

SENATE BILL NO. 106

BY SENATOR MORRELL AND REPRESENTATIVE TALBOT

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AN ACT

To amend and reenact R.S. 47:1524(D)(2) and (3), and 6007(section heading), (B)(5), (10) through (16), (C)(subsection heading), (1)(introductory paragraph), (a)(iii), and (b)(iii), (2) and (4)(b) and (f), (D)(2)(d)(i), (E), and (F), and to enact R.S. 47:6007(B)(17) and (18), (C)(1)(c)(iii), (D)(1)(d)(iv) and (2)(d)(iii), (G), and (H), relative to motion picture investor tax credits; to provide for eligibility for the credits; to provide for definitions; to provide eligibility for certain types of productions; to provide requirements for the completion of projects and certification of expenditures; to authorize assignment of credits to a lender under certain circumstances; to provide for recapture of tax credits; to provide for the final certification of certain expenditures for state-certified infrastructure projects; to provide for effectiveness; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. R.S. 47:1524(D)(2) and (3), and 6007(section heading), (B)(5), (10) through (16), (C)(subsection heading), (1)(introductory paragraph), (a)(iii) and (b)(iii), (2) and (4)(b) and (f), and (D)(2)(d)(i) are hereby amended and reenacted and R.S. 47:6007(B)(17) and (18), (C)(1)(c)(iii), (D)(1)(d)(iv) and (2)(d)(iii), and (G) are hereby enacted to read as follows:

§1524. Tax credit registry; requirements; limitations

\* \* \*

D. Transfers

\* \* \*

(2) Notwithstanding any other provision of law to the contrary, no issuance, sale, or transfer of tax credits after January 1, 2014, shall be effective as between the transferor and transferee, or as to third parties ~~not recognized by~~ or the

1 department until it has been recorded in the registry.

2 ~~(3) The effectiveness of a tax credit transfer as between the transferor and~~  
3 ~~the transferee shall be provided by agreement of the parties or, in the absence of an~~  
4 ~~agreement, in accordance with the provisions of the Louisiana Civil Code and its~~  
5 ~~ancillaries.~~

6 \* \* \*

7 §6007. Motion picture ~~investor~~ **production** tax credit

8 \* \* \*

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

10 \* \* \*

11 (5) "Motion picture" means a nationally or internationally distributed  
12 feature-length film, video, television pilot, television series, television movie of the  
13 week, animated feature film, animated television series, or commercial made in  
14 Louisiana, in whole or in part, for theatrical or television viewing, **or for viewing on**  
15 **any digital online platform as may be further defined by the office through the**  
16 **promulgation of rules.** The term "motion picture" shall not include the production  
17 of television coverage of news and athletic events.

18 \* \* \*

19 (10) "Production expenditures" means preproduction, production, and  
20 postproduction expenditures in this state directly relating to a state-certified  
21 production, including without limitation the following: set construction and  
22 operation; wardrobes, makeup, accessories, and related services; costs associated  
23 with photography and sound synchronization, lighting, and related services and  
24 materials; editing and related services; rental of facilities and equipment; leasing of  
25 vehicles; costs of food and lodging; digital or tape editing, film processing, transfer  
26 of film to tape or digital format, sound mixing, special and visual effects; and  
27 payroll. ~~This~~ **For all state-certified productions approved on or after January**  
28 **1, 2004, this** term shall not include expenditures for marketing and distribution, non-  
29 production related overhead, amounts reimbursed by the state or any other  
30 governmental entity, costs related to the transfer of tax credits, amounts that are paid

1 to persons or entities as a result of their participation in profits from the exploitation  
 2 of the production, the application fee, or state, or local taxes, or any expenditures  
 3 occurring outside of Louisiana. For all state-certified productions approved on  
 4 or after January 1, 2016, marketing expenditures shall be considered  
 5 "production expenditures".

6 (11) "Project completion" means completion of principal photography,  
 7 or as otherwise approved in writing by the office.

8 ~~(11)~~(12) "Qualified accountant" means an independent certified public  
 9 accountant authorized to practice in this state who has sufficient knowledge of  
 10 accounting principles and practices generally recognized in the film and television  
 11 industry.

12 ~~(12)~~(13) "Resident" or "resident of Louisiana" means a natural person  
 13 domiciled in the state. A person who maintains a permanent place of abode within  
 14 the state and spends in the aggregate more than six months of each year within the  
 15 state shall be presumed to be domiciled in the state.

16 ~~(13)~~(14) "Secretary" means the secretary of the Department of Economic  
 17 Development.

18 ~~(14)~~(15) "Source within the state" means a physical facility in Louisiana,  
 19 operating with posted business hours and employing at least one full-time equivalent  
 20 employee.

21 ~~(15)~~(16) "State" means the state of Louisiana.

22 ~~(16)~~(17) "State-certified production" shall ~~mean~~ means a production  
 23 approved by the office and the secretary which is produced by a motion picture  
 24 production company domiciled and headquartered in Louisiana and which has a  
 25 viable multi-market commercial distribution plan.

26 (18) "Taxpayer" means an investor in a production, a motion picture  
 27 production company applicant, individual with an ownership interest in a  
 28 motion picture production company applicant, or a subsequent transferee of the  
 29 tax credit.

30 C. Investor Production tax credit; specific productions and projects.

1 (1) There is hereby authorized a tax credit against state income tax for  
 2 Louisiana taxpayers for ~~investment in~~ **expenditures related to** state-certified  
 3 productions. The tax credit shall be earned by ~~investors~~ **a motion picture**  
 4 **production company** at the time expenditures are made by a motion picture  
 5 production company in a state-certified production. However, credits cannot be  
 6 applied against a tax or transferred until the expenditures are certified by the office  
 7 and the secretary. For state-certified productions, expenditures shall be certified no  
 8 more than ~~twice during the duration of a state-certified production unless the motion~~  
 9 ~~picture production company agrees to reimburse the office for the costs of any~~  
 10 ~~additional certifications~~ **once per production, after project completion. However,**  
 11 **if at the time of application for initial certification, the office is notified that**  
 12 **post-production activities will take place in Louisiana, a supplemental request**  
 13 **for certification of expenditures directly related to such post-production activity**  
 14 **may be submitted for consideration by the office. The cost of any verification**  
 15 **or audit of such expenditures shall be borne by the motion picture production**  
 16 **company.** The tax credit shall be calculated as a percentage of the total base  
 17 investment dollars certified per project.

18 (a) For state-certified productions approved by the office and the secretary  
 19 on or after January 1, 2004, but before January 1, 2006:

20 \* \* \*

21 (iii) The initial certification shall be effective for **qualifying expenditures**  
 22 **made within** a period twelve months prior to and twelve months after the date of  
 23 initial certification, ~~unless the production has commenced, in which case the initial~~  
 24 ~~certification shall be valid until the production is completed.~~

25 (b) For state-certified productions approved by the office and the secretary  
 26 on or after January 1, 2006, but before July 1, 2009:

27 \* \* \*

28 (iii) The initial certification shall be effective for **qualifying expenditures**  
 29 **made within** a period twelve months prior to and twelve months after the date of  
 30 initial certification, ~~unless the production has commenced, in which case the initial~~

1 certification shall be valid until the production is completed.

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

4 \* \* \*

5 **(iii) The initial certification shall be effective for qualifying expenditures**  
6 **made within a period twelve months prior to and twenty-four months after the**  
7 **date of the initial certification.**

8 \* \* \*

9 (2) The credit shall be allowed against the income tax for the taxable period  
10 in which the credit is earned or for the taxable period in which initial certification  
11 authorizes the credit to be taken. If the tax credit allowed pursuant to this Section  
12 exceeds the amount of such taxes due for such tax period, then any unused credit  
13 may be carried forward as a credit against subsequent tax liability for a period not  
14 to exceed ~~ten~~ five years.

15 \* \* \*

16 (4) Transferability of the credit. Any motion picture tax credits not  
17 previously claimed by any taxpayer against its income tax may be transferred or sold  
18 to another Louisiana taxpayer or to the office, subject to the following conditions:(3)  
19 Application of the credit.

20 \* \* \*

21 (b) Transferors and transferees shall submit to the Department of Revenue  
22 in writing, a notification of any transfer or sale of tax credits within ten business days  
23 after the transfer or sale of such tax credits. **No transfer or sale of tax credits shall**  
24 **be effective until recorded in the tax credit registry in accordance with R.S.**  
25 **47:1524.** The notification shall include the transferor's tax credit balance prior to  
26 transfer, a copy of any tax credit certification letter(s) issued by the office and the  
27 secretary of the Department of Economic Development the transferor's remaining tax  
28 credit balance after transfer, all tax identification numbers for both transferor and  
29 transferee, the date of transfer, the amount transferred, a copy of the credit  
30 certificate, price paid by the transferee to the transferor, in the case when the

1 transferor is a state-certified production, for the tax credits, and any other  
 2 information required by the office or the Department of Revenue. For the purpose  
 3 of reporting transfer prices, the term "transfer" shall include allocations pursuant to  
 4 Paragraph (2) of this Subsection as provided by rule. The tax credit transfer value  
 5 means the percentage as determined by the price paid by the transferee to the  
 6 transferor divided by the dollar value of the tax credits that were transferred in  
 7 return. The notification submitted to the Department of Revenue shall include a  
 8 processing fee of up to two hundred dollars per transferee, and any information  
 9 submitted by a transferor or transferee shall be treated by the office and the  
 10 Department of Revenue as proprietary to the entity reporting such information and  
 11 therefore confidential. However, this shall not prevent the publication of summary  
 12 data that includes no fewer than three transactions.

13 \* \* \*

14 (f)(i) Beginning on and after January 1, 2007, the ~~investor who~~ **motion**  
 15 **picture production company that** earned the motion picture ~~investor~~ **production**  
 16 tax credits may transfer the credits to the office for seventy-two percent of the face  
 17 value of the credits. Beginning January 1, 2009, and every second year thereafter,  
 18 the percent of the face value of the tax credits allowed for transferring credits to the  
 19 office shall increase two percent until the percentage reaches eighty percent. ~~Upon~~  
 20 ~~the transfer, the Department of Economic Development shall notify the Department~~  
 21 ~~of Revenue and shall provide it with a copy of the transfer documentation. The~~  
 22 ~~Department of Revenue may require the transferor to submit such additional~~  
 23 ~~information as may be necessary to administer the provisions of this Section. The~~  
 24 ~~secretary of the Department of Revenue shall make payment to the investor in the~~  
 25 ~~amount to which he is entitled from the current collections of the taxes collected~~  
 26 ~~pursuant to Chapter 1 of Subtitle H, provided such credits are transferred to the office~~  
 27 ~~within one calendar year of certification.~~

28 (ii) For projects which receive initial certification on and after July 1, 2009,  
 29 the ~~investor who~~ **motion picture production company that** earned the motion  
 30 picture ~~investor~~ **production** tax credits pursuant to such certification **or the**

1 company's irrevocable designee, as provided for in Item (iv) of this  
2 Subparagraph, may transfer the credits to the ~~office~~ Department of Revenue for  
3 eighty-five percent of the face value of the credits in accordance with the procedures  
4 and requirements of Item ~~(i)~~ (iii) of this Subparagraph.

5 (iii) The Department of Revenue may require the transferor to submit  
6 such additional information as may be necessary to administer the provisions  
7 of this Section. The secretary of the Department of Revenue shall make  
8 payment to the motion picture production company or its irrevocable designee  
9 in the amount to which he is entitled from the current collections of the taxes  
10 collected pursuant to Chapter 1 of Subtitle II, of this Title provided such tax  
11 credits are transferred to the Department of Revenue within one calendar year  
12 of certification.

13 (iv) A bank or other lender may be named as an irrevocable designee in  
14 the initial tax credit certification or other document submitted thereafter by a  
15 motion picture production company to the office. As an irrevocable designee,  
16 a bank or other lender may elect to have the tax credits issued directly to it from  
17 the office, and in addition to the rights of a transferee may also elect to transfer  
18 the credits to the Department of Revenue in accordance with the provisions of  
19 Items (ii) and (iii) of this Subparagraph.

20 \* \* \*

21 D. Certification and administration.

22 (1)

23 \* \* \*

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

27 \* \* \*

28 (iv) Conviction for a criminal offense as an incident to obtaining or  
29 attempting to obtain motion picture investor tax credits.

30 (2)

\* \* \*

1

2 (d)(i) ~~Prior to any final certification of the state-certified production, the~~  
3 ~~motion picture production company shall submit to the office and the secretary a~~  
4 ~~production audit report.~~ **No later than six months after the expiration of the**  
5 **initial certification period for the applicable state-certified production, a state-**  
6 **certified motion picture production company applicant shall make a request to**  
7 **the office to proceed to final certification by submitting to the office a cost**  
8 **report of production expenditures to be formatted in accordance with**  
9 **instructions of the office. The applicant shall make all records related to the**  
10 **cost report available for inspection by the office and the qualified accountant**  
11 **selected by the office to prepare the production expenditure verification report,**  
12 **after which time all such claims to tax credits shall be deemed waived. After**  
13 **review and investigation of the cost report, the accountant shall submit to the**  
14 **office and the secretary a production audit expenditure verification report.** The  
15 office and the secretary shall review the production audit **expenditure verification**  
16 report and may require additional information needed to make a determination **as to**  
17 **final certification of all tax credits for that production.** Within one hundred  
18 twenty days of the receipt of the production audit **expenditure verification** report  
19 and all required supporting information, the office and the secretary shall issue a tax  
20 credit certification letter indicating the amount of tax credits certified for the state-  
21 certified production to the investors **applicant** for all qualifying expenditures  
22 verified by the office. Any expenditures for which tax credits were neither denied  
23 nor certified due to insufficient information or other issues, the office and secretary  
24 shall diligently work to resolve the outstanding issues in a timely manner, and the  
25 office and secretary may subsequently issue a supplemental tax credit certification  
26 at the time of such resolution.

\* \* \*

27

28 **(iii) Only expenditures made during the initial certification period shall**  
29 **earn credits.**

\* \* \*



1           G. Tax credits provided for in this Section shall not be considered  
2           entitlements, and the taxpayer shall bear the burden of clearly and  
3           unequivocally establishing eligibility for tax credits.

4           Section 2. R.S. 47:6007(section heading), (E) and (F) are hereby amended and  
5           reenacted and R.S. 47:6007(H) is hereby enacted to read as follows:

6           §6007. Motion picture investor production tax credit

7   \*       \*       \*

8           E. Recapture Disallowance and recapture of credits. ~~If the office finds that~~  
9           ~~monies for which an investor received tax credits according to this Section are not~~  
10          ~~invested in and expended with respect to a state-certified production within twenty-~~  
11          ~~four months of the date that such credits are earned, then the investor's state income~~  
12          ~~tax for such taxable period shall be increased by such amount necessary for the~~  
13          ~~recapture of credit provided by this Section.~~

14          (1) A bad faith holder may not transfer tax credits pursuant to  
15          Subparagraph (C)(4)(f) of this Section, nor claim tax credits pursuant to  
16          Paragraphs (C)(2) and (3) of this Section, nor transfer tax credits pursuant to  
17          Paragraph (C)(4) of this Section. A bad faith holder is a person who  
18          participated in material misrepresentation or fraudulent acts in connection with  
19          the certification of tax credits pursuant to this section, or who prior to or at the  
20          time of certification of such tax credits knew or reasonably should have known  
21          of such material misrepresentation or fraudulent acts, or a legal entity owned  
22          or controlled by such a person. Upon a determination of bad faith by the  
23          Department of Revenue such tax credits shall be deemed disallowed as to the  
24          bad faith holder.

25          (2) Tax credits previously transferred pursuant to Subparagraph  
26          (C)(4)(f) of this Section or claimed by a bad faith holder, but subsequently  
27          disallowed, may be recovered by the secretary of the Department of Revenue  
28          through any collection remedy authorized by R.S. 47:1561, plus interest and  
29          penalties provided by law for the delinquent payment of taxes, and the  
30          Department of Revenue may recapture any amounts and other damages from

1 a bad faith holder using any collection remedy authorized by law.

2 (3) In the event tax credits obtained through material misrepresentation  
 3 or fraudulent acts are claimed by a taxpayer who is not a bad faith holder, the  
 4 Department of Revenue shall have the right of recourse against a bad faith  
 5 holder as provided to a transferee pursuant to Paragraph (C)(4)(e).

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

9 ~~F. Recovery of credits by Department of Revenue. (1) Credits previously~~  
 10 ~~granted to a taxpayer, but later disallowed, may be recovered by the secretary of the~~  
 11 ~~Department of Revenue through any collection remedy authorized by R.S. 47:1561~~  
 12 ~~and initiated within three years from December thirty-first of the year in which the~~  
 13 ~~twenty-four-month investment period specified in Subsection E of this Section ends.~~

14 ~~(2) The only interest that may be assessed and collected on recovered credits~~  
 15 ~~is interest at a rate three percentage points above the rate provided in R.S.~~  
 16 ~~9:3500(B)(1), which shall be computed from the original due date of the return on~~  
 17 ~~which the credit was taken.~~

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

21 Prescription. Tax credits previously granted to a taxpayer, but later  
 22 disallowed pursuant to the provisions of Subsection E of this Section, may be  
 23 recovered by the secretary of the Department of Revenue through any collection  
 24 remedy authorized by R.S. 47:1561 and initiated within the latter of any of the  
 25 following:

26 (1) Two years from December thirty-first in the year in which the tax  
 27 credit was paid in accordance with Item (C)(4)(f)(ii) of this Section.

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

30 (3) Three years from December thirty-first of the year in which the final

1 tax credit certification letter was issued.

2 (4) The time period for which prescription has been extended, as  
3 provided by R.S. 47:1580.

4 \* \* \*

5 H. Audit reports for certification of expenditures for state-certified  
6 motion picture infrastructure program tax credits shall be submitted in  
7 accordance with the provisions of this Subsection.

8 (1) State-certified infrastructure project applicants may submit to the  
9 office on or before December 31, 2015, all requests and required documentation  
10 for final certification of all tax credits granted by this provision, after which  
11 time all such claims to tax credits shall be deemed waived.

12 (2) Any request shall be accompanied by an audit performed by an  
13 independent certified public accountant.

14 (3) The office, the secretary, and the division shall review the audit, and  
15 may require additional information needed to make a determination as to  
16 certification.

17 (4) The office may request an additional audit report of expenditures  
18 submitted by the state-certified motion picture infrastructure project applicant,  
19 with the cost of the additional report paid by the applicant.

20 (5) Within three hundred and sixty five days after receipt of the audit  
21 report and all required supporting information, or December 31, 2016,  
22 whichever occurs first, the office, the secretary, and the division shall issue a  
23 denial letter or a tax credit certification letter to the investors indicating the  
24 amount of tax credits certified for the state-certified infrastructure project for  
25 all qualifying expenditures verified by the office.

26 (6) Tax credits provided for in this Section shall not be considered  
27 entitlements, and the state-certified motion picture infrastructure applicant  
28 shall bear the burden of clearly and unequivocally establishing eligibility for tax  
29 credits.

30 (7) In the event that a request for final certification is denied, an

1           **applicant may appeal the decision in accordance with program rules.**

2                           **(8) No motion picture infrastructure tax credits shall be certified after**  
3                           **July 1, 2017.**

4           Section 3. Except as provided for in Section 5, the provisions of Section 1 of this Act  
5 shall become effective on January 1, 2016.

6           Section 4. Except as provided for in Section 5, the provisions of this Section and  
7 Sections 1 and 2 of this Act shall become effective on July 1, 2015.

8           Section 5. The provisions of this Act shall only become effective if the  
9 commissioner of administration and the Legislative Auditor provide written notice to the  
10 President of the Senate, the Speaker of the House of Representatives, and the Louisiana State  
11 Law Institute that they have determined that an Act or Acts were enacted in the 2015  
12 Regular Session of the Legislature sufficient to offset any tax increases provided for in the  
13 Acts of such Session over a five year period.

\_\_\_\_\_  
PRESIDENT OF THE SENATE

\_\_\_\_\_  
SPEAKER OF THE HOUSE OF REPRESENTATIVES

\_\_\_\_\_  
GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: \_\_\_\_\_