

Stokes - Provides relative to accounting and audit requirements for purposes of the motion picture investor tax credit

To enact R.S. 36:104.1 and to amend and reenact R.S. 36:104, R.S. 47:6007, 47:6015, 47:6022, 47:6023, and 47:6034 relative to LED directly engaging and assigning CPAs and tax attorneys the review of application submissions and preparation of agreed upon procedures for tax incentive programs; to provide the secretary of LED the authority to impose a fee on incentive program applicants to pay for the agreed upon procedures; and to provide for related matters.

Be in enacted by the Legislature of Louisiana:

Section 1. R.S. 36:104.1 is hereby enacted to read as follows:

§104.1. Fee for Independent CPA or Tax Attorney Verification Report Required by certain Department of Economic Development Incentive Programs

A. In order to protect the integrity of its incentive programs by ensuring that tax credits are only issued for eligible expenditures and to provide for uniformity in verification reporting, the Department of Economic Development shall directly engage and assign an independent certified public accountant (CPA) or tax attorney to perform any required verification reports for the following programs:

- (1) motion investor tax credit program (R.S. 47:6007);
- (2) research and development tax credit program (R.S. 47:6015);
- (3) digital interactive media and software tax credit program (R.S. 47:6022);
- (4) sound recording investor tax credit program (R.S. 47:6023);
- (5) musical and theatrical production tax credit program (R.S. 47:6034); and
- (6) any other programs as provided by statute or department rule.

B. The applicant seeking tax credits shall be assessed the actual cost of the verification report based upon an hourly rate not to exceed \$225.00 per hour for contract services or the pro rate cost of salary and benefits for an internal CPA.

C. The applicant seeking tax credits shall be required to submit an up-front deposit of the verification report fee as required by the individual program's statute or rules.

D. The applicant seeking tax credits shall make all records related to the credit application available to the independent CPA or tax attorney assigned to submit the verification report by the Department of Economic Development.

E. The term "verification report" shall include any audit, agreed upon procedure, tax opinion, attestation or other report required by statute or department rule.

Section 2. R.S. 36:104, is hereby amended and reenacted to read as follows:

§104. Powers and duties of the secretary of economic development

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B. The secretary shall have the authority to:

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(9) Establish and collect fees for the verification report, as defined in R.S. 36:104.1, required by a Department of Economic Development incentive program. The fees shall be established and collected as provided in R.S. 36:104.1 and in accordance with procedures adopted in accordance with the provisions of the Administrative Procedure Act.

Section 3. R.S. 47:6007, 47:6015, 47:6022, 47:6023, and 47:6034 are hereby amended and reenacted to read as follows:

§6007. Motion picture investor tax credit

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B. Definitions. For the purposes of this Section:

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

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D. Certification and administration.

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

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(c)(i)The office shall directly engage and assign the qualified accountant to perform the production audit report. The applicant shall be responsible for payment of the audit fee in accordance with R.S. 36:104.1 and shall make all records related to the credit application available to the qualified accountant.

(ii) The applicant will be assessed the Department of Economic Development's actual cost for the audit with a maximum audit fee of \$15,000 for audit of productions with qualified expenditures between \$300,000 and \$25,000,000 and a maximum audit fee of \$25,000 for audits of productions with qualified expenditures in excess of \$25,000,000.

(iii) At the time of application, the applicant shall be required to submit a deposit of the audit fee of \$7,500 for productions with qualified expenditures between \$300,000 and \$25,000,000 and a deposit of the audit fee of \$15,000 for productions with qualified expenditures in excess of \$25,000,000.

(d) 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.

(e)(i) Prior to any final certification of the state-certified production, the ~~motion picture production company-qualified accountant selected by the Office~~ 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.

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§6015. Research and development tax credit

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(3) Each taxpayer seeking the credits authorized in this Section shall apply to the Department of Economic Development for the credits. The taxpayer shall remit an application fee of two hundred fifty dollars with the application. The application shall include all of the following:

(i) A taxpayer who employs less than fifty employees may apply for credits without providing a federal income tax return as required by Subparagraph (a) of this Paragraph if all of the following criteria are met:

(i) ~~Unless waived by the secretary of the department, the taxpayer provides the department with a report from~~ a certified public accountant authorized to practice in the state of Louisiana or a tax attorney licensed in the state of Louisiana engaged and assigned by the department shall submit a report to the department on the taxpayer's qualified research expenditures. The report shall be rendered based upon procedures and regulations developed by the department in accordance with the Administrative Procedure Act.

(ii) The taxpayer shall be responsible for payment of the report fee in accordance with R.S. 36:104.1 and shall make all records related to the credit application available to the certified public accountant or tax attorney selected by the department.

(iii) The taxpayer will be assessed the Department of Economic Development's actual cost for the report with a maximum report fee of \$15,000 for reports of applications with qualified research expenditures up to \$1,000,000 and a maximum report fee of \$25,000 for reports of applications with qualified research expenditures in excess of \$1,000,000.

(iv) At the time of application, the taxpayer shall be required to submit a deposit of the report fee of \$7,500 for applications with qualified research expenditures up to \$1,000,000 and a deposit of the report fee of \$15,000 for applications with qualified research expenditures in excess of \$1,000,000.

(v) The taxpayer provides all supporting documentation required by the department to show the amount of qualified research expenses for such taxable year.

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§6022. Digital interactive media and software tax credit

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F. Administration. (1) The office may promulgate rules in accordance with the Administrative Procedure Act to establish the policies and program elements regarding project qualifications of state-certified productions and any other matter necessary to carry out the intent and purposes of this Section. Such rules shall be subject to oversight by the House Committee on Ways and Means and the Senate Committee on Revenue and Fiscal Affairs.

(2) Application. A company seeking to participate in the tax credit program shall apply to the department through an application process established by the department.

(a) The department shall directly engage and assign the accountant to perform the cost report of production expenditures. The company shall be responsible for payment of the cost report in accordance with R.S. 36:104.1 and shall make all records related to the credit application available to the accountant selected by the department.

(iii) The company will be assessed the Department of Economic Development's actual cost for the cost report of production expenditures with a maximum cost report fee of \$15,000 for cost reports of applications with production expenses up to \$1,000,000 and a maximum cost report fee of \$25,000 for cost reports of applications with production expenses in excess of \$1,000,000.

(iv) At the time of application, the company shall be required to submit a deposit of the cost report fee of \$7,500 for applications with production expenses up to \$1,000,000 and a deposit of the cost report fee of \$15,000 for applications with production expenses in excess of \$1,000,000.

(3) Certification. (a) The office shall review the company's application and any other information which it deems appropriate for determination of the project's eligibility for initial certification. For a project deemed eligible, the office shall provide an initial certification of the project as a state-certified production to the company and to the secretary of the Department of Revenue. The initial certification shall be effective for expenditures made no more than six months prior to the date of initial certification and shall be valid until the project is completed. The initial certification shall include a unique identifying number for each state-certified production.

(b) Prior to final certification of tax credits of a state-certified production or any portion thereof, the ~~company~~ certified public accountant selected by the department shall submit to the office a cost report of production expenditures. The cost report of expenditures shall be subject to an agreed-upon procedures engagement conducted by a certified public accountant in accordance with statements on standards for attestation engagements established by the American Institute of

Certified Public Accountants. The accountant shall issue a report in the form of procedures and findings. The accountant shall be a certified public accountant licensed in the state of Louisiana and shall be an independent third party unrelated to the company. The agreed-upon procedures shall be established by the office and secretary, with assistance from the Society of Louisiana Certified Public Accountants. The department may request additional audits of the project expenditures, the cost of which shall be borne by the company.

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§6023. Sound recording investor tax credit

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D. Certification and administration.

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(c) Cost report fee. (i) The department shall directly engage and assign the accountant to perform the cost report of project or production expenditures. The applicant shall be responsible for payment of the cost report in accordance with R.S. 36:104.1 and shall make all records related to the credit application available to the accountant selected by the department.

(ii) The applicant will be assessed the Department of Economic Development's actual cost for the cost report with a maximum audit fee of \$5,000 for cost reports of projects or productions with expenditures between \$5,000 and \$50,000 and a maximum cost report fee of \$15,000 for cost reports of projects or productions with expenditures in excess of \$50,000.

(iii) At the time of application, the applicant shall be required to submit a deposit of the cost report fee of \$2,500 for productions with qualified expenditures between \$5,000 and \$50,000 and a deposit of the cost report fee of \$5,000 for productions with qualified expenditures in excess of \$50,000.

(d) The Louisiana Department of Economic Development shall submit its initial certification of a project as a state-certified production or a state-certified sound recording infrastructure project to investors and to the secretary of the Department of Revenue. The initial certification shall include a unique identifying number for each state-certified production.

(~~e~~) Prior to any certification of the state-certified production or infrastructure project, ~~the sound recording production company~~ certified public accountant selected by the Department of Economic Development shall submit to the Louisiana Department of Economic Development a cost report of production or project expenditures which the Louisiana Department of Economic Development may require to be prepared by an independent certified public accountant. The Louisiana Department of Economic Development shall review such expenditures and shall issue a tax credit certification letter to the investors indicating the amount of tax credits certified for the state-certified production or state-certified infrastructure project.

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§6034. Musical and theatrical production income tax credit

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E. Certification and administration:

(1)(a)(i) The secretary of the Department of Economic Development shall determine which musical or theatrical productions and which musical or theatrical facility infrastructure projects shall be certified pursuant to this Section through the adoption and promulgation of rules by the Department of Economic Development. The rules shall also provide for all of the following:

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(e) Prior to the final certification of a production or infrastructure project, the applicant certified public accountant selected by the Department of Economic Development shall submit to the Department of Economic Development an audit of the final amount of expenditures qualifying for credits pursuant to this Section, which report the Department of Economic Development may require to be prepared by an independent certified public accountant. The Department of Economic Development shall review the audit and shall issue a final tax credit certification letter, certifying the applicant and indicating the type and amount of tax credits for which the applicant or other companies or financiers are eligible pursuant to this Section.

(f) An applicant applying for the credits shall be required to reimburse the Department of Economic Development for any audits required in relation to granting the certification or tax credits.

(2)(a) Application. An applicant for the tax credit shall submit an application for initial certification to the Department of Economic Development that includes the following information:

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(c) Audit fee. (i) The department shall directly engage and assign the accountant to perform the audit of production or infrastructure project expenditures. The applicant shall be responsible for payment of the audit in accordance with R.S. 36:104.1 and shall make all records related to the credit application available to the certified public accountant selected by the Department of Economic Development.

(ii) The applicant will be assessed the actual cost of the audit at the Department of Economic Development's contracted rate with a maximum audit fee of \$15,000 for audits of productions or infrastructure projects with expenditures between \$100,000 and \$1,000,000 and a maximum audit fee of \$25,000 for audits of productions or infrastructure projects with expenditures in excess of \$1,000,000.

(iii) At the time of application, the applicant shall be required to submit a deposit of the audit fee of \$7,500 for productions or infrastructure projects with expenditures between \$100,000 and \$1,000,000 and a deposit of the audit fee of \$15,000 for productions with expenditures in excess of \$1,000,000.

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Section 4. This Act shall be effective for applications received on or after January 1, 2016. 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.



Stokes - Single Audit for Film Incentive Projects

To amend and reenact R.S. 47:6007 relative to tax credits; to provide for certain definitions; to limit motion picture production companies to **one submission for final certification**, per production; and to provide for related matters.

Be in enacted by the Legislature of Louisiana:

Section 1. R.S. 47:6007 is hereby amended and reenacted to read as follows:

§ 6007. Motion picture investor tax credit

B. Definitions. For the purposes of this Section:

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(#) **“Project completion” means completion of principal photography, or as otherwise approved in writing by the office.**

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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 **once per production, after project completion.** ~~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.

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D. Certification and administration.

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(2) (d)(i) **No later than two calendar years after the date of project completion, the motion**

picture production company may submit a request for final certification of the state certified production expenditures. Any request shall include a production audit report prepared in accordance with the provisions of R.S. 36.104. ~~Prior to any final 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.

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Section 2. This Act shall be effective for **applications submitted to the office on or after July 1, 2015**, and subsequently approved by the office and the secretary.

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

Stokes – Sunset for Infrastructure Credit submissions

To amend and reenact R.S. 47:6007 relative to tax credits; to provide for certain definitions; to establish a sunset date for the submission of final certification requests for state certified motion picture infrastructure projects; to establish a sunset date for the payment of motion picture infrastructure tax credits; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. R.S. 47:6007 is hereby amended and reenacted to read as follows:

§ 6007. Motion picture investor tax credit

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G. State Certified Motion Picture Infrastructure Program audit report submission deadline.

- (1) State-certified infrastructure project applicants may submit one request for final certification of any outstanding state certified infrastructure project expenditures to the office on or before December 31, 2015.
- (2) Any request shall be accompanied by an audit performed by an independent certified public accountant.
- (3) The office, the secretary and the division shall review the audit, and may require additional information needed to make a determination.
- (4) The office may request an additional audit report of the expenditures submitted by the state-certified motion picture infrastructure project applicant, with the cost of the additional report paid by the infrastructure applicant.
- (5) Within three hundred and sixty five days after receipt of the audit report and all required supporting information, or December 31, 2016, whichever occurs first, the office, the secretary and the division shall issue a denial letter or a tax credit certification letter indicating the amount of tax credits certified for the state-certified infrastructure project to the investors for all qualifying expenditures verified by the office.
- (6) Tax credits provided for in this Section are not to be considered entitlements, and the state-certified motion picture infrastructure applicant shall bear the burden of clearly and unequivocally establishing eligibility for tax credits.
- (7) In the event that a request for final certification is denied, an applicant may appeal

in accordance with program rules.

(8) No motion picture infrastructure tax credits may be certified after July 1, 2017.

Section 2. It is the express intention of this Act that the motion picture infrastructure tax credit program, formerly authorized by R.S. 47:6007, (including but not limited to the provisions of Act No. 456 of the 2005 Regular Session, and Act No. 456 of the 2007 Regular Session,) shall be sunset as follows; (1) December 31, 2015 for applicant audit submissions to the office, (2) December 31, 2016 for certification of non-disputed tax credits, and (3) July 1, 2017 for final certification of any motion picture infrastructure tax credits.

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

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Stokes – Limit transferability to one designee or 90% buyback by state

To amend and reenact R.S. 47:6007 relative to tax credits; to **eliminate transferability** but allow applicants at the time of final certification to **remit any credits earned to the state at a rate of ninety cents**; to provide applicants with the **option to make credits payable to the motion picture production company or its irrevocable designee**; and to provide for related matters.

Be in enacted by the Legislature of Louisiana:

Section 1. R.S. 47:6007 is hereby amended and reenacted to read as follows:

§ 6007. Motion picture investor tax credit

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C. Investor tax credit; specific productions and projects.

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(3) Application of the credit.

(a) All entities taxed as corporations for Louisiana income tax purposes shall claim any credit allowed under this Section on their corporation income tax return.

(b) Individuals, estates, and trusts shall claim any credit allowed under this Section on their income tax return.

(c) Entities not taxed as corporations shall claim any credit allowed under this Section on the returns of the partners or members as follows:

(i) Corporate partners or members shall claim their share of the credit on their corporation income tax returns.

(ii) Individual partners or members shall claim their share of the credit on their individual income tax returns.

(iii) Partners or members that are estates or trusts shall claim their share of the credit on their

fiduciary income tax returns.

(iv) For applications submitted to the office on or after July 1, 2015, and subsequently approved by the office and the secretary, at the time of final certification of tax credits, a motion picture production company may elect to receive ninety percent of the face value of the credits. Upon receipt of the final tax credit certification letter and any necessary additional information, the secretary of the Department of Revenue shall make payment to the motion picture production company, or its irrevocable designee, which may include but not be limited to a bank or other lender, in the amount to which he is entitled from the current collections of the taxes collected pursuant to Chapter 1 or Subtitle II of this Title, as amended.

(4) Transferability of the credit. **For applications submitted to the office prior to July 1, 2015, and subsequently approved by the office and the secretary** Any motion picture tax credits **issued by the office and secretary but** 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:

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Section 2. This Act shall be effective for **applications submitted to the office on or after July 1, 2015**, and subsequently approved by the office and the secretary.

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

Stokes – Administrative Changes / enforcement

To amend and reenact R.S. 47:6007 relative to tax credits; to provide for certain definitions; to clarify the effective period for initial certification; to change the time at which credits are earned, from date of expenditure to date of certification; to update the mechanism and prescriptive period for recovery and recapture of disallowed credits; and to provide for related matters.

Be in enacted by the Legislature of Louisiana:

Section 1. R.S. 47:6007 is hereby amended and reenacted to read as follows:

§ 6007. Motion picture investor tax credit

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B. Definitions. For the purposes of this Section:

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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 any digital online platform as approved by the office. The term “motion picture” shall not include the production of television coverage of news and athletic events.

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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 when certified by the office, according to the total base investment certified per calendar year, as set forth in the final certification issued to the motion picture production company ~~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.

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

(i) If the total base investment is greater than three hundred thousand dollars, each investor shall be allowed a tax credit of thirty percent of the base investment made by that investor.

(ii) To the extent that base investment is expended on payroll for Louisiana residents employed in connection with a state-certified production, each investor shall be allowed an additional tax credit of five percent of such payroll. However, if the payroll to any one person exceeds one million dollars, this additional credit shall exclude any salary for that person that exceeds one million dollars.

(iii) The initial certification shall be effective for expenditures made no more than six months prior to the date of receipt of application.

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D. Certification and administration.

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(1) (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:

(i) The impact of the production on the immediate and long-term objectives of this Section.

(ii) The impact of the production on the employment of Louisiana residents.

(iii) The impact of the production on the overall economy of the state.

(iv) Conviction for a criminal offense as an incident to obtaining or attempting to obtain Motion Picture Tax Credits.

(v) Any other cause the secretary determines to be so serious and compelling that denial of certification is in the best interest of the state.

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E. Recapture of credits. If the office finds that a taxpayer has obtained a tax credit in violation of the provisions of this Chapter, including but not limited to fraud or misrepresentation, any tax liability of the taxpayer collected under Title 47 of the Louisiana Revised Statutes 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.

F. Recovery of credits by Department of Revenue. (1) Credits previously granted paid 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.~~ **the latter of any of the following:**

(i) Two years from December thirty first of the year in which the tax credit was paid, or

(ii) Three years from December thirty first of the year in which the taxes for the filing period were due.

(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.

(3) The provisions of this Subsection are in addition to and shall not limit the authority of the secretary of the Department of Revenue to assess or to collect under any other provision of law.

G. Tax credits provided for in this Section are not to be considered entitlements, and the motion picture production company shall bear the burden of clearly and unequivocally establishing eligibility for tax credits.

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



Stokes - Requires the withholding of income taxes earned by certain employees in the motion picture industry

This bill is still under development and will be finalized at the March 4th EIDAC Meeting due to difficulties in setting a time for the Subcommittee on Withholding to meet.

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Stokes - Requires Louisiana advertising to achieve full amount of the Film Incentive Credit

This bill is still under development and will be finalized at the March 4th EIDAC Meeting. Legislation will be modeled other states which require that the State logo (perhaps animated) be included near the beginning of the credits to achieve full credit value.

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