

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) and (2),

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

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

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

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

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

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

9 productions; to provide for the transfer of credits; to provide for use of the monies

10 collected as a result of the application fee; to provide for tax credit requirements and

11 limitations; to provide for an effective date; and to provide for related matters.

12 Be it enacted by the Legislature of Louisiana:

13 Section 1. R.S. 47:6007(B), (C)(1)(introductory paragraph), (c), and (d) and (2), and

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

15 enacted to read as follows:

16 §6007. Motion picture investor tax credit

17 * * *

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

2 (1) "Above the line services" means services such as those of a producer,
3 executive producer, line producer, co-producer, assistant producer, actor, director,
4 casting director, screenwriter, and other services performed by personnel of the
5 production that are associated with the creative or financial control of a production
6 and customarily considered above the line services in the film and television
7 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, with its principal place of business in this state,
26 which is owned one hundred percent by a Louisiana resident or residents as defined
27 in this Section. A Louisiana resident company is required to file a Louisiana income
28 tax return and maintain a physical 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 must be headquartered in this state and
29 shall not have any fixed locations outside of Louisiana in which administrative or

1 management activities are conducted, and the company shall be required to maintain
2 a physical location in the state. The company shall be licensed to conduct business
3 in this state and shall be required to file a Louisiana income tax return.

4 ~~(9)~~ (12) "Production audit report" means an audit report issued by a qualified
5 accountant who is unrelated to the motion picture production company and that is a
6 report of the qualified accountant's audit of the motion picture production's cost
7 report of production expenditures. The production audit report shall contain an
8 opinion from the qualified accountant stating that the production's cost report of
9 production expenditures presents fairly, in all material aspects, the production
10 expenditures expended in Louisiana pursuant to the provisions of this Section. The
11 production audit shall require:

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

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

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

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

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

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

25 ~~(10)~~ (13) "Production expenditures" means preproduction, production, and
26 postproduction expenditures incurred in this state directly relating to a state-certified
27 production, including without limitation the following: set construction and
28 operation; wardrobes, makeup, accessories, and related services; costs associated
29 with photography and sound synchronization, lighting, and related services and

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

13 (11) (14) "Qualified accountant" means an independent certified public
14 accountant authorized to practice in this state who has sufficient knowledge of
15 accounting principles and practices generally recognized in the film and television
16 industry.

17 (12) (15) "Resident" or "resident of Louisiana" means a natural person who
18 is a legal resident and who has been domiciled in the state and has maintained a
19 permanent place of abode in this state for no less than twelve consecutive months.
20 ~~A person who maintains a permanent place of abode within the state and spends in~~
21 ~~the aggregate more than six months of each year within the state shall be presumed~~
22 ~~to be domiciled in the state.~~

23 (13) (16) "Secretary" means the secretary of the Department of Economic
24 Development.

25 (14) (17) "Source within the state" means a physical facility in Louisiana,
26 operating with posted business hours and employing at least one full-time equivalent
27 employee.

28 (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 Louisiana resident
10 company or a Louisiana company with its principal place of business in the state
11 which employs a minimum of three full-time Louisiana residents, each investor shall
12 be allowed a tax credit of an additional fifteen percent of the base investment.
13 However, if the office and the secretary determine that an expenditure is a related
14 party transaction, that expenditure shall not qualify for the additional fifteen percent
15 tax credit.

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

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

27 (d) For each fiscal year beginning on or after July 1, 2015, the maximum
28 amount of credits which may be certified by the office and the secretary shall not
29 exceed two hundred million dollars. If the total amount of credits certified in any

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 company or a La. company with its principal place of business in the state which employs a minimum of three full-time La. residents, 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 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, with its principle place of business in this state which is 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. must be headquartered in La., and 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.

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 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) and (2), and (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.

The House Floor Amendments to the engrossed bill:

1. Decrease the maximum amount of credits which may be certified annually for the program by the office and the secretary from \$226.4 million to \$200 million.
2. Decrease the amount of the face value for which the investor can transfer a credit back to the state from 90% to 85% which is the amount in present law.
3. Add requirement that a company claiming that La. is its principle place of business shall also be headquartered in this state.