

2015 Regular Session

HOUSE BILL NO. 829

BY REPRESENTATIVES ROBIDEAUX, BARROW, HENRY BURNS, HUNTER, AND
PATRICK WILLIAMS

TAX CREDITS: Provides relative to the motion picture investor tax credit

1 AN ACT

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

3 (4)(f)(ii), (D)(4)(ii)(aa) and to enact R.S. 47:6007(C)(1)(e), relative to income tax

4 credits; to provide with respect to the motion picture investor tax credit; to provide

5 for certain definitions; to provide for the certification of credits; to authorize credits

6 for certain investors; to authorize a credit for certain state certified productions

7 which employ certain residents; to authorize a credit for investments on certain

8 music; to provide for an annual program cap on the tax credit; to provide for a cap

9 on certain productions; to provide for the transfer of credits; to provide for the value

10 of a credit transferred to the state; to provide for use of the monies collected as a

11 result of the application fee; to provide for tax credit requirements and limitations;

12 to provide for an effective date; 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) and (d), (2) and

15 (4)(f)(ii), (D)(4)(ii)(aa) are hereby amended and reenacted and R.S. 47:6007(C)(1)(e) is

16 hereby enacted to read as follows:

17 §6007. Motion picture investor tax credit

18 * * *

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

2 (1) "Above the line (ATL) services" means services such as those of a
3 producer, executive producer, line producer, co-producer, assistant producer, actor,
4 director, casting director, screenwriter, and other services performed by personnel
5 of the production that are associated with the creative or financial control of a
6 production and customarily considered above the line services in the film and
7 television industry.

8 ~~(1)~~ (2) "Base investment" means cash or cash equivalent investment made
9 and used for production expenditures in the state for a state-certified production.

10 ~~(2)~~ (3) "Expended in the state" means an expenditure to lease immovable
11 property located in the state; an expenditure as compensation for services performed
12 in the state; or an expenditure to purchase or lease tangible personal property within
13 the state where the transaction is subject to the state sales or lease tax provisions of
14 Title 47 of the Louisiana Revised Statutes of 1950. A transaction that is subject to
15 the state sales or lease tax provisions of Title 47 of the Louisiana Revised Statutes
16 of 1950 shall include transactions which are also subject to a statutory exclusion or
17 exemption.

18 ~~(3)~~ (4) "Expenditure" means actual cash or cash equivalent exchanged for
19 goods or services.

20 ~~(4)~~ (5) "Headquartered in Louisiana" means a corporation incorporated in
21 Louisiana or a partnership, limited liability company, or other business entity
22 domiciled and headquartered in Louisiana for the purpose of producing nationally
23 or internationally distributed motion pictures as defined in this Section.

24 ~~(5)~~ (6) "Louisiana resident company" means a company licensed to conduct
25 business in the state of Louisiana which is owned one hundred percent by a
26 Louisiana resident or residents as defined in this Section. A Louisiana resident
27 company is required to file a Louisiana income tax return and maintain a physical
28 location in the state.

1 (7) "Motion picture" means a nationally or internationally distributed
2 feature-length film, short film, video, television pilot, television series, television
3 movie of the week, animated feature film, animated short film, animated television
4 series, or commercial, documentary, made in Louisiana, in whole or in part, for
5 theatrical, ~~or television viewing~~, or any online digital platform viewing approved by
6 the office and established by rule in accordance with the provisions of the
7 Administrative Procedure Act. The term "motion picture" shall not include the
8 production of television coverage of news and athletic events.

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

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

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

26 (11) "Principal place of business" means the state where the administrative
27 or management activities of a business are conducted. A company claiming that its
28 principal place of business is in Louisiana shall not have any fixed locations outside
29 of Louisiana in which administrative or management activities are conducted, and

1 the company shall be required to maintain a physical location in the state. The
2 company shall be licensed to conduct business in this state, shall be required to file
3 a Louisiana income tax return, and shall employ a minimum of three full-time
4 employees in this state.

5 ~~(9)~~ (12) "Production audit report" means an audit report issued by a qualified
6 accountant who is unrelated to the motion picture production company and that is a
7 report of the qualified accountant's audit of the motion picture production's cost
8 report of production expenditures. The production audit report shall contain an
9 opinion from the qualified accountant stating that the production's cost report of
10 production expenditures presents fairly, in all material aspects, the production
11 expenditures expended in Louisiana pursuant to the provisions of this Section. The
12 production audit shall require:

13 (a) The production audit report to be performed in accordance with the
14 auditing standards generally accepted in the United States.

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

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

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

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

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

26 ~~(10)~~ (13) "Production expenditures" means preproduction, production, and
27 postproduction expenditures incurred in this state directly relating to a state-certified
28 production, including without limitation the following: set construction and
29 operation; wardrobes, makeup, accessories, and related services; costs associated

1 with photography and sound synchronization, lighting, and related services and
2 materials; editing and related services; rental of facilities and equipment; leasing of
3 vehicles; costs of food and lodging; digital or tape editing, film processing, transfer
4 of film to tape or digital format, sound mixing, special and visual effects; and
5 payroll. The term "production expenditures" shall also include marketing and
6 promotion expenses of the state-certified production; however, the amount of
7 marketing and promotion expenses eligible for tax credits shall not exceed fifteen
8 percent of the total state certified tax credits for the production. This term shall not
9 include expenditures for ~~marketing and~~ distribution, non-production related
10 overhead, amounts reimbursed by the state or any other governmental entity, costs
11 related to the transfer of tax credits, amounts that are paid to persons or entities as
12 a result of their participation in profits from the exploitation of the production, the
13 application fee, or state or local taxes.

14 ~~(11)~~ (14) "Qualified accountant" means an independent certified public
15 accountant authorized to practice in this state who has sufficient knowledge of
16 accounting principles and practices generally recognized in the film and television
17 industry.

18 ~~(12)~~ (15) "Resident" or "resident of Louisiana" means a natural person who
19 is a legal resident and who has been domiciled in the state and has maintained a
20 permanent place of abode in this state for no less than twelve consecutive months.
21 ~~A person who maintains a permanent place of abode within the state and spends in~~
22 ~~the aggregate more than six months of each year within the state shall be presumed~~
23 ~~to be domiciled in the state.~~

24 ~~(13)~~ (16) "Secretary" means the secretary of the Department of Economic
25 Development.

26 ~~(14)~~ (17) "Source within the state" means a physical facility in Louisiana,
27 operating with posted business hours and employing at least one full-time equivalent
28 employee.

29 ~~(15)~~ (18) "State" means the state of Louisiana.

1 line services shall be expended on residents of Louisiana and that seventy-five
2 percent or more of the total number of jobs in the production shall be jobs in which
3 the applicant will employ residents of Louisiana. Failure to comply with these
4 requirements for which certification of the tax credits is granted shall void the
5 certification and no tax credits shall be certified by the office or the secretary or
6 earned by the applicant.

7 (iii) If the total base investment is greater than three hundred thousand
8 dollars and the state certified production is based on a screenplay, the copyright of
9 which or the right of use of the copyright of which, is owned by a resident of
10 Louisiana, a Louisiana resident company, or a Louisiana company with its principal
11 place of business in the state, each investor shall be allowed a tax credit of an
12 additional fifteen percent of the base investment.

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

18 (v) To the extent that the base investment is expended on music, the sound
19 recording copyright of which, or musical copyright of which, is owned in whole or
20 in part at no less than twenty-five percent by a resident of Louisiana or a Louisiana
21 company headquartered in the state with a majority ownership of residents of
22 Louisiana, each investor shall be allowed an additional tax credit of fifteen percent
23 of the base investment.

24 (d) For each fiscal year beginning on or after July 1, 2015, the maximum
25 amount of credits which may be certified by the office and the secretary shall not
26 exceed two hundred twenty-six million four hundred thousand dollars. If the total
27 amount of credits certified in any particular fiscal year exceeds the aggregate amount
28 of tax credits allowed for that year, the excess shall be treated as having been applied
29 for on the first day of the subsequent year. Beginning July 1, 2015, the maximum

1 amount of credits that may be certified for any single state certified production shall
2 not exceed thirty million dollars.

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

5 (2) The credit shall be allowed against the income tax for the taxable period
6 in which the credit is ~~earned or for the taxable period in which initial certification~~
7 ~~authorizes the credit to be taken~~ certified. If the tax credit allowed pursuant to this
8 Section exceeds the amount of such taxes due for such tax period, then any unused
9 credit may be carried forward as a credit against subsequent tax liability for a period
10 not to exceed ten years.

11 * * *

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

15 * * *

16 (f)

17 * * *

18 (ii) For projects which receive initial certification on and after July 1, 2009,
19 the investor who earned the motion picture investor tax credits pursuant to such
20 certification may transfer the credits to the office for ~~eighty-five~~ ninety percent of the
21 face value of the credits in accordance with the procedures and requirements of Item
22 (i) of this Subparagraph.

23 * * *

24 D. Certification and administration.

25 * * *

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

28 (ii)(aa) The production application fee provided for in Subparagraph (2)(b)
29 of this Subsection received by the office shall be deposited upon receipt in the state

1 treasury. After compliance with the requirements of Article VII, Section 9(B) of the
 2 Constitution of Louisiana relative to the Bond Security and Redemption Fund and
 3 prior to any money being placed into the general fund or any other fund, an amount
 4 equal to that deposited as required by this Item shall be credited by the treasurer to
 5 a special fund hereby created in the state treasury to be known as the Entertainment
 6 Promotion and Marketing Fund. The money in the fund shall be appropriated by the
 7 legislature to be used solely for promotion and marketing of Louisiana's
 8 entertainment industry or for costs associated with the administration of the motion
 9 picture investor tax credit program by the office and the secretary.

10 * * *

11 Section 2. This Act shall become effective on July 1, 2015; if vetoed by the governor
 12 and subsequently approved by the legislature, this Act shall become effective on July 1,
 13 2015, or on the day following such approval by the legislature, whichever is later.

DIGEST

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

HB 829 Engrossed

2015 Regular Session

Robideaux

Abstract: Defines "above the line services" for purposes of qualifying for the motion picture investor tax credit; adds an annual cap for the program and a cap per project; and increases the amount of the state buyback from 85% to 90% of face value of the credit.

Present law provides for an income tax credit for La. taxpayers for investment in state-certified productions earned at the time expenditures are made by a motion picture production company in a state-certified production. The amount of the credit is equal to 30% of the base investment made by the investor if the total base investment is more than \$300,000. Additionally provides for a credit equal to 5% of base investment expended on payroll for La. residents employed in connection with a state-certified production. However, this credit does not apply to the payroll of any one person that exceeds \$1 million. Present law further provides that the credit shall be allowed against the income tax for the taxable period in which the credit is earned or for the taxable period in which initial certification authorizes the credit to be taken.

Proposed law changes present law by providing that tax credits shall be earned at the time expenditures are certified rather than the time the expenditures are made and that the credits shall be allowed against income tax for the taxable period in which the credit is certified. Additionally, increases the amount of the tax credit for expenditures on payroll for La. residents from 5% to 10% and deletes the limitation of excluding the salary of any person that exceeds \$1 million.

Proposed law caps the maximum amount of credits which may be certified annually for the program by the office and the secretary at \$226.4 million and beginning July 1, 2015, caps the amount of credits available for any single state-certified production at \$30 million. Additionally provides that if the total amount of credits certified for a year exceeds the maximum amount of credits allowed for that year, the excess shall be treated as having been applied for on the first day of the subsequent year.

Proposed law adds credits for the following:

- (1) If the total base investment is greater than \$50,000 but less than \$300,000, each state certified production which has a director who can prove La. residency for a minimum of two years, shall be allowed a credit of 30% of the total base investment made by that investor. However, a condition for earning this tax credit includes a requirement that no less than 75% of the total amount of the applicant's expenditures for above the line services shall be expended on La. residents and that 75% or more of the total number of jobs in the production shall be filled by La. residents. Failure to comply with these requirements shall void the certification and no tax credits shall be earned by the applicant.
- (2) If the total base investment is greater than \$300,000 and the state certified production is based on a screenplay, the copyright or the right of use of the copyright of which, is owned by a La. resident, a La. resident company, or a La. company with its principal place of business in the state, each investor shall be allowed an additional tax credit of 15% of the base investment.
- (3) To the extent that the base investment is expended on music, the sound recording copyright or musical copyright of which, is owned in whole or in part at no less than 25% by a La. resident or a La. company headquartered in the state with a majority ownership of La. residents, each investor shall be allowed an additional tax credit of 15% of the base investment.

Proposed law defines "above the line (ATL) services" for purposes of defining expenditures eligible for the credit as services of a producer, executive producer, line producer, co-producer, assistant producer, actor, director, casting director, screenwriter, and other services performed by personnel of the production that are associated with the creative or financial control of a production and customarily considered above the line services in the film and television industry.

Proposed law defines a "Louisiana resident company" as a company licensed to conduct business in this state owned 100% by a natural person who is a legal resident and who has been domiciled in this state and has maintained a permanent home in this state for no less than 12 consecutive months. A Louisiana resident company is required to file a La. income tax return and maintain a physical location in the state.

Proposed law defines "principal place of business" as the state where the administrative or management activities of a business are conducted. A company claiming that its principal place of business is in La. shall not have any fixed locations outside of this state in which administrative or management activities are conducted, and the company shall be required to maintain a physical location in the state. Furthermore, the company shall be licensed to conduct business in this state, shall be required to file a La. income tax return, and shall employ a minimum of three full-time employees in this state.

Present law defines a "motion picture" to include nationally or internationally distributed feature-length film, video, television pilot, and television series made in La. The term "motion picture" shall not include the production of television coverage of news and athletic events.

Proposed law expands a "motion picture" to include animated short films, and documentaries made in La. for any online digital platform viewing approved by the office.

Present law defines "production expenditures" to include preproduction, production, and postproduction expenditures in this state directly relating to a state-certified production. However, this term does not include expenditures for marketing and distribution.

Proposed law changes present law by adding eligibility for marketing and promotion expenses of the state-certified production; however, the amount of these expenses eligible for tax credits shall not exceed 15% of the total state certified tax credits for the production.

Present law authorizes investors who earned tax credits to transfer the credits to the office for 85% percent of the face value of the credits.

Proposed law changes present law by increasing the amount of the face value for which the investor can transfer a credit back to the state from 85% to 90%.

Present law requires an application fee to be submitted with a tax credit application. The amount of the fee shall be based on two-tenths of 1% multiplied by the estimated total of the credit. The minimum amount of the fee shall be \$200 and the maximum amount of the fee shall be \$5,000. Further requires the application fee to be deposited into the Entertainment Promotion and Marketing Fund to be used solely for promotion and marketing of entertainment industry in this state.

Proposed law changes present law by providing that the monies deposited into the Entertainment Promotion and Marketing Fund can be used for costs associated with the administration of the motion picture investor tax credit program.

Effective July 1, 2015.

(Amends R.S. 47:6007(B), (C)(1)(intro. para.), (c) and (d), (2) and (4)(f)(ii), (D)(4)(ii)(aa); Adds R.S. 47:6007(C)(1)(e))

Summary of Amendments Adopted by House

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

1. Delete from the definition of "motion picture" to which tax credits may be earned "shows" and reinstates present law to include "series".
2. Increase the cap for any single state-certified production from \$20 million to \$30 million.
3. Remove the increase in tax credit application fees.