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## HOUSE FLOOR AMENDMENTS

2015 Regular Session

Amendments proposed by Representative Robideaux to Reengrossed Senate Bill No. 106 by Senator Morrell

## 1 AMENDMENT NO. 1

- 2 On page 1, line 2, after "reenact" delete the remainder of the line and insert "R.S.
- 3 47:6007(B)(2) through (16), (E), and (F) and enact R.S. 47:6007(B)(17) through (21) and
- 4 (D)(10), relative to motion"

## 5 AMENDMENT NO. 2

- 6 On page 1, line 7, after "Section 1." delete the remainder of the line and insert "R.S.
- 7 47:6007(B)(2) through (16), (E), and (F) are hereby amended and reenacted and R.S.
- 8 47:6007(B)(17) through (21) and (D)(10) are hereby"

## 9 AMENDMENT NO. 3

- On page 1, delete lines 13 through 17 in their entirety and on page 2, delete lines 1 through
- 11 11 in their entirety and insert the following:
- "(2) "Good Faith Transferee" shall mean a transferee of a tax
   credit pursuant to this Section who relied on the validity of the credit
   recorded in the tax credit registry pursuant to the provisions of R.S.
   47:1524.
  - (2) (3) "Expended in the state" means an expenditure to lease immovable property located in the state; an expenditure as compensation for services performed in the state; or an expenditure to purchase or lease tangible personal property within the state where the transaction is subject to the state sales or lease tax provisions of Title 47 of the Louisiana Revised Statutes of 1950. A transaction that is subject to the state sales or lease tax provisions of Title 47 of the Louisiana Revised Statutes of 1950 shall include transactions which are also subject to a statutory exclusion or exemption.
  - (3) (4) "Expenditure" means actual cash or cash equivalent exchanged for goods or services.
    - (4) (5) "Headquartered in Louisiana" means a corporation incorporated in Louisiana or a partnership, limited liability company, or other business entity domiciled and headquartered in Louisiana for the purpose of producing nationally or internationally distributed motion pictures as defined in this Section.
    - (5) (6) "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. The term "motion picture" shall not include the production of television coverage of news and athletic events.

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(6) (7) "Motion picture production company" means a company engaged in the business of producing nationally or internationally distributed motion pictures as defined in this Section. Motion picture production company shall not mean or include any company owned, affiliated, or controlled, in whole or in part, by any company or person which is in default on a loan made by the state or a loan guaranteed by the state, nor with any company or person who has ever declared bankruptcy under which an obligation of the company or person to pay or repay public funds or monies was discharged as a part of such bankruptcy, nor with any company or peson who has been convicted of a criminal violation related to the tax credits as provided for in this Section.

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

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

(10) "Post-Certification Remedy" shall mean disallowance, recapture, recovery, reduction, repayment, forfeiture, decertification, or any other remedy that would have the effect of prohibiting, reducing, or otherwise limiting the certification or use of the Louisiana Motion Picture Investor Tax Credits.

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

(g) Under all circumstances, a production audit report shall mean an audit as required by Subparagraph (D)(2)(d)(i) of this provision that does not contain a material or fraudulent misrepresentation.

(10) (12) "Production expenditures" means preproduction, production, and postproduction expenditures in this state directly relating to a state-certified production, including without limitation the following: set construction and operation; wardrobes, makeup, accessories, and related services; costs associated with photography and sound synchronization, lighting, and related services and materials; editing and related services; rental of facilities and equipment; leasing of vehicles; costs of food and lodging; digital or tape editing, film processing, transfer of film to tape or digital format, sound mixing, special and visual effects; and payroll. This term shall not include expenditures for marketing and distribution, non-production related overhead, amounts reimbursed by the state or any other governmental entity, costs related to the transfer of tax credits, amounts that are paid to persons or entities as a result of their participation in profits from the exploitation of the production, the application fee, or state or local taxes.

2 3 4	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.
5 6 7 8	(12) (14) "Resident" or "resident of Louisiana" means a natural person domiciled in the state. A person who maintains a permanent place of abode within the state and spends in the aggregate more than six months of each year within the state shall be presumed to be domiciled in the state.
9 10 11 12 13	(13) (15) "Secretary" means the secretary of the Department of Economic Development.  (14) (16) "Source within the state" means a physical facility in Louisiana, operating with posted business hours and employing at least one full-time equivalent employee.
14 15 16 17 18 19	(15) (17) "State" means the state of Louisiana.  (16) (18) "State-certified production" shall mean a production approved by the office and the secretary which is produced by a motion picture production company domiciled and headquartered in Louisiana and which has a viable multimarket commercial distribution plan.
20 21 22	(19) "Tax Credit Certification Letter" shall mean a letter issued by the office granting and certifying tax credits pursuant to the provisions of this Section.
23 24 25 26 27	(20) "Wrongful Tax Credits" shall mean either a specific amount of tax credits reflected on a tax credit certification letter issued in response to a wrongful production audit report that would not have otherwise been so reflected or tax credits that would otherwise be subject to a post-certification remedy.
28 29 30 31	(21) "Wrongful Production Audit Report" shall mean a production audit report that contains a material misrepresentation or fraud on the part of a person in connection with the submission of such audit report.
32 33 34	* * *  D. Certification and administration.
35 36 37 38 39 40 41 42 43	* * * *  (10) If at any time prior to the issuance of a tax credit certification letter the office is notified that an investor has been charged with a crime related to tax credits provided for in this Section, the office shall not issue any credits for the project related to the crime charged until conviction or acquittal of the charge. For purposes of this Subsection, "investor" shall mean any investor, applicant production company, or any individual with an ownership interest of five percent or more in an applicant production company.
44 45 46 47 48 49	E. Recapture of credits. If the office finds that monies for which an investor received tax credits according to this Section are not invested in and expended with respect to a state-certified production within twenty-four months of the date that such credits are earned, then the investor's state income tax for such taxable period shall be increased by such amount necessary for the recapture of credit provided by this Section.
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(1) If the office or Department of Revenue finds that a person has obtained a tax credit in violation of the provisions of this Chapter, including but not limited to convictions related to material misrepresentation or fraud, that person shall be assessed by the Department of Revenue for the tax period in which the tax credits are invalidated in an amount necessary for the recapture of the tax credits pursuant to the provisions of Subsection (F).

- Recapture in the Event of Fraud or Material Misrepresentation. (a) If at any time after the issuance of a tax credit certification letter, the office makes a final determination that there was a material misrepresentation or fraud on the part of a person in connection with the submission of a production audit report, that auditor's report will be deemed to be a wrongful production audit report. If the office further determines that the result of the material misrepresentation or fraud was that a specific amount of tax credits were reflected on the tax credit certification letter issued in response to the wrongful production audit report that would not have otherwise been so reflected and the tax credits would otherwise be subject to a post-certification remedy, then the sole and exclusive remedy for the office, by request to the Department of Revenue, as provided for in Subsection (F), shall be against the individual or entity that committed the material misrepresentation or fraud. Neither the office, nor the Department of Revenue, shall have a remedy against a good faith transferee for the wrongful tax credits. In the case of wrongful tax credits, the office shall not request that the Department of Revenue pursue a post-certification remedy against any good faith transferee of the wrongful tax credits or approve the Department of Revenue's pursuing a post-certification remedy against any good faith transferee of the wrongful tax credits.
- (b) The office shall immediately notify the Department of Revenue of the requirement to recapture wrongful tax credits from the individual or entity that committed the material misrepresentation or fraud.
- F. Recovery of credits by Department of Revenue. (1) Credits previously granted to a taxpayer, but later disallowed, may be recovered by the secretary of the Department of Revenue through any collection remedy authorized by R.S. 47:1561 and initiated within three years from December thirty-first of the year in which the twenty-four-month investment period specified in Subsection E of this Section ends.
- (2) The only interest that may be assessed and collected on recovered credits is interest at a rate three percentage points above the rate provided in R.S. 9:3500(B)(1), which shall be computed from the original due date of the return on which the credit was taken.
- (1) Except as provided for in Paragraphs (2) and (4) of this Subsection, credits previously granted, certified, claimed or obtained by a taxpayer, but later disallowed, may be recovered by the secretary of the Department of Revenue through any collection remedy authorized by R.S. 47:1561, plus interest and penalties provided by law for the delinquent payment of taxes.
- (2) Recovery of Credits; Material Misrepresentation or Fraud. With respect to wrongful tax credits, any and all individuals or entities that have made a material misrepresentation or committed fraud resulting in the issuance of wrongful tax credits shall be assessed for the

1	tax periods in question in the amount necessary to recover the wrongful
2	tax credits. The secretary of the Department of Revenue shall initiate an
3	action to recover wrongful tax credits from any and all individuals or
4	entities that have committed fraud or made a material misrepresentation
5	resulting in the issuance of wrongful tax credits through any collection
6	remedy authorized by 47:1561, and shall assess interest and penalties as
7	provided for in connection with the fraudulent and delinquent
8	nonpayment of taxes. The statute of limitations that shall apply to any
9	such action by the Department is the statute of limitations applicable
10	upon failure to file a return for the applicable tax period.
11	(3) The provisions of this Subsection are in addition to and shall not
12	limit the authority of the secretary of the Department of Revenue to assess
13	or to collect under any other provision of law.
14	(4) No post-certification remedy shall be pursued against a good
15	faith transferee who acquired the credits through a transfer authorized
16	pursuant to this Section."
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17	AMENDMENT NO. 4
10	On many 2 delete lines 12 through 20 in their autivative and an many 2 delete lines 1 through
18	On page 2, delete lines 13 through 29 in their entirety and on page 3, delete lines 1 through 14
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20	AMENDMENT NO. 5
20	AMENDMENT NO. 3
21	On page 3, at the beginning of line 15, change "Section 3." to "Section 2."
<b>∠</b> 1	on page 3, at the beginning of fine 13, change bection 3. to bection 2.

On page 3, at the beginning of line 16, change "Section 4." to "Section 3."

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AMENDMENT NO. 6