2015 Regular Session

HOUSE BILL NO. 748

BY REPRESENTATIVE STOKES

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

1	AN ACT
2	To amend and reenact R.S. 47:6007(B)(5), (10) through (16), (C)(1)(introductory
3	paragraph), (a)(iii) and (b)(iii), (D)(2)(d)(i), (E), and (F)(1), and to add R.S.
4	47:6007(B)(17), (C)(1), and (c)(iii), (D)(1)(d)(iv) and (v) and (2)(d)(iii), G, and H,
5	relative to income tax credits; to provide with respect to the motion picture investor
6	tax credit; to provide for definitions; to provide eligibility for certain types of
7	productions; to provide requirements for the completion of projects and certification
8	of expenditures; to authorize assignment of credits to a lender under certain
9	circumstances; to provide for recapture of tax credits; to provide for the final
10	certification of certain expenditures for state-certified infrastructure projects; to
11	provide for effectiveness; and to provide for related matters.
12	Be it enacted by the Legislature of Louisiana:
13	Section 1. R.S. 47:6007(B)(5), (10) through (16), (C)(1)(introductory paragraph),
14	(a)(iii) and $(b)(iii)$, $(D)(2)(d)(i)$, (E) , and $(F)(1)$ are hereby amended and reenacted, and R.S.
15	47:6007(B)(17), (C)(1)(c)(iii), (D)(1)(d)(iv) and (v) and (2)(d)(iii), G, and H are hereby
16	enacted, to read as follows:
17	§6007. Motion picture investor tax credit
18	* * *
19	B. Definitions. For the purposes of this Section:
20	* * *

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

1

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(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 provided by the office. The term "motion picture" shall not include the production of television coverage of news and athletic events.

8 (10) "Production expenditures" means preproduction, production, and 9 postproduction expenditures in this state directly relating to a state-certified 10 production, including without limitation the following: set construction and 11 operation; wardrobes, makeup, accessories, and related services; costs associated 12 with photography and sound synchronization, lighting, and related services and materials; editing and related services; rental of facilities and equipment; leasing of 13 14 vehicles; costs of food and lodging; digital or tape editing, film processing, transfer 15 of film to tape or digital format, sound mixing, special and visual effects; and 16 payroll. This For all state-certified productions approved on or after January 1, 2004, 17 this term shall not include expenditures for marketing and distribution, nonproduction related overhead, amounts reimbursed by the state or any other 18 19 governmental entity, costs related to the transfer of tax credits, amounts that are paid 20 to persons or entities as a result of their participation in profits from the exploitation 21 of the production, the application fee, or state, or local taxes or any expenditures 22 occurring outside of Louisiana.

23 (11) "Project completion" means completion of principal photography, or as
24 otherwise approved in writing by the office.

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

1	(12)(13) "Resident" or "resident of Louisiana" means a natural person
2	domiciled in the state. A person who maintains a permanent place of abode within
3	the state and spends in the aggregate more than six months of each year within the
4	state shall be presumed to be domiciled in the state.
5	(13)(14) "Secretary" means the secretary of the Department of Economic
6	Development.
7	(14)(15) "Source within the state" means a physical facility in Louisiana,
8	operating with posted business hours and employing at least one full-time equivalent
9	employee.
10	(15)(16) "State" means the state of Louisiana.
11	(16)(17) "State-certified production" shall mean a production approved by
12	the office and the secretary which is produced by a motion picture production
13	company domiciled and headquartered in Louisiana and which has a viable multi-
14	market commercial distribution plan.
15	C. Investor tax credit; specific productions and projects.
16	(1) There is hereby authorized a tax credit against state income tax for
17	Louisiana taxpayers for investment in state-certified productions. The tax credit
18	shall be earned by investors at the time expenditures are made by a motion picture
19	production company in a state-certified production when certified by the office,
20	according to the total base investment certified per calendar year, as set forth in the
21	final certification issued to the motion picture production company. However,
22	credits cannot be applied against a tax or transferred until the expenditures are
23	certified by the office and the secretary. For state-certified productions, expenditures
24	shall be certified no more than twice during the duration of a state-certified
25	production unless the motion picture production company agrees to reimburse the
26	office for the costs of any additional certifications once per production, after project
27	completion. The tax credit shall be calculated as a percentage of the total base
28	investment dollars certified per project.

1	(a) For state-certified productions approved by the office and the secretary
2	on or after January 1, 2004, but before January 1, 2006:
3	* * *
4	(iii) The initial certification shall be effective for <u>qualifying expenditures</u>
5	made within a period twelve months prior to and twelve months after the date of
6	initial certification, unless the production has commenced, in which case the initial
7	certification shall be valid until the production is completed.
8	(b) For state-certified productions approved by the office and the secretary
9	on or after January 1, 2006, but before July 1, 2009:
10	* * *
11	(iii) The initial certification shall be effective for <u>qualifying expenditures</u>
12	made within a period twelve months prior to and twelve months after the date of
13	initial certification, unless the production has commenced, in which case the initial
14	certification shall be valid until the production is completed.
15	(c) For state-certified productions approved by the office and the secretary
16	on or after July 1, 2009:
17	* * *
18	(iii) The initial certification shall be effective for qualifying expenditures
19	within a period twelve months prior to and twenty-four months after the date of the
20	initial certification.
21	* * *
22	D. Certification and administration.
23	(1)
24	* * *
25	(d) When determining which productions may qualify, the office and the
26	secretary of the Department of Economic Development shall take the following
27	factors into consideration:
28	* * *

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1	(iv) Conviction for a criminal offense as an incident to obtaining or
2	attempting to obtain motion picture investor tax credits.
3	(v) Any other cause the secretary determinates to be so serious and
4	compelling that denial of certification is in the best interest of the state.
5	(2)
6	* * *
7	(d)(i) Prior to any final certification of the state-certified production, the
8	motion picture production company shall submit to the office and the secretary a
9	production audit report. No later than six months after the expiration of the initial
10	certification period for the applicable state-certified production, a taxpayer must
11	submit to the office all requests and required documentation for final certification of
12	all tax credits granted by this provision, after which time all such claims to tax
13	credits are deemed waived. The office and the secretary shall review the production
14	audit report and may require additional information needed to make a determination.
15	Within one hundred twenty days of the receipt of the production audit report and all
16	required supporting information, the office and the secretary shall issue a tax credit
17	certification letter indicating the amount of tax credits certified for the state-certified
18	production to the investors for all qualifying expenditures verified by the office. Any
19	expenditures for which tax credits were neither denied nor certified due to
20	insufficient information or other issues, the office and secretary shall diligently work
21	to resolve the outstanding issues in a timely manner, and the office and secretary
22	may subsequently issue a supplemental tax credit certification at the time of such
23	resolution.
24	* * *
25	(iii) Only expenditures made during the initial certification period shall earn
26	credits.
27	* * *
28	E. Recapture of credits. If the office finds that monies for which an investor
29	received tax credits according to this Section are not invested in and expended with

1	respect to a state-certified production within twenty-four months of the date that such
2	credits are earned, then the investor's state income tax for such taxable period a
3	taxpayer has obtained a tax credit in violation of the provisions of this Chapter,
4	including but not limited to fraud or misrepresentation, any tax liability of the
5	taxpayer collected under Title 47 of the Louisiana Revised Statutes, as amended,
6	shall be increased by such amount necessary for the recapture of credit provided by
7	this Section.
8	F. Recovery of credits by Department of Revenue. (1) Credits previously
9	granted paid to a taxpayer, but later disallowed, may be recovered by the secretary
10	of the Department of Revenue through any collection remedy authorized by R.S.
11	47:1561 and initiated within three years from December thirty-first of the year in
12	which the twenty-four-month investment period specified in Subsection E of this
13	Section ends: the latter of any of the following:
14	(a) Two years from December thirty-first in the year in which the tax credit
15	was paid, or
16	(b) Three years from December thirty-first of the year in which the taxes for
17	the filing period were due.
18	* * *
19	G. Tax credits provided for in this Section shall not be considered
20	entitlements, and the motion picture production company shall bear the burden of
21	clearly and unequivocally establishing eligibility for tax credits.
22	H. Audit reports for certification of expenditures for state-certified motion
23	picture infrastructure program tax credits shall be submitted in accordance with the
24	provisions of this Subsection.
25	(1) State-certified infrastructure project applicants may submit to the office
26	on or before December 31, 2015, all requests and required documentation for final
27	certification of all tax credits granted by this provision, after which time all such
28	claims to tax credits are deemed waived.

1	(2) Any request shall be accompanied by an audit performed by an
2	independent certified public accountant.
3	(3) The office, the secretary, and the division shall review the audit, and may
4	required additional information needed to make a determination.
5	(4) The office may request an additional audit report of expenditures
6	submitted by the state-certified motion picture infrastructure project applicant, with
7	the cost of the additional report paid by the applicant.
8	(5) Within three hundred and sixty five days after receipt of the audit report
9	and all required supporting information, or December 31, 2016, whichever occurs
10	first, the office, the secretary, and the division shall issue a denial letter or a tax
11	credit certification letter to the investors indicating the amount of the tax credits
12	certified for the state-certified infrastructure project for all qualifying expenditures
13	verified by the office.
14	(6) Tax credits provided for in this Section shall not be considered
15	entitlements, and the state-certified motion picture infrastructure applicant shall bear
16	the burden of clearly and unequivocally establishing eligibility for tax credits.
17	(7) In the event that a request for final certification is denied, an applicant
18	may appeal in accordance with program rules.
19	(8) No motion picture infrastructure tax credits shall be certified after July
20	<u>1, 2017.</u>
21	Section 2. This Act shall become effective upon signature by the governor
22	or, if not signed by the governor, upon expiration of the time for bills to become law without
23	signature by the governor, as provided by Article III, Section 18 of the Constitution of
24	Louisiana. If vetoed by the governor and subsequently approved by the legislature, this Act
25	shall become effective on the day following such approval.

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 748 Original

2015 Regular Session

Stokes

Abstract: Numerous procedural changes to the motion picture investor tax credit program, also includes addition of eligibility for online productions, and requirements specific to final certifications of project expenditures for motion picture *infrastructure* investor tax credits.

<u>Present law</u> 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.

<u>Present law</u> authorizes an income tax credit equal to 30% of production expenditures for all state-certified productions approved after July 1, 2009. Also provided is 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.

<u>Proposed law</u> changes <u>present law</u> definition for <u>motion picture</u> to include eligibility for motion pictures developed for viewing online.

<u>Proposed law</u> makes several changes regarding the procedures and time periods involved with initial certification of expenditures.

<u>Present law</u> provides that the tax credit is earned when production expenditures are "certified" by the office of entertainment industry development within the Dept. of Economic Development ("DED"). Expenditures may be certified no more than twice during the duration of a state-certified production, unless the motion picture production company agrees to reimburse DED for the cost of additional certifications.

<u>Proposed law</u> 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.

<u>Proposed law</u> adds a limitation regarding initial certification of expenditures by restricting the expenditures which may receive initial certification to those made within six months of the application for initial certification.

<u>Proposed law</u> adds a requirement that no later than six months after the expiration of the initial certification period for the applicable state-certified production, a taxpayer is required to submit to the office all requests and required documentation for final certification of all tax credits or the claims to such tax credits shall be deemed waived.

<u>Proposed law</u> changes <u>present law</u> by reducing the number of times and changing the timing of certifications for expenditures <u>from</u> twice during the production <u>to</u> once after the project is completed.

<u>Proposed law</u> adds requirements for consideration of productions for initial certification by requiring DED to consider criminal convictions related to motion picture investor tax credits, or any other serious issues which may impact the approval of the application for initial certification.

<u>Proposed law</u> changes the time period within which the Dept. of Revenue may recapture credits which were issued and then disallowed.

<u>Prior law</u> sunset the motion picture *infrastructure* investor tax credit on Dec. 31, 2008, by repealing the authority to issue credits for any state-certified project for which less than 50% of the base investment provided for in the initial certification had been expended by Dec. 31, 2008.

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

Effective upon signature of governor or lapse of time for gubernatorial action.

(Amends R.S. 47:6007(B)(5), (10) through (16), (C)(1)(intro. para.), (a)(iii) and (b)(iii), (D)(2)(d)(i), (E), and (F)(1); Adds R.S. 47:6007(B)(17), (C)(1)(c)(iii), (D)(1)(d)(iv) and (v) and (2)(d)(iii), (G), and (H))