2015 Regular Session

HOUSE BILL NO. 735

## BY REPRESENTATIVE STOKES

## TAX/INCOME TAX: Requires the withholding of individual income taxes from income earned by certain individuals for purposes of the motion picture investor tax credit

1	AN ACT
2	To amend and reenact R.S. 47:164(D) and 6007(B)(8) and (D)(5), relative to individual
3	income tax; to provide with respect to the motion picture investor tax credit; to
4	provide for employee compensation eligible as a production expense for purposes
5	of the tax credit; to require the reporting of certain payments and other information;
6	to provide for applicability; to provide for effectiveness; and to provide for related
7	matters.
8	Be it enacted by the Legislature of Louisiana:
9	Section 1. R.S. 47:164(D) and 6007(B)(8) and (D)(5) are hereby amended and
10	reenacted to read as follows:
11	§164. Information at source
12	* * *
13	D. Withholding of tax at source. (1) The collector secretary, whenever it is
14	deemed necessary to insure compliance with the provisions of this Chapter, may
15	require the United States, the state of Louisiana or any other state or any political
16	subdivision, agency or instrumentality of the foregoing, or any person having
17	control, receipt, custody, disposal or payment of interest (other than interest coupon
18	payable to the bearer), rent, salaries, wages, premiums, annuities, compensation,
19	remunerations, emoluments, or other fixed or determinable annual or periodical
20	gains, profits, and income, paid or payable to any person, to deduct and withhold as

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

1	tax an amount determined by the collector secretary, to be payable from such person
2	and make return thereof and pay the tax to the collector secretary.

3 (2)(a) The Motion Picture Investor Tax Credit pursuant to R.S. 47:6007 4 awards a tax credit for investments made and used for production expenditures in the 5 state for state-certified productions. Therefore, any individual receiving any payments for the performance of services used directly in a production activity, 6 7 which payments shall be claimed as a production expenditure for purposes of 8 certification of tax credits, is deemed to be receiving Louisiana taxable income 9 whether directly, or indirectly through an agent or agency, loan out company, a 10 personal service company, an employee leasing company, or other entity.

11 (b) Any motion picture production company, payroll service provider, or 12 other entity making or causing to be made payments as provided in Subparagraph (a) 13 of this Paragraph, to an individual, or to an agent or agency, loan out company, 14 personal service company, employee leasing company, or other entity is considered 15 to be paying compensation taxable by the state of Louisiana. For purposes of 16 eligibility as a production expenditure, the company or other entity shall withhold 17 taxes from those payments at the highest individual rate of 6%, or the highest 18 individual rate in effect at the time.

19(c) The motion picture production company or other entity required to20withhold income taxes as required by this Paragraph shall electronically report and21remit such withholdings to the Department of Revenue quarterly, and shall also22annually report electronically a list of all payees in a format approved by the23department. The reports shall contain the following information:

24 (i) Name, address, ownership structure, and taxpayer identification number
25 of the loan out company.

26 (ii) Identification of tax type: C Corporation, S Corporation, or Limited
27 Liability Company with tax type specified.

28 (iii) Name, address, and social security number of the payee.

29 (iv) An estimated amount of what the loan out company will pay the payee.

1	(v) An affirmative statement of whether or not the payee is a related party		
2	to the loan out company, and if so, provision of an affidavit stating under penalty of		
3	perjury that the transaction is valued at the same value that an unrelated party would		
4	value the same transaction.		
5	* * *		
6	§6007. Motion picture investor tax credit		
7	* * *		
8	B. Definitions. For the purposes of this Section:		
9	* * *		
10	(8) "Payroll" means all salary, wages, and other compensation, including		
11	benefits paid to an employee for services relating to a state-certified production and		
12	taxable in this state and for which taxes are withheld and remitted to the Department		
13	of Revenue in accordance with R.S. 47:164(D)(2). However, "payroll" for purposes		
14	of the additional tax credit for Louisiana-resident payroll shall exclude any portion		
15	of an individual salary in excess of one million dollars.		
16	* * *		
17	D. Certification and administration.		
18	* * *		
19	(5) A motion picture production company applying for the additional <u>a tax</u>		
20	credit for the employment of Louisiana residents based upon payroll for any persons		
21	must remit a schedule to the Department of Revenue, in a machine-sensible format		
22	approved by the secretary of the Department of Revenue, that includes the following		
23	information: the names of all persons who received salary, wages, or other		
24	compensation for services performed in Louisiana in connection with the state-		
25	certified production, and the address, taxpayer identification number, permanent		
26	address of, and the amount of compensation for services performed in Louisiana		
27	received by each such person.		
28	(a) Name, address, ownership structure, and taxpayer identification number		
29	of the loan out company.		

1	(b) Identification of tax type: C Corporation, S Corporation, or Limited	
2	Liability Company with tax type specified.	
3	(c) Name, address, and social security number of the payee.	
4	(d) An estimated amount of what the loan out company will pay the payee.	
5	(e) An affirmative statement of whether or not the payee is a related party	
6	to the loan out company, and if so, provision of an affidavit stating under penalty of	
7	perjury that the transaction is valued at the same value that an unrelated party would	
8	value the same transaction.	
9	* * *	
10	Section 2. For each fiscal year after the implementation of this Act, the secretary of	
11	the Department of Revenue shall retain an amount equal to thirty percent of the credit	
12	transfer fee required by R.S. 47:6007 for the purpose of administering the provisions	
13	required by this Act.	
14	Section 3. The provisions of this Act shall be applicable to productions which	
15	receive initial certification on or after January 1, 2016.	

## 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 735 Original	2015 Regular Session	Stokes
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Abstract: Requires the withholding of income tax on payments to all employees who are paid for the performance of services that are considered a production expenditure eligible for certification for purposes of the motion picture investor tax credit.

Present law allows a motion picture investor tax credit in an amount equal to a certain percentage of the "base investment" made in a state-certified production. The "base investment" is a cash or cash equivalent investment made and used for "production expenditures" in the state. "Production expenditures" includes compensation paid to employees for services related to the production.

Proposed law specifies that any individual receiving any payments for the performance of services used directly in a production activity, and claimed as a production expenditure for certification of a tax credit, is deemed to be receiving La. taxable income whether directly, or indirectly through an agent or agency, loan out company, a personal service company, an employee leasing company, or other entity.

Proposed law provides that any motion picture production company, payroll service provider, or other entity ("company") making or causing to be made such payments to an individual, or to an agent or agency, loan-out company, personal service company, employee leasing company, or other entity is considered to be paying compensation taxable by the state. For purposes of eligibility of such payments for certification of motion picture investor tax credits, the company is required to withhold taxes from those payments at the rate of 6%.

<u>Proposed law</u> requires the company to electronically report and remit the withholdings made pursuant to <u>proposed law</u> to the Dept. of Revenue quarterly, and to annually electronically report a list of all payees in a format approved by the department. The report must contain the following information:

- (1) Name, address, ownership structure, and taxpayer identification number of the loan out company.
- (2) Identification of tax type: C Corp; S Corp; or L.L.C. with tax type specified.
- (3) Name, address, and social security number of the payee.
- (4) An estimated amount of what the loan out company will pay the payee.
- (5) An affirmative statement of whether or not the payee is a related party to the loan out company, and if so, provision of an affidavit stating under penalty of perjury that the transaction is valued at the same value that an unrelated party would value the same transaction.

<u>Proposed law</u> redefines "payroll" for purposes of the motion picture investor tax credit to include a requirement that taxes be withheld and remitted to the Dept. of Revenue in accordance with <u>proposed law</u> in order for the payroll to be qualified as "base investment" for purposes of the tax credit.

<u>Proposed law</u> authorizes the Department of Revenue to retain an amount equal to 30% of the credit transfer fee required by R.S. 47:6007 for the purpose of administering the provisions required by <u>proposed law</u>.

<u>Proposed law</u> is applicable to productions which receive initial certification on or after Jan. 1, 2016.

Effective Aug. 1, 2015.

(Amends R.S. 47:164(D) and 6007(B)(8) and (D)(5))