

Regular Session, 2013

SENATE BILL NO. 165

BY SENATOR MARTINY

TAX/TAXATION. Requires a qualified cost report prior to issuance of a motion picture investor tax credit. (8/1/13)

1 AN ACT

2 To amend and reenact R.S. 47:6007(B)(9), (10), (11), (12), (13), (14), the introductory  
3 paragraph of R.S. 47:6007(D)(2)(a) and (D)(2)(c) and (d) and to enact R.S.  
4 47:6007(B)(15) and (16), (G) and 6007.1, relative to the motion picture investor tax  
5 credit; to provide for definitions; to provide for production audit reports and  
6 requirements; to provide for submission of a production audit report prior to being  
7 certified as a state-certified production for application for the credit; to provide for  
8 a production audit report; and to provide for related matters.

9 Be it enacted by the Legislature of Louisiana:

10 Section 1. R.S. 47:6007(B)(9), (10), (11), (12), (13), (14), the introductory paragraph  
11 of R.S. 47:6007(D)(2)(a) and (D)(2)(c) and (d) are hereby amended and reenacted and R.S.  
12 47:6007(B)(15) and (16), (G) and 6007.1 are hereby enacted to read as follows:

13 §6007. Motion picture investor tax credit

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

15 \* \* \*

16 (9) **"Production audit report" means an audit report issued by a**  
17 **qualified accountant who is unrelated to the motion picture production**

1        **company and that is a report of the qualified accountant's audit of the motion**  
2        **picture production's cost report of production expenditures. The production**  
3        **audit report shall contain an opinion from the qualified accountant stating that**  
4        **the production's cost report of production expenditures presents fairly, in all**  
5        **material aspects, the production expenditures expended in Louisiana pursuant**  
6        **to the provisions of this Subsection. The production audit shall be performed**  
7        **pursuant to the qualified sampling and verification procedures provided in R.S.**  
8        **47:6007.1 and shall require:**

9                **(a) The production audit report to be performed in accordance with the**  
10              **auditing standards generally accepted in the United States of America.**

11              **(b) The production audit report to be addressed to the party which has**  
12              **engaged the qualified accountant.**

13              **(c) The production audit report to contain the qualified accountant's**  
14              **name, address, and telephone number.**

15              **(d) The production audit report to be dated as of the date of completion**  
16              **of the qualified accountant's field work.**

17              **(e) The production audit report to contain a statement of**  
18              **acknowledgment by the qualified accountant that the state is relying on the**  
19              **qualified cost report in the issuance of the tax credits under the provisions of**  
20              **this Section.**

21              **(10)** "Production expenditures" means preproduction, production, and  
22              postproduction expenditures in this state directly relating to a state-certified  
23              production, including without limitation the following: set construction and  
24              operation; wardrobes, makeup, accessories, and related services; costs associated  
25              with photography and sound synchronization, lighting, and related services and  
26              materials; editing and related services; rental of facilities and equipment; leasing of  
27              vehicles; costs of food and lodging; digital or tape editing, film processing, transfer  
28              of film to tape or digital format, sound mixing, special and visual effects; and  
29              payroll. This term shall not include expenditures for marketing and distribution, non-

1 production related overhead, amounts reimbursed by the state or any other  
2 governmental entity, costs related to the transfer of tax credits, amounts that are paid  
3 to persons or entities as a result of their participation in profits from the exploitation  
4 of the production, the application fee, or state or local taxes.

5 **(11) "Qualified accountant" means an independent certified public**  
6 **accountant authorized to practice in this state who has sufficient knowledge of**  
7 **accounting principles and practices generally recognized in the film and**  
8 **television industry.**

9 ~~(10)~~ **(12)** "Resident" or "resident of Louisiana" means a natural person  
10 domiciled in the state. A person who maintains a permanent place of abode within  
11 the state and spends in the aggregate more than six months of each year within the  
12 state shall be presumed to be domiciled in the state.

13 ~~(11)~~ **(13)** "Secretary" means the secretary of the Department of Economic  
14 Development.

15 ~~(12)~~ **(14)** "Source within the state" means a physical facility in Louisiana,  
16 operating with posted business hours and employing at least one full-time equivalent  
17 employee.

18 ~~(13)~~ **(15)** "State" means the state of Louisiana.

19 ~~(14)~~ **(16)** "State-certified production" shall mean a production approved by  
20 the office and the secretary which is produced by a motion picture production  
21 company domiciled and headquartered in Louisiana and which has a viable multi-  
22 market commercial distribution plan.

23 \* \* \*

24 D. Certification and administration.

25 \* \* \*

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

29 \* \* \*

1 (c) The office and the secretary shall submit their initial certification of a  
2 project as a state-certified production to investors and to the secretary of the  
3 Department of Revenue indicating the total base investment which shall be expended  
4 in the state on the state-certified production **within thirty days of their receipt of**  
5 **all required information.** The initial certification shall include a unique identifying  
6 number for each state-certified production.

7 (d)(i) Prior to any final certification of the state-certified production, the  
8 motion picture production company shall submit to the office and the secretary ~~an~~  
9 ~~audit of the production expenditures certified by an independent certified public~~  
10 ~~accountant as determined by rule~~ **a production audit report.** The office and the  
11 secretary shall review the ~~audit, the production expense details,~~ **the production**  
12 **audit report** and may require additional information needed to make a  
13 determination. ~~Upon approval of the audit~~ **Within sixty days of the receipt of the**  
14 **production audit report,** the office and the secretary shall issue a ~~final~~ tax credit  
15 certification letter indicating the amount of tax credits certified for the state-certified  
16 production to the investors **for all amounts that are uncontested. If there remains**  
17 **a contested amount, the office and secretary shall diligently work to resolve the**  
18 **outstanding issues in a timely manner and the office and secretary may**  
19 **subsequently issue a supplemental tax credit certification at the time of such**  
20 **resolution, if so warranted.**

21 **(ii) The department may request an additional production audit report**  
22 **of the expenditures submitted by the motion picture production company with**  
23 **the cost of the additional report paid by the motion picture production**  
24 **company. The motion picture production company may submit an amended**  
25 **production audit report if additional expenditures are incurred or discovered**  
26 **after the approval of the initial production audit reports issued pursuant to**  
27 **Item (i) of this Subparagraph and the office and secretary may issue a**  
28 **supplemental tax credit certification if so warranted.** ~~The rules required by this~~  
29 ~~Subparagraph shall, at a minimum, require that:~~

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

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

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

7 (iv) ~~The auditor's opinion shall be dated as of the completion of the audit~~  
8 ~~fieldwork.~~

9 (v) ~~The audit shall be performed in accordance with auditing standards~~  
10 ~~generally accepted in the United States of America and the auditor shall have~~  
11 ~~sufficient knowledge of accounting principles and practices generally recognized in~~  
12 ~~the film and television industry.~~

13 \* \* \*

14 **G. Notwithstanding any other law to the contrary, no motion picture**  
15 **investor tax credit shall be allowed for financing fees, interest, or payments of**  
16 **a similar nature that are paid to related parties. Motion picture investor tax**  
17 **credits shall only be allowed for financing fees, interest or payments of a similar**  
18 **nature that are made to a party who does not control the production and who**  
19 **owns twenty percent or less of the financial rewards of the production based on**  
20 **sales, exploitation of the product, or the success in lining up distribution**  
21 **agreements. No motion picture investor tax credits shall be allowed for any**  
22 **amounts that are paid to persons or entities as a result of a percentage of sales**  
23 **or participation in profits from the exploitation of the product or the success in**  
24 **lining up distribution agreements.**

25 **§6007.1. Motion picture investor tax credit; qualified sampling and verification**  
26 **procedures**

27 **A. A qualified accountant, as defined in R.S. 47:6007, shall perform the**  
28 **following sampling procedures when producing a production audit report**  
29 **required under the provisions of R.S. 47:6007:**

1           (1) Obtain the cost report of all production expenditures for the  
2           production of the motion picture production company and verify the  
3           mathematical accuracy of the report.

4           (2) Obtain the bank statements from the motion picture production  
5           company relevant to the applicable production for the period covered by the  
6           cost report of production expenditures.

7           (3) Obtain the detailed payroll registers applicable to the production.  
8           This report should indicate the name, address, taxpayer identification number,  
9           permanent address, the amount of compensation, and the employee's state of  
10           residence.

11           (4) Foot the payroll registers mentioned in Paragraph (3) of this  
12           Subsection for mathematical accuracy and agree the total to the cost report of  
13           production expenditures mentioned in Paragraph (1) of this Subsection.

14           (5) Obtain the detailed listing of non-payroll expenditures for production  
15           of the motion picture production company. This report should indicate the  
16           payee, the date of payment, the date that the payment cleared the bank, and  
17           amount of the payment.

18           (6) Foot the detailed listing of non-payroll expenditures mentioned in  
19           Paragraph (5) of this Subsection for mathematical accuracy and agree the total  
20           to the cost report of production expenditures mentioned in Paragraph (1) of this  
21           Subsection.

22           B. A qualified accountant shall perform the following verification  
23           procedures when producing a production audit report under the provisions of  
24           R.S. 47:6007:

25           (1) From the detailed payroll registers referenced in Paragraph (A)(3)  
26           of this Section, segregate the gross payroll for all Louisiana residents and agree  
27           the total to the Louisiana payroll and salaries indicated on either the cost report  
28           of production expenditures or the footnotes to the cost report of production  
29           expenditures.

1           **(2) From the payroll registers for Louisiana residents contained in**  
2           **Paragraph (1) of this Subsection, select all disbursements to those individuals**  
3           **whose gross salaries during the period in question exceeded five percent of the**  
4           **total disbursements indicated on the cost report of production expenditures for**  
5           **the production for further testing.**

6           **(3) Excluding those individuals already selected for further testing in**  
7           **Paragraph (2) of this Subsection, select an additional sample consisting of the**  
8           **lesser of one-hundred twenty individual payroll disbursements or fifty percent**  
9           **of the payroll disbursements not already selected in Paragraph (2) of this**  
10           **Subsection from the payroll registers for Louisiana residents for further testing.**

11           **(4) For each employee selected for testing in Paragraphs (2) and (3) of**  
12           **this Subsection, perform the following analysis, detailing any exceptions noted:**

13           **(a) If the employee is a salaried employee, verify that the gross salary for**  
14           **the selected disbursement is supported by and agrees to an employment**  
15           **contract or other form of approved pay documentation.**

16           **(b) If the employee is an hourly employee, verify that the hourly wage**  
17           **rate for the selected transaction is supported by and agrees to the approved pay**  
18           **rate documentation in the employee's personnel file.**

19           **(c) If the employee is an hourly employee, verify that the hours paid for**  
20           **the selected transaction is supported by approved timesheets.**

21           **(d) Verify that the disbursement of such funds is a qualifying**  
22           **expenditure given the operations of the motion picture production company.**

23           **(e) Verify that the payroll expenditures were actually made by the**  
24           **motion picture production company as evidenced by deductions in the bank**  
25           **account statements maintained by the motion picture production company and**  
26           **that the disbursement cleared the bank during the period in question.**

27           **(f) Review employee's personnel file, verifying that the individual is a**  
28           **natural person domiciled in or who maintains a permanent place of abode**

1 within this state and spends in the aggregate more than six months of each year  
2 within this state.

3 (5) From the detailed payroll registers referenced in Paragraph (A)(3)  
4 of this Section, segregate the gross payroll for all non-Louisiana residents and  
5 agree the total to the non-Louisiana payroll indicated on either the cost report  
6 of production expenditures or the footnotes to the cost report of production  
7 expenditures.

8 (6) From the payroll registers for non-Louisiana residents, select all  
9 disbursements to those individuals whose gross salaries during the period in  
10 question exceeded five percent of the total disbursements indicated on the cost  
11 report of production expenditures for the period in question for further testing.

12 (7) Excluding those individuals already selected for further testing in  
13 Paragraph (6) of this Subsection, select an additional sample consisting of the  
14 lesser of one-hundred twenty individual payroll disbursements or fifty percent  
15 of the payroll disbursements not already selected in Paragraph (6) of this  
16 Subsection from the payroll registers for non-Louisiana residents, for further  
17 testing.

18 (8) For each employee selected for testing in Paragraphs (6) and (7) of  
19 this Subsection, perform the following procedures, detailing any exceptions  
20 noted:

21 (a) If the employee is a salaried employee, verify that the gross salary for  
22 the selected disbursement is supported by and agrees to an employment  
23 contract or other form of approved pay documentation.

24 (b) If the employee is an hourly employee, verify that the hourly wage  
25 rate for the selected transaction is supported by and agrees to the approved pay  
26 rate documentation in the employee's personnel file.

27 (c) If the employee is an hourly employee, verify that hours paid for the  
28 selected transaction is supported by approved timesheets.



1           (d) Verify that the disbursement of such funds is a qualifying  
2           expenditure given the operations of the motion picture production company.

3           (e) Verify that the payroll expenditures were actually made by the  
4           motion picture production company as evidenced by deductions in the bank  
5           account statements maintained by the motion picture production company and  
6           that the disbursement cleared the bank during the period in question.

7           (9) From the detailed listing of non-payroll expenditures referenced in  
8           Paragraph (A)(5) of this Section, select all disbursements for a particular  
9           contract of purchase that exceeded five percent of the total disbursements  
10           indicated on the cost report of production expenditures for the period in  
11           question for further testing.

12           (10) Excluding those expenditures already selected for further testing in  
13           Paragraph (9) of this Subsection, select an additional sample consisting of the  
14           lesser of one-hundred twenty individual disbursements or fifty percent of the  
15           non-payroll disbursements not already selected in Paragraph (9) of this  
16           Subsection from the detailed listing of non-payroll expenditures for further  
17           testing.

18           (11) For each disbursement selected for testing in Paragraphs (9) and  
19           (10) of this Subsection, perform the following procedures, detailing any  
20           exceptions noted:

21           (a) Verify that the transaction is supported by an original invoice or  
22           receipt and that the amounts are in agreement.

23           (b) Verify that the expense category to which the disbursement was  
24           coded appears reasonable based on the invoice documentation.

25           (c) Verify that the disbursement of such funds is a qualifying expenditure  
26           given the operations of the motion picture production company.

27           (d) Verify that the expenditures were actually made by the motion  
28           picture production company as evidenced by deductions in the bank account

1            **statements maintained by the motion picture production company and that the**  
 2            **disbursement cleared the bank during the period in question.**

3            **C. Before submission of the production audit report, the qualified**  
 4            **accountant shall ensure that these steps have been taken:**

5            **(1) Redact all but the last four digits of any employee's social security**  
 6            **number.**

7            **(2) Separate expenditures by calendar year, as well as the aggregate**  
 8            **project totals.**

9            **(3) Submit detailed list of all expenditures as a spreadsheet.**

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The original instrument was prepared by Thomas L. Tyler. The following digest, which does not constitute a part of the legislative instrument, was prepared by Danielle Doiron.

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#### DIGEST

Martiny (SB 165)

Present law provides for motion picture investor tax credits for certain state-certified productions by a motion picture production company.

Proposed law defines a " production audit report" as an audit report issued by a qualified accountant who is unrelated to the motion picture production company and that is a report of the qualified accountant's audit of the motion picture production's cost report of production expenditures. The production audit report shall contain an opinion from the qualified accountant stating that the production's cost report of production expenditures presents fairly, the production expenditures expended in Louisiana. The production audit shall require:

- (1) The production audit report be performed in accordance with the auditing standards generally accepted in the United States of America.
- (2) The production audit report is addressed to the party which has engaged the qualified accountant.
- (3) The production audit report contains the qualified accountant's name, address, and telephone number.
- (4) The production audit report be dated as of the date of completion of the qualified accountant's field work.
- (5) The production audit report contains a statement of acknowledgment by the qualified accountant that the state is relying on the qualified cost report in the issuance of the tax credits under the provisions of this Section.

Present law requires the office of entertainment industry development and the secretary of the Department of Economic Development (DED) submit their initial certification of a project as a state-certified production to investors and to the secretary of the Department of Revenue indicating the total base investment which is to be expended in the state on the

state-certified production. Proposed law retains these provisions but requires that the initial certification be submitted within 30 days of receipt of all required information.

Present law requires that prior to any final certification of the state-certified production, the motion picture production company submit to the office of entertainment industry development and the secretary of DED an audit of the production expenditures certified by an independent certified public accountant. Requires that the office and the secretary review the audit, the production expense details, and may require additional information needed to make a determination.

Proposed law requires a production audit report by a qualified accountant.

Present law requires that upon approval of the audit, that a final tax credit certification letter be sent to the investors indicating the amount of tax credits certified for the state-certified production. Proposed law requires that this letter be issued within 60 days after receipt of the qualified cost report and that it indicate the credits certified which are uncontested and if there is a contested amount, then the office and the secretary of DED are required to diligently work to resolve the outstanding issues in a timely manner.

Proposed law provides that no motion picture investor tax credit be allowed for fees, interest, or payments of a similar nature paid to related parties and that it only be allowed if received by investors in the production who own 20% or less of the financial rewards based on sales, exploitation of the product, or the success in lining up distribution agreements. Further provides that no motion picture investor tax credit shall be allowed for any percentage of the financial awards but shall only be allowed for actually paid financing fees and interest.

Proposed law requires that when producing the production audit report, the qualified accountant perform certain sampling and verification procedures enumerated in proposed law.

Effective August 1, 2013.

(Amends R.S. 47:6007(B)(9)(10), (11), (12), (13), (14), (D)(2)(a)(intro para) and (D)(2)(c) and (d); adds R.S. 47:6007(B)(15) and (16), (G) and 6007.1)

#### Summary of Amendments Adopted by Senate

##### Committee Amendments Proposed by Senate Committee on Revenue and Fiscal Affairs to the original bill

1. Changed "qualified cost report" to "production audit report" and provided for definition.
2. Removed requirements of qualified cost report and added requirements of production audit reports.
3. Changed qualifications for a "qualified accountant", requiring the accountant to be authorized to practice instead of licensed.
4. Changed the number of individual payroll disbursements needed for an additional sample from the lesser of 60 to the lesser of 120 disbursements, or 50 percent of the payroll disbursements, not already selected for further testing.