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RULE

**Department of Economic Development
Office of Business Development
Office of Entertainment Industry Development**

Motion Picture Investor Program (LAC 61:I.1617 and 1619)

In accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Department of Economic Development has amended the rules for the motion picture tax credit program.

Title 61

REVENUE AND TAXATION

**Part I. Taxes Collected and Administered by the
Secretary of Revenue**

**Chapter 16. Louisiana Entertainment Industry Tax
Credit Programs**

**Subchapter A. Motion Picture Investor Tax Credit
Program**

§1617. Louisiana Music

A. For state certified productions initially certified on or after July 1, 2015, with expenditures occurring on or after July 1, 2015, to be eligible for an additional 15 percent tax credit for music expenditures, an applicant company must meet the following criteria:

1. services performed in Louisiana—music expenditures were for services performed in Louisiana, with job titles such as composer, songwriter, performer, musician, sound designer, arranger, producer. The purchase of a pre-existing musical work from a procurement company will not qualify; and

2. Louisiana copyright ownership—must be able to prove that the sound recording copyright or musical copyright is either:

a. owned in whole or in no part less than 25 percent by a Louisiana resident or residents, or

b. owned by a company headquartered in the state, with a majority ownership (51 percent+) of Louisiana residents;

c. the purchase of a copyright from a procurement company will not qualify.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:6007

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development, Office of Entertainment Industry Development, LR 42:1656 (October 2016).

§1619. Louisiana Promotional Graphic

A. For state-certified productions initially certified on or after August 1, 2015, to be eligible for the entire 30 base investment tax credit, motion picture production applicants with base investments in excess of \$300,000 must be able to demonstrate, at time of request for final certification, that

either that they have complied with the Louisiana promotional graphic requirements set forth below, or that an alternative marketing opportunity has been approved in writing by LED.

1. Approved Louisiana promotional graphic requirements:

a. a five-second long static or animated graphical brand or logo promoting Louisiana, that has been approved in writing by LED;

b. for feature films, or other production types with a customary end credit crawl, the approved logo is to be placed in the end credits, before the below-the line crawl for the life of the production;

i. LED shall deem “life of the production” to mean that the approved logo is permanently embedded within the subject of the state certified production; and

c. the production company includes an approved Louisiana promotional link or prominent credit to Louisiana on its own website, or that of an approved affiliated company.

2.a. Alternative marketing opportunities shall be proposed to LED at the time of application for initial certification, setting forth the details and estimated value of the proposed opportunity or justification of value taking into consideration the additional five percent credit being sought. LED shall either approve or deny such options in writing at time of initial certification.

b. Acceptable examples of alternative marketing opportunities may include, but not be limited to a combination of the following:

i. a produced in Louisiana card featuring an approved version of the logo during the opening credits of a feature film;

ii. an approved promotional featurette highlighting Louisiana as a tourist destination included on the DVD release of the production;

iii. an approved version of the logo placed in the opening title sequence or as a bumper into or out of commercial breaks for Television productions;

iv. significant community service projects in Louisiana;

v. red carpet screening event in Louisiana;

vi. sponsorship of a film festival or other approved event in Louisiana;

vii. an official advertising poster for the state-certified production and a still frame from the production, or, at the discretion of LED, a significant set piece, prop, or costume from the production may be donated on the condition that they may be used for unlimited marketing purposes by the state;

viii. access to a standard or electronic press kit, clip from the motion picture or special interview with the principles involved in the production (actors, directors, producers, etc) promoting Louisiana as a business destination for unlimited use for marketing purposes by LED;

ix. other alternatives as proposed by production companies and approved by LED.

B. Failure to demonstrate such compliance at time of final certification shall result in a reduced base investment credit amount of 25 percent.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:6007

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development, Office of Entertainment Industry Development, LR 42:1656 (October 2016).

Anne G. Villa
Undersecretary

1610#057

the requirements of §703.A.5.a.i above, or §803.A.6.a, the following courses shall be considered equivalent to the identified core courses and may be substituted to satisfy corresponding core courses.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

NOTICE OF INTENT

**Department of Economic Development
Office of Business Development
Office of Entertainment Industry Development**

**Motion Picture Investor Tax Credit Program
(LAC 61:I.Chapter 16)**

In accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., notice is hereby given that the Department of Economic Development has initiated rulemaking procedures to make amendments to the Rules for the Motion Picture Investor Tax Credit Program to better align the rules with current statutory provisions and administrative practices.

Title 61

REVENUE AND TAXATION

Part I. Taxes Collected and Administered by the Secretary of Revenue

Chapter 16. Louisiana Entertainment Industry Tax Credit Programs

Subchapter A. Motion Picture Investor Tax Credit Program

§1605. Definitions

A. - B. ...

Cost Report of Production Expenditures—a report of production expenditures formatted in accordance with LED accounting guidelines, which may be issued with initial certification, posted on LED's website or otherwise communicated by LED to applicant in writing.

Louisiana Publisher—a company primarily engaged in trade, professional or scholarly publishing, which sells or licenses copyrights or the right of use of copyrights in its ordinary course of business, and has a physical location in Louisiana with at least one full-time employee working at such a location on a regular basis. Registering with the Louisiana Secretary of State or appointing a registered agent in Louisiana does not establish a physical location in Louisiana. A procurement company shall not be considered a Louisiana publisher.

Louisiana Resident—a natural person who is a legal resident, who has been domiciled in and maintained a permanent place of abode in Louisiana for no less than twelve consecutive months, and who has filed a Louisiana state income tax return.

Louisiana Screenplay□

a. a screenplay created by a Louisiana resident or
b. a screenplay purchased, optioned, licensed or otherwise acquired from a Louisiana publisher, in each case, as evidenced by documents such as certificate of authorship, a WGA registration certificate, the records of the United States Copyright Office, or a reasonable legal opinion issued to the office.

Procurement Company—any person or entity that purchases, leases or otherwise obtains goods or services from sources outside of the state, for the ultimate use, benefit or enjoyment of a state certified production company.

Qualified Louisiana Production Company—an LED approved motion picture production company, meeting the eligibility criteria for §1615, Louisiana Screenplay Credit.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:6007

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development, Office of Entertainment Industry Development and the Office of the Governor, Division of Administration, LR 36:53 (January 2010) amended by the Department of Economic Development, Office of Business Development, Office of Entertainment Industry Development, LR 43:

§1615. Louisiana Screenplay Credit

A.1. For state certified productions initially certified on or after July 1, 2015, with expenditures occurring on or after

July 1, 2015, a state certified production company which demonstrates that it owned or optioned to own a Louisiana screenplay, which has been held by a qualified Louisiana production company for a minimum of 12 months prior to production, may be eligible for an additional 15 percent of base investment tax credit.

2. *Louisiana Screenplay*—

a. a screenplay created by a Louisiana resident; or
b. a screenplay purchased, optioned, licensed or otherwise acquired, from a Louisiana publisher;

i. in each case, as evidenced by documents such as certificate of authorship, a WGA registration certificate, the records of the United States Copyright Office, or a reasonable legal opinion issued to the office.

3. *Qualified Louisiana Production Company (QLPC)*—a motion picture production company, organized under Louisiana law, or otherwise domiciled and authorized to do business in Louisiana, having its principal place of business in Louisiana, which files Louisiana income tax returns and can also demonstrate:

a. the power and authority to make creative decisions with respect to a motion picture being produced by a state certified production company, including but not limited to final cut authority; and

b. either of the following:

i. Louisiana ownership—must be able to prove that the company is one hundred percent owned by a Louisiana resident or residents, who are natural persons who have been domiciled in and maintained a permanent place of abode in Louisiana for no less than twelve consecutive months prior to beginning of pre-production; or

ii. Louisiana employees—must be able to prove that the company has directly employed a minimum of three full-time Louisiana residents for a minimum of twelve months prior to beginning of pre-production.

3. LED shall post on its website a listing of approved Louisiana publishers and qualified Louisiana production companies.

B. If LED determines that an expenditure is a related party transaction, after review of CPA's verification report and any other supplemental support documentation, in addition to any other appropriate limitations or exclusions, such related party transactions shall not qualify for the additional fifteen percent copyright credit.

C. LED shall not issue a final certification letter certifying any credits pursuant to the provisions of this section, until promulgation of a rule in the *Louisiana Register*, pursuant to the Administrative Procedure Act.

D. LED staff are available to assist interested parties in understanding the eligibility criteria and applying for this additional credit, and would suggest the following sequence of steps.

1. Interested motion picture production companies should apply to LED for approval as a QLPC.

2. Interested publishing house companies should apply to LED for approval as a Louisiana Publisher.

3. Following QLPC approval, QLPC's may apply to LED for project approval of state certified productions as usual, applying either on their own behalf, or their associated project company may apply, but at time of application it must be able to demonstrate the relationship between QLPC and state certified production company applicant.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:6007

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development, Office of Entertainment Industry Development, LR 43:

§1621. Louisiana Filmmaker Credit

A. For state certified productions initially certified on or after July 1, 2015, with expenditures occurring on or after July 1, 2015, to be eligible for the 30 percent base investment tax credit, motion picture production applicants with base investments in excess of \$50,000 but less than \$300,000, must be able to demonstrate at time of request for final certification that 90 percent of the Louisiana base investment expended on above the line services has been expended for the services of Louisiana residents and that at least 90 percent of the total production jobs have been filled by Louisiana residents. No credits shall be earned by applicant, and LED shall void any initial certification letter issued and deny final certification requests if applicant fails to demonstrate such compliance.

B. Compensation for above the line services performed in Louisiana shall be paid directly to a Louisiana resident, and any payments made to a loan-out company shall not be considered Louisiana resident payroll for the purposes of above the line percentage calculations.

C. Production jobs may include, but not be limited to cast and crew positions customarily considered below the line in the film and television industry, such as: production manager, cinematographer, set designer, make-up artist. Extras shall not be considered a production job for purposes of production job percentage calculations.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:6007

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development, Office of Entertainment Industry Development, LR 43:

Family Impact Statement

It is anticipated that the proposed Rule amendment will have no significant effect on the: stability of the family, authority and rights of parents regarding the education and supervision of their children, functioning of the family, family earnings and family budget, behavior and personal responsibility of children, ability of the family or a local government to perform the function as contained in the proposed Rule.

Poverty Impact Statement

The proposed rulemaking will have no impact on poverty as described in R.S. 49:973.

Provider Impact Statement

The proposed rulemaking will have no provider impact as described in HCR 170 of 2014.

Small Business Statement

It is anticipated that the proposed Rule should not have a significant adverse impact on small businesses as defined in the Regulatory Flexibility Act. The agency, consistent with health, safety, environmental and economic factors has considered and, where possible, utilized regulatory methods in drafting the proposed rule to accomplish the objectives of applicable statutes while minimizing any anticipated adverse impact on small businesses.

Public Comments

Interested persons should submit written comments on the proposed Rules to Stephen Hamner through the close of

business on Tuesday, November 29, 2016 at 1051 N. Third St., Baton Rouge, LA 70802 or via email to stephen.hamner@la.gov.

Public Hearing

A meeting for the purpose of receiving the presentation of oral comments will be held at 11 a.m. on Wednesday, November 30, 2016 at the Department of Economic Development, 1051 N. Third St., Baton Rouge, LA 70802.

Anne G. Villa
Undersecretary

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Motion Picture Investor Tax Credit Program

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

There will be no costs or savings to state or local governmental units due to the implementation of the proposed rules because they set forth guidelines required by portions of Act 134 of 2015 and Act 417 of 2015. The proposed rules align the administrative rules with statutory provisions and administrative practices. Any administrative duties brought about by the proposed rules will be absorbed utilizing existing personnel and resources presently included in the LA Dept. of Economic Development's (LED) FY 17 appropriation.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

The proposed rule changes enact provisions of Act 134 of 2015, increasing the potential for more credits to be issued to Louisiana-based productions under the Motion Picture Investor Tax Program. Presently productions can qualify for a 40% credit comprised of a 30% credit for the base investment and 10% of payroll associated with the production. Regarding the issuance of credits, the act provides for two new credit provisions in accordance with these proposed LED rules, which set forth criteria a production company must meet to qualify for; 1) an additional 15% tax credit (for 45% total film tax credit) on the total base investment for expenditures based upon a Louisiana screenplay, and 2) a new base investment credit of 30% for certain Louisiana filmmakers spending between \$50,000-\$300,000 (with 90% of above-the-line expenditures and 90% of below-the line jobs with LA residents). A Louisiana resident must reside in the state for 12 consecutive months and payments made to a loan-out company are considered separate from payroll for both the Louisiana resident credit and above the line percentage calculations. Essentially, Act 134 of 2015 expands the available potential credit rate by 15%, from 40% to 55%, on the total base investment in the event the production is sourced to Louisiana and qualifies for the additional 15% credit.

Act 134 of 2015 also placed an exposure cap of \$180 M that the state may incur from FY 16 to FY 18. These changes in program composition are expected to occur under the annual program cost cap of \$180 M during FY 16-18, pursuant to Act 134 of 2015. The fiscal note for Act 134 indicates an expected increase in state general fund revenue of \$77M in FY 16 and \$70M annually in FY 17 and FY 18 as a result of the \$180 M cap.

However, a potential exposure to the state fisc exists beyond FY 18, when the \$180 M cap expires. While Act 134 of 2015 limited the state's annual Motion Picture Investor Tax Program cost exposure to \$180 million for FY 16-18 reallocated the limited amounts of credits to projects with more resident content & participation, the cap does not limit LED's

authority to issue credits. Credits certified in a given fiscal year that are not covered by the \$180 M cap are rolled forward to the ensuing fiscal year and are credited against that year's cap. Assuming current activity levels and greater percentages of credits issued (conceivable that companies may qualify for 55% credit rate: 30% base+15% additional base for LA copyright credit+10% LA payroll) it is possible that exposure to the state fisc could build up and be realized in FY 19 to the extent credits are certified in excess of the \$180 M cap in FYs 17 and 18 and are rolled forward to the program's cost in FY 19.

For reference, the current version of the statute was established in 2009, to date over 700 applications have been received, and \$1.25 billion issued in total credits certified as follows: \$49 million in FY 2010, \$186 million in FY 2011, \$138 million in FY 2012, \$348 million in FY 2013, \$133 million in FY 2014, \$308 million in FY 2015 and \$87 million certified to date in FY 2016.

There is no impact to local governmental units.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

The income of businesses participating in the program may increase due to the increased credit rates and new eligibility criteria. However, due to the \$180 M cap, businesses participating in the program may see a delay in the issuance of their credit to the extent the amount of credits certified are in excess of \$180 M in a given fiscal year.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

Companies receiving benefits under this program will continue to gain competitively over companies that do not receive the program's benefits

Anne G. Villa
Undersecretary
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Gregory Albrecht
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