

GREEN SHEET REDIGEST

HB 829

2015 Regular Session

Robideaux

(KEYWORD, SUMMARY, AND DIGEST as amended by Senate committee amendments)

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

Abstract: Defines "above the line services" for purposes of qualifying for the motion picture investor tax credit and adds an annual cap for the program and a cap per project.

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 caps the maximum amount of credits which may be certified annually for the program by the office and the secretary at \$180 million and beginning July 1, 2015, caps the amount of credits available for any single state-certified production at \$30 million. Also, beginning FY 2015-2016, caps claims against state income tax allowed on returns for tax credits or transfers of such tax credits to the office of entertainment industry development in LED at \$180 million each fiscal year.

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 must be treated as having been applied for on the first day of the subsequent year. Claims for tax credits on returns filed or transfers of tax credits to the office are allowed on a first-come-first-served basis. Any taxpayer whose claim is disallowed may use the tax credits in a return filed in the next fiscal year or may transfer tax credits to the office the next fiscal year, and his claim or transfer has priority over other claims filed or transfers applied for after the date and time of his original claim or application for transfer. If less than \$180 million of such tax credits and transfers are allowed in a fiscal year, the remaining amount, plus any amounts remaining from previous fiscal years, is added to the \$180 million dollar limit of a subsequent fiscal year until that amount of tax credits or tax credit transfers to the office are claimed and allowed.

Present law limits "payroll" eligible for the additional 5% tax credit for Louisiana-resident to exclude any portion of an individual salary in excess of \$1 million.

Proposed law places the limitation on all payroll of a production excluding any portion of the salary, wages, and other compensation including benefits paid to an individual in excess of \$1 million.

Present law defines "production expenditures" to include preproduction, production, and postproduction expenditures in this state directly relating to a state-certified production. However, the term specifically excludes expenditures for marketing and distribution.

Proposed law adds eligibility for "marketing and promotion expenses"; however, the amount of those expenses eligible for tax credits cannot exceed the lesser of \$300,000 or 15% of the total state certified tax credits for the production. "Marketing and promotion expenses" is defined as expenditures included in a production budget and made in this state for services performed in this state directly relating to the development of advertising and marketing campaigns for a state certified production. Marketing and promotion expenses cannot include media buys except as established by rule for a fixed fee or commission payment made to a

Louisiana company for services performed in the state in accordance with standard business practices.

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 requires an eligible "motion picture" to be a nationally and internationally distributed feature length production and expands the definition to include animated short films, documentaries, and productions for any online digital platform viewing with a paid subscription approved by the office.

Proposed law grants a tax credit of 30% if the total base investment is greater than \$50,000, but less than \$300,000 for each production which has employed a director or directors who is a resident of this state and can prove Louisiana residency for a minimum of two years. However, each applicant must accept as a condition for earning this tax credit, that no less than 75% of the total amount of the applicant's expenditures for "above the line" services is expended on residents and that 75% or more of the total number of jobs in the production are jobs in which the applicant will employ residents. Failure to comply voids the certification and no tax credits shall be certified or earned by the applicant.

"Above the line services" is defined 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.

Present law defines a "resident" as a person who maintains a permanent place of abode within the state and spends in the aggregate more than six months of each year within the state shall be presumed to be domiciled in the state.

Proposed law requires a "resident" to be a legal resident and maintain a permanent place of abode in this state for no less than 12 consecutive months.

Proposed law defines "slate of productions" as an aggregation of motion picture production projects with a combined total of expenditures that exceed \$300,000 for activities occurring within the state over a maximum of 24 months, not including more than three state-certified productions with no production in the slate exceeding \$300,000.

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 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.

Proposed law grants transferable Student Assessment for a Valuable Education (SAVE) credits for each student enrolling at a public institution of higher education and requires the Board of Regents (the board) to implement a program for each student enrolling at a public institution of higher education. Each student assessed shall be granted a SAVE credit against income, sales and use, gasoline and special fuel taxes equal to the individual amount of a SAVE assessment. The amount of each credit must not exceed the average household tax liability in Louisiana for the total of such taxes as determined and published by the Department of Revenue no later than June 30th of each fiscal year.

The SAVE credit is a transferable, nonrefundable credit against the tax liability set forth above of a student, or his parent or legal guardian, which must be transferred to the board and used solely as set forth below for each student enrolled in a public institution of higher education on and after July 1, 2015.

The Department of Revenue is to distribute student eligibility determination criteria to the board to be used for requesting the credit for student assessments from the department. Student eligibility is to be based on the tax liability set forth above paid to the state by all of the students and their parents or legal guardians in the prior year as determined by the Department of Revenue.

No later than June 30th of each fiscal year, the board must certify to the department the total headcount enrollment at public institutions of higher education in the previous fall. The department then must determine the total amount of the credit and must transfer from the current collections of taxes that amount to the treasurer. Upon receipt of the funds, the treasurer is authorized and directed to transfer or deposit the funds into the Higher Education Initiatives Fund in R.S. 17:3129.6. The secretary of the department and the treasurer must report such action to the commissioner of administration and the Joint Legislative Committee on the Budget. In no event can the credit or assessment exceed the amount appropriated by the legislature from the Higher Education Initiatives Fund each fiscal year. For Fiscal Year 2015-2016, the total allowable amount available for transfer shall be designated in the supplementary section of Schedule 19-671 Board of Regents in the Act that originated as HB1 of the 2015 Regular Session of the Legislature of Louisiana. The legislature is required to determine the total allowable amount available for transfer for Fiscal Year 2016-2017 and thereafter.

Proposed law requires the Board of Regents to distribute all funds appropriated from the Higher Education Initiatives Fund derived from the SAVE Credit program pursuant to its formula for the equitable distribution of funds to public institutions of higher education.

Proposed law provides that no student or student's parent or legal guardian shall be required to pay an assessment that is not offset by a SAVE Credit.

Proposed law provides that the tax credit registry is not applicable to the proposed law.

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) and 6039)

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.

Summary of Amendments Adopted by Senate

Committee Amendments Proposed by Senate Committee on Finance to the reengrossed bill

1. Reduces the limit on credit certifications from \$200 million to \$180 million and limits the amount of credits and transfers to LED to \$180 million.
2. Grants transferable Student Assessment for a Valuable Education (SAVE) credits for each student enrolling at a public institution of higher education and requires the Board of Regents to implement a program.
3. Places a \$1 million limitation on compensation eligible for the credit and paid to an individual.
4. Returns the credit for resident payroll to 5% as in present law from the 10% in the reengrossed bill and restores the \$1 million limitation on compensation to an individual eligible for the resident credit.
5. Deletes the additional tax credit of 15% for expenditures 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 resident of Louisiana or a Louisiana company headquartered in the state with a majority ownership of residents of Louisiana.
6. Deletes the additional tax credit of 15% for productions in excess of \$300,000 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.
7. Limits the maximum amount of "marketing and promotion expenses" eligible for the credit to \$300,000.
8. Requires eligible "motion pictures" to be nationally and internationally distributed and requires productions for any online digital platform viewing to be viewed with a paid subscription.
9. Provides a definition for "slate of productions".