

TAX/TAXATION. Prohibits certification for motion picture investor tax credits if expenditures for ATL services exceed 50% of total production expenditures. (1/1/16)

§6007. Motion picture investor tax credit

* * *

B. Definitions. For the purposes of this Section:

* * *

(17) "Above the Line (ATL) services" means services such as those of a producer, executive producer, line producer, co-producer, assistant producer, actor, director, casting director, screenwriter, and other services of job positions that are associated with the creative or financial control of a production and customarily considered as above the line services in the film and television industry.

* * *

C. Investor tax credit; specific productions and projects.

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

* * *

(iii) With regards to any productions submitted to the office and the secretary for approval, or approved on or after July 1, 2015, no production shall be certified as a state-certified production, and no tax credit shall be earned or certified for any production expenditures, if the office and the secretary determines that the expenditures for Above the Line (ATL) services for the production will exceed, or has exceeded, fifty percent of the total production expenditures for the production.

Section 2. The provisions of this Act shall apply to productions certified on and after January 1, 2016.

Section 3. This Act shall become effective on January 1, 2016.

TAX/TAXATION. Excludes certain expenditures as eligible for motion picture investor tax credits. (1/1/16)

§6007. Motion picture investor tax credit

* * *
* * *
* * *

B. Definitions. For the purposes of this Section:

(10) "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. **In addition, "production expenditures" shall not include expenditures for airfare or expenditures for bond fees, insurance premiums, finance fees, loan interest fees, or payments of a similar nature paid to investors in the production; however, such expenditures made to a Louisiana financial institution as defined in R.S. 6(8) regulated by the office of financial institutions which has one or more offices in the state shall be considered "production expenditures."**

* * *

Section 2. The provisions of this Act shall apply to productions certified on and after January 1, 2016.

Section 3. This Act shall become effective on January 1, 2016.

TAX/TAXATION. Requires recovery of motion picture investor tax credits issued in violation of the tax credit law or its administrative interpretation and those issued to an investor convicted of a criminal violation related to such tax credits. (gov sig)

§6007. Motion picture investor tax credit

* * *

G. Notwithstanding the provisions of Subsections (E) and (F) or any other law to the contrary:

(1) If the office determines that an investor was granted, or was required to be granted, tax credits in violation of the provisions of this Section or this Section's administrative interpretation by the office or the office's predecessors, such tax credits granted shall be invalidated and the amount shall be recovered by the secretary of the Department of Revenue.

(2) If the office determines that any investor who was granted a tax credit pursuant to this Section has been convicted of a criminal violation related to the tax credits provided for in this Section, then all tax credits issued to such investor shall be invalidated and shall be recovered by the secretary of the Department of Revenue by an action for recovery initiated at any time, and the running of any prescription against such claim shall be interrupted until the action for recovery is filed by the secretary.

(3) Such investor's state income tax shall be increased by the amount necessary for the recapture of tax credit provided for in this Subsection and the secretary of the Department of Revenue shall recover such tax credits through any collection remedy authorized by R.S. 47:1561, plus interest and penalties provided for the delinquent payment of taxes.

Section 2. The provisions of this Act shall be retroactive.

Section 3. The provisions of this Act shall be severable.

Section 4. This Act shall become effective upon signature by the governor or, if not signed by the governor, upon expiration of the time for bills to become law without signature by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If vetoed by the governor and subsequently approved by the legislature, this Act shall become effective on the day following such approval.

TAX/TAXATION. Authorizes certain movie memorabilia donations to CRT in lieu of a first processing transfer fee for a Hollywood South program to memorialize the movie industry in Louisiana. (7/1/15)

§6007. Motion picture investor tax credit

* * *

C. Investor tax credit; specific productions and projects.

* * *

(4) Transferability of the credit. Any motion picture tax credits not previously claimed by any taxpayer against its income tax may be transferred or sold to another Louisiana taxpayer or to the office, subject to the following conditions:

* * *

(b)(i) Transferors and transferees shall submit to the Department of Revenue in writing, a notification of any transfer or sale of tax credits within ten business days after the transfer or sale of such tax credits. The notification shall include the transferor's tax credit balance prior to transfer, a copy of any tax credit certification letter(s) issued by the office and the secretary of the Department of Economic Development and, the transferor's remaining tax credit balance after transfer, all tax identification numbers for both transferor and transferee, the date of transfer, the amount transferred, a copy of the credit certificate, price paid by the transferee to the transferor, in the case when the transferor is a state-certified production, for the tax credits, and any other information required by the office or the Department of Revenue. For the purpose of reporting transfer prices, the term "transfer" shall include allocations pursuant to Paragraph (2) of this Subsection as provided by rule. The office may post on its website an average tax credit transfer value, as determined by the office and the secretary of the Department of Economic Development to reflect adequately the current average tax credit transfer value. The tax credit transfer value means the percentage as determined by the price paid by the transferee to the transferor divided by the dollar value of the tax credits that were transferred in return.

(ii) The notification submitted to the Department of Revenue shall include a processing fee of up to two hundred dollars per transferee and any information submitted by a transferor or transferee shall be treated by the office and the Department of Revenue as proprietary to the entity reporting such information and therefore confidential. However, this shall not prevent the publication of summary data that includes no fewer than three transactions. **However, in lieu of the first transfer processing fee charged to a transferor related to a particular state-certified production, a qualifying donation from the production may be made to Hollywood South in lieu of such fee as provided for in Item (iii) of this Subparagraph.**

(iii) In lieu of the first transfer processing fee required by Item (ii) of this Subparagraph which is charged to a transferor related to a particular state-certified production, an official advertising poster for the state-certified production and a still frame from the production, or, at the discretion of the department, a significant set piece, prop, or costume from the production may be donated to the Department of Recreation and Tourism on the condition that they may be used for unlimited marketing purposes by the department and the state. The department shall use the donated items to establish a Hollywood South program to memorialize and honor the present and past movie industry in Louisiana.

* * *

Section 2. This Act shall become effective on July 1, 2015; if vetoed by the governor and subsequently approved by the legislature, this Act shall become effective on July 1, 2015, or on the day following such approval by the legislature, whichever is later.

draft

TAX/TAXATION. Requires the Louisiana Workforce Commission to provide information to LED and LDR to verify payroll and employment of Louisiana residents for purposes of the motion picture investor tax credit. (7/1/15)

§6007. Motion picture investor tax credit

* * *

B. Definitions. For the purposes of this Section:

* * *

(8) "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 as verified by the office and the Department of Revenue through the use of information which shall be provided to them by the Louisiana Workforce Commission. 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.

* * *

D. Certification and administration.

* * *

(5) A motion picture production company applying for the additional credit for the employment of Louisiana residents must remit a schedule to the Department of Revenue, in a machine-sensible format approved by the secretary of the Department of Revenue, that includes the following information: the names of all persons who received salary, wages, or other compensation for services performed in Louisiana in connection with the state-certified production, and the address, taxpayer identification number, permanent address of, and the amount of compensation for services performed in Louisiana received by each such person. Such information shall be verified by the office and/or by the Department of Revenue through the use of information which shall be provided to them by the Louisiana Workforce Commission.

* * *

Section 2. This Act shall become effective on July 1, 2015; if vetoed by the governor and subsequently approved by the legislature, this Act shall become effective on July 1, 2015, or on the day following such approval by the legislature, whichever is later.

TAX/TAXATION. Authorizes the recapture of tax credits from owners of entities created or organized for the primary purpose of receiving and/or selling motion picture investor tax credits. (gov sig)

§6007. Motion picture investor tax credit

* * *

F. Recovery of credits by Department of Revenue. (1)(a) 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.

(b) Notwithstanding any other provision of law to the contrary, if a corporation, limited liability company, or limited partnership was created or organized for the primary purpose of receiving and/or selling tax credits granted pursuant to this Section, the secretary of the Department of Revenue may, as an alternative means of enforcing recovery of such credits, hold any person who has an ownership interest in such an entity personally liable for the total amount of such credits, together with any interest accruing thereon.

* * *

Section 2. This Act shall become effective upon signature by the governor or, if not signed by the governor, upon expiration of the time for bills to become law without signature by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If vetoed by the governor and subsequently approved by the legislature, this Act shall become effective on the day following such approval.

TAX/TAXATION. Regulates and limits production expenditures between related parties which qualify for motion picture investor tax credits, and subjects related party transactions to review by the office of the state inspector general. (See Act)

§6007. Motion picture investor tax credit

* * *

B. Definitions. For the purposes of this Section:

* * *

(9) "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 **there are no related party transactions or that material transactions of related party relationships are properly reported and accounted for as required by Paragraph (D)(9) of this Section, adequately disclosed, and explained in the audit and 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:

* * *

(10)(a) "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.\

(b) This term "**Production expenditures**" 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, **or expenditures for related party transactions denied or limited by the office pursuant to Paragraph (D)(9) of this Section.**

* * *

(17) "**Above the Line (ATL) services**" means services such as those of a producer, executive producer, line producer, co-producer, assistant producer, actor, director, casting director, screenwriter, and other services of job positions that are associated with the creative or financial control of a production and customarily considered as above the line services in the film and television industry.

(18) "**Below the Line (BTL) services**" means services which are not above the line services.

(19) "**Related party transaction**" means a transaction between parties deemed to be related by common ownership or control according to generally accepted auditing standards (GAAS) and generally accepted auditing principles (GAAP).

* * *

D. Certification and administration.

* * *

(9)(a) It is recognized that, while legitimate related party transactions often occur as production expenditures, some related party transactions may be conducted in such a manner as to abuse the purpose and intent of the program. **Therefore, the production audit report required by Subparagraph (D)(2)(d) of this Section or audit notes therein shall verify that all related party transactions have been disclosed and explained, and that the production accounts include all of the following:**

(i) The name of the related party.

(ii) The nature of the relationship between the related party and the motion picture production company.

(iii) The nature of the transaction.

(iv) The amount of the transaction.

(v) The capture and reporting of more than the functional expense classifications of related party transactions, but also how they are a legitimate project expenditure, including reporting of Labor and Facility/Equipment "charge rates" related to production company personnel and facility and equipment used in the production of the state certified production.

(b) Tax credits certified for goods and services provided by related parties to a state-certified production shall be further limited as follows:

(i) Qualifying production expenditures for Above the Line (ATL) services provided by related parties shall be limited to twelve percent of total Louisiana production expenditures.

(ii) Qualifying production expenditures for below the line services provided by a related party shall be limited to the actual compensation paid by the related party to its employee or employees who are actually performing the service, including employer-paid benefits, allocated to the production on an hourly basis.

(iii)(aa) Qualifying production expenditures for goods and services such as equipment, supplies, studio rental, and visual effects packages provided by a related party shall be limited to fair market value as established through the related party's historic dealings with unrelated parties, or established by comparable transactions between other unrelated parties for substantially similar goods and services considering the geographic market and other pertinent variables.

(bb) If the fair market value cannot be established in the manner provided for in Subitem (aa) of this Item, qualifying production expenditures shall be limited to the internal cost recovery rate consisting of actual acquisition cost plus ongoing maintenance and upgrade cost, divided by anticipated utilization over the real useful life of the property. However, qualifying production expenditures for visual effects packages shall be limited to either the internal cost recovery rate and/or the actual compensation paid by the related party employer to its employee or employee actually performing the service, including employer-paid benefits, allocated to the production on an hourly basis as determined by the methodology selected and deemed most appropriate under the circumstances by the office.

(iv) No tax credits shall be earned or certified for expenditures for finance fees, interest, or payments of a similar nature paid to related parties, investors in the production, or any other entities which the office determines will gain financial rewards based upon sale or exploitation of the product or success in procuring distribution agreements.

(c) The office may request and use additional information in determining the extent to which expenditures for related party transactions will be certified by requesting and obtaining documentation, including, but not limited third-party contracts, notarized affidavits, tax records, W-2's, 1099's, and cancelled checks.

(d) Any related party transaction shall be referred by the office and the secretary to the office of the state inspector general for further review to determine whether the transaction is in accord with the provisions of this Paragraph. The office of the state inspector general may make such further audit, examination, and investigation of all books and records and officers and employees of a movie production company earning, or of any entity or persons receiving, tax credits pursuant to this Section as is necessary to make such determination pursuant to any authority provided for in Part VI of Chapter 2 of Title 49 of the Louisiana Revised Statutes of 1950. Such movie production companies, entities, and persons earning or receiving such credits are hereby deemed to consent to such audit, examination, and investigation and of any reasonable fees associated with such examination and investigation as a condition of earning or receiving the tax credits.

(e) The secretary of the Department of Economic Development and the office shall promulgate rules regarding related party transactions in accordance with the Administrative Procedure Act.

Section 2. The provisions of this Act shall be effective for all productions certified on and after July 1, 2015.

Section 3. This Act shall become effective upon signature by the governor or, if not signed by the governor, upon expiration of the time for bills to become law without signature by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If vetoed by the governor and subsequently approved by the legislature, this Act shall become effective on the day following such approval.

TAX/TAXATION. Authorizes contracts for motion picture investor tax credit for 5 years, renewable for 5 more, for scripted television series if they agree to construct or lease production facilities in Louisiana and reach an agreement with LED on guaranteed expenditures and jobs for residents. (gov sig)

§6007. Motion picture investor tax credit

* * *

B. Definitions: For the purposes of this Section:

* * *

(17) "Qualified Production Facility" means a film or television production facility in the state qualified in writing by the office and the secretary for purposes of the tax credit for scripted television series.

* * *

C. Investor tax credit; specific productions and projects.

(1) There is hereby authorized a tax credit against state income tax for Louisiana taxpayers for investment in state-certified productions. The tax credit shall be earned by investors at the time expenditures are made by a motion picture production company in a state-certified production. However, credits cannot be applied against a tax or transferred until the expenditures are certified by the office and the secretary. For state-certified productions, expenditures shall be certified no more than twice during the duration of a state-certified production unless the motion picture production company agrees to reimburse the office for the costs of any additional certifications. **State-certified productions which are scripted television series may be certified at the end of each season as provided for in the contract.** The tax credit shall be calculated as a percentage of the total base investment dollars certified per project.

* * *

D. Certification and administration.

(1) * * *

(b) The secretary, the office, and the division of administration shall determine, through the promulgation of rules, an appeals process in the event that an application for, or the certification of **or a contract, or the renewal of a contract, for** motion picture production tax credit **or qualification as a qualified production facility,** is denied. The office shall promptly provide written notice of such denial to the Senate Committee on Revenue and Fiscal Affairs and the House Committee on Ways and Means.

* * *

(d) When determining which productions may qualify, the office and the secretary of the Department of Economic Development shall take the following factors into consideration:

* * *

(iv) The extent to which an applicants will utilize Qualified Production Facilities.

(2)(a) Application. An applicant for the motion picture investor credit shall submit an application for initial certification **and/or for a contact for a scripted television series** to the office and the secretary of the Department of Economic Development that includes the following information:

* * *

(ii) The application for a scripted television series shall also include:

(aa) The estimated number of years the scripted television series will be in production.

(bb) A contract for the applicant's investment in the construction of a qualified production facility, or a lease of an existing qualified production facility for a minimum of five years, contingent upon the applicants receipt of a contract with the office for a scripted television series production.

(cc) A guarantee by the applicant, if granted the contract, of:

(I) The average annual amount of production expenditures the applicant will expend over the course of production of the scripted television series.

(II) The number of full time jobs in which the applicant will employ Louisiana residents.

* * *

(c)(i) Except as provided for a scripted television series in Item (ii) of this Subparagraph, the office and the secretary shall submit their initial certification or written denial of a project as a state-certified production to investors and to the secretary of the Department of Revenue indicating the total base investment which shall be expended in the state on the state-certified production within sixty days of their receipt of all required information. The initial certification shall include a unique identifying number for each state-certified production.

(ii)(aa)The office and the secretary shall review the proposed guarantees and the and the proposed qualified production facility contracts in applications for contacts for a scripted television series. If the office and the secretary determines that the production is a scripted television series as that term is used in the television industry, they may accept the application or may negotiate with the applicant for terms which the office and secretary determine are in the best interest of the state. The office and the secretary may then enter into a contract with an applicant for tax credits to be certified and earned at the end of each season of the television series in the manner provided for other state-certified productions in this Section for a period of five years. In addition to any other requirements for certification of the applicant as a state-certified production, the contract shall set forth the obligations of the applicant with respect to the following:

(I)The investment by the applicant in the construction of a qualified production facility, or a lease of an existing qualified production facility for a minimum of five years, as provided for in the proposed contracts submitted by the applicant.

(II)A guarantee of the average annual amount of production expenditures the applicant will expend over the course of production of the scripted television series.

(III) A guarantee of the number of full time jobs in which the applicant will employ Louisiana residents.

(bb) The office and the secretary shall submit their agreement to and initial certification as a state-certified production of, or written denial of, the application for a scripted television series to investors and to the secretary of the Department of Revenue indicating the total base investment which shall be expended in the state on the state-certified production. The initial certification and contract shall include a unique identifying number for each scripted television series.

(cc)(i) Violation of the terms and obligations of the contract shall void the contract and no tax credits shall be certified or earned under the contract.

(ii) A contract and certification may be renewed for up to five years if the applicant

has complied with all the terms of the contract and has not performed any act, nor failed to perform any act, which the office and secretary determine would have been a violation of the applicant's obligations under the contract and the office and secretary are reasonably assured of the applicant's continued successful performance of the contract's terms if renewed. Denial of a renewal may be appealed as provided for in this Section for denials of certification.

(d)(i) Prior to any final **or season** certification of the state-certified production, the motion picture production company shall submit to the office and the secretary a production audit report. The office and the secretary shall review the production audit report and may require additional information needed to make a determination. Within one hundred twenty days of the receipt of the production audit report and all required supporting information, the office and the secretary shall issue a tax credit certification letter indicating the amount of tax credits certified for the state-certified production to the investors for all qualifying expenditures verified by the office. Any expenditures for which tax credits were neither denied nor certified due to insufficient information or other issues, the office and secretary shall diligently work to resolve the outstanding issues in a timely manner, and the office and secretary may subsequently issue a supplemental tax credit certification at the time of such resolution.

* * *

(e) In addition to the requirements of Subparagraph (d) of this Paragraph, prior to any final **or season** certification of a state-certified production or infrastructure project, the motion picture production company or infrastructure project applicant shall submit to the office a notarized statement demonstrating conformity with, and agreeing to, the following:

* * *

(ii) To publish, at completion of principal photography **for an entire production or for a season**, a notice at least once a week for three consecutive weeks in local newspapers in regions where filming has taken place in order to notify the public of the need to file creditor claims against the film production company by a specified date.

* * *

Section 2. This Act shall become effective upon signature by the governor or, if not signed by the governor, upon expiration of the time for bills to become law without signature by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If vetoed by the governor and subsequently approved by the legislature, this Act shall become effective on the day following such approval.

TAX/TAXATION. Requires sellers of motion picture investor tax credits to qualify and register as a dealer or salesman of securities and be subject to regulation in the sale of tax credits as is provided for securities in the Louisiana Securities Law. (1/1/15)

§6007. Motion picture investor tax credit

* * *

C. Investor tax credit; specific productions and projects.

* * *

(4) Transferability of the credit. Any motion picture tax credits not previously claimed by any taxpayer against its income tax may be transferred or sold to another Louisiana taxpayer or to the office, subject to the following conditions:

* * *

(c)(i) Any person selling tax credits issued pursuant to this Section on behalf of an investor shall be qualify as a dealer or salesman of securities pursuant to Louisiana Securities Law, R.S. 51:701, et seq. and shall be registered with the office of financial institutions and shall be subject to regulation in the sale of tax credits as is provided for securities in that law.

(ii) Failure to comply with this Paragraph will result in the disallowance of the tax credit until the taxpayers are in full compliance.

* * *

Section 2. The provisions of this Section shall apply to transfers occurring on and after January 1, 2016.

Section 3. This Act shall become effective on January 1, 2016.

TAX/TAXATION. Limits all claims against income tax for motion picture investor tax credits filed during each fiscal year to \$300 million, but rolls over any remaining balance to future fiscal years. (7/1/15)

§6007. Motion picture investor tax credit

* * *

C. Investor tax credit; specific productions and projects.

(1) There is hereby authorized a tax credit against state income tax for Louisiana taxpayers for investment in state-certified productions. The tax credit shall be earned by investors at the time expenditures are made by a motion picture production company in a state-certified production. However, credits cannot be applied against a tax or transferred until the expenditures are certified by the office and the secretary. For state-certified productions, expenditures shall be certified no more than twice during the duration of a state-certified production unless the motion picture production company agrees to reimburse the office for the costs of any additional certifications. The tax credit shall be calculated as a percentage of the total base investment dollars certified per project.

(d)(i) For each fiscal year beginning Fiscal Year 2015-2016, no more than three hundred million dollars of tax credits provided pursuant to this Section shall be allowed against state income tax for all claims for the credit filed during each fiscal year. Claims for credit shall be allowed on a first-come-first-served basis. Any taxpayer whose claim for such tax credits is disallowed may use the tax credits against state income tax due in a return filed in the next fiscal year, and his claim shall have priority over other claims filed after the date and time of his claim.

(ii) If less than three hundred million dollars of such tax credits are claimed and allowed in a fiscal year, the amount unclaimed in that fiscal year, plus any unclaimed amounts from previous fiscal years, shall be added to the three hundred million dollar limit of a subsequent fiscal year until they are claimed and allowed.

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

Section 2. This Act shall become effective on July 1, 2015; if vetoed by the governor and subsequently approved by the legislature, this Act shall become effective on July 1, 2015, or on the day following such approval by the legislature, whichever is later.