

In bill text the following has special meaning
underline denotes added text
~~struck out text denotes deleted text~~

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AUTHOR: Hammett

VERSION: Enacted

Regular Session, 2005

HOUSE BILL NO. 731

ACT NO. 456

BY REPRESENTATIVES HAMMETT, SALTER, ALARIO, AND DORSEY AND
SENATORS HINES, BAJOIE, HEITMEIER, AND MOUNT

AN ACT

To amend and reenact R.S. 47:1124, 1125.1(A), and 6007(A), (B), (C)(1), (3)(b), and (4)(a) and (b), and (D) and to enact R.S. 47:1123(10), 1125.1(F), and 6007(C)(4)(f) and (6), relative to the motion picture investor tax credit; to provide incentives for motion picture infrastructure development; to provide for an effective date; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. R.S. 47:1124, 1125.1(A), and 6007(A), (B), (C)(1), (3)(b), and (4)(a) and (b), and (D) are hereby amended and reenacted and R.S. 47:1123(10), 1125.1(F), and 6007(C)(4)(f) and (6) are hereby enacted to read as follows:

Section 1123. Definitions

The following words and phrases as used in this Chapter shall have the following meanings unless the context of use clearly indicates otherwise:

* * *

(10) "State-certified production" shall mean a production approved by the Governor's Office of Film and Television Development and the Department of Economic Development produced by a motion picture production company domiciled and headquartered in Louisiana which has a viable multi-market commercial distribution plan.

Section 1124. Relief from payment of state sales and use tax

Until January 1, ~~2007-2006~~, any motion picture production company that intends to expend in the aggregate two hundred fifty thousand dollars or more in connection with the filming or production of one or more ~~motion pictures~~ state-certified productions in the state of Louisiana within any consecutive twelve-month period shall, upon making application for and meeting the requirements as provided in this Chapter, be relieved from the payment of state sales and use taxes on funds so expended in Louisiana in connection with the filming or production of a ~~motion picture or pictures or commercials~~ state-certified production . The production of television coverage of news and athletic events is specifically excluded from the provisions of this Chapter. The provisions of this Chapter shall not apply to any sales and use tax levied by any local governmental subdivision.

* * *

Section 1125.1. Employment tax credit

A. ~~Until July 1, 2006~~ For state certified productions that have received an effective certification date prior to December 31, 2005, a motion picture production company shall be entitled to a tax credit for the employment of residents of Louisiana in connection with production of a ~~motion picture~~ state-certified production . The credit shall be equal to ten percent of the total aggregate payroll for residents employed in connection with such production when total production costs in Louisiana equal or exceed three hundred thousand dollars but total less than one million dollars during the taxable year. The credit shall be equal to twenty percent of the total aggregate payroll for residents employed in connection with such production when total production costs in Louisiana equal or exceed one million dollars during the taxable year. For purposes of this Section, the term "total aggregate payroll" shall not include the salary of any employee whose salary is equal to or greater than one million dollars.

* * *

F. Employment tax credits not previously claimed by any taxpayer against its income or franchise tax liability and that are held by the motion picture production company or that have been allocated to another person may be transferred by the motion picture production company or the person allocated such credits in the same manner and subject to the same conditions and procedures provided for Motion Picture Investor Tax Credits in R.S. 47:6007(C)(4) and the rules and regulations pertaining thereto.

Section 6007. Motion picture investor tax credit

A. Purpose. The primary objective of this Section is to encourage development in Louisiana of a strong capital and infrastructure base for motion picture film, videotape, digital, and television program productions, in order to achieve ~~a more~~ an independent, self-supporting industry. This objective is divided into immediate and long-term objectives as follows:

(1) Immediate objectives are to:

(a) Attract private investment for the production of motion pictures, videotape productions, and television programs ~~which contain substantial Louisiana content as defined herein in Louisiana.~~

(b) Develop a tax and capital infrastructure which encourages private investment. This infrastructure will provide for state participation in the form of tax credits to encourage investment in state-certified productions and infrastructure projects.

(c) Develop a tax infrastructure utilizing tax credits which encourage investments in multiple state-certified production and infrastructure projects.

(2) Long-term objectives are to:

(a) Encourage increased employment opportunities within this sector and increased global competition with other states in fully developing economic development options within the film and video industry.

(b) Encourage new education curricula in order to provide a labor force trained in all aspects of film and digital production.

(c) Encourage development of a Louisiana film, video, television, and digital production and post-production infrastructure with state-of-the-art facilities.

B. Definitions. For the purposes of this Section:

(1) "Base investment" shall mean the actual investment made and expended by:

(a) A state-certified production in the state as ~~production-related costs~~ production expenditures incurred in this state that are directly used in a state-certified production or productions.

(b) A person in the development of a state-certified infrastructure project.

(2) "Expended in the state" in the case of tangible property shall mean property which is acquired from a source within the state, and in the case of services, shall mean services procured and performed in the state.

~~(2)~~(3) "Headquartered in Louisiana" shall mean a corporation incorporated in Louisiana or a partnership, limited liability company, or other business entity domiciled and headquartered in Louisiana for the purpose of producing nationally distributed motion pictures as defined in this Section.

~~(3)~~(4) "Motion picture" means a nationally distributed feature-length film, video, television series, or commercial made in Louisiana, in whole or in part, for theatrical or television viewing or as a television pilot. The term "motion picture" shall not include the production of television coverage of news and athletic events.

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

(6) "Payroll" shall include all salary, wages, and other compensation, including related benefits sourced or apportioned to Louisiana.

(7) "Production expenditures" means preproduction, production, and postproduction expenditures directly incurred in this state that are directly used in a state-certified production, including without limitation the following: set construction and operation; wardrobes, make-up, accessories, and related services; costs associated with photography and sound synchronization, lighting, and related services and materials; editing and related services; rental of facilities and equipment; leasing of vehicles; costs of food and lodging; digital or tape editing, film processing, transfer of film to tape or digital format, sound mixing, special and visual effects; total aggregate payroll; music, if performed, composed, or recorded by a Louisiana musician, or released or published by a Louisiana-domiciled and headquartered company; airfare, if purchased through a Louisiana-based travel agency or travel company; insurance costs or bonding, if purchased through a Louisiana-based insurance agency; or other similar production expenditures as determined by rule. This term shall not include postproduction expenditures for marketing and distribution, any indirect costs, any amounts that are later reimbursed, any costs related to the transfer of tax credits, or any amounts that are paid to persons or entities as a result of their participation in profits from the exploitation of the production.

(8) "Resident" or "resident of Louisiana" means a natural person and, for the purpose of determining eligibility for the tax incentives provided by this Chapter, any person domiciled in the state of Louisiana and any other person who maintains a permanent place of abode within the state and spends in the aggregate more than six months of each year within the state.

~~(5)~~(9) "State-certified infrastructure project" shall mean an infrastructure project approved by the Governor's Office of Film and Television Development and the Department of Economic Development. The term "infrastructure project" shall not include movie theaters or other commercial exhibition facilities.

(10) "State-certified production" shall mean a production approved by the Governor's Office of Film and Television Development and the Department of Economic Development produced by a motion picture production company domiciled and headquartered in Louisiana which has signed a viable multi-market commercial distribution agreement with either a major theatrical exhibitor, television network, or

~~cable television programmer plan .~~

C. Investor tax credit; specific projects.

(1) There is hereby authorized a tax credit against state income tax for Louisiana taxpayers ~~domiciled in the state of Louisiana~~, other than motion picture production companies. The tax credit shall be earned by investors at the time ~~of such investment in such state-certified productions~~ 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 Governor's Office of Film and Television Development and the Department of Economic Development. ~~and 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 Governor's Office of Film and Television Development and the Department of Economic Development for the costs of any additional certifications. The tax credit shall be calculated as a percentage of the investment according to the total base investment dollars certified per project.~~

~~(a) For state-certified productions approved by the Governor's Office of Film and Television Development, before January 1, 2004, if total base investment is greater than three hundred thousand dollars and less than or equal to one million dollars, each taxpayer shall be allowed a tax credit of ten percent of the actual investment made by that taxpayer.~~

~~(b) For state-certified productions approved by the Governor's Office of Film and Television Development, before January 1, 2004, if the total base investment is greater than one million dollars, each taxpayer shall be allowed a tax credit of fifteen percent of the investment made by that taxpayer.~~

~~(c) For state-certified productions approved by the Governor's Office of Film and Television Development, on or after January 1, 2004:~~

~~(i) If the total base investment is greater than three hundred thousand dollars and less than or equal to eight million dollars, each taxpayer shall be allowed a tax credit of ten percent of the actual investment made by that taxpayer.~~

~~(ii) If the total base investment is greater than eight million dollars, each taxpayer shall be allowed a tax credit of fifteen percent of the actual investment made by that taxpayer.~~

(b) For state-certified productions approved by the Governor's Office of Film and Television Development, on or after January 1, 2006, and for state-certified infrastructure projects approved by the Governor's Office of Film and Television Development, on or after July 1, 2005:

(i) If the total base investment is greater than three hundred thousand dollars, each investor shall be allowed a tax credit of twenty-five 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 ten 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) Until January 1, 2008, if the total base investment is greater than three hundred thousand dollars, each taxpayer shall be allowed a tax credit of fifteen percent of the base investment made by that taxpayer that is expended in this state on a state-certified infrastructure project as certified by the Governor's Office of Film and Television Development, the Department of Economic Development, and approved by the division of administration.

(c) For state-certified productions approved by the Governor's Office of Film and Television Development and the Department of Economic Development, on or after July 1, 2010:

(i) If the total base investment is greater than three hundred thousand dollars, each investor shall be allowed a tax credit of twenty 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 ten 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.

(d) For state-certified productions approved by the Governor's Office of Film and Television Development and the Department of Economic Development, on or after July 1, 2012:

(i) If the total base investment is greater than three hundred thousand dollars, each investor shall be allowed a tax credit of fifteen 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 ten 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.

~~(d)~~(e) Motion picture investor tax credits associated with a state-certified production shall never exceed the total base investment in that production.

* * *

(3) Application of the credit.

* * *

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

* * *

(4) Transferability of the credit. Any ~~investor motion picture~~ tax credits ~~with respect to a state-certified production allocated to a person and~~ not previously claimed by any taxpayer against its income tax may be transferred or sold ~~by such person~~ to another Louisiana taxpayer or to the Governor's Office of Film and Television Development, subject to the following conditions:

(a) A single transfer or sale may involve one or more transferees. The transferee of the ~~investor~~-tax credits may transfer or sell such ~~investor~~-tax credits subject to the conditions of this Subsection.

(b) Transferors and transferees shall submit to the Governor's Office of Film and Television Development, and to the Department of Revenue in writing, a notification of any transfer or sale of tax credits within thirty days after the transfer or sale of such tax credits. The notification shall include the transferor's tax credit balance prior to transfer, ~~the credit certificate number, a copy of any tax credit certification letter(s) issued by the Governor's Office of Film and Television Development and the Department of Economic Development,~~ the name of the state-certified production, the transferor's remaining tax credit balance after transfer, all tax identification numbers for both transferor and transferee, the date of transfer, the amount transferred, a copy of the credit certificate, price paid by the transferee to the transferor, in the case when the transferor is a state-certified production or state-certified infrastructure project, for the tax credits, and any other information required by the Governor's Office of Film and Television Development, or the Department of Revenue. For the purpose of reporting transfer prices, the term "transfer" shall include allocations pursuant to R.S. 47:6007(C)(3) as provided by rule. The Governor's Office of Film and Television Development may post on its website an average tax credit transfer value, as determined by the Governor's Office of Film and Television Development and the secretary of the Department of Economic Development to reflect adequately the current average tax credit transfer value. The tax credit transfer value means the percentage as determined by the price paid by the transferee to the transferor divided by the dollar value of the tax credits that were transferred in return. The notification submitted to the ~~Department of Revenue~~ Governor's Office of Film and Television Development shall include a processing fee of up to two hundred dollars per transferee and any pricing information submitted by a transferor or transferee shall be treated by the Governor's Office of Film and Television Development, the Department of Economic Development, and the Department of Revenue as proprietary to the entity reporting such information and therefore confidential. However, this shall not prevent the publication of summary data that includes no fewer than three transactions.

* * *

(f) Beginning on and after January 1, 2007, the investor who earned the motion picture investor tax credits may transfer the credits to the Governor's Office of Film and Television Development for seventy-two percent of the face value of the credits. Beginning January 1, 2009, and every second year thereafter, the percent of the face value of the tax credits allowed for transferring credits to the Governor's Office of Film and Television Development shall increase two percent until the percentage reaches eighty percent. Upon the transfer, the Department of Economic Development shall notify the Department of Revenue and shall provide it with a copy of the transfer documentation. The Department of Revenue may require the transferor to submit such additional information as may be necessary to administer the provisions of this Section. The secretary of the Department of Revenue shall make payment to the investor in the amount to which he is entitled from the current collections of the taxes collected pursuant to Chapter 1 of such Subtitle II provided such credits are transferred to the Governor's Office of Film and Television Development within one calendar year of certification.

* * *

(6) Notwithstanding any other provision of law, on or after January 1, 2006, a state-certified production which receives tax credits pursuant to the provisions of this Chapter shall not be eligible to receive the rebates provided for in R.S. 51:2451 through 2461 in connection with the activity for which the tax credits were received.

D. Certification and administration.

(1) The secretary of the Department of Economic Development and the Governor's Office of Film and Television Development shall determine through the promulgation of rules what projects and expenses including amounts expended in this state on state-certified infrastructure projects qualify according to this Section. Prior to adoption, these rules shall be approved by the House Committee on Ways and Means and the Senate Committee on Revenue and Fiscal Affairs. When determining what projects qualify, the Governor's Office of Film and Television Development and the Department of Economic Development shall take the following factors into consideration:

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

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

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

(2)(a) Application. An applicant for the motion picture investor credit shall submit an application for initial certification to the Governor's Office of Film and Television Development that includes the following information:

(i) For state-certified productions the application shall include:

(aa) The distribution plan.

(bb) A preliminary budget including estimated Louisiana payroll and estimated base investment.

(cc) The script, including a synopsis.

(dd) A list of the principal creative elements including the cast, producer, and director.

(ee) A statement that the production will qualify as a state-certified production.

(ff) Estimated start and completion dates.

(ii) For state-certified infrastructure projects the application shall include:

(aa) A detailed description of the infrastructure project.

(bb) A preliminary budget.

(cc) A statement that the project meets the definition of state-certified infrastructure project.

(dd) Estimated start and completion dates.

(b) If the application is incomplete, additional information may be requested prior to further action by the Governor's Office of Film and Television Development and the Department of Economic Development. An application fee shall be submitted with the application based on the following:

(i) 0.2 percent times the estimated total incentive tax credits.

(ii) The minimum application fee is two hundred dollars, and the maximum application fee is five thousand dollars.

(c) The Governor's Office of Film and Television Development shall submit its initial certification of a project as a state-certified production 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.

~~(b)-(d)(i) Upon completion~~ Prior to any certification of the state-certified production, the motion picture production company shall submit to the Governor's Office of Film and Television Development a cost report of production expenditures audited and certified by an independent certified public accountant as determined by rule. The Governor's Office of Film and Television Development shall review the production expenses and will issue a ~~credit certificate~~ tax credit certification letter indicating the amount of tax credits

certified for the state-certified production or state-certified infrastructure project to the investors. The certificate shall include the identifying number assigned to that state-certified production in the initial certification.

(3) The secretary of the Department of Revenue, in consultation with the Department of Economic Development and the director of the Governor's Office of Film and Television 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.

(4) Any taxpayer applying for the credit shall be required to reimburse the ~~Department of Revenue~~ Governor's Office of Film and Television Development and the Department of Economic Development for any audits required in relation to granting the credit.

(5) A motion picture production company applying for the additional credit for the employment of Louisiana residents must remit a schedule to the Department of Revenue, in a machine-sensible format approved by the secretary of the Department of Revenue, that includes the following information: the names of all persons who received salary, wages, or other compensation for services performed in Louisiana in connection with the state-certified production, and the address, taxpayer identification number, permanent address of, and the amount of compensation for services performed in Louisiana received by each such person.

(6) With input from the Legislative Fiscal Office, the Governor's Office of Film and Television Development and the Department of Economic Development shall prepare a written report to be submitted to the Senate Committee on Revenue and Fiscal Affairs and the House of Representatives Committee on Ways and Means no less than sixty days prior to the start of the Regular Session of the Legislature in 2007, and every second year thereafter. The report shall include the overall impact of the tax credits, the amount of the tax credits issued, the number of net new jobs created, the amount of Louisiana payroll created, the economic impact of the tax credits and film industry, the amount of new infrastructure that has been developed in the state, and any other factors that describe the impact of the program.

(7) Either the Department of Economic Development or the Department of Revenue may audit the cost report submitted by the motion picture production company.

* * *

Section 2. This Act shall become effective for taxable years beginning after December 31, 2005, and shall not apply to state-certified productions that have received an effective initial certification date that is prior to December 31, 2005. For state-certified infrastructure projects, this Act shall become effective on or after July 1, 2005.