

Regular Session, 2005

ACT No. 456

HOUSE BILL NO. 731

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

1 AN ACT

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

7 Be it enacted by the Legislature of Louisiana:

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

11 §1123. Definitions

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

14 * * *

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

20 §1124. Relief from payment of state sales and use tax

21 Until January 1, ~~2007~~ 2006, any motion picture production company that
22 intends to expend in the aggregate two hundred fifty thousand dollars or more in
23 connection with the filming or production of one or more ~~motion pictures~~ state-

1 Picture Investor Tax Credits in R.S. 47:6007(C)(4) and the rules and regulations
 2 pertaining thereto.

3 §6007. Motion picture investor tax credit

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

9 (1) Immediate objectives are to:

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

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

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

19 (2) Long-term objectives are to:

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

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

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

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

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

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

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

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

8 ~~(2)~~ (3) "Headquartered in Louisiana" shall mean a corporation incorporated
 9 in Louisiana or a partnership, limited liability company, or other business entity
 10 domiciled and headquartered in Louisiana for the purpose of producing nationally
 11 distributed motion pictures as defined in this Section.

12 ~~(3)~~ (4) "Motion picture" means a nationally distributed feature-length film,
 13 video, television series, or commercial made in Louisiana, in whole or in part, for
 14 theatrical or television viewing or as a television pilot. The term "motion picture"
 15 shall not include the production of television coverage of news and athletic events.

16 ~~(4)~~ (5) "Motion picture production company" shall mean a company engaged
 17 in the business of producing nationally distributed motion pictures as defined in this
 18 Section. Motion picture production company shall not mean or include any company
 19 owned, affiliated, or controlled, in whole or in part, by any company or person which
 20 is in default on a loan made by the state or a loan guaranteed by the state, nor with
 21 any company or person who has ever declared bankruptcy under which an obligation
 22 of the company or person to pay or repay public funds or monies was discharged as
 23 a part of such bankruptcy.

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

26 (7) "Production expenditures" means preproduction, production, and
 27 postproduction expenditures directly incurred in this state that are directly used in
 28 a state-certified production, including without limitation the following: set
 29 construction and operation; wardrobes, make-up, accessories, and related services;
 30 costs associated with photography and sound synchronization, lighting, and related

1 services and materials; editing and related services; rental of facilities and
 2 equipment; leasing of vehicles; costs of food and lodging; digital or tape editing, film
 3 processing, transfer of film to tape or digital format, sound mixing, special and visual
 4 effects; total aggregate payroll; music, if performed, composed, or recorded by a
 5 Louisiana musician, or released or published by a Louisiana-domiciled and
 6 headquartered company; airfare, if purchased through a Louisiana-based travel
 7 agency or travel company; insurance costs or bonding, if purchased through a
 8 Louisiana-based insurance agency; or other similar production expenditures as
 9 determined by rule. This term shall not include postproduction expenditures for
 10 marketing and distribution, any indirect costs, any amounts that are later reimbursed,
 11 any costs related to the transfer of tax credits, or any amounts that are paid to persons
 12 or entities as a result of their participation in profits from the exploitation of the
 13 production.

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

19 ~~(5)~~ (9) "State-certified infrastructure project" shall mean an infrastructure
 20 project approved by the Governor's Office of Film and Television Development and
 21 the Department of Economic Development. The term "infrastructure project" shall
 22 not include movie theaters or other commercial exhibition facilities.

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

29 C. Investor tax credit; specific projects.

1 (1) There is hereby authorized a tax credit against state income tax for
2 Louisiana taxpayers ~~domiciled in the state of Louisiana~~, other than motion picture
3 production companies. The tax credit shall be earned by investors at the time of such
4 ~~investment in such state-certified productions~~ expenditures are made by a motion
5 picture production company in a state-certified production. However, credits cannot
6 be applied against a tax or transferred until the expenditures are certified by the
7 Governor's Office of Film and Television Development and the Department of
8 Economic Development. and For state-certified productions, expenditures shall be
9 certified no more than twice during the duration of a state-certified production unless
10 the motion picture production company agrees to reimburse the Governor's Office
11 of Film and Television Development and the Department of Economic Development
12 for the costs of any additional certifications. The tax credit shall be calculated as a
13 percentage of ~~the investment according to~~ the total base investment dollars certified
14 per project.

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

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

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

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

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

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

8 (i) If the total base investment is greater than three hundred thousand dollars,
9 each investor shall be allowed a tax credit of twenty-five percent of the base
10 investment made by that investor.

11 (ii) To the extent that base investment is expended on payroll for Louisiana
12 residents employed in connection with a state-certified production, each investor
13 shall be allowed an additional tax credit of ten percent of such payroll. However, if
14 the payroll to any one person exceeds one million dollars, this additional credit shall
15 exclude any salary for that person that exceeds one million dollars.

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

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

25 (i) If the total base investment is greater than three hundred thousand dollars,
26 each investor shall be allowed a tax credit of twenty percent of the base investment
27 made by that investor.

28 (ii) To the extent that base investment is expended on payroll for Louisiana
29 residents employed in connection with a state-certified production, each investor
30 shall be allowed an additional tax credit of ten percent of such payroll. However, if

1 the payroll to any one person exceeds one million dollars, this additional credit shall
2 exclude any salary for that person that exceeds one million dollars.

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

6 (i) If the total base investment is greater than three hundred thousand dollars,
7 each investor shall be allowed a tax credit of fifteen percent of the base investment
8 made by that investor.

9 (ii) To the extent that base investment is expended on payroll for Louisiana
10 residents employed in connection with a state-certified production, each investor
11 shall be allowed an additional tax credit of ten percent of such payroll. However, if
12 the payroll to any one person exceeds one million dollars, this additional credit shall
13 exclude any salary for that person that exceeds one million dollars.

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

16 * * *

17 (3) Application of the credit.

18 * * *

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

21 * * *

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

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

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

30 * * *

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

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

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

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

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

9 (aa) The distribution plan.

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

12 (cc) The script, including a synopsis.

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

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

17 (ff) Estimated start and completion dates.

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

19 (aa) A detailed description of the infrastructure project.

20 (bb) A preliminary budget.

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

23 (dd) Estimated start and completion dates.

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

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

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

1 (c) The Governor's Office of Film and Television Development shall submit
 2 its initial certification of a project as a state-certified production to investors and to
 3 the secretary of the Department of Revenue. The initial certification shall include
 4 a unique identifying number for each state-certified production.

5 ~~(b) (d)(i) Upon completion~~ Prior to any certification of the state-certified
 6 production, the motion picture production company shall submit to the Governor's
 7 Office of Film and Television Development a cost report of production expenditures
 8 audited and certified by an independent certified public accountant as determined by
 9 rule. The Governor's Office of Film and Television Development shall review the
 10 production expenses and will issue a ~~credit certificate~~ tax credit certification letter
 11 indicating the amount of tax credits certified for the state-certified production or
 12 state-certified infrastructure project to the investors. ~~The certificate shall include the~~
 13 ~~identifying number assigned to that state-certified production in the initial~~
 14 ~~certification.~~

15 (3) The secretary of the Department of Revenue, in consultation with the
 16 Department of Economic Development and the director of the Governor's Office of
 17 Film and Television Development, shall promulgate such rules and regulations as are
 18 necessary to carry out the intent and purposes of this Section in accordance with the
 19 general guidelines provided herein.

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

24 (5) A motion picture production company applying for the additional credit
 25 for the employment of Louisiana residents must remit a schedule to the Department
 26 of Revenue, in a machine-sensible format approved by the secretary of the
 27 Department of Revenue, that includes the following information: the names of all
 28 persons who received salary, wages, or other compensation for services performed
 29 in Louisiana in connection with the state-certified production, and the address,

