**ORIGINAL** 

2015 Regular Session

HOUSE BILL NO. 633

### BY REPRESENTATIVES JAMES, GAINES, HALL, HUNTER, JACKSON, AND SMITH

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

1	AN ACT				
2	To amend and reenact R.S. 47:6007(B)(8), (9)(introductory paragraph), and (10), (C)(4) and				
3	(5), and (D)(2)(d)(i) to enact R.S. 47:6007(C)(1)(e) and (f) and to repea				
4	R.S.47:6006(C)(6), relative to income tax credits; to provide with respect to the				
5	motion picture investor income tax credit; to provide for definitions; to provide for				
6	transferability of the motion picture investor credit; to provide for an annual program				
7	cap for the motion picture investor tax credit; to require publication of production				
8	audit reports; to provide for an effective date; and to provide for related matters.				
9	Be it enacted by the Legislature of Louisiana:				
10	Section 1. R.S. 47:6007(B)(8), (9)(introductory paragraph), and (10), (C)(4) and (5),				
11	and (D)(2)(d)(i) are hereby amended and reenacted and R.S. 47:6007(C)(1)(e) and (f) are				
12	hereby enacted to read as follows:				
13	§6007. Motion picture investor tax credit				
14	* * *				
15	B. Definitions. For the purposes of this Section:				
16	* * *				
17	(8) "Payroll" means all salary, wages, and other compensation, including				
18	benefits paid to an employee for services relating to a state-certified production and				
19	taxable in this state. However, "payroll" for purposes of the additional tax credit for				
20	Louisiana-resident payroll shall exclude any portion of an individual salary in excess				
21	of one million dollars.				

### Page 1 of 8

CODING: Words in struck through type are deletions from existing law; words <u>underscored</u> are additions.

1	(9) "Production audit report" means an audit report issued by a qualified
2	accountant who is unrelated to the motion picture production company and that is a
3	report of the qualified accountant's audit of the motion picture production's cost
4	report of production expenditures. The production audit report shall contain an
5	opinion from the qualified accountant stating that the production's cost report of
6	production expenditures presents fairly, in all material aspects, the production
7	expenditures expended in Louisiana pursuant to the provisions of this Section. The
8	production audit report shall also contain an accounting of the total number of people
9	employed by the state-certified production, specifying the number of employees who
10	are Louisiana residents, the aggregate payroll of the production, specifying the
11	percentage of payroll paid to Louisiana residents, and the number of days and hours
12	worked by "below the line" employees, specifying the percentage attributable to
13	Louisiana residents. The production audit shall require:
14	* * *
15	(10) "Production expenditures" means preproduction, production, and
16	postproduction expenditures <u>incurred</u> in this state directly relating to a state-certified
17	production, including without limitation the following: set construction and
18	operation; wardrobes, makeup, accessories, and related services; costs associated
19	with photography and sound synchronization, excluding license fees incurred with
20	Louisiana companies for sound recordings and musical compositions, lighting, and
21	related services and materials; editing and related services; rental of facilities and
22	equipment; leasing of vehicles, if leased through a Louisiana vehicle leasing
23	company; costs of food and lodging; digital or tape editing, film processing, transfer
24	of film to tape or digital format, sound mixing, computer graphic services, special
25	and visual effects services, and animation services; and payroll. payroll; airfare to
26	and from Louisiana, if purchased through a Louisiana travel agency or travel
27	company; insurance costs and bonding, if purchased through a Louisiana insurance
28	agency; and other direct costs of producing the project in Louisiana in accordance
29	with generally accepted entertainment industry practices. This term shall not include

1	expenditures for marketing and distribution, non-production related overhead,		
2	amounts reimbursed by the state or any other governmental entity, costs related to		
3	the transfer of tax credits, amounts that are paid to persons or entities as a result of		
4	their participation in profits from the exploitation of the production, the application		
5	fee, or state or local taxes.		
6	* * *		
7	C. Investor tax credit; specific productions and projects.		
8	(1)		
9	* * *		
10	(e) For state-certified productions approved by the office and the secretary		
11	on or after January 1, 2016:		
12	(i) If the total base investment is greater than three hundred thousand dollars		
13	and at least seventy-five percent of the "below the line" employees who are		
14	employed in connection with the state-certified production are Louisiana residents,		
15	each investor shall be allowed a tax credit of thirty percent of the base investment		
16	made by that investor. For purposes of this Section, "below the line" employees		
17	shall include all persons employed by the state-certified production except for actors,		
18	directors, writers, and producers of the state-certified production		
19	(ii) To the extent that base investment is expended on payroll for Louisiana		
20	residents employed in connection with a state-certified production, each investor		
21	shall be allowed an additional tax credit of five percent of such payroll.		
22	(f)(i) Beginning on January 1, 2016, the aggregate amount of credits certified		
23	for all investors pursuant to this Section during any calendar year shall not exceed		
24	one hundred fifty million dollars. An application for initial certification of a project		
25	shall be submitted to the Louisiana Department of Economic Development prior to		
26	the granting of the credit, and the granting of credits under this Section shall be on		
27	a first-come, first-served basis. If the total amount of credits applied for in any		
28	particular year exceeds the aggregate amount of tax credits allowed for that year, the		
29	excess will be treated as having been applied for on the first day of the subsequent		

1	year. The secretary shall provide for the administration of the annual aggregate
2	maximum amount of credits certified by the office through rules and regulations
3	promulgated in accordance with the Administrative Procedure Act, subject to
4	oversight by the House Committee on Ways and Means and the Senate Committee
5	on Revenue and Fiscal Affairs.
6	* * *
7	(4) Transferability of the credit. Any motion picture tax credits not
8	previously claimed by any taxpayer against its income tax may be transferred or sold
9	to another Louisiana taxpayer or to the office, subject to the following conditions:
10	(a) A single transfer or sale may involve one or more transferees. The
11	transferee of the tax credits may transfer or sell such tax credits subject to the
12	conditions of this Subsection.
13	(b) Transferors and transferees shall submit to the Department of Revenue
14	in writing, a notification of any transfer or sale of tax credits within ten business days
15	after the transfer or sale of such tax credits. The notification shall include the
16	transferor's tax credit balance prior to transfer, a copy of any tax credit certification
17	letter(s) issued by the office and the secretary of the Department of Economic
18	Development the transferor's remaining tax credit balance after transfer, all tax
19	identification numbers for both transferor and transferee, the date of transfer, the
20	amount transferred, a copy of the credit certificate, price paid by the transferee to the
21	transferor, in the case when the transferor is a state-certified production, for the tax
22	credits, and any other information required by the office or the Department of
23	Revenue. For the purpose of reporting transfer prices, the term "transfer" shall
24	include allocations pursuant to Paragraph (2) of this Subsection as provided by rule.
25	The tax credit transfer value means the percentage as determined by the price paid
26	by the transferee to the transferor divided by the dollar value of the tax credits that
27	were transferred in return. The notification submitted to the Department of Revenue
28	shall include a processing fee of up to two hundred dollars per transferee, and any
29	information submitted by a transferor or transferee shall be treated by the office and

# Page 4 of 8

CODING: Words in struck through type are deletions from existing law; words <u>underscored</u> are additions.

1	the Department of Revenue as proprietary to the entity reporting such information	
2	and therefore confidential. However, this shall not prevent the publication of	
3	summary data that includes no fewer than three transactions.	
4	(c) Failure to comply with this Paragraph will result in the disallowance of	
5	the tax credit until the taxpayers are in full compliance.	
6	(d) The transfer or sale of this credit does not extend the time in which the	
7	credit can be used. The carryforward period for credit that is transferred or sold	
8	begins on the date on which the credit was earned.	
9	(e) To the extent that the transferor did not have rights to claim or use the	
10	credit at the time of the transfer, the Department of Revenue shall either disallow the	
11	credit claimed by the transferee or recapture the credit from the transferee through	
12	any collection method authorized by R.S. 47:1561. The transferee's recourse is	
13	against the transferor.	
14	(f)(i) (a)(i) Beginning on and after January 1, 2007, the investor who earned	
15	the motion picture investor tax credits may transfer the credits to the office for	
16	seventy-two percent of the face value of the credits. Beginning January 1, 2009, and	
17	every second year thereafter, the percent of the face value of the tax credits allowed	
18	for transferring credits to the office shall increase two percent until the percentage	
19	reaches eighty percent. Upon the transfer, the Department of Economic	
20	Development shall notify the Department of Revenue and shall provide it with a	
21	copy of the transfer documentation. The Department of Revenue may require the	
22	transferor to submit such additional information as may be necessary to administer	
23	the provisions of this Section. The secretary of the Department of Revenue shall	
24	make payment to the investor in the amount to which he is entitled from the current	
25	collections of the taxes collected pursuant to Chapter 1 of Subtitle II, provided such	
26	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 earned the motion picture investor tax credits pursuant to such
certification may transfer the credits to the office for eighty-five percent of the face

1	value of the credits in accordance with the procedures and requirements of Item (i)		
2	of this Subparagraph.		
3	(5) The transferee shall apply such credits in the same manner and against		
4	the same taxes as the taxpayer originally awarded the credit.		
5	(6)(5) Notwithstanding any other provision of law, on or after January 1,		
6	2006, a state-certified production which receives tax credits pursuant to the		
7	provisions of this Chapter shall not be eligible to receive the rebates provided for in		
8	R.S. 51:2451 through 2461 in connection with the activity for which the tax credits		
9	were received.		
10	D. Certification and administration.		
11	* * *		
12	(2)(a)		
13	* * *		
14	(d)(i) Prior to any final certification of the state-certified production, the		
15	motion picture production company shall submit to the office and the secretary a		
16	production audit report and the department shall make available to the public the		
17	production audit report on the website for the department. The office and the		
18	secretary shall review the production audit report and may require additional		
19	information needed to make a determination. Within one hundred twenty days of		
20	the receipt of the production audit report and all required supporting information, the		
21	office and the secretary shall issue a tax credit certification letter indicating the		
22	amount of tax credits certified for the state-certified production to the investors for		
23	all qualifying expenditures verified by the office. Any expenditures for which tax		
24	credits were neither denied nor certified due to insufficient information or other		
25	issues, the office and secretary shall diligently work to resolve the outstanding issues		
26	in a timely manner, and the office and secretary may subsequently issue a		
27	supplemental tax credit certification at the time of such resolution.		
28	* * *		

29 Section 2. R.S. 47:6007(C)(6) is hereby repealed in its entirety.

# Page 6 of 8

CODING: Words in struck through type are deletions from existing law; words <u>underscored</u> are additions.

- 1 Section 3. This Act shall become effective on January 1, 2016; if vetoed by the
- 2 governor and subsequently approved by the Legislature, this Act shall become effective on
- 3 January 1, 2016, or on the day following such approval by the Legislature, whichever is
- 4 later.

## 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)]

HB 633 Original	2015 Regular Session	James
IID 055 Offginal		Junes

Abstract: Beginning Jan. 1, 2016, establishes an annual \$150 million program cap on the amount of motion picture investor tax credits certified by the office.

<u>Present law</u> provides for an income tax credit for La. taxpayers for investment in statecertified productions earned at the time expenditures are made by a motion picture production company in a state-certified production. The amount of the credit shall be 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 dollars.

<u>Present law</u> excludes from the definition of "payroll" any portion of an individual salary in excess of \$1M for purposes of the additional tax credit for La. resident payroll.

<u>Proposed law</u> changes <u>present law</u> to excludes from the definition of "payroll" any portion of any individual's salary that is in excess of \$1M.

<u>Present law</u> defines "production audit report" to mean an audit report issued by a qualified accountant who is unrelated to the motion picture production company. Further requires that certain information be contained in the production audit report.

<u>Proposed law</u> retains <u>present law</u> but also requires the production audit report to contain an accounting of the total number of people employed by the state-certified production, the aggregate payroll of the production, and the number of days and hours worked by "below the line" employees. Further requires the report to specify the number of employees who are La. residents, their percentage of payroll for the production, and the number of hours and days worked by La. residents.

<u>Present law</u> defines "production expenditures" to include preproduction, production, and postproduction expenditures in this state directly relating to a state-certified production.

<u>Proposed law</u> retains <u>present law</u> but specifies that the expenditures are incurred in La. and requires certain related services to be contracted for through a La. company.

<u>Proposed law</u> retains <u>present law</u> but requires at least 75% of the "below the line" employees who are employed in connection with the state-certified production to be Louisiana residents in order for the production to be eligible to receive the credit. Further defines "below the line" employees as any employee who is not an actor, writer, director, or producer.

<u>Proposed law</u> retains <u>present law</u> but limits the program to an annual \$150 million cap in tax credits that may be certified each year. Credits shall be granted on a first-come, first-served basis. If the total amount of credits applied for in any particular year exceeds the aggregate amount of credits allowed for that year, the excess shall be treated as having been applied for on the first day of the subsequent year.

<u>Proposed law</u> requires the secretary to promulgate rules and regulations for administration of the annual cap in accordance with the procedures of the Administrative Procedures Act, subject to oversight by the House Ways and Means Committee and the Senate Revenue and Fiscal Affairs Committee.

<u>Proposed law</u> requires the secretary to publish the production audit reports submitted to the department for final certification on the department's website.

Effective Jan. 1. 2016.

(Amends R.S. 47:6007(B)(8), (9)(intro. para.),and (10), (C)(4) and (5), and (D)(2)(d)(i); Adds R.S. 47:6007(C)(1)(e) and (f); Repeals R.S. 47:6007(C)(6))