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HOUSE FLOOR AMENDMENTS

Amendments proposed by Representative Leger to Engrossed House Bill No. 696 by Representative Montoucet

1 AMENDMENT NO. 1

2 On page 1, line 2, after "R.S. 47:6007(B)," delete the remainder of the line, delete lines 3 and
3 4 in their entirety, and insert the following:

4 "(C)(1)(introductory paragraph), (c)(introductory paragraph) and (d),
5 (2)(introductory paragraph), (4)(introductory paragraph) and (f)(ii), (D)(1)(a),
6 (2)(b)(introductory paragraph), (c), and (d)(introductory paragraph), (3), (6), (7), and
7 (8), (E), and (F)(3), to enact R.S. 47:6007(C)(1)(e), (D)(9), and (F)(4), and 6030(G),
8 and to repeal R.S. 47:6007(D)(2)(a)(i)(ee), relative

9 AMENDMENT NO. 2

10 On page 1, line 6, after "credit;" delete the remainder of the line and insert the following:

11 "to provide for amounts of tax credits; to provide"

12 AMENDMENT NO. 3

13 On page 1, delete line 9 in its entirety and insert "with respect to rulemaking; to provide
14 with"

15 AMENDMENT NO. 4

16 On page 1, line 16, after "R.S. 47:6007(B)," delete the remainder of the line, delete lines 17
17 through 21 in their entirety, delete pages 2 through 9 in their entirety, and on page 10, delete
18 lines 1 through 18 in their entirety, and insert the following:

19 "(C)(1)(introductory paragraph), (c)(introductory paragraph) and (d),
20 (2)(introductory paragraph), (4)(introductory paragraph) and (f)(ii), (D)(1)(a),
21 (2)(b)(introductory paragraph), (c), and (d)(introductory paragraph), (3), (6), (7), and
22 (8), (E), and (F)(3) are hereby amended and reenacted and R.S. 47:6007(C)(1)(e),
23 (D)(9), and (F)(4) are hereby enacted to read as follows:

24 §6007. Motion picture investor tax credit

25 * * *

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

27 (1) "Base investment" means cash or cash equivalent investment made and
28 used for production expenditures in the state for a state-certified production.

29 (2) "Below the line crewmember" means a person employed by a motion
30 picture production company for a state-certified production that is not a producer,
31 associate producer, coproducer, line producer, executive producer, director, director
32 of photography, production designer, writer, actor, stunt performer, or other onscreen
33 performer with spoken lines.

34 (3) "Box rental" means private property owned by an employee or individual
35 contractor and leased to a state-certified production for use in Louisiana on a state-

1 certified production, which is designated as additional income on a W-2 or 1099
 2 federal income tax form.

3 ~~(3)~~ (4) "Expenditure" means actual cash or cash equivalent exchanged for
 4 goods or services.

5 ~~(2)~~ (5) "Expenditure in the state" means an expenditure to lease
 6 immovable property located in the state; an expenditure as compensation for services
 7 performed in the state; or an expenditure to purchase or lease tangible personal
 8 property from a source within the state where the transaction is subject to the state
 9 sales or lease tax provisions of Title 47 of the Louisiana Revised Statutes of 1950.
 10 A transaction that is subject to the state sales or lease tax provisions of Title 47 of the
 11 Louisiana Revised Statutes of 1950 shall include transactions which are also subject
 12 to a statutory exclusion or exemption.

13 ~~(4)~~ (6) "Headquartered in Louisiana" means a corporation incorporated in
 14 Louisiana or a partnership, limited liability company, or other business entity
 15 domiciled ~~and in Louisiana and having its principal place of business in Louisiana.~~
 16 An entity shall not be deemed to be headquartered in Louisiana for the purpose of
 17 producing nationally or internationally distributed motion pictures as defined in this
 18 Section: if it is controlled, directly or indirectly, by a nonresident individual or entity.

19 ~~(5)~~ (7) "Motion picture" means a nationally or internationally distributed
 20 feature-length film, video, television pilot, television series, television movie of the
 21 week, animated feature film, animated television series, or commercial made in
 22 Louisiana, in whole or in part, for theatrical or television viewing. The term "motion
 23 picture" shall not include the production of television coverage of news and athletic
 24 events.

25 ~~(6)~~ (8) "Motion picture production company" means a company engaged in
 26 the business of producing nationally or internationally distributed motion pictures
 27 as defined in this Section. Motion picture production company shall not mean or
 28 include any company owned, affiliated, or controlled, in whole or in part, by any
 29 company or person which is in default on a loan made by the state or a loan
 30 guaranteed by the state, nor with any company or person who has ever declared
 31 bankruptcy under which an obligation of the company or person to pay or repay
 32 public funds or monies was discharged as a part of such bankruptcy.

33 ~~(7)~~ (9) "Office" means the Governor's Office of Film and Television
 34 Development until August 15, 2006; thereafter, the term "office" means the office
 35 of entertainment industry development in the Department of Economic Development
 36 provided for in R.S. 51:938.1.

37 ~~(8)~~ (10) "Payroll" means all salary, wages, and other compensation, including
 38 benefits paid to an employee for services relating to a state-certified production and
 39 taxable in this state. However, "payroll" for purposes of the additional tax credit for
 40 Louisiana-resident payroll shall exclude any portion of an individual salary in excess
 41 of one million dollars.

42 (11) "Post-production work" means film or digital dailies, editorial services,
 43 providing post-production facilities, color correction, sound and music editing,
 44 rerecording and mixing, post-production lab services, title sequence creation,
 45 animation, transfer of film to tape or digital format, sound synchronization, foley,
 46 and visual effects.

47 ~~(9)~~ (12) "Production expenditures" means preproduction, production, and
 48 qualified postproduction expenditures in this the state directly relating to a state-
 49 certified production, including without limitation the following: set construction and
 50 operation; wardrobes, makeup, accessories, and related services; costs associated
 51 with photography and sound synchronization, lighting, and related services and
 52 materials; editing and related services; rental of facilities and equipment; leasing of
 53 vehicles; costs of food and lodging; digital or tape editing, film processing, transfer
 54 of film to tape or digital format, sound mixing, special and visual effects; financing
 55 and interest costs if such financing or loan is obtained from a financier headquartered
 56 in Louisiana; and payroll. This term shall include the cost of customization or
 57 custom development of a tangible good specifically designed for use by a state-
 58 certified production in Louisiana if the customization services are performed in
 59 Louisiana. This term shall not include expenditures for marketing and distribution,

1 ~~non-production~~ nonproduction related overhead, amounts reimbursed by the state or
 2 any other governmental entity, costs related to the transfer of tax credits, amounts
 3 that are paid to persons or entities as a result of their participation in profits from the
 4 exploitation of the production, the application fee, box or kit rentals paid to an
 5 individual who is not a Louisiana resident for the use of property that does not
 6 originate from a source within the state, or state or local taxes.

7 (13) "Qualified post-production expenditures" means only such costs that are
 8 attributable to the use of tangible property or the performance of post-production
 9 services by a qualified post-production facility within the state and related to a state-
 10 certified production. This shall include only those costs and their pro rata portions
 11 which occur directly within the state, no cost or salary which is incurred outside of
 12 Louisiana can be considered eligible; thus services contracted to subsidiaries, third
 13 party companies, satellite offices or individuals performing the work outside the state
 14 are not qualified post-production costs. A production company claiming qualified
 15 post-production expenditures must sign a statement attesting that, to the best of its
 16 knowledge, all services being submitted as eligible meet the requirements of this
 17 Paragraph. Additionally, it shall be required that the qualified post-production
 18 facility performing the claimed post-production services must sign a statement
 19 attesting that all claimed qualified post-production expenditures meet the
 20 requirements of this Paragraph. Should it be found that a post-production facility
 21 fradulently misrepresents the eligibility of expenditures, such post-production facility
 22 shall be deemed ineligible to serve as a qualified post-production facility for a period
 23 of eighteen months.

24 (14) "Qualified post-production facility" means:

25 (a) For state-certified productions with a total base investment of more than
 26 one million dollars, a permanent facility located within the state which is designed
 27 for the performance of post-production work, at which all necessary equipment is
 28 maintained on a permanent basis, and which meets either of the following criteria:

29 (i) If used for picture-based post-production, it contains a minimum of two
 30 thousand five hundred square feet of workable space, and has a minimum of four
 31 full-time employees.

32 (ii) If used for sound-based post production, it contains a minimum of one
 33 thousand two hundred fifty square feet of workable space, and it maintains a
 34 minimum of two full-time employees.

35 (b) For state-certified productions with a total base investment of one million
 36 dollars or less, a facility located within the state which is designed for the
 37 performance of post-production work, at which all necessary equipment is
 38 maintained on a permanent basis, and which meets either of the following criteria:

39 (i) If used for picture-based post-production, it contains a minimum of one
 40 thousand two hundred fifty square feet of workable space, and has a minimum of two
 41 full-time employees.

42 (ii) If used for sound-based post production, it contains a minimum of seven
 43 hundred fifty square feet of workable space, and it maintains a minimum of one full-
 44 time employee.

45 (c) A production which performs post-production services on its own behalf
 46 shall be exempt from the requirement to use a qualified post-production facility;
 47 provided, however, expenditures shall only be eligible for earning tax credits under
 48 the cost-recovery method of accounting.

49 ~~(10)~~ (15) "Resident" or "resident of Louisiana" means a natural person
 50 domiciled in the state who has a driver's license issued by the state of Louisiana, and
 51 who can provide either a utility bill or real property lease which indicates the same
 52 address as that on the driver's license, and which document is dated at least six
 53 months and no more than one year prior to employment. A person who maintains
 54 a permanent place of abode within the state and spends in the aggregate more than
 55 six months of each year within the state shall be presumed to be domiciled in the
 56 state.

57 ~~(11)~~ (16) "Secretary" means the secretary of the Department of Economic
 58 Development.

1 ~~or for the taxable period in which initial certification authorizes the credit to be~~
2 ~~taken.~~ If the tax credit allowed pursuant to this Section exceeds the amount of such
3 taxes due for such tax period, then any unused credit may be carried forward as a
4 credit against subsequent tax liability for a period not to exceed ten years.

5 * * *

6 (4) Transferability of the credit. Any motion picture tax credits not
7 previously claimed by any taxpayer against its income corporation franchise,
8 severance, and sales and use tax may be transferred or sold to another Louisiana
9 taxpayer or to the office, subject to the following conditions:

10 * * *

11 (f)

12 * * *

13 (ii) For projects which receive initial certification on and after July 1, 2009,
14 the investor or motion picture production company who earned the motion picture
15 investor tax credits pursuant to such certification may transfer the credits to the
16 office for eighty-five percent of the face value of the credits in accordance with the
17 procedures and requirements of Item (i) of this Subparagraph.

18 * * *

19 D. Certification and administration.

20 (1)(a) The secretary of the Department of Economic Development and the
21 office shall determine through the promulgation of rules the minimum criteria that
22 a project must meet in order to qualify according to this Section. ~~The secretary, the~~
23 ~~office, and the division of administration shall determine through the promulgation~~
24 ~~of rules the minimum criteria that a project must meet in order to qualify according~~
25 ~~to this Section. However, rulemaking authority shall not extend to the setting of a~~
26 ~~specific cap, proportion, percentage, or similar limit or restriction with regard to the~~
27 ~~scope or qualification of production expenditures as defined in this Section. The~~
28 ~~qualification of production expenditures shall be confirmed through the audit process~~
29 ~~associated with final certification as provided for in Subparagraph (2)(d) of this~~
30 Subsection.

31 * * *

32 (2)

33 * * *

34 (b) If the application is incomplete, additional information may be requested
35 ~~prior to further action~~ by the office or the secretary of the Department of Economic
36 Development. An application fee shall be submitted with the application based on
37 the following:

38 * * *

39 (c) The office and the secretary shall submit their initial certification of a
40 project as a state-certified production to ~~investors~~ both the motion picture production
41 company and to the secretary of the Department of Revenue ~~indicating~~ . The initial
42 certification shall indicate the total base investment which shall be expended in the
43 state on the state-certified production. ~~The initial certification and~~ shall include a
44 unique identifying number for each state-certified production.

45 (d) Prior to any final certification of the state-certified production, the
46 motion picture production company shall submit to the office and the secretary an
47 audit of the production expenditures certified by an independent certified public
48 accountant as determined by rule. The office and the secretary shall review the audit;
49 and the production expense details, and may require additional information needed
50 to make a determination. Upon approval of the audit, the office and the secretary
51 shall issue a final tax credit certification letter indicating the amount of tax credits
52 certified for the state-certified production to the ~~investors~~ motion picture production
53 company. The rules required by this Subparagraph shall, at a minimum, require that:

54 * * *

55 (3) The secretary of the Department of Revenue, in consultation with the
56 office and the secretary of the Department of Economic Development shall
57 promulgate such rules and regulations as are necessary to carry out the intent and
58 purposes of this Section in accordance with the general guidelines provided herein.
59 However, rulemaking authority shall not extend to the setting of a specific cap,

1 proportion, percentage, or similar limit or restriction with regard to the scope or
 2 qualification of production expenditures as defined in this Section. The qualification
 3 of production expenditures shall be confirmed through the audit process associated
 4 with final certification as provided for in Subparagraph (2)(d) of this Subsection.

5 * * *

6 (6) Prior to any final certification of a state-certified production, the motion
 7 picture production company applying for the credit must ensure and be able to
 8 demonstrate that all taxes related to production expenditures paid to an individual,
 9 or to a loan out, personal services corporation, professional employer organization,
 10 or employee leasing company for the services of an individual that are performed in
 11 this state are withheld and paid to this state pursuant to R.S. 47:112. Any amounts
 12 so withheld shall be deemed to have been withheld by the loan out, personal services
 13 corporation, professional employer organization, or employee leasing company on
 14 wages paid to its employees for services performed in Louisiana.

15 ~~(6)~~ (7)(a) With input from the Legislative Fiscal Office, the office shall
 16 prepare a written report to be submitted to the Senate Committee on Revenue and
 17 Fiscal Affairs and the House of Representatives Committee on Ways and Means no
 18 less than sixty days prior to the start of the Regular Session of the Legislature in
 19 2007, and every second year thereafter. The report shall include the overall impact
 20 of the tax credits, the amount of the tax credits issued, the number of net new jobs
 21 created, the amount of Louisiana payroll created, the economic impact of the tax
 22 credits and film industry, and any other factors that describe the impact of the
 23 program.

24 (b) For the year 2015, the report shall include a long term strategic plan for
 25 the development of an indigenous self-sustaining entertainment industry and shall
 26 include recommendations for legislative and policy changes that will help reduce
 27 industry dependence on tax credits and government subsidy.

28 (c) The long-term plan with recommendations shall be developed by a
 29 committee of industry experts named "The Entertainment Industry Advisory
 30 Committee", hereafter referred to as "committee". The committee shall meet a
 31 minimum of eight times without compensation and will convene no later than
 32 December 1, 2013. The committee's final report shall be due to the office, the House
 33 Committee on Ways and Means, and the Senate Committee on Revenue and Fiscal
 34 Affairs no later than February 1, 2015.

35 (d) The committee shall be appointed by the secretary of the Louisiana
 36 Department of Economic Development and shall be composed of the following:

37 (i) The director of the Office of Entertainment Industry Development;

38 (ii) The secretary of the Department of Economic Development, or his
 39 designee;

40 (iii) The chairman of the House Committee on Ways and Means, or his
 41 designee;

42 (iv) The chairman of the Senate Committee on Revenue and Fiscal Affairs,
 43 or his designee;

44 (v) An economist with the Legislative Fiscal Office;

45 (vi) Three representatives of the entertainment business community selected
 46 from a list provided by the Louisiana Film and Entertainment Association;

47 (vii) A representative of the banking or investment community with
 48 experience in film financing, start up investment or intellectual property selected
 49 from a list provided by the Louisiana Bankers Association;

50 (viii) A representative from a Louisiana university which offers degreed
 51 programs in at least two of the following areas: film, music business, animation,
 52 video game development, or dramatic arts.

53 (e) Any expenses incurred by the committee for research, facilitation, or
 54 compilation of the strategic plan may be paid from the Entertainment Promotion and
 55 Marketing Fund, but shall not exceed a total of twenty-five thousand dollars.

56 ~~(7)~~ (8) The Department of Economic Development may request an additional
 57 audit of the expenditures submitted by the motion picture production company at the
 58 cost of the motion picture production company.

