

ACT No. 134

2015 Regular Session

HOUSE BILL NO. 829

BY REPRESENTATIVES ROBIDEAUX, BARROW, HENRY BURNS, HUNTER, AND
PATRICK WILLIAMS

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AN ACT

To amend and reenact R.S. 47:6007(B), (C)(1)(introductory paragraph), (c), and (d), (2), and (4)(introductory paragraph), (D)(4)(ii)(aa) and to enact R.S. 47:6007(C)(1)(e) and (4)(f)(iii), relative to income tax credits; to provide with respect to the motion picture investor tax credit; to provide for certain definitions; to provide for the certification of credits; to authorize credits for certain investors; to authorize a credit for certain state certified productions which employ certain residents; to authorize a credit for investments on certain music; to provide for an annual program cap on the tax credit and a fiscal year program cap on allowance of the tax credits and transfers; to provide for a cap on certain productions; to provide for the transfer of credits; to prohibit transfers of tax credits to the office for certain periods; to provide for use of the monies collected as a result of the application fee; to provide for tax credit requirements and limitations; to provide for an effective date; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. R.S. 47:6007(B), (C)(1)(introductory paragraph), (c), and (d),(2), and (4)(introductory paragraph), (D)(4)(ii)(aa) are hereby amended and reenacted and R.S. 47:6007(C)(1)(e) and (4)(f)(iii) are hereby enacted to read as follows:

§6007. Motion picture investor tax credit

* * *

B. Definitions. For the purposes of this Section:

(1) "Above the line services" means services such as those of a producer, executive producer, line producer, co-producer, assistant producer, actor, director,

1 ~~casting director, screenwriter, and other services performed by personnel of the~~
2 ~~production that are associated with the creative or financial control of a production~~
3 ~~and customarily considered above the line services in the film and television~~
4 ~~industry.~~

5 ~~(1)~~ (2) "Base investment" means cash or cash equivalent investment made
6 and used for production expenditures in the state for a state-certified production.

7 ~~(2)~~ (3) "Expended in the state" means an expenditure to lease immovable
8 property located in the state; an expenditure as compensation for services performed
9 in the state; or an expenditure to purchase or lease tangible personal property within
10 the state where the transaction is subject to the state sales or lease tax provisions of
11 Title 47 of the Louisiana Revised Statutes of 1950. A transaction that is subject to
12 the state sales or lease tax provisions of Title 47 of the Louisiana Revised Statutes
13 of 1950 shall include transactions which are also subject to a statutory exclusion or
14 exemption.

15 ~~(3)~~ (4) "Expenditure" means actual cash or cash equivalent exchanged for
16 goods or services.

17 ~~(4)~~ (5) "Headquartered in Louisiana" means a corporation incorporated in
18 Louisiana or a partnership, limited liability company, or other business entity
19 domiciled and headquartered in Louisiana for the purpose of producing nationally
20 or internationally distributed motion pictures as defined in this Section.

21 ~~(5)~~ (6) "Louisiana resident company" means a motion picture production
22 company licensed to conduct business in the state of Louisiana, with its principal
23 place of business in this state, which is owned one hundred percent by a Louisiana
24 resident or residents as defined in this Section. A Louisiana resident company is
25 required to file a Louisiana income tax return and maintain a physical location in the
26 state.

27 (7) "Marketing and promotion expenses" means expenditures in this state
28 directly relating to the development of advertising and marketing campaigns for a
29 state-certified production, such as the creation of film trailers and posters. Marketing
30 and promotional expenses must be included in and expended from the production

1 budget and may not exceed one million dollars, or fifteen percent of the total state-
 2 certified tax credits for the production, whichever is less. Marketing and
 3 promotional expenses shall not include media buys except for a fixed fee or
 4 commission payment made to a Louisiana company for services performed in the
 5 state in accordance with standard business practices as established by rule.

6 (8) "Motion picture" means a nationally or internationally distributed
 7 feature-length film, short film, video, television pilot, television series, television
 8 movie of the week, animated feature film, animated short film, animated television
 9 series, ~~or commercial, or documentary~~ made in Louisiana, in whole or in part, for
 10 theatrical, ~~or television viewing, or any online digital platform viewing~~. The term
 11 "motion picture" shall not include the production of television coverage of news and
 12 athletic events.

13 ~~(6)~~ (9) "Motion picture production company" means a company engaged in
 14 the business of producing nationally or internationally distributed motion pictures
 15 as defined in this Section. Motion picture production company shall not mean or
 16 include any company owned, affiliated, or controlled, in whole or in part, by any
 17 company or person which is in default on a loan made by the state or a loan
 18 guaranteed by the state, nor with any company or person who has ever declared
 19 bankruptcy under which an obligation of the company or person to pay or repay
 20 public funds or monies was discharged as a part of such bankruptcy.

21 ~~(7)~~ (10) "Office" means the Governor's Office of Film and Television
 22 Development until August 15, 2006; thereafter, the term "office" means the office
 23 of entertainment industry development in the Department of Economic Development
 24 provided for in R.S. 51:938.1.

25 ~~(8)~~ (11) "Payroll" means all salary, wages, and other compensation,
 26 including benefits paid to an employee for services relating to a state-certified
 27 production and taxable in this state. However, "payroll" ~~for purposes of the~~
 28 ~~additional tax credit for Louisiana-resident payroll~~ shall exclude any portion of an
 29 individual salary in excess of ~~one~~ three million dollars.

1 (12) "Principal place of business" means the state where the administrative
 2 or management activities of a business are conducted. A company claiming that its
 3 principal place of business is in Louisiana must be a motion picture production
 4 company headquartered in this state and shall not have any fixed locations outside
 5 of Louisiana in which administrative or management activities are conducted, and
 6 the company shall be required to maintain a physical location in the state. The
 7 company shall be licensed to conduct business in this state and shall be required to
 8 file a Louisiana income tax return.

9 ~~(9)~~ (13) "Production audit report" means an audit report issued by a qualified
 10 accountant who is unrelated to the motion picture production company and that is a
 11 report of the qualified accountant's audit of the motion picture production's cost
 12 report of production expenditures. The production audit report shall contain an
 13 opinion from the qualified accountant stating that the production's cost report of
 14 production expenditures presents fairly, in all material aspects, the production
 15 expenditures expended in Louisiana pursuant to the provisions of this Section. The
 16 production audit shall require:

17 (a) The production audit report to be performed in accordance with the
 18 auditing standards generally accepted in the United States.

19 (b) The production audit report to be addressed to the party which has
 20 engaged the qualified accountant.

21 (c) The production audit report to contain the qualified accountant's name,
 22 address, and telephone number.

23 (d) The production audit report to contain a certification that the qualified
 24 accountant is unrelated to the motion picture production company.

25 (e) The production audit report to be dated as of the date of completion of
 26 the qualified accountant's field work.

27 (f) The production audit report to contain a statement of acknowledgment by
 28 the qualified accountant that the state is relying on the qualified cost report in the
 29 issuance of the tax credits under the provisions of this Section.

1 ~~(10)~~ (14) "Production expenditures" means preproduction, production, and
 2 postproduction expenditures in this state directly relating to a state-certified
 3 production, including without limitation the following: set construction and
 4 operation; wardrobes, makeup, accessories, and related services; costs associated
 5 with photography and sound synchronization, lighting, and related services and
 6 materials; editing and related services; rental of facilities and equipment; leasing of
 7 vehicles; costs of food and lodging; digital or tape editing, film processing, transfer
 8 of film to tape or digital format, sound mixing, special and visual effects; and
 9 payroll. For all state-certified productions approved on or after January 1, 2004, this
 10 ~~This~~ term shall not include expenditures for ~~marketing and~~ distribution, non-
 11 production related overhead, amounts reimbursed by the state or any other
 12 governmental entity, costs related to the transfer of tax credits, amounts that are paid
 13 to persons or entities as a result of their participation in profits from the exploitation
 14 of the production, the application fee, ~~or state or local taxes, or any expenditures~~
 15 occurring outside of Louisiana. For all state-certified productions approved on or
 16 after July 1, 2015, this term shall include marketing and promotion expenses of the
 17 state-certified production incurring in this state.

18 ~~(11)~~ (15) "Qualified accountant" means an independent certified public
 19 accountant authorized to practice in this state who has sufficient knowledge of
 20 accounting principles and practices generally recognized in the film and television
 21 industry.

22 ~~(12)~~ (16) "Resident" or "resident of Louisiana" means a natural person who
 23 is a legal resident and who has been domiciled in the state and has maintained a
 24 permanent place of abode in this state for no less than twelve consecutive months.
 25 ~~A person who maintains a permanent place of abode within the state and spends in~~
 26 ~~the aggregate more than six months of each year within the state shall be presumed~~
 27 ~~to be domiciled in the state.~~

28 ~~(13)~~ (17) "Secretary" means the secretary of the Department of Economic
 29 Development.

1 (18) "Slate of productions" or "slate" means an aggregation of motion picture
 2 production projects with a combined total of qualified expenditures that exceed three
 3 hundred thousand dollars for activities occurring over a maximum of twenty-four
 4 months within the state. A slate shall not include more than three state- certified
 5 productions. No single state-certified production in a slate shall exceed three
 6 hundred thousand dollars. Tax credits shall not be issued for any single state
 7 certified production included within a slate until the entire slate has been completed.
 8 A single application for the slate must identify all of the productions within the slate
 9 and the application shall be submitted to the office no less than thirty days prior to
 10 the beginning of production. Only expenditures made after the application for the
 11 slate received by the office may qualify for tax credits pursuant to the provisions of
 12 this Section.

13 ~~(14)~~ (19) "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)~~ (20) "State" means the state of Louisiana.

17 ~~(16)~~ (21) "State-certified production" shall mean a production or slate of
 18 productions approved by the office and the secretary which is produced by a motion
 19 picture production company domiciled and headquartered in Louisiana and which
 20 has a viable multi-market commercial distribution plan.

21 C. Investor tax credit; specific productions and projects.

22 (1) There is hereby authorized a tax credit against state income tax for
 23 Louisiana taxpayers for investment in state-certified productions. The tax credit
 24 shall be earned by investors at the time expenditures are ~~made by~~ certified by the
 25 office and the secretary for a motion picture production company in a state-certified
 26 production. However, credits cannot be applied against a tax or transferred until the
 27 expenditures are certified by the office and the secretary. For state-certified
 28 productions, expenditures shall be certified no more than twice during the duration
 29 of a state-certified production unless the motion picture production company agrees
 30 to reimburse the office for the costs of any additional certifications. The tax credit

1 shall be calculated as a percentage of the total base investment dollars certified per
2 project.

3 * * *

4 (c) For state-certified productions approved by the office and the secretary
5 on or after July 1, 2009:

6 (i) If the total base investment is greater than three hundred thousand dollars,
7 each investor shall be allowed a tax credit of thirty percent of the base investment
8 made by that investor.

9 (ii) If the total base investment is greater than fifty thousand dollars, but less
10 than three hundred thousand dollars, for each state certified production there shall
11 be allowed a tax credit of thirty percent of the total base investment made by that
12 investor. However, each applicant shall accept as a condition for earning this tax
13 credit, that no less than ninety percent of the total amount of the applicant's
14 expenditures for above the line services shall be expended on residents of Louisiana
15 and that ninety percent or more of the total number of jobs in the production shall be
16 jobs in which the applicant will employ residents of Louisiana. Failure to comply
17 with these requirements for which certification of the tax credits is granted, shall
18 void the certification and no tax credits shall be certified by the office or the
19 secretary or earned by the applicant.

20 (iii) If the total base investment is greater than three hundred thousand
21 dollars and the state certified production is based on a screenplay, the copyright of
22 which or the right of use of the copyright of which, is owned or optioned to own for
23 a minimum of twelve months prior to production by a Louisiana resident company
24 or a Louisiana company with its principal place of business in the state which
25 employs a minimum of three full-time Louisiana residents for minimum of twelve
26 months prior to production, there shall be allowed a tax credit of an additional fifteen
27 percent of the base investment of the state-certified production. If the office and the
28 secretary determine that an expenditure is a related party transaction, that
29 expenditure shall not qualify for the additional fifteen percent tax credit. The tax
30 credit authorized in this Item shall be in addition to the tax credit authorized in Item

1 (i) of this Subparagraph. Prior to the office certifying any credits pursuant to the
 2 provisions of this Item, the secretary shall promulgate rules and regulations pursuant
 3 to the Administrative Procedure Act, subject to oversight by the House Ways and
 4 Means and the Senate Revenue and Fiscal Affairs Committees. The rules and
 5 regulations shall set forth criteria a Louisiana resident company with its principal
 6 place of business in this state shall meet in order to qualify for the additional credit.
 7 The secretary shall commence the promulgation of rules and regulations no later than
 8 October 1, 2015.

9 ~~(ii) (iv)~~ To the extent that base investment is expended on payroll for
 10 Louisiana residents employed in connection with a state-certified production, each
 11 investor shall be allowed an additional tax credit of ~~five~~ ten percent of such payroll.
 12 ~~However, if the payroll to any one person exceeds one million dollars, this additional~~
 13 ~~credit shall exclude any salary for that person that exceeds one million dollars.~~

14 (v) To the extent that the base investment is expended on music, the sound
 15 recording copyright of which, or musical copyright of which, is owned in whole or
 16 in part at no less than twenty-five percent by a resident of Louisiana or a Louisiana
 17 company headquartered in the state with a majority ownership of residents of
 18 Louisiana, there shall be allowed an additional tax credit of fifteen percent of the
 19 base investment.

20 (d)(i) For state-certified productions approved on or after July 1, 2015, and
 21 on or before June 30, 2018, the maximum amount of credits that may be certified for
 22 an single state-certified production shall not exceed thirty million dollars. The credit
 23 for these productions may be structured over two or more tax years as provided for
 24 in the initial certification letter.

25 (ii)(aa) For Fiscal Years 2015-2016, 2016-2017, and 2017-2018, claims
 26 against state income tax allowed on returns for tax credits or transfers of such tax
 27 credits to the office as provided for in Paragraph (4) of this Subsection shall be
 28 limited to an aggregate total of one hundred eighty million dollars each fiscal year.
 29 Claims for tax credits or transfers of tax credits to the office shall be allowed on a
 30 first-come-first-served basis. Any taxpayer whose claim for such tax credits or

1 transfer to the office is disallowed may use the tax credits against state income tax
2 due in a return filed in the next fiscal year or may transfer tax credits to the office the
3 next fiscal year, and his claim or transfer shall have priority over other claims filed
4 or transfers applied for after the date and time of his original claim or application for
5 transfer.

6 (bb) If less than one hundred eighty million dollars of such tax credits and
7 transfers are allowed in a fiscal year, the remaining amount, plus any amounts
8 remaining from previous fiscal years, shall be added to the one hundred eighty
9 million dollar limit of subsequent fiscal years until that amount of tax credits or tax
10 credit transfers to the office are claimed and allowed.

11 (cc) Beginning in Fiscal Year 2018-2019, the cap on the aggregate amount
12 of tax credits that may be paid by the state or transferred to the state shall be
13 inapplicable, inoperable, and of no effect.

14 ~~(d)~~ (e) Motion picture investor tax credits associated with a state-certified
15 production shall never exceed the total base investment in that production.

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

22 * * *

23 (4) Transferability of the credit. ~~Any~~ Except as provided for in Item (f)(iii)
24 of this Paragraph, motion picture tax credits not previously claimed by any taxpayer
25 against its income tax may be transferred or sold to another Louisiana taxpayer or
26 to the office, subject to the following conditions:

27 * * *

28 (f)(i)

29 * * *

