

DIGEST

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SB 100 Reengrossed

2015 Regular Session

Morrell

Present law grants a motion picture investor tax credit as a percentage of the "base investment" made and used for "production expenditures" in La. by a "state-certified production". The term "production expenditures" is defined in present law.

Proposed law excludes from the definition of eligible "production expenditures" those expenditures for "related party transactions" that have been denied or limited by the office of entertainment industry development (office) in the Department of Economic Development (LED).

Present law requires a motion picture production company or motion picture investor that applies for tax credits (collectively referred to as "tax credit applicant") to submit to the office and the secretary of LED a production audit report for certification for purposes of the tax credit. After review of the report, the office and the secretary are required to issue a tax credit certification letter to the tax credit applicant indicating all qualifying expenditures and the amount of tax credits certified for the state-certified production.

Present law requires the production audit report to be issued by a qualified accountant who is unrelated to the motion picture production company. The report shall contain the accountant's audit of the motion picture's cost report of production expenditures. The production audit report must contain an opinion from the accountant stating that the production's cost report of production expenditures presents fairly, in all material aspects, the "production expenditures" expended in Louisiana.

Proposed law changes present law by providing that instead of the audit report for review and analysis of the tax credit applicant's cost report of production expenditures, there shall be prepared and submitted to LED a "production expenditure verification report" (verification report).

Proposed law provides that the verification report shall be prepared by a certified public accountant (CPA) to be engaged and assigned by LED for that purpose. The report shall be a review of the tax credit applicant's cost report of production expenditures, and shall be made in accordance with agreed-upon procedures established pursuant to rule promulgated by LED. The tax credit applicant is responsible for the payment of the fee charged by the CPA for the report.

Proposed law defines "related party transaction" as a transaction between parties deemed to be related by common ownership or control according to generally accepted auditing standards (GAAS) and generally accepted auditing principles (GAAP).

Proposed law requires that the verification report include an opinion of the CPA as to the existence of and sufficiency of reporting regarding "related party transactions".

Proposed law authorizes the office to request and use additional information in determining the extent to which expenditures for related party transactions may be certified, to include: third-party contracts, notarized affidavits, tax records, W-2s, 1099s, and cancelled checks.

Proposed law requires the tax credit applicant to submit to the office and the secretary of LED a sworn affidavit by the individual responsible for providing the accounts, documents, records and any other information necessary to the CPA for purposes of the verification report. The affidavit shall attest to the accuracy of all information provided, particularly with regard to related party transactions. False statements under oath contained in the

affidavit shall constitute perjury and be punished as provided by R.S. 14:123(C)(4) - a fine of not more than \$10,000 or imprisonment at hard labor for not more than five years, or both.

Proposed law further limits certification of tax credits certified for goods and services provided by related parties as follows:

- (1) Qualifying "production expenditures" for "Above the Line (ATL) services" provided by related parties must be limited to 12% of total Louisiana "production expenditures".

"Above the Line (ATL) services" is defined as services such as those of a producer, executive producer, line producer, coproducer, assistant producer, actor, director, casting director or screenwriter.

- (2) Qualifying production expenditures for "Below the Line" services provided by a related party must be limited to the actual compensation paid by the related party to its employee or employees who are actually performing the service, including employer-paid benefits, allocated to the production on an hourly basis.

"Below the Line (BTL) services" is defined as services which are not "Above the Line services".

- (3) Qualifying production expenditures for goods and services provided by a related party must be limited to fair market value or established by comparable transactions between other unrelated parties for substantially similar goods and services considering the geographic market and other pertinent variables.

Proposed law prohibits the certification of tax credits for expenditures for finance fees, interest, or payments of a similar nature paid to related parties, investors in the production, or any other entities which the office determines will gain financial rewards based upon sale or exploitation of the product or success in procuring distribution agreements unless such expenditures are made to a La. licensed insurance producer with a principal place of business in La., or to a Louisiana financial institution as defined in R.S. 6:2(8), or to a Louisiana Business and Industrial Development Company (BIDCO) defined in and provided for in R.S. 51:2386 et seq. which is regulated by the office of financial institutions and which has one or more offices in the state.

Proposed law authorizes the office to refer production expenditures constituting "related party transactions" to the office of the state inspector general for further review to determine whether the transactions comply with the provisions of proposed law. The office of the state inspector general may make such further audit, examination, and investigation of all books and records and officers and employees of a movie production company earning, or of any entity or persons receiving, tax credits as is necessary to make such determination pursuant to any authority provided to it in present law. Such entities and people are deemed to consent to such audit, examination, and investigation and to any reasonable fees associated as a condition of earning or receiving the tax credits.

Applies to all productions receiving initial certification on and after Dec. 31, 2015.

Effective upon signature of the governor or lapse of time for gubernatorial action.

(Amends R.S. 47:6007(B)(9), (10), and (11) and (D)(2)(c) and (d) and (9); adds R.S. 47:6007(B)(17), (18), and (19), (C)(1)(e), and (D)(2)(f) and (g))

Summary of Amendments Adopted by Senate

Committee Amendments Proposed by Senate Committee on Revenue and Fiscal Affairs to the original bill

1. Requires the credits to be certified only upon receipt and approval by LED of a "production expenditure verification report."

2. Requires LED to engage independent CPA's or tax attorneys to prepare such reports and the LETA to review expenditures for related party transactions of state-certified television productions.
3. Provides for the qualifications of the CPA's engaged and requires production expenditure verification reports by CPA's to be subject to two levels of review either within a CPA firm or a second review through a cooperative endeavor with another CPA prior to their submission.

Senate Floor Amendments to engrossed bill

1. Technical amendments

Summary of Amendments Adopted by House

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

1. Specify that insurance premiums that constitute production expenditures shall be those paid to a La. licensed insurance producer with a principal place of business in La.
2. Remove the requirement for LED to submit production expenditures for state-certified television productions to the La. Educational Television Authority for review.
3. Change the requirement for LED to send production expenditures for a state-certified production which involve related-party transactions to the state inspector general from mandatory to permissive.
4. Add a requirement that when the production expenditure verification report is provided by the CPA to LED that a copy is also sent to the production company or tax credit applicant.
5. Technical amendments.