

CONFERENCE COMMITTEE REPORT

HB 748

2015 Regular Session

Stokes

June 11, 2015

To the Honorable Speaker and Members of the House of Representatives and the Honorable President and Members of the Senate.

Ladies and Gentlemen:

We, the conferees appointed to confer over the disagreement between the two houses concerning House Bill No. 748 by Representative Stokes, recommend the following concerning the Reengrossed bill:

1. That Senate Committee Amendments Nos. 9 and 12 through 17 proposed by the Senate Committee on Revenue and Fiscal Affairs and adopted by the Senate on June 5, 2015, be adopted.
2. That Senate Committee Amendments Nos. 1 through 6, 7, 8, 10, and 11 proposed by the Senate Committee on Revenue and Fiscal Affairs and adopted by the Senate on June 5, 2015, be rejected.
3. That the set of Senate Floor Amendments proposed by Senator Riser and adopted by the Senate on June 6, 2015, be rejected.

That the reengrossed bill be amended as follows:

1 AMENDMENT NO. 1

2 On page 1, line 2, after "R.S.", delete the remainder of the line, delete lines 3 and 4 in their
3 entirety, at the beginning of line 5, delete "G, and H," and insert the following:

4 "47:1524(D)(2), and 6007(section heading), (B)(5), (10) through (16), (C)(subsection
5 heading), (1)(introductory paragraph), (a)(iii), and (b)(iii), (2) and (4)(b) and (f),
6 (D)(2)(d)(i), (E), and (F), to enact R.S. 47:6007(B)(17) and (18), (C)(1)(c)(iii),
7 (D)(1)(d)(iv) and (2)(d)(iii), (G), and (H), and to repeal R.S. 47:1524(D)(3),"

8 AMENDMENT NO. 2

9 On page 1, delete lines 13 through 16 in their entirety, and insert the following:

10 "Section 1. R.S. 47:1524(D)(2), and 6007(section heading), (B)(5), (10)
11 through (16), (C)(subsection heading), (1)(introductory paragraph), (a)(iii) and
12 (b)(iii), (2) and (4)(b) and (f), and (D)(2)(d)(i) are hereby amended and reenacted and
13 R.S. 47:6007(B)(17) and (18), (C)(1)(c)(iii), (D)(1)(d)(iv) and (2)(d)(iii), and (G) are
14 hereby enacted to read as follows:"

15 AMENDMENT NO. 3

16 On page 1, between lines 16 and 17, insert the following:

17 "§1524. Tax credit registry; requirements; limitations

18		*	*	*
19	D. Transfers.			
20		*	*	*

21 (2) Notwithstanding any other provision of law to the contrary, no issuance,
22 sale, or transfer of tax credits after January 1, 2014, shall be effective as between the

1 transferor and transferee, or as to third parties ~~not recognized by~~ or the department
2 until it has been recorded in the registry.

3 * * *

4 AMENDMENT NO. 4

5 On page 1, line 17, after "picture" and before "tax" delete "investor" and insert "production"

6 AMENDMENT NO. 5

7 On page 2, at the end of line 23, insert the following:

8 "For all state-certified productions approved on or after January 1, 2016, marketing
9 expenditures shall be considered "production expenditures"."

10 AMENDMENT NO. 6

11 On page 3, line 18, after "C." and before "tax" delete "Investor" and insert "Production"

12 AMENDMENT NO. 7

13 On page 3, delete lines 20 through 25, and insert the following:

14 "Louisiana taxpayers for ~~investment in~~ expenditures related to state-certified
15 productions. The tax credit shall be earned by ~~investors~~ a motion picture production
16 company at the time expenditures are made by a motion picture production company
17 in a state-certified production. However, credits cannot be applied"

18 AMENDMENT NO. 8

19 On page 4, between lines 24 and 25, insert the following:

20 "(2) The credit shall be allowed against the income tax for the taxable period
21 in which the credit is earned or for the taxable period in which initial certification
22 authorizes the credit to be taken. If the tax credit allowed pursuant to this Section
23 exceeds the amount of such taxes due for such tax period, then any unused credit may
24 be carried forward as a credit against subsequent tax liability for a period not to
25 exceed ~~ten~~ five years.

26 * * *

27 AMENDMENT NO. 9

28 On page 4, after line 29, insert the following:

29 "(b) Transferors and transferees shall submit to the Department of Revenue
30 in writing, a notification of any transfer or sale of tax credits within ten business days
31 after the transfer or sale of such tax credits. No transfer or sale of tax credits shall
32 be effective until recorded in the tax credit registry in accordance with R.S. 47:1524.
33 The notification shall include the transferor's tax credit balance prior to transfer, a
34 copy of any tax credit certification letter(s) issued by the office and the secretary of
35 the Department of Economic Development the transferor's remaining tax credit
36 balance after transfer, all tax identification numbers for both transferor and
37 transferee, the date of transfer, the amount transferred, a copy of the credit certificate,
38 price paid by the transferee to the transferor, in the case when the transferor is a state-
39 certified production, for the tax credits, and any other information required by the
40 office or the Department of Revenue. For the purpose of reporting transfer prices,
41 the term "transfer" shall include allocations pursuant to Paragraph (2) of this
42 Subsection as provided by rule. The tax credit transfer value means the percentage
43 as determined by the price paid by the transferee to the transferor divided by the
44 dollar value of the tax credits that were transferred in return. The notification

1 submitted to the Department of Revenue shall include a processing fee of up to two
 2 hundred dollars per transferee, and any information submitted by a transferor or
 3 transferee shall be treated by the office and the Department of Revenue as proprietary
 4 to the entity reporting such information and therefore confidential. However, this
 5 shall not prevent the publication of summary data that includes no fewer than three
 6 transactions.

7 * * *

8 (f)(i) Beginning on and after January 1, 2007, the investor who earned the
 9 motion picture investor tax credits may transfer the credits to the office for seventy-
 10 two percent of the face value of the credits. Beginning January 1, 2009, and every
 11 second year thereafter, the percent of the face value of the tax credits allowed for
 12 transferring credits to the office shall increase two percent until the percentage
 13 reaches eighty percent. ~~Upon the transfer, the Department of Economic~~
 14 ~~Development shall notify the Department of Revenue and shall provide it with a copy~~
 15 ~~of the transfer documentation. The Department of Revenue may require the~~
 16 ~~transferor to submit such additional information as may be necessary to administer~~
 17 ~~the provisions of this Section. The secretary of the Department of Revenue shall~~
 18 ~~make payment to the investor in the amount to which he is entitled from the current~~
 19 ~~collections of the taxes collected pursuant to Chapter 1 of Subtitle II, provided such~~
 20 ~~credits are transferred to the office within one calendar year of certification.~~

21 (ii) For projects which receive initial certification on and after July 1, 2009,
 22 ~~the investor who motion picture production company that~~ earned the motion picture
 23 ~~investor production tax credits pursuant to such certification or the company's~~
 24 ~~irrevocable designee, as provided for in Item (iv) of this Subparagraph, may transfer~~
 25 ~~the credits to the office Department of Revenue for eighty-five percent of the face~~
 26 ~~value of the credits in accordance with the procedures and requirements of Item (i)~~
 27 ~~(iii) of this Subparagraph.~~

28 (iii) The Department of Revenue may require the transferor to submit such
 29 additional information as may be necessary to administer the provisions of this
 30 Section. The secretary of the Department of Revenue shall make payment to the
 31 motion picture production company or its irrevocable designee in the amount to
 32 which he is entitled from the current collections of the taxes collected pursuant to
 33 Chapter 1 of Subtitle II, of this Title provided such tax credits are transferred to the
 34 Department of Revenue within one calendar year of certification.

35 (iv) A bank or other lender may be named as an irrevocable designee in the
 36 initial tax credit certification or other document submitted thereafter by a motion
 37 picture production company to the office. As an irrevocable designee, a bank or
 38 other lender may elect to have the tax credits issued directly to it from the office, and
 39 in addition to the rights of a transferee may also elect to transfer the credits to the
 40 Department of Revenue in accordance with the provisions of Items (ii) and (iii) of
 41 this Subparagraph.

42 * * *

43 AMENDMENT NO. 10

44 On page 5, delete lines 1 through 5 in their entirety

45 AMENDMENT NO. 11

46 On page 5, delete lines 22 through 28 in their entirety, and insert the following:

47 "certification period for the applicable state-certified production, a state-certified
 48 motion picture production company applicant shall make a request to the office to
 49 proceed to final certification by submitting to the office a cost report of production
 50 expenditures to be formatted in accordance with instructions of the office. The
 51 applicant shall make all records related to the cost report available for inspection by

1 the office and the qualified accountant selected by the office to prepare the
2 production expenditure verification report, after which time all such claims to tax
3 credits shall be deemed waived. After review and investigation of the cost report, the
4 accountant shall submit to the office and the secretary a production expenditure
5 verification report. The office and the secretary shall review the production audit
6 expenditure verification report and may require additional information needed to
7 make a determination as to final certification of all tax credits for that production.
8 Within one hundred twenty days of the receipt of the production audit expenditure
9 verification report and all required supporting information, the office and the
10 secretary shall"

11 AMENDMENT NO. 12

12 On page 6, line 1, after "to the" and before "for" delete "investors" and insert "applicant"

13 AMENDMENT NO. 13

14 On page 7, between lines 15 and 16, insert the following:

15 "Section 2. R.S. 47:6007(section heading), (E) and (F) are hereby amended
16 and reenacted and R.S. 47:6007(H) is hereby enacted to read as follows:

17 §6007. Motion picture investor production tax credit

18 * * *
19

20 E. Recapture Disallowance and recapture of credits. If the office finds that
21 monies for which an investor received tax credits according to this Section are not
22 invested in and expended with respect to a state-certified production within twenty-
23 four months of the date that such credits are earned, then the investor's state income
24 tax for such taxable period shall be increased by such amount necessary for the
25 recapture of credit provided by this Section.

26 (1) A bad faith holder may not transfer tax credits pursuant to any provision
27 of Paragraph (C)(4) of this Section, nor claim tax credits pursuant to Paragraphs
28 (C)(2) and (3) of this Section. A bad faith holder is a person who participated in
29 material misrepresentation or fraudulent acts in connection with the certification of
30 tax credits pursuant to this Section, or who prior to or at the time of certification of
31 such tax credits knew or reasonably should have known of such material
32 misrepresentation or fraudulent acts, or a legal entity owned or controlled by such a
33 person. Upon a determination of bad faith by the Department of Revenue such tax
34 credits shall be deemed disallowed as to the bad faith holder.

35 (2) Tax credits previously transferred pursuant to Subparagraph (C)(4)(f) of
36 this Section or claimed by a bad faith holder, but subsequently disallowed, may be
37 recovered by the secretary of the Department of Revenue through any collection
38 remedy authorized by R.S.47:1561, plus interest and penalties provided by law for
39 the delinquent payment of taxes, and the Department of Revenue may recapture any
40 amounts and other damages from a bad faith holder using any collection remedy
41 authorized by law.

42 (3) In the event tax credits obtained through material misrepresentation or
43 fraudulent acts are claimed by a taxpayer who is not a bad faith holder, the
44 Department of Revenue shall have the right of recourse against a bad faith holder as
45 provided to a transferee pursuant to Subparagraph (C)(4)(e) of this Section.

46 (4) The provisions of this Subsection are in addition to and shall not limit the
47 authority of the secretary of the Department of Revenue to assess or to collect under
48 any other provision of law.

1 F. Recovery of credits by Department of Revenue. ~~(1) Credits previously~~
2 ~~granted to a taxpayer, but later disallowed, may be recovered by the secretary of the~~
3 ~~Department of Revenue through any collection remedy authorized by R.S. 47:1561~~
4 ~~and initiated within three years from December thirty-first of the year in which the~~
5 ~~twenty-four-month investment period specified in Subsection E of this Section ends.~~

6 ~~(2) The only interest that may be assessed and collected on recovered credits~~
7 ~~is interest at a rate three percentage points above the rate provided in R.S.~~
8 ~~9:3500(B)(1), which shall be computed from the original due date of the return on~~
9 ~~which the credit was taken.~~

10 ~~(3) The provisions of this Subsection are in addition to and shall not limit the~~
11 ~~authority of the secretary of the Department of Revenue to assess or to collect under~~
12 ~~any other provision of law.~~

13 Prescription. Tax credits previously granted to a taxpayer, but later
14 disallowed pursuant to the provisions of Subsection E of this Section, may be
15 recovered by the secretary of the Department of Revenue through any collection
16 remedy authorized by R.S. 47:1561 and initiated within the later of any of the
17 following:

18 (1) Two years from December thirty-first in the year in which the tax credit
19 was paid in accordance with Item (C)(4)(f)(ii) of this Section.

20 (2) Three years from December thirty-first of the year in which the taxes for
21 the filing period were due.

22 (3) Three years from December thirty-first of the year in which the final tax
23 credit certification letter was issued.

24 (4) The time period for which prescription has been extended, as provided
25 by R.S. 47:1580.

26 * * *

27 AMENDMENT NO. 14

28 On page 8, delete lines 15 through 19 in their entirety, and insert the following:

29 "Section 3. R.S. 47:1524(D)(3) is hereby repealed in its entirety.

30 Section 4. The provisions of Sections 1 and 3 of this Act shall become
31 effective on January 1, 2016.

32 Section 5. The provisions of Sections 2, 4, and 5 of this Act shall become
33 effective on July 1, 2015."

34 Respectfully submitted,

35 _____
Representative Joel C. Robideaux

35 _____
Senator Jack Donahue

36 _____
Representative Walt Leger III

36 _____
Senator Robert Adley

37 _____
Representative Julie Stokes

37 _____
Senator Jean-Paul J. Morrell

 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)]

CONFERENCE COMMITTEE REPORT DIGEST
HB 748**2015 Regular Session****Stokes**
Keyword and oneliner of the instrument as it left the House

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

Report adopts Senate amendments to:

1. Add authorization for the certification of additional supplemental expenditures related to post-production activities in La. under certain circumstances.
2. Add authorization for a bank or other lender to be named as an irrevocable designee in an initial tax credit certification.
3. Delete authority for the denial of an application for initial certification at the discretion of the secretary of the Dept. of Economic Development.
4. Delete certain revisions regarding the authority of the Dept. of Revenue to disallow and recapture tax credits.

Report rejects Senate amendments which would have:

1. Add marketing expenditures to the definition of "production expenditures" beginning July 1, 2015.
2. Change the timing for the earning of tax credits.
3. Authorize the use of tax credits against a prior year's tax liability.
4. Technical amendments.

Report amends the bill to:

1. Change the name of the program from motion picture investor tax credit to motion picture production tax credit.
2. Add marketing expenditures to the definition of "production expenditures" beginning Jan. 1, 2016.
3. Conform provisions of this bill with those of House Bill No. 604 regarding changes in the basis for the office's consideration of production expenditures for certification from a production audit report to a cost report of production expenditures and a production expenditure verification report.
4. Substantially revises present law regarding the disallowance and recapture of tax credits in cases of fraud, including provisions specific to a "bad faith holder" of tax credits.

5. With respect to recovery of tax credits that have been disallowed deletes provisions limiting interest and changes the prescriptive periods for the authority of the Dept. of Revenue to initiate collection.
6. Add specific effectiveness provisions.

Digest of the bill as proposed by the Conference Committee

Present law authorizes a tax credit against state income tax based on motion picture production expenditures for state-certified productions. The tax credit is calculated as a percentage of the total base investment dollars certified per project.

Present law authorizes an income tax credit equal to 30% of production expenditures for all state-certified productions approved after July 1, 2009. Also provides an additional tax credit equal to 5% of the base investment expended on payroll for La. residents employed in connection with all state-certified productions.

Proposed law changes the name of the program from motion picture investor tax credit to motion picture production tax credit.

Proposed law for productions granted initial certification on or after Jan. 1, 2016, makes several changes regarding the procedures and time periods involved with initial certification of expenditures.

Proposed law changes the present law definition for motion picture to include eligibility for motion pictures developed for viewing online, changes present law definition for production expenditures to include marketing expenses, and adds a definition for "taxpayer".

Proposed law further changes present law by reducing the number of times expenditures can be certified and changes the timing of certifications for expenditures from twice during the production to once after the project is completed.

Proposed law provides that if at the time of application for initial certification, the production company notifies the office of entertainment industry development of the Dept. of Economic Development ("office") that post-production activities will occur in La., a supplemental request for certification of expenditures may be submitted for consideration and the cost of any verification will be paid by the production company.

Proposed law specifies that the initial certification shall be effective for qualifying expenditures made within 12 months before and 24 months after the date of initial certification.

Proposed law authorizes a motion picture production company to name a bank or other lender as an irrevocable designee in the initial certification under certain circumstances, and provides for the rights and protections of such an irrevocable designee. As an irrevocable designee, a bank or other lender may elect to have the tax credits issued directly to it from the office, and in addition to the rights of a transferee may also elect to transfer the credits to the Dept. of Revenue in accordance with the proposed law.

Present law requires a motion picture production company applicant to submit to the office a production audit report before final certification of expenditures for a state-certified production. The audit report is reviewed by the office and within 120 days of receipt the office shall issue a tax credit certification letter indicating the amount of the tax credits certified for the production.

Proposed law retains present law, but changes the documents submitted for substantiation of qualifying expenditures, as well as the review of such information. Within 6 months of the end of the initial certification period a motion picture production company shall make a request to the office to proceed to final certification by submitting a cost report of production expenditures. The applicant shall make all records related to the cost report available for inspection by the office and the qualified accountant selected by the office to prepare the

production expenditure verification report, after which time all such claims to tax credits shall be deemed waived. After review and investigation of the cost report, the accountant shall submit to the office and the secretary a production expenditure verification report. The office and the secretary shall review the production expenditure verification report for determinations relative to the certification of tax credits based upon qualifying expenditures.

Proposed law substitutes the expenditure verification report for the production audit report as the basis for the office's review of a state-certified production's cost report of production expenditures.

Present law requires an investor's state income tax to be increased by the amount necessary for the recapture of tax credits if the office finds that monies for which an investor received tax credits were not invested in and expended with respect to a state-certified production within 24 months of the date that the credits were earned. Authorizes the secretary of the Dept. of Revenue to initiate collection of tax credits disallowed within 3 years from Dec. 31st of the year in which the 24 month investment period ended. Interest which may be recovered on recaptured tax credits is limited to three percentage points above the rate established in R.S. 9:3500(B)(1).

Proposed law repeals present law with respect the recapture and recovery of tax credits. Proposed law prohibits the transfer or claiming of a tax credit by a "bad faith holder", which is defined as a person who participated in material misrepresentation or fraudulent acts in connection with the certification of tax credits, or who prior to or at the time of certification of such tax credits knew or reasonably should have known of such material misrepresentation or fraudulent acts, or a legal entity owned or controlled by such a person. Upon a determination of bad faith by the Dept. of Revenue such tax credits shall be deemed disallowed as to the bad faith holder.

Proposed law further provides that previously transferred or claimed tax credits by a bad faith holder which are subsequently disallowed may be recovered by the secretary of the Dept. of Revenue through any collection remedy authorized under present law specific to the authority of the Dept. of Revenue, plus interest and penalties provided by present law specific to the Dept. of Revenue for the delinquent payment of taxes. The Dept. of Revenue is authorized to recapture any amounts and other damages from a bad faith holder using any collection remedy authorized by law.

Proposed law provides that in the event tax credits obtained through material misrepresentation or fraudulent acts are claimed by a taxpayer who is not a bad faith holder, the Dept of Revenue shall have the right of recourse against a bad faith holder as provided to a transferee pursuant to present law.

Proposed law establishes a schedule of prescriptive periods for the initiation of recovery of disallowed tax credits by the Dept. of Revenue, as follows: 2 years from Dec. 31st in the year in which a tax credit was transferred to the office; 3 years from Dec. 31st of the year in which the taxes for the filing period were due, or in which the final tax credit certification letter was issued; and a time period for which prescription has been extended, as provided by R.S. 47:1580.

Proposed law adds requirements regarding submission and consideration of audit reports for final certification of state-certified expenditures for the motion picture *infrastructure* investor tax credits.

Proposed law concerning motion picture infrastructure investor tax credit becomes effective July 1, 2015.

Proposed law governing disallowance, recapture, and recovery of tax credits becomes effective July 1, 2015.

All other provisions of proposed law become effective Jan. 1, 2016.

(Amends R.S. 47:1524(D)(2) and (3), and 6007(section heading), (B)(5), (10) through (16), (C)(subsection heading), (1)(intro. para.), (a)(iii), and (b)(iii), (2), and (4)(b) and (f), (D)(2)(d)(i), (E), and (F); Adds R.S. 47:6007(B)(17) and (18), (C)(1)(c)(iii), (D)(1)(d)(iv) and (2)(d)(iii), (G), and (H); Repeals R.S. 47:1524(D)(3))