

SENATE BILL NO. 165

BY SENATOR MARTINY

1 AN ACT

2 To amend and reenact R.S. 47:6007(B)(9), (10), (11), (12), (13), (14), (C)(4)(b), (D)(2)(c)
3 and (d) and to enact R.S. 47:6007(B)(15) and (16), and (D)(9), relative to the motion
4 picture investor tax credit; to provide for definitions; to provide for production audit
5 reports and requirements; to provide for submission of a production audit report prior
6 to being certified as a state-certified production for application for the credit; to
7 provide for a production audit report; to provide relative to notification of transfer
8 or sale of tax credits; and to provide for related matters.

9 Be it enacted by the Legislature of Louisiana:

10 Section 1. R.S. 47:6007(B)(9), (10), (11), (12), (13), (14), (C)(4)(b), (D)(2)(c) and
11 (d) are hereby amended and reenacted and R.S. 47:6007(B)(15) and (16), and (D)(9) are
12 hereby enacted to read as follows:

13 §6007. Motion picture investor tax credit

14 * * *

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

16 * * *

17 (9) **"Production audit report" means an audit report issued by a**
18 **qualified accountant who is unrelated to the motion picture production**
19 **company and that is a report of the qualified accountant's audit of the motion**
20 **picture production's cost report of production expenditures. The production**
21 **audit report shall contain an opinion from the qualified accountant stating that**
22 **the production's cost report of production expenditures presents fairly, in all**
23 **material aspects, the production expenditures expended in Louisiana pursuant**
24 **to the provisions of this Section. The production audit shall require:**

25 **(a) The production audit report to be performed in accordance with the**
26 **auditing standards generally accepted in the United States.**

27 **(b) The production audit report to be addressed to the party which has**

1 engaged the qualified accountant.

2 (c) The production audit report to contain the qualified accountant's
3 name, address, and telephone number.

4 (d) The production audit report to contain a certification that the
5 qualified accountant is unrelated to the motion picture production company.

6 (e) The production audit report to be dated as of the date of completion
7 of the qualified accountant's field work.

8 (f) The production audit report to contain a statement of
9 acknowledgment by the qualified accountant that the state is relying on the
10 qualified cost report in the issuance of the tax credits under the provisions of
11 this Section.

12 (10) "Production expenditures" means preproduction, production, and
13 postproduction expenditures in this state directly relating to a state-certified
14 production, including without limitation the following: set construction and
15 operation; wardrobes, makeup, accessories, and related services; costs associated
16 with photography and sound synchronization, lighting, and related services and
17 materials; editing and related services; rental of facilities and equipment; leasing of
18 vehicles; costs of food and lodging; digital or tape editing, film processing, transfer
19 of film to tape or digital format, sound mixing, special and visual effects; and
20 payroll. This term shall not include expenditures for marketing and distribution, non-
21 production related overhead, amounts reimbursed by the state or any other
22 governmental entity, costs related to the transfer of tax credits, amounts that are paid
23 to persons or entities as a result of their participation in profits from the exploitation
24 of the production, the application fee, or state or local taxes.

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

29 ~~(10)~~ (12) "Resident" or "resident of Louisiana" means a natural person
30 domiciled in the state. A person who maintains a permanent place of abode within

1 the state and spends in the aggregate more than six months of each year within the
2 state shall be presumed to be domiciled in the state.

3 ~~(11)~~ **(13)** "Secretary" means the secretary of the Department of Economic
4 Development.

5 ~~(12)~~ **(14)** "Source within the state" means a physical facility in Louisiana,
6 operating with posted business hours and employing at least one full-time equivalent
7 employee.

8 ~~(13)~~ **(15)** "State" means the state of Louisiana.

9 ~~(14)~~ **(16)** "State-certified production" shall mean a production approved by
10 the office and the secretary which is produced by a motion picture production
11 company domiciled and headquartered in Louisiana and which has a viable multi-
12 market commercial distribution plan.

13 * * *

14 C. Investor tax credit; specific productions and projects.

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:

19 * * *

20 (b) Transferors and transferees shall submit to the ~~office, and to the~~
21 Department of Revenue in writing, a notification of any transfer or sale of tax credits
22 within ~~thirty~~ **ten** days after the transfer or sale of such tax credits. The notification
23 shall include the transferor's tax credit balance prior to transfer, a copy of any tax
24 credit certification letter(s) issued by the office and the secretary of the Department
25 of Economic Development and, the transferor's remaining tax credit balance after
26 transfer, all tax identification numbers for both transferor and transferee, the date of
27 transfer, the amount transferred, a copy of the credit certificate, price paid by the
28 transferee to the transferor, in the case when the transferor is a state-certified
29 production, for the tax credits, and any other information required by the office or
30 the Department of Revenue. For the purpose of reporting transfer prices, the term

1 "transfer" shall include allocations pursuant to Paragraph (2) of this Subsection as
 2 provided by rule. The office may post on its website an average tax credit transfer
 3 value, as determined by the office and the secretary of the Department of Economic
 4 Development to reflect adequately the current average tax credit transfer value. The
 5 tax credit transfer value means the percentage as determined by the price paid by the
 6 transferee to the transferor divided by the dollar value of the tax credits that were
 7 transferred in return. The notification submitted to the office **Department of**
 8 **Revenue** shall include a processing fee of up to two hundred dollars per transferee,
 9 and any pricing information submitted by a transferor or transferee shall be treated
 10 by the office and the Department of Revenue as proprietary to the entity reporting
 11 such information and therefore confidential. However, this shall not prevent the
 12 publication of summary data that includes no fewer than three transactions.

13 * * *

14 D. Certification and administration.

15 * * *

16 (2)(a)

* * *

17 (c) The office and the secretary shall submit their initial certification, **or**
 18 **written denial** of a project as a state-certified production to investors and to the
 19 secretary of the Department of Revenue indicating the total base investment which
 20 shall be expended in the state on the state-certified production **within sixty days of**
 21 **their receipt of all required information**. The initial certification shall include a
 22 unique identifying number for each state-certified production.

23 (d)(i) Prior to any final certification of the state-certified production, the
 24 motion picture production company shall submit to the office and the secretary an
 25 ~~audit of the production expenditures certified by an independent certified public~~
 26 ~~accountant as determined by rule~~ **a production audit report**. The office and the
 27 secretary shall review the ~~audit, the production expense details,~~ **production audit**
 28 **report** and may require additional information needed to make a determination.
 29 ~~Upon approval of the audit~~ **Within one hundred twenty days of the receipt of the**
 30 **production audit report and all required supporting information**, the office and

1 the secretary shall issue a ~~final~~ tax credit certification letter indicating the amount of
 2 tax credits certified for the state-certified production to the investors **for all**
 3 **qualifying expenditures verified by the office. Any expenditures for which tax**
 4 **credits were neither denied nor certified due to insufficient information or other**
 5 **issues, the office and secretary shall diligently work to resolve the outstanding**
 6 **issues in a timely manner, and the office and secretary may subsequently issue**
 7 **a supplemental tax credit certification at the time of such resolution.**

8 **(ii) The department may request an additional production audit report**
 9 **of the expenditures submitted by the motion picture production company with**
 10 **the cost of the additional report paid by the motion picture production**
 11 **company. The motion picture production company may submit an amended**
 12 **production audit report if additional expenditures are incurred or discovered**
 13 **after the approval of the initial production audit reports issued pursuant to**
 14 **Item (i) of this Subparagraph, and the office and secretary may issue a**
 15 **supplemental tax credit certification if so warranted.** ~~The rules required by this~~
 16 ~~Subparagraph shall, at a minimum, require that:~~

17 ~~(i) The auditor shall be a certified public accountant licensed in the state of~~
 18 ~~Louisiana and shall be an independent third party, not related to the producer.~~

19 ~~(ii) The auditor's opinion shall be addressed to the party which has engaged~~
 20 ~~the auditor (e.g., directors of the production company, producer of the production).~~

21 ~~(iii) The auditor's name, address, and telephone number shall be evident on~~
 22 ~~the report.~~

23 ~~(iv) The auditor's opinion shall be dated as of the completion of the audit~~
 24 ~~fieldwork.~~

25 ~~(v) The audit shall be performed in accordance with auditing standards~~
 26 ~~generally accepted in the United States of America and the auditor shall have~~
 27 ~~sufficient knowledge of accounting principles and practices generally recognized in~~
 28 ~~the film and television industry.~~

29 * * *

30 **(9) It is recognized that, while legitimate related party transactions often**

1 occur as production expenditures, some related party transactions may be
2 conducted in such a manner as to abuse the purpose and intent of the program.
3 The secretary of the Department of Economic Development and the office shall
4 promulgate rules regarding related party transactions in accordance with the
5 Administrative Procedure Act.

PRESIDENT OF THE SENATE

SPEAKER OF THE HOUSE OF REPRESENTATIVES

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____