Regular Session, 2013

HOUSE BILL NO. 695

BY REPRESENTATIVE HENRY

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

1 AN ACT 2 To amend and reenact R.S. 47:6007(B), (C)(1)(introductory paragraph), (c)(introductory 3 paragraph) and (d), (2)(introductory paragraph), (4)(f)(ii), (D)(1)(a), 4 (2)(b)(introductory paragraph), (c), and (d)(introductory paragraph), (3), (6), (7), and 5 (8), (E), and (F)(3) and to enact R.S. 47:6007(C)(1)(e), (D)(9), and (F)(4), relative 6 to income tax credits; to provide with respect to the motion picture investor tax credit 7 program; to provide for definitions; to provide for amounts of tax credits; to provide 8 for limitations; to provide for the application and certification process; to provide 9 with respect to rulemaking; to provide for effectiveness; and to provide for related 10 matters. 11 Be it enacted by the Legislature of Louisiana: 12 Section 1. R.S. 47:6007(B), (C)(1)(introductory paragraph), (c)(introductory 13 paragraph) and (d), (2)(introductory paragraph), (4)(f)(ii), (D)(1)(a), (2)(b)(introductory 14 paragraph), (c), and (d)(introductory paragraph), (3), (6), (7), and (8), (E), and (F)(3) are 15 hereby amended and reenacted and R.S. 47:6007(C)(1)(e), (D)(9), and (F)(4) 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 (1) "Base investment" means cash or cash equivalent investment made and 21 used for production expenditures in the state for a state-certified production.

1	(2) "Below the line crewmember" means a person employed by a motion
2	picture production company for a state-certified production that is not a producer,
3	associate producer, coproducer, line producer, executive producer, director, director
4	of photography, production designer, writer, actor, stunt performer, or other onscreen
5	performer with spoken lines.
6	(3) "Box rental" means private property owned by an employee or individual
7	contractor and leased to a state-certified production for use in Louisiana on a state-
8	certified production, which is designated as additional income on a W-2 or 1099
9	federal income tax form.
10	(3) (4) "Expenditure" means actual cash or cash equivalent exchanged for
11	goods or services.
12	(2) "Expended (5) "Expenditure in the state" means an expenditure to lease
13	immovable property located in the state; an expenditure as compensation for services
14	performed in the state; or an expenditure to purchase or lease tangible personal
15	property from a source within the state where the transaction is subject to the state
16	sales or lease tax provisions of Title 47 of the Louisiana Revised Statutes of 1950.
17	A transaction that is subject to the state sales or lease tax provisions of Title 47 of the
18	Louisiana Revised Statutes of 1950 shall include transactions which are also subject
19	to a statutory exclusion or exemption.
20	(4) (6) "Headquartered in Louisiana" means a corporation incorporated in
21	Louisiana or a partnership, limited liability company, or other business entity
22	domiciled and in Louisiana and having its principal place of business in Louisiana.
23	An entity shall not be deemed to be headquartered in Louisiana for the purpose of
24	producing nationally or internationally distributed motion pictures as defined in this
25	Section. if it is controlled, directly or indirectly, by a nonresident individual or entity.
26	(5) (7) "Motion picture" means a nationally or internationally distributed
27	feature-length film, video, television pilot, television series, television movie of the
28	week, animated feature film, animated television series, or commercial made in
29	Louisiana, in whole or in part, for theatrical or television viewing. The term "motion

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picture" shall not include the production of television coverage of news and athletic events.

3 (6) (8) "Motion picture production company" means a company engaged in 4 the business of producing nationally or internationally distributed motion pictures as defined in this Section. Motion picture production company shall not mean or 5 include any company owned, affiliated, or controlled, in whole or in part, by any 6 7 company or person which is in default on a loan made by the state or a loan 8 guaranteed by the state, nor with any company or person who has ever declared 9 bankruptcy under which an obligation of the company or person to pay or repay 10 public funds or monies was discharged as a part of such bankruptcy.

(7) (9) "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) (10) "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.

20 (9) (11) "Production expenditures" means preproduction, production, and 21 postproduction expenditures in this the state directly relating to a state-certified 22 production, including without limitation the following: set construction and 23 operation; wardrobes, makeup, accessories, and related services; costs associated 24 with photography and sound synchronization, lighting, and related services and 25 materials; editing and related services; rental of facilities and equipment; leasing of 26 vehicles; costs of food and lodging; digital or tape editing, film processing, transfer 27 of film to tape or digital format, sound mixing, special and visual effects; financing 28 costs if obtained from a financier headquartered in Louisiana; and payroll. This term 29 shall include the cost of customization or custom development of a tangible good

1	specifically designed for use by a state-certified production in Louisiana if the
2	customization services are performed in Louisiana. This term shall not include
3	expenditures for marketing and distribution, non-production nonproduction related
4	overhead, amounts reimbursed by the state or any other governmental entity, costs
5	related to the transfer of tax credits, amounts that are paid to persons or entities as
6	a result of their participation in profits from the exploitation of the production, the
7	application fee, box or kit rentals paid to an individual who is not a Louisiana
8	resident for the use of property that does not originate from a source within the state,
9	airfare, or state or local taxes.
10	(12) "Qualified production facility" means a permanent facility located in the
11	state which meets all of the following criteria:
12	(a) A facility in which motion pictures are intended to be regularly produced;
13	(b) A facility which either contains at least one sound stage with a minimum
14	of three thousand square feet of contiguous production space or contains animation
15	or visual effects capabilities and employs on average a minimum of twenty full-time
16	employees;
17	(c) A facility for which there has been expended, excluding the purchase of
18	land, at least two million five hundred thousand dollars of private capital for
19	construction or improvement of space for the purpose of facilitating film or digital
20	media production.
21	(13) "Related party transaction" means a transaction between parties that are
22	deemed to be related by common ownership or control, under generally accepted
23	auditing principles. Related party transaction expenditures may be subject to
24	limitations provided by rules promulgated by the department in accordance with the
25	Administrative Procedure Act.
26	(10) (14) "Resident" or "resident of Louisiana" means a natural person
27	domiciled in the state who has a driver's license issued by the state of Louisiana, and
28	who can provide either a utility bill or real property lease which indicates the same
29	address as that on the driver's license, and which document is dated at least six

1 months and no more than one year prior to employment. A person who maintains 2 a permanent place of abode within the state and spends in the aggregate more than 3 six months of each year within the state shall be presumed to be domiciled in the 4 state. (11) (15) "Secretary" means the secretary of the Department of Economic 5 Development. 6 7 "Source within the state" means a resident, corporation, (12) (16) 8 partnership, limited liability company, or other business entity, or division or 9 subsidiary thereof, with a physical facility in Louisiana, operating with posted 10 business hours and employing at least one full-time equivalent employee. 11 (17) "Special events" means an event that occurs irrespective of filming, 12 such as Mardi Gras, music festivals, concerts, or other similarly situated events. 13 (18) "Special event production expenditures" means only costs directly 14 related to filming the special event shall qualify for tax credits. Costs that are 15 indirectly related to filming shall not qualify for tax credits. Such indirect costs shall 16 include but not be limited to artist compensation for festival or concert appearances 17 or costs associated with the usual activities of a reality show or documentary. 18 (13) (19) "State" means the state of Louisiana. 19 (14) (20) "State-certified production" shall mean a production approved by 20 the office and the secretary which is produced by a motion picture production 21 company domiciled and headquartered in Louisiana and which has a viable multi-22 market multimarket commercial distribution plan. 23 C. Investor tax credit; specific productions and projects. 24 (1) There is hereby authorized a tax credit against state income tax for 25 Louisiana taxpayers for investment in state-certified productions. The tax credit 26 shall be earned by investors at the time expenditures are made by a motion picture 27 production company in a state-certified production. However, credits cannot be 28 applied against a tax or transferred until the expenditures are certified by the office 29 and the secretary. For state-certified productions, expenditures shall be certified no

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1	more than twice during the duration of a state-certified production unless the motion
2	picture production company agrees to reimburse the office for the costs of any
3	additional certifications. The tax credit shall be calculated as a percentage of the
4	total base investment dollars certified per project.
5	* * *
6	(c) For state-certified productions approved by the office and the secretary
7	on or after July 1, 2009, but before January 1, 2014:
8	* * *
9	(d) For state-certified productions approved by the office and the secretary
10	on or after January 1, 2014:
11	(i) If the total base investment is greater than three hundred thousand dollars,
12	each motion picture production company shall be allowed a tax credit of thirty
13	percent of the base investment made by that motion picture production company
14	excluding any portion of the base investment that is expended on payroll for below
15	the line crewmembers that are not residents of Louisiana.
16	(ii) To the extent that base investment is expended on payroll for Louisiana
17	residents employed in connection with a state-certified production, each motion
18	picture production company shall be allowed an additional tax credit of five percent
19	of such payroll; however, if such payroll contains compensation to any individual
20	which exceeds one million dollars, this additional credit shall exclude any
21	compensation for that individual that exceeds one million dollars.
22	(iii) To the extent that base investment is expended on payroll for below the
23	line crewmembers that are not residents of Louisiana employed in connection with
24	a state-certified production, each motion picture production company shall be
25	allowed a tax credit of twenty percent of such payroll.
26	(iv) To the extent that base investment is expended on direct or indirect
27	payments to an individual other than a below the line crewmember, the limitations
28	established within this Item shall apply. For purposes of this Item, the payment of
29	compensation to an individual through a personal service company, loan-out,

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1	professional employee organization, or an employee leasing company shall be
2	deemed to be an indirect payment to such individual.
3	(aa) Except as provided in Subitem (bb) of this Item, no more than three
4	million dollars in tax credits shall be allowed in connection with payments to such
5	individual.
6	(bb) If a state-certified production spends at least ten principal photography
7	days at a qualified production facility, no more than six million dollars in tax credits
8	shall be allowed in connection with payments to such individual.
9	(d) (e) Motion picture investor tax credits associated with a state-certified
10	production shall never exceed the total base investment in that production.
11	(2) The credit shall be allowed against the income tax for the taxable period
12	in which the credit is earned or for the taxable period in which initial certification
13	authorizes the credit to be taken. If the tax credit allowed pursuant to this Section
14	exceeds the amount of such taxes due for such tax period, then any unused credit
15	may be carried forward as a credit against subsequent tax liability for a period not
16	to exceed ten years.
17	* * *
18	(4)
19	* * *
20	(f)
21	* * *
22	(ii) For projects which receive initial certification on and after July 1, 2009,
23	the investor or motion picture production company who earned the motion picture
24	investor tax credits pursuant to such certification may transfer the credits to the
25	office for eighty-five percent of the face value of the credits in accordance with the
26	procedures and requirements of Item (i) of this Subparagraph.
27	* * *

1	D. Certification and administration.
2	(1)(a) The secretary of the Department of Economic Development and the
3	office shall determine through the promulgation of rules the minimum criteria that
4	a project must meet in order to qualify according to this Section. The secretary, the
5	office, and the division of administration shall determine through the promulgation
6	of rules the minimum criteria that a project must meet in order to qualify according
7	to this Section. However, rulemaking authority shall not extend to the setting of
8	limits with respect to the qualification or proportion of specific production
9	expenditures as such term is defined by law. The qualification of production
10	expenditures shall be confirmed through the audit process associated with final
11	certification as provided for in Subparagraph (2)(d) of this Subsection.
12	* * *
13	(2)
14	* * *
15	(b) If the application is incomplete, additional information may be requested
16	prior to further action by the office or the secretary of the Department of Economic
17	Development. An application fee shall be submitted with the application based on
18	the following:
19	* * *
20	(c) The office and the secretary shall submit their initial certification within
21	twenty-one calendar days from the date of receipt of the application for initial
22	certification of a project as a state-certified production to investors both the motion
23	picture production company and to the secretary of the Department of Revenue
24	indicating. The initial certification shall indicate the total base investment which
25	shall be expended in the state on the state-certified production. The initial
26	certification and shall include a unique identifying number for each state-certified
27	production. The twenty-one day period shall be tolled when the office requests
28	additional information; however, after the furnishing of the information requested
29	by the motion picture production company, the tolling shall cease and the period

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shall recommence where it stopped. Failure by the office and the secretary to submit
 the initial certification within the time period as required by this Subparagraph shall
 result in the application for an initial certification being deemed approved.

4 (d) Prior to any final certification of the state-certified production, the 5 motion picture production company shall submit to the office and the secretary an audit of the production expenditures certified by an independent certified public 6 7 accountant as determined by rule. The office and the secretary shall review the audit; 8 and the production expense details, and may require make a single request for 9 additional information needed to make a determination with respect to the final 10 certification within thirty days of receipt of the audit. Upon approval of the audit 11 Within sixty calendar days of the office's receipt of any such requested information, 12 or within ninety calendar days from the date of receipt of the audit if no additional 13 information was requested, the office and the secretary shall issue a final tax credit 14 certification letter indicating the amount of tax credits certified for the state-certified 15 production to the investors motion picture production company, or shall issue a 16 denial of the final certification in whole or in part. The denial of any tax credits shall 17 be accompanied by detailed, written reasons for each expenditure so denied. Any 18 expenditure not denied shall be deemed approved upon the expiration of the time 19 period set forth in this Subparagraph. The rules required by this Subparagraph shall, 20 at a minimum, require that:

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* *

(3) The secretary of the Department of Revenue, in consultation with the
 office and the secretary of the Department of Economic Development shall
 promulgate such rules and regulations as are necessary to carry out the intent and
 purposes of this Section in accordance with the general guidelines provided herein.
 <u>However, rulemaking authority shall not extend to the setting of limits with respect</u>
 to the qualification or proportion of specific production expenditures as such term
 is defined by law. The qualification of production expenditures shall be confirmed

1	through the audit process associated with final certification as provided for in
2	Subparagraph (2)(d) of this Subsection.
3	* * *
4	(6) Prior to any final certification of a state-certified production, the motion
5	picture production company applying for the credit must ensure and be able to
6	demonstrate that all taxes related to production expenditures paid to an individual,
7	or to a loan out, personal services corporation, professional employer organization,
8	or employee leasing company for the services of an individual that are performed in
9	this state are withheld and paid to this state pursuant to R.S. 47:112. Any amounts
10	so withheld shall be deemed to have been withheld by the loan out, personal services
11	corporation, professional employer organization, or employee leasing company on
12	wages paid to its employees for services performed in Louisiana.
13	(6) (7) With input from the Legislative Fiscal Office, the office shall prepare
14	a written report to be submitted to the Senate Committee on Revenue and Fiscal
15	Affairs and the House of Representatives Committee on Ways and Means no less
16	than sixty days prior to the start of the Regular Session of the Legislature in 2007,
17	and every second year thereafter. The report shall include the overall impact of the
18	tax credits, the amount of the tax credits issued, the number of net new jobs created,
19	the amount of Louisiana payroll created, the economic impact of the tax credits and
20	film industry, and any other factors that describe the impact of the program.
21	(7) (8) The Department of Economic Development may request an additional
22	audit of the expenditures submitted by the motion picture production company at the
23	cost of the motion picture production company.
24	(8) (9) As a condition for receiving certification of tax credits under this
25	Section, state-certified productions may be required to display an animated a state
26	brand or logo, or both, which includes a fleur de lis as prescribed by the secretary of
27	the Department of Economic Development as long as the animated state brand or
28	logo is not contrary to any rule or regulation of the Federal Communications
29	Commission.

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1	E. Recapture of credits. If the office finds that monies for which an investor
2	a motion picture production company received tax credits according to this Section
3	are not invested in and expended with respect to a state-certified production within
4	twenty-four months of the date that such credits are earned, then the investor's then
5	the motion picture production company's state income tax for such taxable period
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.
9	* * *
10	(3) No tax credits transferred to another Louisiana taxpayer pursuant to this
11	Section shall be subject to recovery or recapture. Once tax credits are granted and
12	issued, the office and Department of Revenue shall have no right, except in the case
13	of possible material misrepresentation or fraud, to conduct any further or additional
14	review, examination, or audit of the production expenditures for which such tax
15	credits were granted. The sole and exclusive remedy of the office and Department
16	of Revenue shall be to seek collection of the amount of such tax credits from the
17	entity that committed the fraud or misrepresentation.
18	(3) (4) The provisions of this Subsection are in addition to and shall not limit
19	the authority of the secretary of the Department of Revenue to assess or to collect
20	under any other provision of law.
21	Section 2. This Act shall become effective July 1, 2013.

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)]

Henry

HB No. 695

Abstract: Numerous changes in the motion picture investor tax credit, including the amount of tax credit which may be earned based on nonresident payroll and above-the-line talent, and special provisions relating to a "qualified production facility".

<u>Present law</u> authorizes a tax credit against state income tax based on 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> retains <u>present law</u> with the exception of the following changes which apply to productions certified after Jan. 1, 2014.

<u>Proposed law</u> changes the definition of "qualified expenditures", and provides for other definitions for purposes of the tax credit program.

<u>Proposed law</u> changes the value of tax credits based on two types of expenditures:

- (1) Expenditures for payroll for below the line crewmembers who are not La. residents shall earn tax credits at the rate of 20%.
- (2) Expenditures for an "individual", who may be commonly referred to as "above-theline" talent, shall earn tax credits at the rate of 30%, with the following limitations:
 - (a) No more than \$3 million in tax credits per production may be earned associated with this type of expenditure.
 - (b) If the production spends at least 10 days filming at a qualified production facility, the limit on tax credits associated with such expenditures is \$6 million per production.

<u>Proposed law</u> provides requirements relating to the application for initial and final certification.

Proposed law provides limits on rulemaking.

<u>Proposed law</u> provides that no tax credits transferred to another La. taxpayer shall be subject to recovery or recapture. Once tax credits are granted and issued, the office and Dept. of Revenue shall have no right, except in the case of possible material misrepresentation or fraud, to conduct any further or additional review, examination, or audit of the production expenditures for which such tax credits were granted. The sole and exclusive remedy of the office and Dept. of Revenue shall be to seek collection of the amount of such tax credits from the entity that committed the fraud or misrepresentation.

Effective July 1, 2013.

(Amends R.S. 47:6007(B), (C)(1)(intro. para.), (c)(intro. para.) and (d), (2)(intro. para.), (4)(f)(ii), (D)(1)(a), (2)(b)(intro. para.), (c), and (d)(intro. para.), (3), (6), (7), and (8), (E), and (F)(3); Adds R.S. 47:6007(C)(1)(e), (D)(9), and (F)(4))