

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), (C)(4)(b), (D)(2)(c)
3 and (d) and to enact R.S. 47:6007(B)(15) and (16), (D)(9), and 6007.1, relative to the
4 motion picture investor tax credit; to provide for definitions; to provide for
5 production audit reports and requirements; to provide for submission of a production
6 audit report prior to being certified as a state-certified production for application for
7 the credit; to provide for a production audit report; to provide relative to notification
8 of transfer or sale of tax credits; 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), (C)(4)(b), (D)(2)(c) and
11 (d) are hereby amended and reenacted and R.S. 47:6007(B)(15) and (16), (D)(9), and 6007.1
12 are hereby enacted to read as follows:

13 §6007. Motion picture investor tax credit

14 * * *

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

16 * * *

17 (9) "Production audit report" means an audit report issued by a

1 qualified accountant who is unrelated to the motion picture production
2 company and that is a report of the qualified accountant's audit of the motion
3 picture production's cost report of production expenditures. The production
4 audit report shall contain an opinion from the qualified accountant stating that
5 the production's cost report of production expenditures presents fairly, in all
6 material aspects, the production expenditures expended in Louisiana pursuant
7 to the provisions of this Section. The production audit shall be performed
8 pursuant to the qualified sampling and verification procedures provided in R.S.
9 47:6007.1 and shall require:

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

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

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

16 (d) The production audit report to contain a certification that the
17 qualified accountant is unrelated to the motion picture production company.

18 (e) The production audit report to be dated as of the date of completion
19 of the qualified accountant's field work.

20 (f) The production audit report to contain a statement of
21 acknowledgment by the qualified accountant that the state is relying on the
22 qualified cost report in the issuance of the tax credits under the provisions of
23 this Section.

24 (10) "Production expenditures" means preproduction, production, and
25 postproduction expenditures in this state directly relating to a state-certified
26 production, including without limitation the following: set construction and
27 operation; wardrobes, makeup, accessories, and related services; costs associated
28 with photography and sound synchronization, lighting, and related services and
29 materials; editing and related services; rental of facilities and equipment; leasing of

1 vehicles; costs of food and lodging; digital or tape editing, film processing, transfer
 2 of film to tape or digital format, sound mixing, special and visual effects; and
 3 payroll. This term shall not include expenditures for marketing and distribution, non-
 4 production related overhead, amounts reimbursed by the state or any other
 5 governmental entity, costs related to the transfer of tax credits, amounts that are paid
 6 to persons or entities as a result of their participation in profits from the exploitation
 7 of the production, the application fee, or state or local taxes.

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

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

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

18 ~~(12)~~ **(14)** "Source within the state" means a physical facility in Louisiana,
 19 operating with posted business hours and employing at least one full-time equivalent
 20 employee.

21 ~~(13)~~ **(15)** "State" means the state of Louisiana.

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

26 * * *

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

28 * * *

29 (4) Transferability of the credit. Any motion picture tax credits not

1 (2)(a) * * *

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

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

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

1 Subparagraph shall, at a minimum, require that:

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

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

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

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

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

14 * * *

15 **(9) It is recognized that, while legitimate related party transactions often**
16 **occur as production expenditures, some related party transactions may be**
17 **conducted in such a manner as to abuse the purpose and intent of the program.**
18 **Not later than January 1, 2014, the secretary of the Department of Economic**
19 **Development and the office shall promulgate rules, in accordance with the**
20 **Administrative Procedure Act, for the allowance of tax credits for production**
21 **expenditures made in related party transactions.**

22 **§6007.1. Motion picture investor tax credit; qualified sampling and verification**
23 **procedures**

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

27 **(1) Obtain the cost report of all production expenditures for the**
28 **production of the motion picture production company and verify the**
29 **mathematical accuracy of the report.**

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

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

7 **(4) Foot the payroll registers mentioned in Paragraph (3) of this**
8 **Subsection for mathematical accuracy and agree the total to the cost report of**
9 **production expenditures mentioned in Paragraph (1) of this Subsection.**

10 **(5) Obtain the detailed listing of non-payroll expenditures for**
11 **production of the motion picture production company. This report should**
12 **indicate the payee, the date of payment, the date that the payment cleared the**
13 **bank, and amount of the payment.**

14 **(6) Foot the detailed listing of non-payroll expenditures mentioned in**
15 **Paragraph (5) of this Subsection for mathematical accuracy and agree the total**
16 **to the cost report of production expenditures mentioned in Paragraph (1) of this**
17 **Subsection.**

18 **B. A qualified accountant shall perform the following minimum**
19 **verification procedures when producing a production audit report under the**
20 **provisions of R.S. 47:6007:**

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

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

1 the production for further testing.

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

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

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

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

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

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

19 (e) Verify that the payroll expenditures were actually made by the
20 motion picture production company as evidenced by deductions in the bank
21 account statements maintained by the motion picture production company and
22 that the disbursement cleared the bank during the period in question.

23 (f) Review employee's personnel file, verifying that the individual is a
24 natural person domiciled in or who maintains a permanent place of abode
25 within this state and spends in the aggregate more than six months of each year
26 within this state.

27 (5) From the detailed payroll registers referenced in Paragraph (A)(3)
28 of this Section, segregate the gross payroll for all non-Louisiana residents and
29 agree the total to the non-Louisiana payroll indicated on either the cost report

1 of production expenditures or the footnotes to the cost report of production
2 expenditures.

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

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

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

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

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

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

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

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

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

6 **(10) Excluding those expenditures already selected for further testing**
7 **in Paragraph (9) of this Subsection, select an additional sample consisting of the**
8 **lesser of one-hundred twenty individual disbursements or fifty percent of the**
9 **non-payroll disbursements not already selected in Paragraph (9) of this**
10 **Subsection from the detailed listing of non-payroll expenditures for further**
11 **testing.**

12 **(11) For each disbursement selected for testing in Paragraphs (9) and**
13 **(10) of this Subsection, perform the following procedures, detailing any**
14 **exceptions noted:**

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

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

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

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

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

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

29 **(2) Separate expenditures by calendar year, as well as the aggregate**

1 **project totals.**

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

3 **D. The sampling or verification procedures contained in this Section are**
 4 **minimum sampling and verification procedures that an auditor shall perform.**
 5 **These minimum standards shall not relieve an auditor of any professional**
 6 **obligations associated with the issuance of the audit opinion according to**
 7 **auditing standards generally accepted in the United States as required by R.S.**
 8 **42:6007. Notwithstanding any provision of law to the contrary, if an auditor**
 9 **believes that additional sampling and verification of any transaction is**
 10 **necessary to enable the auditor to render an audit opinion, such additional**
 11 **sampling and verification shall be authorized. The Department of Economic**
 12 **Development and the office may require additional sampling and verification**
 13 **procedures. The Department of Economic Development may promulgate rules,**
 14 **in accordance with the Administrative Procedure Act, to implement the**
 15 **provisions of this Subsection.**

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 Nancy Vicknair.

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 to contain a certification that the qualified accountant is unrelated to the motion picture production company.
- (5) The production audit report be dated as of the date of completion of the qualified accountant's field work.
- (6) 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.

With respect to the transferability of motion picture tax credits, present law authorizes any credits not previously claimed by any taxpayer against its income tax to be transferred or sold to another La. taxpayer or to the office.

Proposed law retains present law.

Present law requires transferors and transferees to submit to the office and to the Dept. of Revenue in writing, a notification of any transfer or sale of tax credits within 30 days after the transfer or sale of such tax credits.

Proposed law changes the time frame for providing such notification from 30 days to seven days.

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 60 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 120 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 requires DED and the office to promulgate rules in accordance with the APA not later than Jan. 1, 2014, for the allowance of tax credits for production expenditures made in related party transactions.

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

Proposed law requires authorization of additional sampling and verification of any transaction if an auditor believes it is necessary in order to render an audit opinion. Authorizes DED and the office to require additional sampling and verification procedures, and authorizes DED to promulgate rules, in accordance with the Administrative Procedure

Act, in order to implement the provisions of proposed law.

Effective August 1, 2013.

(Amends R.S. 47:6007(B)(9), (10), (11), (12), (13), (14), (C)(4)(b), (D)(2)(c) and (d); adds R.S. 47:6007(B)(15) and (16), (D)(9) 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.

Senate Floor Amendments to engrossed bill

1. Make technical changes.
2. Require the production audit report to contain a certification specifying that the qualified accountant is unrelated to the motion picture production company.
3. Require transferors and transferees to provide written notification to the Dept. of Revenue and the office of any transfer or sale of tax credits within 7 days after such transfer or sale.
4. Require the secretary of DED and the office to promulgate rules in accordance with the Administrative Procedure Act not later than Jan. 1, 2014, for the allowance of tax credits for production expenditures in related party transactions.
5. Remove requirements prohibiting motion picture investor tax credits from being used for financing fees, interest, or payments of a similar nature paid to related parties.
6. Remove requirement that motion picture investor tax credits be allowed only if received by investors who own 20% or less of the financial rewards based on certain criteria.
7. Remove requirement that motion picture investor tax credits not be allowed for any percentage of the financial awards, but only be allowed for actually paid financing fees and interest.
8. Change the time frame for submission of the initial certification of a project

as a state-certified production from within 30 days to within 60 days of receipt of all required information.

9. Change the time frame for issuance of a final tax credit certification letter to investors from 60 days to 120 days after receipt of the qualified cost report.