

SENATE SUMMARY OF HOUSE AMENDMENTS

SB 105

2015 Regular Session

Morrell

KEYWORD AND SUMMARY AS RETURNED TO THE SENATE

TAX/TAXATION. Authorizes the recapture of disallowed tax credits from owners of entities created or organized for the primary purpose of receiving or selling motion picture investor tax credits. (7/1/15)

SUMMARY OF HOUSE AMENDMENTS TO THE SENATE BILL

1. Revises existing definitions and adds the following new definitions:
 - a. Above the line services
 - b. Good faith transferee
 - c. Louisiana resident company
 - d. Louisiana screenplay
 - e. Marketing and promotion expenses
 - f. Post-Certification Remedy
 - g. Principal place of business
 - h. Slate of productions" or "slate"
 - i. Tax Credit Certification Letter
 - j. Wrongful Production Audit Report
 - k. Wrongful Tax Credits
2. Provides different percentage amounts of the tax credit computed on the total base investment in a state-certified production and a cap on the amount of the credits.
3. Provides for the recapture and recovery of credits not used or fraudulently obtained under certain conditions.
4. Adds a July 1, 2015 effective date.

DIGEST OF THE SENATE BILL AS RETURNED TO THE SENATE

DIGEST

SB 105 Reengrossed

2015 Regular Session

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Present law authorizes a tax credit against state income tax for Louisiana taxpayers for investment in state-certified productions.

Proposed law defines the following terms:

1. "Above the line services" as those 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.
2. "Good faith transferee" as a transferee of the tax credit who relied on the validity of the credit recorded in the tax credit registry.
3. "Louisiana resident company" is a motion picture production company licensed to conduct business in this state, with its principal place of business in this state, which is owned 100% by a Louisiana resident or residents Requires that the company file a Louisiana income tax return and maintain a physical location in the state.

3. "Louisiana screenplay" is a screenplay directly related to the state-certified production, such as a screenplay created by a Louisiana resident, copyright, or right of use held by a Louisiana resident with ongoing business activities in the state, or other economic nexus with the state.
4. "Marketing and promotion expenses" are expenditures included in the 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, such as the creation of film trailers and posters, not exceeding the lesser of \$1 million or 15% of the total state-certified tax credits for the production. Marketing and promotion expenses shall not 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.
5. "Post-Certification Remedy" means disallowance, recapture, recovery, reduction, repayment, forfeiture, decertification, or any other remedy that would have the effect of prohibiting, reducing, or otherwise limiting the certification or use of the tax credits.
6. "Principal place of business" is the state where the administrative or management activities of a business are conducted. A company claiming that its principal place of business is in Louisiana shall be a motion picture production company headquartered in this state and not have any fixed locations outside of Louisiana in which administrative or management activities are conducted, and the company shall maintain a physical location in the state. Requires that the company be licensed to conduct business in this state and file a Louisiana income tax return.
7. "Slate of productions" or "slate" means an aggregation of motion picture production projects with a combined total of qualified expenditures that exceed \$300,000 for activities occurring over a maximum of twenty-four months within the state and prohibits the slate from having more than three state certified productions. No single state certified production in a slate shall exceed \$300,000. No credits shall be issued for any single state certified production included within a slate until the entire slate has been completed. Requires that a single application for the slate identify all of the productions within the slate and the application shall be submitted to the office no less than thirty days prior to the beginning of production. Only expenditures made after the application for the slate received by the office can qualify for the tax credits.
8. "Tax Credit Certification Letter" is a letter issued by the office granting and certifying tax credits.
9. "Wrongful Production Audit Report" is a production audit report that contains a material misrepresentation or fraud on the part of a person in connection with the submission of such audit report.
10. "Wrongful Tax Credits" mean either a specific amount of tax credits reflected on a tax credit certification letter issued in response to a wrongful production audit report that would not have otherwise been so reflected or tax credits that would otherwise be subject to a post-certification remedy.

Proposed law adds the following provisions to existing definitions:

1. A "motion picture production company" does not include a company or person who has been convicted of a criminal violation related to motor picture investor tax credits.
2. Requires that a "production audit report" is an audit report required by law that does not contain a material or fraudulent misrepresentation.

3. A "motion picture" includes a short film, animated short film, documentary. Provides that a "motion picture" includes items made in the state for any online digital viewing approved by the office.
4. Provides that the term "production expenditures" approved on or after January 1, 2004 does not include certain expenditures for marketing by a state-certified productions or any expenditure incurred outside the state. Provides that the term include marketing and promotion expenses incurred by a state-certified production in this state on or after July 1, 2015.

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

Proposed law requires that a "resident" be a legal resident of the state and maintain a permanent place of abode in the state for no less than twelve consecutive months.

Present law requires that the motor picture investor tax credit be earned by investors at the time expenditures are made by a motion picture production company in a state-certified production. Proposed law requires that the credit earned at the time expenditures are certified by the office of entertainment industry development and the secretary of the Department of Economic Development for the company.

Present law provides that for state-certified productions approved on or after July 1, 2009, the if the total base investment is greater than \$300,000, each investor is allowed a 30% tax credit of the their base investment.

Proposed law retains these provisions but provides that of the total base investment is greater than \$50,000 but less that \$300,000, for each state certified production which has employed a director or directors who are Louisiana residents for at least two years, then the tax credit is 30%. Requires that, as a condition for earning the credit, the applicant accept no less than 75% of the total amount of the applicant's expenditures for above the line services be expended on residents of Louisiana and that 75% or more of the total number of production jobs employ residents of Louisiana. Provides that failure to comply voids the certification and no tax credits shall be certified.

Proposed law provides that, beginning January 1, 2016, if the total base investment is greater than \$300,000 and the state certified production is based on a screenplay, the copyright of which or the right of use of the copyright of which, is owned by a Louisiana resident company for a minimum of twelve months prior to production or a Louisiana company with its principal place of business in the state which employs a minimum of three full-time Louisiana residents for a minimum of twelve months prior to production, then each investor is allowed a tax credit of 15% of the base investment of the production which is in addition to the 30% credit. Requires that prior to certifying this credit, rules and regulations be promulgated setting criteria for a Louisiana resident company or company with its principal place of business in the state no later than October 1, 2015. Requires that an expenditure which is related party transaction does not qualify for the 15% credit.

Present law provides that it addition to the 30% credit, each investor is allowed an additional tax credit of 5% of payroll to the extent their total base investment is on payroll for Louisiana residents employed in connection with the state-certified production.

Proposed law increases this credit from 5% to 10% and removes provisions that if payroll to any one person exceeds \$1 million the additional credit excludes that portion of salary exceeding \$1 million.

Proposed law provides that to the extent that the base investment is expended on music, the sound recording copyright of which, 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, each investor shall be

allowed a tax credit of 15% of the musical copyright's expenditures and that this credit is in addition to the 30% credit.

Proposed law provides that for applications initially certified before July 1, 2015, and each fiscal year beginning on or after July 1, 2015, the maximum amount of credits which may be certified shall not exceed \$2 million. Provides that if the total certified in a particular fiscal year exceeds the aggregate amount for that year, the excess shall be treated as having been applied for on the first day of the subsequent year. Provides that for state-certified productions approved on or after July 1, 2015, the maximum amount of credits that may be certified for any single state-certified production not exceed \$30 million.

Retains present law that prohibits any motion picture investor tax credits associated with a state-certified production from exceeding the total base investment in that production.

Present law requires that a credit 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 requires that the credit be allowed for the taxable period in which the credit is certified. Retains provisions that allow unused credits to be carried forward against subsequent tax liabilities for a period not to exceed ten years.

Present law requires payment of a production application fee equal to 2/10ths of one percent times the estimated total incentive tax credits but with a minimum amount of \$200 and a maximum amount of \$5,000. Requires the fee be deposited into the Entertainment Promotion and Marketing Fund and that monies in the fund be appropriated solely for promotion and marketing of the state's entertainment industry. Proposed law retains these provisions but authorizes monies in the fund to also be used for costs associated with the administration of the motion picture investor tax credit program.

Proposed law prohibits issuance of tax credits if notification is received that the investor has been charged with a crime related to motion picture investor tax credits until the conviction or acquittal of the crime. Provides that investor, for purposes of the prohibition, means any investor, applicant production company, or individual with an ownership interest.

Present law provides for the recapture of credits if the office finds monies for which the credit is received are not invested in and expended with respect to a certified production within 24 months of the date credits are earned and the investor's state income tax liability increased for the tax period by an amount necessary for the credit recapture.

Proposed law provides that if the office or the Department of Revenue finds that a person obtained a tax credit in violation provisions regarding the credit, including convictions related to material misrepresentation or fraud, then the Department of Revenue is to assess the person an amount necessary for the recapture of the tax credits

Provides that as to a recapture in the event of fraud or material misrepresentation a material misrepresentation or fraud on the part of a person in connection with the submission of a production audit report, then the auditor's report is deemed to be a wrongful production audit report. Provides that if, as a result of the violation, a specific amount credits were reflected on the tax credit certification letter issued in response to the false report that would not have been reflected and credits would be subject to a post-certification remedy, then the sole and exclusive remedy for the office shall be against the individual or entity that committed the material misrepresentation or fraud. Provides no post-certification remedy is available against a good faith transferee for issuance of the wrongful tax credits.

Present law provides allows the Department of Revenue to recover disallowed credits within three years from December 31st of the year in which the 24 month period for investment of the credits ends and limits interest which can be assessed on the recovered credits to three percentage points above the judicial interest rate.

Proposed law provides for recovery of credits by the Department of Revenue through any collection remedy authorized by law plus interest and penalties as provided for the delinquent payment of taxes. Provides for recovery of wrongful tax credits whose issuance was the

result of a material misrepresentation or fraud in the amount necessary to recover the wrongful tax credits. Authorizes the secretary to initiate the action through any collection remedy authorized by law and to assess interest and penalties as provided for in connection with the fraudulent and delinquent nonpayment of taxes. Provides the same statute of limitations for actions by the department as for failure to file a return. Prohibits pursuit of a post-certification remedy against a good faith transferee.

Proposed law authorizes the secretary of the Department of Revenue to hold any person who has an ownership interest in a corporation, limited liability company, or limited partnership which was created or organized for the purpose of receiving or selling tax credits personally liable for the total amount of the credits as an alternative means of enforcing recovery of disallowed credits.

Effective on July 1, 2015.

(Amends R.S. 47:6007(B), (C)(1)(intro para), (C)(1)(c) and (d), (C)(2), (D)(4)(ii)(aa), (E) and (F); adds R.S. 47:6007(C)(1)(e) and (D)(10))

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