

13 ~~(iii) The initial certification shall be effective for a period twelve months~~
14 ~~prior to and twelve months after the date of initial certification, unless the production~~
15 ~~has commenced, in which case the initial certification shall be valid until the~~
16 ~~production is completed:~~

17 ~~(d) For state-certified productions approved by the office and the secretary~~
18 ~~on or after July 1, 2012:~~

19 ~~(i) If the total base investment is greater than three hundred thousand dollars,~~
20 ~~each investor shall be allowed a tax credit of fifteen percent of the base investment~~
21 ~~made by that investor:~~

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

27 ~~(iii) The initial certification shall be effective for a period twelve months~~
28 ~~prior to and twelve months after the date of initial certification, unless the production~~

1 ~~has commenced, in which case the initial certification shall be valid until the~~
2 ~~production is completed.~~

3 ~~(e) Motion picture investor tax credits associated with a state-certified~~
4 ~~production shall never exceed the total base investment in that production.~~

5 ~~(2)(a) Beginning July 1, 2005, and ending on January 1, 2009, there shall be~~
6 ~~allowed a credit against state income tax for state-certified infrastructure projects~~
7 ~~which meet the criteria provided for in this Paragraph and which are approved by the~~
8 ~~office, the secretary of the Department of Economic Development, and the division~~
9 ~~of administration. The tax credit shall be equal to forty percent of the base~~
10 ~~investment expended in this state on such project which is in excess of three hundred~~
11 ~~thousand dollars. The total tax credit allowed for any state-certified infrastructure~~
12 ~~project shall not exceed twenty-five million dollars, and the tax credit shall be earned~~
13 ~~and may be structured as provided for in this Paragraph.~~

14 ~~(b)(i) An infrastructure project shall be approved if it is a film, video,~~
15 ~~television, or digital production or postproduction facility.~~

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

22 ~~(aa) The facility will be used as a state-of-the-art production or~~
23 ~~postproduction facility, or as a support and component thereof, for the useful life of~~
24 ~~the facility.~~

25 ~~(bb) No tax credits shall be earned on such multiple-use facilities until the~~
26 ~~production or postproduction facility is complete.~~

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

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

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

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

7 (iv) ~~No tax credit shall be allowed for expenditures made for any~~
8 ~~infrastructure project after December 31, 2008, unless fifty percent of total base~~
9 ~~investment provided for in the initial certification of the project pursuant to~~
10 ~~Subparagraph (D)(2)(d) of this Section has been expended prior to that date. The~~
11 ~~expenditures may be finally certified at a later date.~~

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

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

20 ~~(3)~~(2) The credit shall be allowed against the income tax for the taxable
21 period in which the credit is earned or for the taxable period in which initial
22 certification authorizes the credit to be taken. If the tax credit allowed pursuant to
23 this Section exceeds the amount of such taxes due for such tax period, then any
24 unused credit may be carried forward as a credit against subsequent tax liability for
25 a period not to exceed ten years.

26 ~~(4)~~(3) Application of the credit.

27 (a) All entities taxed as corporations for Louisiana income tax purposes shall
28 claim any credit allowed under this Section on their corporation income tax return.

1 (b) Individuals, estates, and trusts shall claim any credit allowed under this
2 Section on their income tax return.

3 (c) Entities not taxed as corporations shall claim any credit allowed under
4 this Section on the returns of the partners or members as follows:

5 (i) Corporate partners or members shall claim their share of the credit on
6 their corporation income tax returns.

7 (ii) Individual partners or members shall claim their share of the credit on
8 their individual income tax returns.

9 (iii) Partners or members that are estates or trusts shall claim their share of
10 the credit on their fiduciary income tax returns.

11 ~~(5)~~(4) Transferability of the credit. Any motion picture tax credits not
12 previously claimed by any taxpayer against its income tax may be transferred or sold
13 to another Louisiana taxpayer or to the office, subject to the following conditions:

14 (a) A single transfer or sale may involve one or more transferees. The
15 transferee of the tax credits may transfer or sell such tax credits subject to the
16 conditions of this Subsection.

17 (b) Transferors and transferees shall submit to the office, and to the
18 Department of Revenue in writing, a notification of any transfer or sale of tax credits
19 within thirty days after the transfer or sale of such tax credits. The notification shall
20 include the transferor's tax credit balance prior to transfer, a copy of any tax credit
21 certification letter(s) issued by the office and the secretary of the Department of
22 Economic Development and, ~~in the case of an infrastructure project, to the office, the~~
23 ~~secretary, and the division of administration, the name of the state-certified~~
24 ~~production or infrastructure project,~~ the transferor's remaining tax credit balance after
25 transfer, all tax identification numbers for both transferor and transferee, the date of
26 transfer, the amount transferred, a copy of the credit certificate, price paid by the
27 transferee to the transferor, in the case when the transferor is a state-certified
28 production ~~or state-certified infrastructure project,~~ for the tax credits, and any other
29 information required by the office or the Department of Revenue. For the purpose

1 of reporting transfer prices, the term "transfer" shall include allocations pursuant to
2 Paragraph (3) of this Subsection as provided by rule. The office may post on its web
3 site an average tax credit transfer value, as determined by the office and the secretary
4 of the Department of Economic Development to reflect adequately the current
5 average tax credit transfer value. The tax credit transfer value means the percentage
6 as determined by the price paid by the transferee to the transferor divided by the
7 dollar value of the tax credits that were transferred in return. The notification
8 submitted to the office shall include a processing fee of up to two hundred dollars per
9 transferee, and any pricing information submitted by a transferor or transferee shall
10 be treated by the office and the Department of Revenue as proprietary to the entity
11 reporting such information and therefore confidential. However, this shall not
12 prevent the publication of summary data that includes no fewer than three
13 transactions.

14 (c) Failure to comply with this Paragraph will result in the disallowance of
15 the tax credit until the taxpayers are in full compliance.

16 (d) The transfer or sale of this credit does not extend the time in which the
17 credit can be used. The carryforward period for credit that is transferred or sold
18 begins on the date on which the credit was ~~originally earned or, in the case of a~~
19 ~~structured infrastructure credit, the date upon which the credit is allowed to be taken~~
20 earned.

21 (e) To the extent that the transferor did not have rights to claim or use the
22 credit at the time of the transfer, the Department of Revenue shall either disallow the
23 credit claimed by the transferee or recapture the credit from the transferee through
24 any collection method authorized by R.S. 47:1561. The transferee's recourse is
25 against the transferor.

26 (f) Beginning on and after January 1, 2007, the investor who earned the
27 motion picture investor tax credits may transfer the credits to the office for seventy-
28 two percent of the face value of the credits. Beginning January 1, 2009, and every
29 second year thereafter, the percent of the face value of the tax credits allowed for

1 transferring credits to the office shall increase two percent until the percentage
2 reaches eighty percent. Upon the transfer, the Department of Economic
3 Development shall notify the Department of Revenue and shall provide it with a
4 copy of the transfer documentation. The Department of Revenue may require the
5 transferor to submit such additional information as may be necessary to administer
6 the provisions of this Section. The secretary of the Department of Revenue shall
7 make payment to the investor in the amount to which he is entitled from the current
8 collections of the taxes collected pursuant to Chapter 1 of Subtitle II, provided such
9 credits are transferred to the office within one calendar year of certification.

10 ~~(6)~~(5) The transferee shall apply such credits in the same manner and against
11 the same taxes as the taxpayer originally awarded the credit.

12 ~~(7)~~(6) Notwithstanding any other provision of law, on or after January 1,
13 2006, a state-certified production which receives tax credits pursuant to the
14 provisions of this Chapter shall not be eligible to receive the rebates provided for in
15 R.S. 51:2451 through 2461 in connection with the activity for which the tax credits
16 were received.

17 D. Certification and administration.

18 (1)(a) The secretary of the Department of Economic Development and the
19 office shall determine through the promulgation of rules the minimum criteria that
20 a project must meet in order to qualify according to this Section. The secretary, the
21 office, and the division of administration shall determine through the promulgation
22 of rules the minimum criteria that a project must meet in order to qualify according
23 to this Section.

24 (b) The secretary, the office, and the division of administration shall
25 determine, through the promulgation of rules, an appeals process in the event that an
26 application for or the certification of motion picture production ~~or infrastructure tax~~
27 ~~credits~~ tax credit is denied. The office shall promptly provide written notice of such
28 denial to the Senate Committee on Revenue and Fiscal Affairs and the House
29 Committee on Ways and Means.

1 (c) ~~Prior to adoption~~ In addition, these rules shall be approved by the House
2 Committee on Ways and Means and the Senate Committee on Revenue and Fiscal
3 Affairs in accordance with the provisions of the Administrative Procedure Act.

4 (d) When determining which productions ~~and infrastructure projects~~ may
5 qualify, the office and the secretary of the Department of Economic Development
6 ~~and, in the case of infrastructure projects, also the division of administration~~ shall
7 take the following factors into consideration:

8 (i) The impact of the production ~~or infrastructure project~~ on the immediate
9 and long-term objectives of this Section.

10 (ii) The impact of the production ~~or infrastructure project~~ on the employment
11 of Louisiana residents.

12 (iii) The impact of the production ~~or infrastructure project~~ on the overall
13 economy of the state.

14 (2)(a) Application. An applicant for the motion picture investor credit shall
15 submit an application for initial certification to the office and the secretary of the
16 Department of Economic Development ~~and, in the case of infrastructure projects, to~~
17 ~~the office, the secretary, and the division of administration~~ that includes the
18 following information:

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

20 (aa) The multi-market commercial distribution plan.

21 (bb) A preliminary budget including estimated Louisiana payroll and
22 estimated base investment.

23 (cc) The script, including a synopsis.

24 (dd) A list of the principal creative elements, including the cast, producer,
25 and director.

26 (ee) A statement that the production will qualify as a state-certified
27 production.

28 (ff) Estimated start and completion dates.

29 (ii) ~~For state-certified infrastructure projects the application shall include:~~

1 ~~(aa) A detailed description of the infrastructure project.~~

2 ~~(bb) A preliminary budget.~~

3 ~~(cc) A complete detailed business plan and market analysis.~~

4 ~~(dd) Estimated start and completion dates.~~

5 (b) If the application is incomplete, additional information may be requested
6 prior to further action by the office or the secretary of the Department of Economic
7 Development ~~or, in the case of infrastructure projects, the office, the secretary, and~~
8 ~~the division of administration.~~ An application fee shall be submitted with the
9 application based on the following:

10 (i) 0.2 percent times the estimated total incentive tax credits.

11 (ii) The minimum application fee is two hundred dollars, and the maximum
12 application fee is five thousand dollars.

13 (c) The office and the secretary ~~and, in the case of infrastructure projects, the~~
14 ~~division~~ shall submit their initial certification of a project as a state-certified
15 production ~~or infrastructure project~~ to investors and to the secretary of the
16 Department of Revenue indicating the total base investment which shall be expended
17 in the state on the state-certified production ~~or state-certified infrastructure project~~
18 ~~and, in the case of state-certified infrastructure projects, when such tax credits may~~
19 ~~be taken or transferred.~~ The initial certification shall include a unique identifying
20 number for each state-certified production.

21 (d) Prior to any final certification of the state-certified production ~~or~~
22 ~~infrastructure project~~, the motion picture production company ~~or applicant for the~~
23 ~~infrastructure project~~ shall submit to the office and the secretary ~~and, in the case of~~
24 ~~infrastructure projects, to the office, the secretary, and the division,~~ a cost report of
25 production ~~or infrastructure project~~ an audit of the production expenditures audited
26 ~~and~~ certified by an independent certified public accountant as determined by rule.
27 The office and the secretary ~~and, in the case of infrastructure projects, the office, the~~
28 ~~secretary, and the division shall review the production or infrastructure project~~
29 ~~expenses and will~~ shall review the audit, the production expense details, and may

1 require additional information needed to make a determination. Upon approval of
2 the audit, the office and the secretary shall issue a final tax credit certification letter
3 indicating the amount of tax credits certified for the state-certified production ~~or~~
4 ~~state-certified infrastructure project~~ to the investors. The rules required by this
5 Subparagraph shall, at a minimum, require that:

6 (i) The auditor shall be a certified public accountant licensed in the state of
7 Louisiana and shall be an independent third party, not related to the producer.

8 (ii) The auditor's opinion shall be addressed to the party which has engaged
9 the auditor (e.g., directors of the production company, producer of the production).

10 (iii) The auditor's name, address, and telephone number shall be evident on
11 the report.

12 (iv) The auditor's opinion shall be dated as of the completion of the audit
13 fieldwork.

14 (v) The audit shall be performed in accordance with auditing standards
15 generally accepted in the United States of America and the auditor shall have
16 sufficient knowledge of accounting principles and practices generally recognized in
17 the film and television industry.

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

23 (4)(i) Any taxpayer applying for the credit shall be required to reimburse the
24 office for any audits required in relation to granting the credit.

25 (ii)(aa) The production ~~or infrastructure project~~ application fee provided for
26 in Subparagraph (2)(b) of this Subsection received by the office shall be deposited
27 upon receipt in the state treasury. After compliance with the requirements of Article
28 VII, Section 9(B) of the Constitution of Louisiana relative to the Bond Security and
29 Redemption Fund and prior to any money being placed into the general fund or any

1 other fund, an amount equal to that deposited as required by this Item shall be
2 credited by the treasurer to a special fund hereby created in the state treasury to be
3 known as the Entertainment Promotion and Marketing Fund. The money in the fund
4 shall be appropriated by the legislature to be used solely for promotion and
5 marketing of Louisiana's entertainment industry.

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

12 (5) A motion picture production company applying for the additional credit
13 for the employment of Louisiana residents must remit a schedule to the Department
14 of Revenue, in a machine-sensible format approved by the secretary of the
15 Department of Revenue, that includes the following information: the names of all
16 persons who received salary, wages, or other compensation for services performed
17 in Louisiana in connection with the state-certified production, and the address,
18 taxpayer identification number, permanent address of, and the amount of
19 compensation for services performed in Louisiana received by each such person.

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

1 (7) ~~Either the~~ The Department of Economic Development ~~or the Department~~
2 ~~of Revenue may audit the cost report~~ may request an additional audit of the
3 expenditures submitted by the motion picture production company at the cost of the
4 motion picture production company.

5 (8) As a condition for receiving certification of tax credits under this Section,
6 state-certified productions may be required to display the state brand or logo, or both
7 as prescribed by the secretary of the Department of Economic Development.

8 E. Recapture of credits. If the office finds that monies for which an investor
9 received tax credits according to this Section are not invested in and expended with
10 respect to a state-certified production within twenty-four months of the date that such
11 credits are earned, ~~and with respect to a state-certified infrastructure project also~~
12 ~~within the time provided for in Paragraph (C)(2) of this Section,~~ then the investor's
13 state income tax for such taxable period shall be increased by such amount necessary
14 for the recapture of credit provided by this Section.

15 F. Recovery of credits by Department of Revenue. (1) Credits previously
16 granted to a taxpayer, but later disallowed, may be recovered by the secretary of the
17 Department of Revenue through any collection remedy authorized by R.S. 47:1561
18 and initiated within three years from December thirty-first of the year in which the
19 twenty-four-month investment period specified in Subsection E of this Section ends.

20 (2) The only interest that may be assessed and collected on recovered credits
21 is interest at a rate three percentage points above the rate provided in R.S.
22 9:3500(B)(1), which shall be computed from the original due date of the return on
23 which the credit was taken.

24 (3) The provisions of this Subsection are in addition to and shall not limit the
25 authority of the secretary of the Department of Revenue to assess or to collect under
26 any other provision of law.

27 Section 2. This Act shall become effective upon signature by the governor or, if not
28 signed by the governor, upon expiration of the time for bills to become law without signature
29 by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If

- 1 vetoed by the governor and subsequently approved by the legislature, this Act shall become
2 effective on the day following such approval.
-

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

Henry

HB No. 898

Abstract: Provides that the amount of the tax credit for state-certified productions is 25% and repeals the phase-down of the tax credit.

Present law authorizes a tax credit against state income tax for La. taxpayers for state-certified productions and state-certified infrastructure projects earned by investors at the time expenditures are made by a motion picture production company. The tax credit shall be calculated as a percentage of the total base investment dollars certified per project.

Present law provides for a tax credit of 25% of the base investment made by an investor for state-certified productions approved by the office and the secretary on or after Jan. 1, 2006, but before July 1, 2010, if the total base investment is greater than \$300,000. Provides for an additional tax credit of 10% for payroll of La. residents employed in connection with a state-certified production; however, this additional credit shall exclude any salary for a person that exceeds \$1 million.

Present law provides that the initial certification shall be effective for a period 12 months prior to and 12 months after the date of initial certification, unless the production has commenced, in which case the initial certification shall be valid until the production is completed.

Proposed law changes present law to remove the July 1, 2010, deadline for qualification of the 25% tax credit. Proposed law makes the 25% tax credit permanent for state-certified productions approved by the office and the secretary and retains the 10% tax credit for payroll.

Present law provides for a tax credit of 20% of the base investment made by an investor for state-certified productions approved by the office and the secretary on or after July 1, 2010, but before July 1, 2012, if the total base investment is greater than \$300,000.

Proposed law repeals present law.

Present law provides for a tax credit of 15% of the base investment made by an investor for state-certified productions approved by the office and the secretary on or after July 1, 2012, if the base investment is greater than \$300,000.

Proposed law repeals present law.

Proposed law defines a base investment as a cash or cash equivalent investment made and used for production expenditures in the state for a state-certified production. Further provides that payroll means all salary, wages, and other compensation, including benefits paid to an employee for services relating to a state-certified production and is taxable in this state. However, "payroll" for purposes of the additional ten percent tax credit for Louisiana-resident payroll shall exclude any portion of an individual salary in excess of one million dollars.

Present law provided for motion picture investor tax credits associated with a state-certified infrastructure projects beginning July 1 2005 and ending on January 1, 2009.

Proposed law deletes present law since the period for issuance of the tax credit for state-certified infrastructure projects has ended.

Present law provided for the application, transferability, certification, and administration of the credit. Further requires the promulgation of rules to determine an appeals process in the event that an application for, or the certification of, a motion picture investor tax credit is denied.

Proposed law retains present law but requires that the rules be approved by the House Committee on Ways and Means and the Senate Committee on Revenue and Fiscal Affairs in accordance with the APA.

Present law provides for the application which must be submitted for initial certification of a motion picture investor tax credit.

Proposed law retains present law but requires that prior to final certification of the state-certified production, the motion picture production company shall submit an audit of the production expenditures certified by an independent certified public accountant. Requires the office and the secretary to review the audit, the production expense details, and may require additional information needed to make a determination.

Proposed law provides that as a condition for receiving certification of tax credits under proposed law, state-certified productions may be required to display the state brand or logo, or both as prescribed by the Dept. of Economic Development.

Present law provides for the recapture and recovery of credits.

Proposed law retains present law.

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

(Amends R.S. 47:6007)