

2015 Regular Session

SENATE BILL NO. 100

BY SENATOR MORRELL AND REPRESENTATIVE TALBOT

TAX/TAXATION. Requires sworn affidavits of those submitting information for the creation of production audit reports for motion picture investor tax credits, regulates and limits production expenditures between related parties, and subjects related party transactions to review by the state inspector general. (gov sig)

1 AN ACT

2 To amend and reenact the introductory paragraph of R.S. 47:6007(B)(9), (B)(10),
3 (D)(2)(d)(i) and (9), and to enact R.S. 47:6007(B)(17), (18), and (19) and (D)(2)(f)
4 and (g), relative to motion picture investor tax credits; to regulate and limit
5 production expenditures between related parties; to subject related party transactions
6 to review by the office of the state inspector general; to require certain sworn
7 affidavits and provide for criminal penalties; and to provide for related matters.

8 Be it enacted by the Legislature of Louisiana:

9 Section 1. The introductory paragraph of R.S. 47:6007(B)(9), (B)(10), (D)(2)(d)(i)
10 and (9) are hereby amended and reenacted and R.S. 47:6007(B)(17), (18), and (19) and
11 (D)(2)(f) and (g) are hereby enacted to read as follows:

12 §6007. Motion picture investor tax credit

13 * * *

14 B. Definitions. For the purposes of this Section:

15 * * *

16 (9) "Production audit report" means an audit report issued by a qualified
17 accountant who is unrelated to the motion picture production company and that is a

1 report of the qualified accountant's audit of the motion picture production's cost
 2 report of production expenditures. The production audit report shall contain an
 3 opinion from the qualified accountant stating that there are no related party
 4 transactions or that material transactions of related party relationships are
 5 properly reported and accounted for as required by Paragraph (D)(9) of this
 6 Section, adequately disclosed, and explained in the audit and that the
 7 production's cost report of production expenditures presents fairly, in all material
 8 aspects, the production expenditures expended in Louisiana pursuant to the
 9 provisions of this Section. The production audit shall require:

10 * * *

11 (10)(a) "Production expenditures" means preproduction, production, and
 12 postproduction expenditures in this state directly relating to a state-certified
 13 production, including without limitation the following: set construction and
 14 operation; wardrobes, makeup, accessories, and related services; costs associated
 15 with photography and sound synchronization, lighting, and related services and
 16 materials; editing and related services; rental of facilities and equipment; leasing of
 17 vehicles; costs of food and lodging; digital or tape editing, film processing, transfer
 18 of film to tape or digital format, sound mixing, special and visual effects; and
 19 payroll. ~~This term~~

20 (b) "Production expenditures" shall not include expenditures for marketing
 21 and distribution, non-production related overhead, amounts reimbursed by the state
 22 or any other governmental entity, costs related to the transfer of tax credits, amounts
 23 that are paid to persons or entities as a result of their participation in profits from the
 24 exploitation of the production, the application fee, ~~or~~ state or local taxes, or
 25 expenditures for related party transactions denied or limited by the office
 26 pursuant to Paragraph (D)(9) of this Section.

27 * * *

28 (17) "Above the Line (ATL) services" means services such as those of a
 29 producer, executive producer, line producer, coproducer, assistant producer,

1 actor, director, casting director, screenwriter, and other services of job positions
2 that are associated with the creative or financial control of a production and
3 customarily considered as Above the Line services in the film and television
4 industry.

5 (18) "Below the Line (BTL) services" means services which are not
6 Above the Line services.

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

11 * * *

12 D. Certification and administration.

13 * * *

14 (2)

* * *

15 (d)(i) Prior to any final certification of the state-certified production, the
16 motion picture production company shall submit to the office and the secretary a
17 production audit report and the affidavit required by Subparagraph (f) of this
18 Paragraph. The office and the secretary shall review the production audit report and
19 may require additional information needed to make a determination. Within one
20 hundred twenty days of the receipt of the production audit report and all required
21 supporting information, the office and the secretary shall issue a tax credit
22 certification letter indicating the amount of tax credits certified for the state-certified
23 production to the investors for all qualifying expenditures verified by the office. Any
24 expenditures for which tax credits were neither denied nor certified due to
25 insufficient information or other issues, the office and secretary shall diligently work
26 to resolve the outstanding issues in a timely manner, and the office and secretary
27 may subsequently issue a supplemental tax credit certification at the time of such
28 resolution.

29 * * *

1 **(f) In addition to any other requirements of this Paragraph, the**
2 **production audit report shall include information concerning the total number**
3 **of people who were paid salary, wages, benefits, and other compensation in the**
4 **production which was included as payroll for which a credit was claimed and**
5 **the number of those who were Louisiana residents.**

6 **(g)(i) In addition to any other requirements of this Paragraph, the**
7 **production audit report shall include a sworn affidavit by the individual**
8 **responsible for providing the accounts, documents, records and any other**
9 **information necessary to the accountant charged with preparing and filing the**
10 **production audit report that such accounts, documents, records and other**
11 **information were true and correct; that he has reviewed the production audit**
12 **report and, except for any matter specified in the affidavit, the report is true**
13 **and correct; and that all related party transactions were accurately reported in**
14 **accordance with Paragraph (9) of this Subsection; all to the best of the affiant's**
15 **knowledge, information, and belief.**

16 **(ii) Any false statement under oath contained in the affidavit required**
17 **by this Subparagraph shall constitute perjury and shall be punished as provided**
18 **by R.S. 14:123(C)(4).**

19 * * *

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

- 27 **(i) The name of the related party.**
- 28 **(ii) The nature of the relationship between the related party and the**
29 **motion picture production company.**

1 (iii) The nature of the transaction.

2 (iv) The amount of the transaction.

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

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

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

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

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

25 (bb) If the fair market value cannot be established in the manner
26 provided for in Subitem (aa) of this Item, qualifying production expenditures
27 shall be limited to the internal cost recovery rate consisting of actual acquisition
28 cost plus ongoing maintenance and upgrade cost, divided by anticipated
29 utilization over the real useful life of the property. However, qualifying

1 production expenditures for visual effects packages shall be limited to either the
2 internal cost recovery rate and/or the actual compensation paid by the related
3 party employer to its employee or employees actually performing the service,
4 including employer-paid benefits, allocated to the production on an hourly basis
5 as determined by the methodology selected and deemed most appropriate under
6 the circumstances by the office.

7 (iv) No tax credits shall be earned or certified for expenditures for
8 finance fees, interest, or payments of a similar nature paid to related parties,
9 investors in the production, or any other entities which the office determines
10 will gain financial rewards based upon sale or exploitation of the product or
11 success in procuring distribution agreements unless such expenditures are made
12 to a Louisiana financial institution as defined in R.S. 6:2(8) or a Louisiana
13 Business and Industrial Development Company defined in and provided for in
14 Chapter 39-B of Title 51 of the Louisiana Revised Statutes of 1950 (R.S. 51:2386
15 et seq.) which are regulated by the office of financial institutions and which have
16 one or more offices in the state.

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

22 (d) Any related party transaction shall be referred by the office and the
23 secretary to the office of the state inspector general for further review to
24 determine whether the transaction is in accord with the provisions of this
25 Paragraph. The office of the state inspector general may make such further
26 audit, examination, and investigation of all books and records and officers and
27 employees of a movie production company earning, or of any entity or persons
28 receiving, tax credits pursuant to this Section as is necessary to make such
29 determination pursuant to any authority provided for in Part VI of Chapter 2

1 **of Title 49 of the Louisiana Revised Statutes of 1950. Such movie production**
 2 **companies, entities, and persons earning or receiving such credits are hereby**
 3 **deemed to consent to such audit, examination, and investigation and of any**
 4 **reasonable fees associated with such examination and investigation as a**
 5 **condition of earning or receiving the tax credits.**

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

9 Section 2. The provisions of this Act shall apply to all productions certified on and
 10 after July 1, 2015.

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

The original instrument and the following digest, which constitutes no part
 of the legislative instrument, were prepared by Riley Boudreaux.

DIGEST

SB 100 Original

2015 Regular Session

Morrell

Present law grants a motion picture investor tax credit as a percentage of the "base investment" made and used for "production expenditures" in the state for a "state-certified production". The term "production expenditures" is defined in present law.

Proposed law excludes from eligible "production expenditures" expenditures for "related party transactions" denied or limited by the office of entertainment industry development in the Department of Economic Development pursuant to the following provisions of proposed law.

Present law requires a motion picture production company to submit to the office and the secretary of LED a production audit report, after the review of which the office and the secretary must 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.

Present law requires the production audit report to be issued by a qualified accountant who is unrelated to the motion picture production company and to be a report of the accountant's audit of the motion picture production's cost report of "production expenditures". The production audit report must contain an opinion from the accountant stating that the production's cost report of production expenditures presents fairly, in all material aspects, the "production expenditures" expended in Louisiana.

Proposed law requires the opinion of the accountant to also state that there are no "related party transactions" or that material transactions of related party relationships are properly reported and accounted for as required below, adequately disclosed, and explained in the audit.

"Related party transaction" is defined as 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).

Proposed law requires the production audit report or audit notes therein to verify that all "related party transactions" have been disclosed and explained, and that the production accounts include all of the following:

- (1) The name of the related party.
- (2) The nature of the relationship between the related party and the motion picture production company.
- (3) The nature of the transaction.
- (4) The amount of the transaction.
- (5) 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.

The office is authorized to 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 to third-party contracts, notarized affidavits, tax records, W-2s, 1099s, and cancelled checks.

Proposed law requires the motion picture production company to submit to the office and the secretary a sworn affidavit by the individual responsible for providing the accounts, documents, records and any other information necessary to the accountant charged with preparing and filing the production audit report that such information was true and correct; that he has reviewed the production audit report and, except for any matter specified in the affidavit, the report is true and correct; and that all "related party transactions" were accurately reported in accordance with the proposed law; all to the best of the affiant's knowledge, information, and belief.

Any false statement under oath contained in the affidavit constitutes perjury and shall be punished as provided by R.S. 14:123(C)(4) - a fine of not more than \$10,000 or imprisonment at hard labor for not more than five years, or both.

Proposed law requires the production audit report to include information concerning the total number of people who were paid salary, wages, benefits, and other compensation in the production which was included as payroll for which a credit was claimed and the number of those who were Louisiana residents.

Proposed law further limits certification of tax credits certified for goods and services provided by related parties as follows:

- (1) Qualifying "production expenditures" for "Above the Line (ATL) services" provided by related parties must be limited to 12% of total Louisiana "production expenditures".

"Above the Line (ATL) services" is defined as services such as those of a producer, executive producer, line producer, coproducer, 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.

- (2) Qualifying production expenditures for "Below the Line" services provided by a related party must 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.

"Below the Line (BTL) services" is defined as services which are not "Above the Line services".

- (3) Qualifying production expenditures for goods and services provided by a related party must 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. If the fair market value cannot be established in such a manner, qualifying production expenditures must 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 must be limited to either the internal cost recovery rate and/or the actual compensation paid by the related party employer to its employee or employees 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.
- (4) No tax credits can 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 unless such expenditures are made to a Louisiana financial institution as defined in R.S. 6:2(8) or a Louisiana Business and Industrial Development Company (BIDCO) defined in and provided for in R.S. 51:2386 et seq. which are regulated by the office of financial institutions and which have one or more offices in the state.

Proposed law requires "related party transactions" to be referred to the office of the state inspector general for further review to determine whether the transaction is in accord with the above provisions. 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 as is necessary to make such determination pursuant to any authority provided to it in present law. Such entities and people are deemed to consent to such audit, examination, and investigation and to any reasonable fees associated as a condition of earning or receiving the tax credits.

Applies to all productions certified on and after July 1, 2015.

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

(Amends R.S. 47:6007(B)(9)(intro para) and (B)(10), (D)(2)(d)(i) and (9); adds R.S. 47:6007(B)(17), (18), and (19) and (D)(2)(f) and (g))