

Regular Session, 2013

HOUSE BILL NO. 693

BY REPRESENTATIVE LEGER

TAX CREDITS: Authorizes the use of motion picture investor tax credits against corporation franchise and severance taxes

1 AN ACT

2 To amend and reenact R.S. 47:6007(B), (C)(1)(introductory paragraph), (c)(introductory

3 paragraph) and (d), (2)(introductory paragraph), (4)(introductory paragraph) and

4 (f)(ii), (D)(1)(a), (2)(b)(introductory paragraph), (c), and (d)(introductory paragraph),

5 (3), (6), (7), and (8), (E), and (F)(3) and to enact R.S. 47:6007(C)(1)(e), (D)(9), and

6 (F)(4), relative to tax credits; to provide with respect to the motion picture investor

7 income tax credit; to provide for definitions; to provide for the amount of tax credits;

8 to provide for requirements for receipt of tax credits; to provide with respect to

9 rulemaking; to provide with respect to a long-term strategic plan; to establish a

10 committee and provide for its membership; to provide with respect to the recapture

11 of tax credits; to authorize use of the credit against corporation franchise tax; to

12 provide for applicability; and to provide for related matters.

13 Be it enacted by the Legislature of Louisiana:

14 Section 1. R.S. 47:6007(B), (C)(1)(introductory paragraph), (c)(introductory

15 paragraph) and (d), (2)(introductory paragraph), (4)(introductory paragraph) and (f)(ii),

16 (D)(1)(a), (2)(b)(introductory paragraph), (c), and (d)(introductory paragraph), (3), (6), (7),

17 and (8), (E), and (F)(3) are hereby amended and reenacted and R.S. 47:6007(C)(1)(e),

18 (D)(9), and (F)(4) are hereby enacted to read as follows:

19 §6007. Motion picture investor tax credit

20 * * *

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

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

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

9 (3) "Box rental" means private property owned by an employee or individual
10 contractor and leased to a state-certified production for use in Louisiana on a state-
11 certified production, which is designated as additional income on a W-2 or 1099
12 federal income tax form.

13 ~~(3)~~(4) "Expenditure" means actual cash or cash equivalent exchanged for
14 goods or services.

15 ~~(2) "Expended~~ (5) "Expenditure in the state" means an expenditure to lease
16 immovable property located in the state; an expenditure as compensation for services
17 performed in the state; or an expenditure to purchase or lease tangible personal
18 property from a source within the state where the transaction is subject to the state
19 sales or lease tax provisions of Title 47 of the Louisiana Revised Statutes of 1950.
20 A transaction that is subject to the state sales or lease tax provisions of Title 47 of the
21 Louisiana Revised Statutes of 1950 shall include transactions which are also subject
22 to a statutory exclusion or exemption.

23 ~~(4)~~(6) "Headquartered in Louisiana" means a corporation incorporated in
24 Louisiana or a partnership, limited liability company, or other business entity
25 domiciled ~~and in Louisiana and having its principal place of business in Louisiana.~~
26 An entity shall not be deemed to be headquartered in Louisiana for the purpose of
27 producing nationally or internationally distributed motion pictures as defined in this
28 Section: if it is controlled, directly or indirectly, by a nonresident individual or entity.

1 ~~(5)~~(7) "Motion picture" means a nationally or internationally distributed
2 feature-length film, video, television pilot, television series, television movie of the
3 week, animated feature film, animated television series, or commercial made in
4 Louisiana, in whole or in part, for theatrical or television viewing. The term "motion
5 picture" shall not include the production of television coverage of news and athletic
6 events.

7 ~~(6)~~(8) "Motion picture production company" means a company engaged in
8 the business of producing nationally or internationally distributed motion pictures
9 as defined in this Section. Motion picture production company shall not mean or
10 include any company owned, affiliated, or controlled, in whole or in part, by any
11 company or person which is in default on a loan made by the state or a loan
12 guaranteed by the state, nor with any company or person who has ever declared
13 bankruptcy under which an obligation of the company or person to pay or repay
14 public funds or monies was discharged as a part of such bankruptcy.

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

19 ~~(8)~~(10) "Payroll" means all salary, wages, and other compensation, including
20 benefits paid to an employee for services relating to a state-certified production and
21 taxable in this state. However, "payroll" for purposes of the additional tax credit for
22 Louisiana-resident payroll shall exclude any portion of an individual salary in excess
23 of one million dollars.

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

1 ~~(9)~~(12) "Production expenditures" means preproduction, production, and
2 qualified postproduction expenditures in ~~this~~ the state directly relating to a state-
3 certified production, including without limitation the following: set construction and
4 operation; wardrobes, makeup, accessories, and related services; costs associated
5 with photography and sound synchronization, lighting, and related services and
6 materials; editing and related services; rental of facilities and equipment; leasing of
7 vehicles; costs of food and lodging; digital or tape editing, film processing, transfer
8 of film to tape or digital format, sound mixing, special and visual effects; financing
9 and interest costs if such financing or loan is obtained from a financier headquartered
10 in Louisiana; and payroll. This term shall include the cost of customization or
11 custom development of a tangible good specifically designed for use by a state-
12 certified production in Louisiana if the customization services are performed in
13 Louisiana. This term shall not include expenditures for marketing and distribution,
14 ~~non-production~~ nonproduction related overhead, amounts reimbursed by the state or
15 any other governmental entity, costs related to the transfer of tax credits, amounts
16 that are paid to persons or entities as a result of their participation in profits from the
17 exploitation of the production, the application fee, box or kit rentals paid to an
18 individual who is not a Louisiana resident for the use of property that does not
19 originate from a source within the state, or state or local taxes.

20 (13) "Qualified post-production expenditures" means only such costs that are
21 attributable to the use of tangible property or the performance of post-production
22 services by a qualified post-production facility within the state and related to a state-
23 certified production. This shall include only those costs and their pro rata portions
24 which occur directly within the state, no cost or salary which is incurred outside of
25 Louisiana can be considered eligible; thus services contracted to subsidiaries, third-
26 party companies, satellite offices or individuals performing the work outside the state
27 are not qualified post-production costs. A production company claiming qualified
28 post-production expenditures must sign a statement attesting that, to the best of its
29 knowledge, all services being submitted as eligible meet the requirements of this

1 Paragraph. Additionally, it shall be required that the qualified post-production
2 facility performing the claimed post-production services must sign a statement
3 attesting that all claimed qualified post-production expenditures meet the
4 requirements of this Paragraph. Should it be found that a post-production facility
5 fradulently misrepresents the eligibility of expenditures, such post-production facility
6 shall be deemed ineligible to serve as a qualified post-production facility for a period
7 of eighteen months.

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

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

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

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

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

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

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

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

5 ~~(10)~~(15) "Resident" or "resident of Louisiana" means a natural person
6 domiciled in the state who has a driver's license issued by the state of Louisiana, and
7 who can provide either a utility bill or real property lease which indicates the same
8 address as that on the driver's license, and which document is dated at least six
9 months and no more than one year prior to employment. A person who maintains
10 a permanent place of abode within the state and spends in the aggregate more than
11 six months of each year within the state shall be presumed to be domiciled in the
12 state.

13 ~~(11)~~(16) "Secretary" means the secretary of the Department of Economic
14 Development.

15 ~~(12)~~(17) "Source within the state" means a resident, corporation, partnership,
16 limited liability company, or other business entity, or division or subsidiary thereof,
17 with a physical facility in Louisiana, operating with posted business hours and
18 employing at least one full-time equivalent employee.

19 (18) "Special events" means an event that occurs irrespective of filming,
20 such as Mardi Gras, music festivals, concerts, or other similarly situated events.

21 (19) "Special event production expenditures" means only costs directly
22 related to filming the special event.

23 (20) For state-certified productions receiving initial certification on or after
24 January 1, 2014, costs that are indirectly related to filming shall not qualify for tax
25 credits. Such indirect costs shall include, but not be limited to artist compensation
26 for festival or concert appearances or costs associated with the usual activities of a
27 reality show or documentary.

28 ~~(13)~~(21) "State" means the state of Louisiana.

1 picture production company shall be allowed an additional tax credit of five percent
2 of such payroll; however, if such payroll contains compensation to any individual
3 which exceeds one million dollars, this additional credit shall exclude any
4 compensation for that individual that exceeds one million dollars.

5 (bb) To the extent that base investment is expended on payroll for below the
6 line crewmembers that are not residents of Louisiana employed in connection with
7 a state-certified production, each motion picture production company shall be
8 allowed a tax credit of twenty percent of such payroll.

9 (ii) If the total base investment is greater than fifty thousand dollars, but less
10 than three hundred thousand dollars, each investor who can prove Louisiana
11 residency for a minimum of three years shall be allowed a tax credit for thirty
12 percent of the base investment made by that investor.

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

15 (2) The credit shall be allowed against the income and corporation franchise
16 tax for the taxable period in which the credit is earned ~~or for the taxable period in~~
17 ~~which initial certification authorizes the credit to be taken.~~ If the tax credit allowed
18 pursuant to this Section exceeds the amount of such taxes due for such tax period,
19 then any unused credit may be carried forward as a credit against subsequent tax
20 liability for a period not to exceed ten years.

21 * * *

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

26 * * *

27 (f)

28 * * *

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

6 * * *

7 D. Certification and administration.

8 (1)(a) The secretary of the Department of Economic Development and the
9 office shall determine through the promulgation of rules the minimum criteria that
10 a project must meet in order to qualify according to this Section. ~~The secretary, the~~
11 ~~office, and the division of administration shall determine through the promulgation~~
12 ~~of rules the minimum criteria that a project must meet in order to qualify according~~
13 ~~to this Section.~~ However, rulemaking authority shall not extend to the setting of a
14 specific cap, proportion, percentage, or similar limit or restriction with regard to the
15 scope or qualification of production expenditures as defined in this Section. The
16 qualification of production expenditures shall be confirmed through the audit process
17 associated with final certification as provided for in Subparagraph (2)(d) of this
18 Subsection.

19 * * *

20 (2)

21 * * *

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

26 * * *

27 (c) The office and the secretary shall submit their initial certification of a
28 project as a state-certified production to ~~investors~~ both the motion picture production
29 company and to the secretary of the Department of Revenue ~~indicating~~. The initial

1 certification shall indicate the total base investment which shall be expended in the
2 state on the state-certified production. ~~The initial certification~~ and shall include a
3 unique identifying number for each state-certified production.

4 (d) Prior to any final certification of the state-certified production, the
5 motion picture production company shall submit to the office and the secretary an
6 audit of the production expenditures certified by an independent certified public
7 accountant as determined by rule. The office and the secretary shall review the audit;
8 and the production expense details, and may require additional information needed
9 to make a determination. Upon approval of the audit, the office and the secretary
10 shall issue a final tax credit certification letter indicating the amount of tax credits
11 certified for the state-certified production to the ~~investors~~ motion picture production
12 company. The rules required by this Subparagraph shall, at a minimum, require that:

13 * * *

14 (3) The secretary of the Department of Revenue, in consultation with the
15 office and the secretary of the Department of Economic Development shall
16 promulgate such rules and regulations as are necessary to carry out the intent and
17 purposes of this Section in accordance with the general guidelines provided herein.
18 However, rulemaking authority shall not extend to the setting of a specific cap,
19 proportion, percentage, or similar limit or restriction with regard to the scope or
20 qualification of production expenditures as defined in this Section. The qualification
21 of production expenditures shall be confirmed through the audit process associated
22 with final certification as provided for in Subparagraph (2)(d) of this Subsection.

23 * * *

24 (6) Prior to any final certification of a state-certified production, the motion
25 picture production company applying for the credit must ensure and be able to
26 demonstrate that all taxes related to production expenditures paid to an individual,
27 or to a loan out, personal services corporation, professional employer organization,
28 or employee leasing company for the services of an individual that are performed in
29 this state are withheld and paid to this state pursuant to R.S. 47:112. Any amounts

1 so withheld shall be deemed to have been withheld by the loan out, personal services
2 corporation, professional employer organization, or employee leasing company on
3 wages paid to its employees for services performed in Louisiana.

4 ~~(6)(7)(a)~~ With input from the Legislative Fiscal Office, the office shall
5 prepare a written report to be submitted to the Senate Committee on Revenue and
6 Fiscal Affairs and the House of Representatives Committee on Ways and Means no
7 less than sixty days prior to the start of the Regular Session of the Legislature in
8 2007, and every second year thereafter. The report shall include the overall impact
9 of the tax credits, the amount of the tax credits issued, the number of net new jobs
10 created, the amount of Louisiana payroll created, the economic impact of the tax
11 credits and film industry, and any other factors that describe the impact of the
12 program.

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

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

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

26 (i) The director of the Office of Entertainment Industry Development;
27 (ii) The secretary of the Department of Economic Development, or his
28 designee;

1 (iii) The chairman of the House Committee on Ways & Means, or his
2 designee;

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

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

6 (vi) Three representatives of the entertainment business community selected
7 from a list provided by the Louisiana Film and Entertainment Association.

8 (vii) A representative of the banking or investment community with
9 experience in film financing, start up investment or intellectual property selected
10 from a list provided by the Louisiana Bankers Association.

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

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

17 ~~(7)~~(8) The Department of Economic Development may request an additional
18 audit of the expenditures submitted by the motion picture production company at the
19 cost of the motion picture production company.

20 ~~(8)~~(9) As a condition for receiving certification of tax credits under this
21 Section, state-certified productions may be required to display ~~an animated~~ a state
22 brand or logo, or both, which includes a fleur de lis as prescribed by the secretary of
23 the Department of Economic Development as long as the ~~animated~~ state brand or
24 logo is not contrary to any rule or regulation of the Federal Communications
25 Commission.

26 E. Recapture of credits. If the office finds that monies for which ~~an investor~~
27 a motion picture production company received tax credits according to this Section
28 are not ~~invested in and~~ expended with respect to a state-certified production ~~within~~
29 ~~twenty-four months of the date that such credits are earned, then the investor's then~~

Present law provides for definitions, eligibility requirements, and program administration.

Proposed law makes numerous changes to provisions of present law which are applicable to productions certified after Jan. 1, 2014.

Proposed law authorizes the use of tax credits against corporation franchise tax in addition to income taxes as provided in present law.

Proposed law changes the definitions of "qualified expenditures", "resident", "source within the state", and provides new definitions for purposes of the tax credit program, including "qualified post-production expenditures", "post-production work", "qualified post-production facility", and "special event".

Proposed law changes present law by reducing the value of tax credits based on payroll expenditures for below-the-line crewmembers who are not La. residents from 30% to 20%.

Proposed law extends the credit to smaller productions by allowing individual investors to receive tax credits equal to 30% of their investment in a production with a total base investment of greater than \$50,000 but less than \$300,000.

Proposed law limits rulemaking relative to the setting of caps or percentages with regard to the scope or qualification of expenditures.

Proposed law provides that no tax credits transferred to another La. taxpayer shall be subject to recovery or recapture. Once tax credits are granted and issued, the Dept. of Economic Development and Dept. of Revenue shall have no right, except in the case of possible material misrepresentation or fraud, to conduct any further or additional review, examination, or audit of the production expenditures for which such tax credits were granted. The sole and exclusive remedy of the Dept. of Economic Development and Dept. of Revenue shall be to seek collection of the amount of such tax credits from the entity that committed the fraud or misrepresentation.

Proposed law establishes "The Entertainment Advisory Committee" to develop a long term strategic plan for the development of an indigenous self-sustaining entertainment industry.

Proposed law provides for the membership of the committee and requires that the committee provide a report to the House Committee on Ways and Means and Senate Committee on Revenue and Fiscal Affairs no later than Feb. 1, 2015.

Applicable to tax years beginning on or after Jan. 1, 2014.

(Amends R.S. 47:6007(B), (C)(1)(intro. para.), (c)(intro. para.) and (d), (2)(intro. para.), (4)(intro. para.) and (f)(ii), (D)(1)(a), (2)(b)(intro. para.), (c), and (d)(intro. para.), (3), (6), (7), and (8), (E), and (F)(3); Adds R.S. 47:6007(C)(1)(e), (D)(9), and (F)(4))

Summary of Amendments Adopted by House

Committee Amendments Proposed by House Committee on Ways and Means to the original bill.

1. Deletes authorization for use of tax credits against severance and sales and use taxes.
2. Revises and adds various definitions, including "production expenditures".
3. Changes the value of the tax credit for nonresident below the line crew from 30% to 20%.

4. Adds a new tax credit for small productions.
5. Limits rulemaking authority.
6. Adds a new Entertainment Advisory Committee for purposes of developing a strategic plan for the entertainment industry in La.