2015 Regular Session

HOUSE BILL NO. 748

BY REPRESENTATIVE STOKES

1	AN ACT
2	To amend and reenact R.S. 47:1524(D)(2), and 6007(section heading), (B)(5), (10) through
3	(16), (C)(subsection heading), (1)(introductory paragraph), (a)(iii), and (b)(iii), (2)
4	and (4)(b) and (f), (D)(2)(d)(i), (E), and (F), to enact R.S. 47:6007(B)(17) and (18),
5	(C)(1)(c)(iii), (D)(1)(d)(iv) and (2)(d)(iii), (G), and (H), and to repeal R.S.
6	47:1524(D)(3), relative to income tax credits; to provide with respect to the motion
7	picture investor tax credit; to provide for definitions; to provide eligibility for certain
8	types of productions; to provide requirements for the completion of projects and
9	certification of expenditures; to authorize assignment of credits to a lender under
10	certain circumstances; to provide for recapture of tax credits; to provide for the final
11	certification of certain expenditures for state-certified infrastructure projects; to
12	provide for effectiveness; and to provide for related matters.
13	Be it enacted by the Legislature of Louisiana:
14	Section 1. R.S. 47:1524(D)(2), and 6007(section heading), (B)(5), (10) through (16),
15	(C)(subsection heading), (1)(introductory paragraph), (a)(iii) and (b)(iii), (2) and (4)(b) and
16	(f), and $(D)(2)(d)(i)$ are hereby amended and reenacted and R.S. 47:6007(B)(17) and (18),
17	(C)(1)(c)(iii), (D)(1)(d)(iv) and (2)(d)(iii), and (G) are hereby enacted to read as follows:
18	§1524. Tax credit registry; requirements; limitations
19	* * *
20	D. Transfers.
21	* * *
22	(2) Notwithstanding any other provision of law to the contrary, no issuance,
23	sale, or transfer of tax credits after January 1, 2014, shall be effective as between the
24	transferor and transferee, or as to third parties nor recognized by or the department
25	until it has been recorded in the registry.
26	* * *

Page 1 of 12

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§6007. Motion picture investor production tax credit

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B. Definitions. For the purposes of this Section:

* *

(5) "Motion picture" means a nationally or internationally distributed feature-length film, video, television pilot, television series, television movie of the week, animated feature film, animated television series, or commercial made in Louisiana, in whole or in part, for theatrical or television viewing, or for viewing on any digital online platform as may be further defined by the office through the promulgation of rules. The term "motion picture" shall not include the production of television coverage of news and athletic events.

*

13 (10) "Production expenditures" means preproduction, production, and 14 postproduction expenditures in this state directly relating to a state-certified 15 production, including without limitation the following: set construction and 16 operation; wardrobes, makeup, accessories, and related services; costs associated 17 with photography and sound synchronization, lighting, and related services and 18 materials; editing and related services; rental of facilities and equipment; leasing of 19 vehicles; costs of food and lodging; digital or tape editing, film processing, transfer 20 of film to tape or digital format, sound mixing, special and visual effects; and 21 payroll. This For all state-certified productions approved on or after January 1, 2004, 22 this term shall not include expenditures for marketing and distribution, non-23 production related overhead, amounts reimbursed by the state or any other 24 governmental entity, costs related to the transfer of tax credits, amounts that are paid 25 to persons or entities as a result of their participation in profits from the exploitation 26 of the production, the application fee, or state, or local taxes, or any expenditures 27 occurring outside of Louisiana. For all state-certified productions approved on or after January 1, 2016, marketing expenditures shall be considered "production 28 29 expenditures".

1	(11) "Project completion" means completion of principal photography, or as
2	otherwise approved in writing by the office.
3	(11)(12) "Qualified accountant" means an independent certified public
4	accountant authorized to practice in this state who has sufficient knowledge of
5	accounting principles and practices generally recognized in the film and television
6	industry.
7	(12)(13) "Resident" or "resident of Louisiana" means a natural person
8	domiciled in the state. A person who maintains a permanent place of abode within
9	the state and spends in the aggregate more than six months of each year within the
10	state shall be presumed to be domiciled in the state.
11	(13)(14) "Secretary" means the secretary of the Department of Economic
12	Development.
13	(14)(15) "Source within the state" means a physical facility in Louisiana,
14	operating with posted business hours and employing at least one full-time equivalent
15	employee.
16	(15)(16) "State" means the state of Louisiana.
17	(16)(17) "State-certified production" shall mean means a production
18	approved by the office and the secretary which is produced by a motion picture
19	production company domiciled and headquartered in Louisiana and which has a
20	viable multi-market commercial distribution plan.
21	(18) "Taxpayer" means an investor in a production, a motion picture
22	production company applicant, individual with an ownership interest in a motion
23	picture production company applicant, or a subsequent transferee of the tax credit.
24	C. Investor Production tax credit; specific productions and projects.
25	(1) There is hereby authorized a tax credit against state income tax for
26	Louisiana taxpayers for investment in expenditures related to state-certified
27	productions. The tax credit shall be earned by investors a motion picture production
28	company at the time expenditures are made by a motion picture production company
29	in a state-certified production. However, credits cannot be applied against a tax or
30	transferred until the expenditures are certified by the office and the secretary. For

Page 3 of 12

1	state-certified productions, expenditures shall be certified no more than twice during
2	the duration of a state-certified production unless the motion picture production
3	company agrees to reimburse the office for the costs of any additional certifications
4	once per production, after project completion. However, if at the time of application
5	for initial certification, the office is notified that post-production activities will take
6	place in Louisiana, a supplemental request for certification of expenditures directly
7	related to such post-production activity may be submitted for consideration by the
8	office. The cost of any verification or audit of such expenditures shall be borne by
9	the motion picture production company. The tax credit shall be calculated as a
10	percentage of the total base investment dollars certified per project.
11	(a) For state-certified productions approved by the office and the secretary
12	on or after January 1, 2004, but before January 1, 2006:
13	* * *
14	(iii) The initial certification shall be effective for <u>qualifying expenditures</u>
15	made within a period twelve months prior to and twelve months after the date of
16	initial certification, unless the production has commenced, in which case the initial
17	certification shall be valid until the production is completed.
18	(b) For state-certified productions approved by the office and the secretary
19	on or after January 1, 2006, but before July 1, 2009:
20	* * *
21	(iii) The initial certification shall be effective for <u>qualifying expenditures</u>
22	made within a period twelve months prior to and twelve months after the date of
23	initial certification, unless the production has commenced, in which case the initial
24	certification shall be valid until the production is completed.
25	(c) For state-certified productions approved by the office and the secretary
26	on or after July 1, 2009:
27	* * *

Page 4 of 12

ENROLLED

1	(iii) The initial certification shall be effective for qualifying expenditures
2	made within a period twelve months prior to and twenty-four months after the date
3	of the initial certification.
4	* * *
5	(2) The credit shall be allowed against the income tax for the taxable period
6	in which the credit is earned or for the taxable period in which initial certification
7	authorizes the credit to be taken. If the tax credit allowed pursuant to this Section
8	exceeds the amount of such taxes due for such tax period, then any unused credit
9	may be carried forward as a credit against subsequent tax liability for a period not
10	to exceed ten five years.
11	* * *
12	(4) Transferability of the credit. Any motion picture tax credits not
13	previously claimed by any taxpayer against its income tax may be transferred or sold
14	to another Louisiana taxpayer or to the office, subject to the following conditions:(3)
15	Application of the credit.
16	* * *
16 17	* * *(b) Transferors and transferees shall submit to the Department of Revenue
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17 18	(b) Transferors and transferees shall submit to the Department of Revenue in writing, a notification of any transfer or sale of tax credits within ten business days
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17 18 19 20	(b) Transferors and transferees shall submit to the Department of Revenue in writing, a notification of any transfer or sale of tax credits within ten business days after the transfer or sale of such tax credits. <u>No transfer or sale of tax credits shall</u> be effective until recorded in the tax credit registry in accordance with R.S. 47:1524.
17 18 19 20 21	(b) Transferors and transferees shall submit to the Department of Revenue in writing, a notification of any transfer or sale of tax credits within ten business days after the transfer or sale of such tax credits. <u>No transfer or sale of tax credits shall</u> <u>be effective until recorded in the tax credit registry in accordance with R.S. 47:1524.</u> The notification shall include the transferor's tax credit balance prior to transfer, a
 17 18 19 20 21 22 	(b) Transferors and transferees shall submit to the Department of Revenue in writing, a notification of any transfer or sale of tax credits within ten business days after the transfer or sale of such tax credits. <u>No transfer or sale of tax credits shall</u> <u>be effective until recorded in the tax credit registry in accordance with R.S. 47:1524.</u> The notification shall include the transferor's tax credit balance prior to transfer, a copy of any tax credit certification letter(s) issued by the office and the secretary of
 17 18 19 20 21 22 23 	(b) Transferors and transferees shall submit to the Department of Revenue in writing, a notification of any transfer or sale of tax credits within ten business days after the transfer or sale of such tax credits. <u>No transfer or sale of tax credits shall</u> <u>be effective until recorded in the tax credit registry in accordance with R.S. 47:1524.</u> The notification shall include the transferor's tax credit balance prior to transfer, a copy of any tax credit certification letter(s) issued by the office and the secretary of the Department of Economic Development the transferor's remaining tax credit
 17 18 19 20 21 22 23 24 	(b) Transferors and transferees shall submit to the Department of Revenue in writing, a notification of any transfer or sale of tax credits within ten business days after the transfer or sale of such tax credits. <u>No transfer or sale of tax credits shall</u> <u>be effective until recorded in the tax credit registry in accordance with R.S. 47:1524.</u> The notification shall include the transferor's tax credit balance prior to transfer, a copy of any tax credit certification letter(s) issued by the office and the secretary of the Department of Economic Development the transferor's remaining tax credit balance after transfer, all tax identification numbers for both transferor and
 17 18 19 20 21 22 23 24 25 	(b) Transferors and transferees shall submit to the Department of Revenue in writing, a notification of any transfer or sale of tax credits within ten business days after the transfer or sale of such tax credits. <u>No transfer or sale of tax credits shall</u> <u>be effective until recorded in the tax credit registry in accordance with R.S. 47:1524.</u> The notification shall include the transferor's tax credit balance prior to transfer, a copy of any tax credit certification letter(s) issued by the office and the secretary of the Department of Economic Development the transferor's remaining tax credit balance after transfer, all tax identification numbers for both transferor and transferee, the date of transfer, the amount transferred, a copy of the credit
 17 18 19 20 21 22 23 24 25 26 	(b) Transferors and transferees shall submit to the Department of Revenue in writing, a notification of any transfer or sale of tax credits within ten business days after the transfer or sale of such tax credits. <u>No transfer or sale of tax credits shall</u> <u>be effective until recorded in the tax credit registry in accordance with R.S. 47:1524.</u> The notification shall include the transferor's tax credit balance prior to transfer, a copy of any tax credit certification letter(s) issued by the office and the secretary of the Department of Economic Development the transferor's remaining tax credit balance after transfer, all tax identification numbers for both transferor and transferee, the date of transfer, the amount transferred, a copy of the credit certificate, price paid by the transferee to the transferor, in the case when the
 17 18 19 20 21 22 23 24 25 26 27 	(b) Transferors and transferees shall submit to the Department of Revenue in writing, a notification of any transfer or sale of tax credits within ten business days after the transfer or sale of such tax credits. <u>No transfer or sale of tax credits shall</u> <u>be effective until recorded in the tax credit registry in accordance with R.S. 47:1524.</u> The notification shall include the transferor's tax credit balance prior to transfer, a copy of any tax credit certification letter(s) issued by the office and the secretary of the Department of Economic Development the transferor's remaining tax credit balance after transfer, all tax identification numbers for both transferor and transferee, the date of transfer, the amount transferred, a copy of the credit certificate, price paid by the transferee to the transferor, in the case when the transferor is a state-certified production, for the tax credits, and any other

Page 5 of 12

HB NO. 748

1 means the percentage as determined by the price paid by the transferee to the 2 transferor divided by the dollar value of the tax credits that were transferred in 3 return. The notification submitted to the Department of Revenue shall include a 4 processing fee of up to two hundred dollars per transferee, and any information 5 submitted by a transferor or transferee shall be treated by the office and the 6 Department of Revenue as proprietary to the entity reporting such information and 7 therefore confidential. However, this shall not prevent the publication of summary 8 data that includes no fewer than three transactions.

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* * *

10 (f)(i) Beginning on and after January 1, 2007, the investor who earned the 11 motion picture investor tax credits may transfer the credits to the office for seventy-12 two percent of the face value of the credits. Beginning January 1, 2009, and every 13 second year thereafter, the percent of the face value of the tax credits allowed for 14 transferring credits to the office shall increase two percent until the percentage 15 reaches eighty percent. Upon the transfer, the Department of Economic 16 Development shall notify the Department of Revenue and shall provide it with a 17 copy of the transfer documentation. The Department of Revenue may require the 18 transferor to submit such additional information as may be necessary to administer 19 the provisions of this Section. The secretary of the Department of Revenue shall 20 make payment to the investor in the amount to which he is entitled from the current 21 collections of the taxes collected pursuant to Chapter 1 of Subtitle II, provided such 22 credits are transferred to the office within one calendar year of certification.

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

Page 6 of 12

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1	(iii) The Department of Revenue may require the transferor to submit such
2	additional information as may be necessary to administer the provisions of this
3	Section. The secretary of the Department of Revenue shall make payment to the
4	motion picture production company or its irrevocable designee in the amount to
5	which he is entitled from the current collections of the taxes collected pursuant to
6	Chapter 1 of Subtitle II, of this Title provided such tax credits are transferred to the
7	Department of Revenue within one calendar year of certification.
8	(iv) A bank or other lender may be named as an irrevocable designee in the
9	initial tax credit certification or other document submitted thereafter by a motion
10	picture production company to the office. As an irrevocable designee, a bank or
11	other lender may elect to have the tax credits issued directly to it from the office, and
12	in addition to the rights of a transferee may also elect to transfer the credits to the
13	Department of Revenue in accordance with the provisions of Items (ii) and (iii) of
14	this Subparagraph.
15	* * *
16	D. Certification and administration.
17	(1)
18	* * *
19	(d) When determining which productions may qualify, the office and the
20	secretary of the Department of Economic Development shall take the following
21	factors into consideration:
22	* * *
23	(iv) Conviction for a criminal offense as an incident to obtaining or
24	attempting to obtain motion picture investor tax credits.
25	(2)
26	* * *
27	(d)(i) Prior to any final certification of the state-certified production, the
28	motion picture production company shall submit to the office and the secretary a
29	production audit report. No later than six months after the expiration of the initial
30	certification period for the applicable state-certified production, a state-certified

Page 7 of 12

1	motion picture production company applicant shall make a request to the office to
2	proceed to final certification by submitting to the office a cost report of production
3	expenditures to be formatted in accordance with instructions of the office. The
4	applicant shall make all records related to the cost report available for inspection by
5	the office and the qualified accountant selected by the office to prepare the
6	production expenditure verification report, after which time all such claims to tax
7	credits shall be deemed waived. After review and investigation of the cost report,
8	the accountant shall submit to the office and the secretary a production expenditure
9	verification report. The office and the secretary shall review the production audit
10	expenditure verification report and may require additional information needed to
11	make a determination as to final certification of all tax credits for that production.
12	Within one hundred twenty days of the receipt of the production audit expenditure
13	verification report and all required supporting information, the office and the
14	secretary shall issue a tax credit certification letter indicating the amount of tax
15	credits certified for the state-certified production to the investors applicant for all
16	qualifying expenditures verified by the office. Any expenditures for which tax
17	credits were neither denied nor certified due to insufficient information or other
18	issues, the office and secretary shall diligently work to resolve the outstanding issues
19	in a timely manner, and the office and secretary may subsequently issue a
20	supplemental tax credit certification at the time of such resolution.
21	* * *
22	(iii) Only expenditures made during the initial certification period shall earn
23	credits.
24	* * *
25	G. Tax credits provided for in this Section shall not be considered
26	entitlements, and the taxpayer shall bear the burden of clearly and unequivocally
27	establishing eligibility for tax credits.
28	Section 2. R.S. 47:6007(section heading), (E) and (F) are hereby amended and
29	reenacted and R.S. 47:6007(H) is hereby enacted to read as follows:

Page 8 of 12

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§6007. Motion picture investor production tax credit

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3 E. Recapture Disallowance and recapture of credits. If the office finds that 4 monies for which an investor received tax credits according to this Section are not 5 invested in and expended with respect to a state-certified production within twentyfour months of the date that such credits are earned, then the investor's state income 6 7 tax for such taxable period shall be increased by such amount necessary for the 8 recapture of credit provided by this Section. 9 (1) A bad faith holder may not transfer tax credits pursuant to any provision 10 of Paragraph (C)(4) of this Section, nor claim tax credits pursuant to Paragraphs 11 (C)(2) and (3) of this Section. A bad faith holder is a person who participated in 12 material misrepresentation or fraudulent acts in connection with the certification of 13 tax credits pursuant to this Section, or who prior to or at the time of certification of 14 such tax credits knew or reasonably should have known of such material 15 misrepresentation or fraudulent acts, or a legal entity owned or controlled by such 16 a person. Upon a determination of bad faith by the Department of Revenue such tax 17 credits shall be deemed disallowed as to the bad faith holder. 18 (2) Tax credits previously transferred pursuant to Subparagraph (C)(4)(f) of 19 this Section or claimed by a bad faith holder, but subsequently disallowed, may be 20 recovered by the secretary of the Department of Revenue through any collection 21 remedy authorized by R.S.47:1561, plus interest and penalties provided by law for 22 the delinquent payment of taxes, and the Department of Revenue may recapture any 23 amounts and other damages from a bad faith holder using any collection remedy 24 authorized by law. 25 (3) In the event tax credits obtained through material misrepresentation or 26 fraudulent acts are claimed by a taxpayer who is not a bad faith holder, the 27 Department of Revenue shall have the right of recourse against a bad faith holder as 28 provided to a transferee pursuant to Subparagraph (C)(4)(e) of this Section.

Page 9 of 12

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1	(4) The provisions of this Subsection are in addition to and shall not limit the
2	authority of the secretary of the Department of Revenue to assess or to collect under
3	any other provision of law.
4	F. Recovery of credits by Department of Revenue. (1) Credits previously
5	granted to a taxpayer, but later disallowed, may be recovered by the secretary of the
6	Department of Revenue through any collection remedy authorized by R.S. 47:1561
7	and initiated within three years from December thirty-first of the year in which the
8	twenty-four-month investment period specified in Subsection E of this Section ends.
9	(2) The only interest that may be assessed and collected on recovered credits
10	is interest at a rate three percentage points above the rate provided in R.S.
11	9:3500(B)(1), which shall be computed from the original due date of the return on
12	which the credit was taken.
13	(3) The provisions of this Subsection are in addition to and shall not limit the
14	authority of the secretary of the Department of Revenue to assess or to collect under
15	any other provision of law.
16	Prescription. Tax credits previously granted to a taxpayer, but later
17	disallowed pursuant to the provisions of Subsection E of this Section, may be
18	recovered by the secretary of the Department of Revenue through any collection
19	remedy authorized by R.S. 47:1561 and initiated within the later of any of the
20	following:
21	(1) Two years from December thirty-first in the year in which the tax credit
22	was paid in accordance with Item (C)(4)(f)(ii) of this Section.
23	(2) Three years from December thirty-first of the year in which the taxes for
24	the filing period were due.
25	(3) Three years from December thirty-first of the year in which the final tax
26	credit certification letter was issued.
27	(4) The time period for which prescription has been extended, as provided
28	<u>by R.S. 47:1580.</u>
29	* * *

Page 10 of 12

1	H. Audit reports for certification of expenditures for state-certified motion
2	picture infrastructure program tax credits shall be submitted in accordance with the
3	provisions of this Subsection.
4	(1) State-certified infrastructure project applicants may submit to the office
5	on or before December 31, 2015, all requests and required documentation for final
6	certification of all tax credits granted by this provision, after which time all such
7	claims to tax credits shall be deemed waived.
8	(2) Any request shall be accompanied by an audit performed by an
9	independent certified public accountant.
10	(3) The office, the secretary, and the division shall review the audit, and may
11	require additional information needed to make a determination as to certification.
12	(4) The office may request an additional audit report of expenditures
13	submitted by the state-certified motion picture infrastructure project applicant, with
14	the cost of the additional report paid by the applicant.
15	(5) Within three hundred and sixty five days after receipt of the audit report
16	and all required supporting information, or December 31, 2016, whichever occurs
17	first, the office, the secretary, and the division shall issue a denial letter or a tax
18	credit certification letter to the investors indicating the amount of tax credits certified
19	for the state-certified infrastructure project for all qualifying expenditures verified
20	by the office.
21	(6) Tax credits provided for in this Section shall not be considered
22	entitlements, and the state-certified motion picture infrastructure applicant shall bear
23	the burden of clearly and unequivocally establishing eligibility for tax credits.
24	(7) In the event that a request for final certification is denied, an applicant
25	may appeal the decision in accordance with program rules.
26	(8) No motion picture infrastructure tax credits shall be certified after July
27	<u>1, 2017.</u>
28	Section 3. R.S. 47:1524(D)(3) is hereby repealed in its entirety.
29	Section 4. The provisions of Sections 1 and 3 of this Act shall become effective on
30	January 1, 2016.

Page 11 of 12

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

SPEAKER OF THE HOUSE OF REPRESENTATIVES

PRESIDENT OF THE SENATE

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____