

## **§6007. Motion picture production 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 production in order to achieve 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 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.

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

(2) Long-term objectives are to:

(a) Encourage increased employment opportunities within this sector and increased global competitiveness with other states in fully utilizing economic development options within the motion picture industry.

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

B. Definitions. For the purposes of this Section:

(1) "Above the Line salaries" or "ATL salaries" means all salary, wages, fees, and fringe benefits paid for services such as those of a producer, executive producer, coproducer, director, screenwriter, lead cast, supporting cast, day players, and other services of job positions performed by personnel of the production that are associated with the creative or financial control of a production and customarily considered as above the line services in the film and television industry.

(2) "Alternative marketing opportunity" means an alternative marketing mechanism which has been approved by the office for a production as an alternative to a Louisiana promotional graphic.

(3) "Base investment" means cash or cash equivalent investment made and used for production expenditures in the state for a state-certified production.

(4) Repealed by Acts 2017, No. 309, §2, eff. June 15, 2017.

(5) "Expended in the state" means an expenditure to lease immovable property located in the state; an expenditure as compensation for services performed in the state; or an expenditure to

purchase or lease tangible personal property within the state where the transaction is subject to the state sales or lease tax provisions of Title 47 of the Louisiana Revised Statutes of 1950. A transaction that is subject to the state sales or lease tax provisions of Title 47 of the Louisiana Revised Statutes of 1950 shall include transactions which are also subject to a statutory exclusion or exemption.

(6) "Expenditure" means actual cash or cash equivalent exchanged for goods or services.

(7) "Fringe benefit" means an additional benefit which supplements an employee's salary and may include meal per diems, housing per diems, pension or retirement contributions, health insurance premium payments, box rental that includes an inventory list, and car allowances.

(8) "Headquartered in Louisiana" means 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 or internationally distributed motion pictures as defined in this Section.

(9) "Independent film production" means a state-certified production, with a production budget no greater than ten million dollars, produced outside of the major film studio system, as approved by the office.

(10) "Legacy credit" is a certified credit that is evidenced by a final certification letter issued before July 1, 2017, that has not expired, that has not been claimed as a credit against state income tax on a tax return filed before July 1, 2017, and that has not been transferred to the Department of Revenue pursuant to the provisions of Subitem (C)(4)(f)(i)(aa) of this Section before July 1, 2017.

(11) "Louisiana promotional graphic" means a graphical brand or logo for promotion of the state which has been approved by the office.

(12) "Louisiana resident company" means a motion picture production company licensed to conduct business in the state of Louisiana, with its principal place of business in this state, which is owned one hundred percent by a Louisiana resident or residents as defined in this Section. A Louisiana resident company is required to file a Louisiana income tax return and maintain a physical location in the state.

(13) "Louisiana screenplay production" means a state-certified production meeting the Louisiana screenplay base investment enhancement eligibility criteria set forth in Subitem (C)(1)(a)(i)(bb) of this Section.

(14) "Marketing and promotion expenses" means expenditures in this state directly relating to the development of advertising and marketing campaigns for a state-certified production, such as the creation of film trailers and posters. Marketing and promotional expenses must be included in and expended from the production budget and may not exceed one million dollars, or fifteen percent of the total state-certified tax credits for the production, whichever is less. Marketing and promotional expenses shall not include media buys except for a fixed fee or commission payment made to a Louisiana company for services performed in the state in accordance with standard business practices as established by rule.

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

(16) "Motion picture production company" means a company engaged in the business of producing nationally or internationally 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. (17) "New jobs" means full-time employment in this state working an average of thirty hours or more per week, filled by residents of the state, at the project site designated in the contract, who were not previously on the QEC's payroll in Louisiana, nor previously on the payroll of the QEC's parent entity, subsidiary, or affiliate in Louisiana, or previously on the payroll of any business whose physical location and employees are substantially the same as those of the QEC in Louisiana, as approved by the secretary.

(18) "Office" means the Governor's Office of Film and Television Development until August 15, 2006; thereafter, the term "office" means the office of entertainment industry development in the Department of Economic Development provided for in R.S. 51:938.1.

(19) "Payroll" means all salary, wages, and fringe benefits paid, provided, or rendered to an individual for services relating to a state-certified production and, except for fringe benefits not includible in gross income, for which taxes are withheld and remitted to the Department of Revenue in accordance with R.S. 47:164(D)(2) and taxable in this state as verified by the office through the use of information which may be provided to them upon request by the office from the Louisiana Workforce Commission, or the Department of Revenue. Any information so furnished shall be considered and held confidential and privileged by the Department of Economic Development.

(20) "Principal place of business" means the state where the administrative or management activities of a business are conducted. A company claiming that its principal place of business is in Louisiana must be a motion picture production company headquartered in this state and shall not have any fixed locations outside of Louisiana in which administrative or management activities are conducted, and the company shall be required to maintain a physical location in the state. The company shall be licensed to conduct business in this state and shall be required to file a Louisiana income tax return.

(21) "Production expenditure verification report" means a report issued by a qualified accountant who is unrelated to the motion picture production company and that is a report of the qualified accountant's verification of the motion picture production's cost report of production expenditures. The production expenditure verification report shall contain an opinion from the

qualified accountant stating that there are no related party transactions or that material transactions of related party relationships are properly reported and accounted for as required by Paragraph (D)(9) of this Section, adequately disclosed, and explained in the report and that the production's cost report of production expenditures presents fairly, in all material aspects, the production expenditures expended in Louisiana pursuant to the provisions of this Section. The production expenditure verification report shall:

- (a) Be performed in accordance with the accounting standards generally accepted in the United States.
- (b) Be addressed to the party which has engaged the qualified accountant, with a copy addressed to the motion picture production company or motion picture investor tax credit applicant.
- (c) Contain the qualified accountant's name, address, and telephone number.
- (d) Contain a certification that the qualified accountant is unrelated to the motion picture production company.
- (e) Be dated as of the date of completion of the qualified accountant's field work.
- (f) Contain a statement of acknowledgment by the qualified accountant that the state is relying on the qualified production expenditure verification report in the issuance of the tax credits under the provisions of this Section.

(22)(a) "Production expenditures" means preproduction, production, and postproduction expenditures in this state directly relating to a state-certified production, including without limitation the following: set construction and operation; wardrobes, makeup, 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; and payroll. For all state-certified productions approved on or after July 1, 2015, this term shall include marketing and promotion expenses of the state-certified production incurred in this state.

(b) For all state-certified productions approved on or after January 1, 2004, this term shall not include expenditures for marketing and distribution, except as otherwise provided by Subparagraph (a) of this Paragraph, non-production related overhead, amounts reimbursed by the state or any other governmental entity, costs related to the transfer of tax credits, amounts that are paid to persons or entities as a result of their participation in profits from the exploitation of the production, the application fee, state, or local taxes, or any expenditures occurring outside of Louisiana. This term shall not include expenditures for related party transactions denied or limited by the office pursuant to Paragraph (D)(9) of this Section, the production expenditure verification report fee, expenditures for ATL salaries for the production that exceed forty percent of total production expenditures in the state for the production, or expenditures for airfare. This term shall not include expenditures for bond fees, insurance premiums, finance fees, loan interest fees, or payments of a similar nature, paid to investors in the production unless such expenditures are made to a Louisiana resident licensed insurance producer that has its principal place of business in this state as required by R.S. 22:1543, a Louisiana financial institution as defined in

R.S. 6:2, or a Louisiana Business and Industrial Development Company as defined in and provided for in Chapter 39-B of Title 51 of the Louisiana Revised Statutes of 1950, R.S. 51:2386 et seq., that is regulated by the office of financial institutions and which have one or more offices in the state, in which case, the expenditures may be allocated only on a pro rata basis, allocating the fees based on the relative percentage of production activity occurring in and out of state.

(c) For all applications received on or after July 1, 2017, this term shall not include expenditures for catering and craft services unless such expenditures are made to a source within the state.

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

(24) "Qualified accountant" means a certified public accountant or "CPA" who meets all of the following qualifications:

(a) Maintains an active unrestricted original certified public accountant license.

(b) Maintains a current Louisiana certified public accountant firm permit.

(c) Actively participates in a Peer Review Program approved by the State Board of Certified Public Accountants of Louisiana.

(d) Completes eight hours of continuing professional education in approved Department of Economic Development tax credit attestation courses for each reporting cycle.

(e) Is capable of conducting two levels of review within the CPA firm or, if not within the firm, then through a cooperative endeavor with another CPA for the review of a verification report prior to its issuance.

(25) "Qualified Entertainment Company (QEC)" means an entity authorized to do business in the state of Louisiana, engaged in the development or distribution of audio, visual, or both audio-visual entertainment products for public consumption, directly or indirectly, certified by the secretary as meeting the eligibility requirements of this Section, and executing a contract providing the terms and conditions for its participation.

(26) "QEC Payroll" means W-2, box 1 wages.

NOTE: Paragraph (B)(27) as enacted by Acts 2015, No. 141, §§1, 4, eff. Jan. 1, 2016, upon determination by the Commissioner of Administration and the Legislative Auditor that an Act or Acts were enacted in the 2015 R.S. sufficient to offset any tax increase provided for in the Acts of the 2015 R.S. over a five-year period.

(27) "*Related party transaction*" means a transaction between parties deemed to be related by common ownership or control according to generally accepted accounting standards, or "GAAS", and generally accepted accounting principles, or "GAAP".

(28) "Resident" or "resident of Louisiana" means a natural person who is required to file a Louisiana resident individual income tax return.

(29) "Secretary" means the secretary of the Department of Economic Development.

(30) "Source within the state" means a physical facility in Louisiana, operating with posted business hours and employing at least one full-time equivalent employee. Procurement company means any vendor 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, unless the vendor: (a) is actively engaged in the business of obtaining goods or services by being a consumer of, or acquiring ownership of, or a leasehold in, goods and services, prior to the goods or services being sold, leased or licensed to motion picture production companies or providers of services thereto; (b) is organized and maintains its principal place of business in Louisiana; (c) maintains at least one commercially zoned immovable property physical location in Louisiana that is either owned or leased, pursuant to an arms-length written lease of not less than twelve months duration, by the vendor; (d) maintains at such physical location a showroom and some inventory; (e) is registered to charge and remit, and charges and remits, Louisiana sales tax; (f) is required to file and files Louisiana income tax returns; (g) employs a minimum of three full-time Louisiana residents for a minimum of twelve months prior to providing its services to a Louisiana production company; (h) has commercially standard daytime business hours; and (i) is not a publisher or otherwise engaged in the sale or licensure of literary property. For the avoidance of doubt, any vendor that meets the requirements of (a) through (i) of this Paragraph shall constitute a "source within the state".

(31) "State" means the state of Louisiana.

(32) "State-certified production" means a production or slate of productions approved by the office and the secretary which is produced by a motion picture production company domiciled and headquartered in Louisiana and which has a viable multi-market commercial distribution plan.

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

#### C. Production tax credit; specific productions and projects.

(1) There is hereby authorized a tax credit against state income tax for Louisiana taxpayers for expenditures related to state-certified productions and qualified entertainment companies. The tax credit shall be earned by a motion picture production company at the time expenditures are certified by the office and the secretary for 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 office and the secretary. For state-certified productions, expenditures shall be certified no more than once per production, after project completion. However, if at the time of application for initial certification, the office is notified that post-production activities will take place in Louisiana, a supplemental request for certification of expenditures directly related to such post-production activity may be submitted for consideration

by the office. The cost of any verification or audit of such expenditures shall be borne by the motion picture production company. The tax credit shall be calculated as a percentage of the total base investment dollars certified per project, or as otherwise provided in this Paragraph.

(a) Project-based production tax credit. For applications for state-certified productions on or after July 1, 2017:

(i) Base investment credit. If the total base investment is greater than three hundred thousand dollars, or if a production is a Louisiana screenplay production, each investor shall be allowed a tax credit of twenty-five percent of the base investment made by the investor. Investors may receive an increased base investment credit rate by satisfying any of the following criteria:

(aa) Out-of-zone filming. A five percent increase in the base investment rate may be allowed for state-certified productions with their production office and sixty percent of principal photography based and occurring outside of the New Orleans Metro Statistical Area, as delineated by the federal Office of Management and Budget, but not including St. John the Baptist Parish.

(bb) Louisiana screenplay. A ten percent increase in the base investment rate may be allowed for state-certified production expenditures equal to or greater than fifty thousand dollars but no greater than five million dollars, based upon a screenplay created by a Louisiana resident as evidenced by documents such as certificate of authorship, a Writers Guild of America registration certificate, the records of the United States Copyright Office, or a reasonable legal opinion issued to the office.

(ii) Additional payroll and visual effects credits.

(aa) Louisiana payroll. 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 fifteen percent of such payroll.

(bb) Visual effects. To the extent that base investment is expended on visual effects expenditure, each investor shall be allowed an additional tax credit of five percent of such expenditures if at least fifty percent of the visual effects budget is expended for services performed in Louisiana by an approved QEC, or a minimum of one million dollars in qualified visual effects expenditures are made in Louisiana.

(cc) The maximum tax credit that a production can earn pursuant to this Paragraph for the base investment credit, including base investment increases for out-of-zone filming and Louisiana screenplay, and the additional payroll and visual effects credits is forty percent of base investment.

(iii) The initial certification shall be effective for qualifying expenditures made within a period of twelve months prior to the date of application, and twenty-four months after the date of initial certification, except that:

(aa) State-certified productions for scripted episodic content, with estimated expenditures of at least ten million dollars in qualifying in state expenditures per calendar year, for up to five years,

shall be issued an initial certification effective for qualifying expenditures made until sixty months after the date of initial certification, under terms and conditions approved by the office and the secretary, as set forth in the initial certification.

(iv) As a condition of receiving tax credits pursuant to this Section, state-certified productions shall be required to acknowledge the financial assistance of the state of Louisiana, either through the inclusion of a Louisiana promotional graphic, or an alternative marketing option, including a donation to a Louisiana nonprofit film grant program as approved by the office.

(v) As a condition of receiving tax credits pursuant to this Section, state-certified productions shall be required to participate in a career-based learning and training program approved by the office. The secretary and the office shall determine through the promulgation of rules, approved programs as well as the minimum criteria that an applicant must meet in order to qualify according to this Section.

(b) Company-based QEC payroll tax credit for Qualified Entertainment Companies approved by the office and the secretary on or after July 1, 2017. To the extent that base investment is expended on payroll for Louisiana residents in connection with a QEC, tax credits shall be earned at the following rates:

(i) Tier 1. A payroll credit of fifteen percent shall be earned for each new job whose QEC payroll is equal to or greater than forty-five thousand dollars per year, up to sixty-six thousand dollars per year.

(ii) Tier 2. A payroll credit of twenty percent shall be earned for each new job whose QEC payroll is equal to or greater than sixty-six thousand dollars per year, but no greater than two hundred thousand dollars per year.

(c) For applications for state-certified productions approved on or after July 1, 2009, and before July 1, 2017:

(i) If the total base investment is greater than three hundred thousand dollars, each investor shall be allowed a tax credit of thirty percent of the base investment made by that investor. However, if a state-certified production does not include a Louisiana promotional graphic or an alternative marketing opportunity which has been approved by the department for that specific production, the tax credit shall be twenty-five percent of the base investment made by the investor.

(ii) If the total base investment is greater than fifty thousand dollars, but less than three hundred thousand dollars, for each state certified production there shall be allowed a tax credit of thirty percent of the total base investment made by that investor. However, each applicant shall accept as a condition for earning this tax credit, that no less than ninety percent of the total amount of the applicant's expenditures for above the line services shall be expended on residents of Louisiana and that ninety percent or more of the total number of jobs in the production shall be jobs in which the applicant will employ residents of Louisiana. Failure to comply with these requirements for which certification of the tax credits is granted, shall void the certification and no tax credits shall be certified by the office or the secretary or earned by the applicant.



(iii) If the total base investment is greater than three hundred thousand dollars and the state certified production is based on a screenplay, the copyright of which or the right of use of the copyright of which, is owned or optioned to own for a minimum of twelve months prior to production by a Louisiana resident company or a Louisiana company with its principal place of business in the state which employs a minimum of three full-time Louisiana residents for minimum of twelve months prior to production, there shall be allowed a tax credit of an additional fifteen percent of the base investment of the state-certified production. If the office and the secretary determine that an expenditure is a related party transaction, that expenditure shall not qualify for the additional fifteen percent tax credit. The tax credit authorized in this Item shall be in addition to the tax credit authorized in Item (i) of this Subparagraph. Prior to the office certifying any credits pursuant to the provisions of this Item, the secretary shall promulgate rules and regulations pursuant to the Administrative Procedure Act, subject to oversight by the House Ways and Means and the Senate Revenue and Fiscal Affairs Committees. The rules and regulations shall set forth criteria a Louisiana resident company with its principal place of business in this state shall meet in order to qualify for the additional credit. The secretary shall commence the promulgation of rules and regulations no later than October 1, 2015.

(iv) 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.

(v) To the extent that the base investment is expended on music, the sound recording copyright of which, or musical copyright of which, is owned in whole or in part at no less than twenty-five percent by a resident of Louisiana or a Louisiana company headquartered in the state with a majority ownership of residents of Louisiana, there shall be allowed an additional tax credit of fifteen percent of the base investment.

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

(d) Repealed by Acts 2017, No. 309, §2, eff. June 15, 2017.

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

(f) Motion picture investor tax credits shall be certified only upon the receipt and approval by the office of a production expenditure verification report submitted by a qualified accountant in accordance with the provisions of Subparagraph (D)(2)(c) of this Section.

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

(3) Application of the credit.

(a) All entities taxed as corporations for Louisiana income tax purposes shall claim any credit allowed under this Section on their corporation income tax return.

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

(c) Entities not taxed as corporations shall claim any credit allowed under this Section on the returns of the partners or members as follows:

(i) Corporate partners or members shall claim their share of the credit on their corporation income tax returns.

(ii) Individual partners or members shall claim their share of the credit on their individual income tax returns.

(iii) Partners or members that are estates or trusts shall claim their share of the credit on their fiduciary income tax returns.

(d) In order to prevent disguised sales of the credits, allocations of credits through partnership and membership agreements shall not be recognized unless they have "substantial economic effect" as that term is defined by 26 U.S.C. 704 and the federal regulations thereunder.

(4) Transferability of the credit. Except as provided for in Subparagraph (g) of this Paragraph, motion picture tax credits not previously claimed by any taxpayer against its income tax may be transferred or sold to another Louisiana taxpayer or to the Department of Revenue, subject to the following conditions:

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

(b) Transferors and transferees shall submit to the Department of Revenue in writing, a notification of any transfer or sale of tax credits within ten business days after the transfer or sale of such tax credits. No transfer or sale of tax credits shall be effective until recorded in the tax credit registry in accordance with R.S. 47:1524. The notification shall include the transferor's tax credit balance prior to transfer, a copy of any tax credit certification letter(s) issued by the office and the secretary of the Department of Economic Development 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, for the tax credits, and any other information required by the office or the Department of Revenue. For the purpose of reporting transfer prices, the term "transfer" shall include allocations pursuant to Paragraph (2) of this Subsection as provided by rule. 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 shall include a fee and any information submitted by a transferor or transferee shall be treated by the office 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.

(c) Failure to comply with this Paragraph will result in the disallowance of the tax credit until the taxpayers are in full compliance.

(d) The transfer or sale of this credit does not extend the time in which the credit can be used. The carryforward period for credit that is transferred or sold begins on the date on which the credit was earned.

(e) To the extent that the transferor did not have rights to claim or use the credit at the time of the transfer, the Department of Revenue shall either disallow the credit claimed by the transferee or recapture the credit from the transferee through any collection method authorized by R.S. 47:1561. The transferee's recourse is against the transferor.

(f)(i)(aa) For projects that apply on and after July 1, 2009, and before July 1, 2017, the motion picture production company that earned the motion picture production tax credits pursuant to such certification or the company's irrevocable designee, as provided for in Item (iii) of this Subparagraph, may transfer the credits to the Department of Revenue for eighty-five percent of the face value of the credits in accordance with the procedures and requirements of Item (ii) of this Subparagraph.

(bb) For projects that apply on and after July 1, 2017, the motion picture production company that earned the motion picture production tax credits pursuant to such certification or the company's irrevocable designee, as provided for in Item (iii) of this Subparagraph, may transfer the credits to the Department of Revenue for ninety percent of the face value of the credits in accordance with the procedures and requirements of Item (ii) of this Subparagraph.

(cc) Beginning July 1, 2017, legacy credits that are recorded in the Louisiana Tax Credit Registry before January 1, 2018, may be transferred to the Department of Revenue for eighty-five percent of face value. The Department of Revenue shall make payment for the legacy credits in the amount to which the transferor is entitled from the current collections of the taxes collected pursuant to Chapter 1 of Subtitle II, of this Title. The Department of Revenue may require the transferor to submit such additional information as may be necessary to administer the provisions of this Section.

(ii) 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 motion picture production company or its irrevocable designee in the amount to which he is entitled from the current collections of the taxes collected pursuant to Chapter 1 of Subtitle II, of this Title provided such tax credits are transferred to the Department of Revenue within one calendar year of certification.

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

(g) For projects that apply on and after July 1, 2017, except as provided for in Subparagraph (f) of this Paragraph, motion picture tax credits not previously claimed by any taxpayer against its income tax may not be transferred or sold to another taxpayer.

(h)(i) The notification submitted to the Department of Revenue shall include a fee, for projects that apply to the office prior to July 1, 2017, of two hundred dollars per transferee, and a fee, for projects that apply to the office on or after July 1, 2017, of two percent of the tax credit transfer value, which shall be deposited upon receipt in the state treasury.

(ii) There is hereby established in the state treasury a special treasury fund, the Louisiana Entertainment Development Fund, hereinafter referred to as the "fund". Out of the funds remaining in the Bond Security and Redemption Fund after a sufficient amount is allocated from that fund to pay all obligations secured by the full faith and credit of the state which becomes due and payable within any fiscal year as required by Article VII, Section 9(B) of this constitution, the treasurer shall deposit in and credit to the fund the fees deposited as provided in this Paragraph.

(iii) The money in the fund shall be appropriated by the legislature as follows:

(aa) Twenty-five percent to the Department of Revenue for administrative purposes.

(bb) Seventy-five percent to the Department of Economic Development, office for education development initiatives, matching grants for Louisiana filmmakers, a loan guarantee program, and a deal closing fund.

(iv) The money in the fund shall be invested by the treasurer in the same manner as money in the state general fund and interest earned on the investment of the money shall be credited to the fund after compliance with the requirements of Article VII, Section 9(B) of the Constitution of Louisiana relative to the Bond Security and Redemption Fund. All unexpended and unencumbered money in the fund at the end of the year shall remain in the fund.

(v) The office shall promulgate rules and regulations prior to issuance of any awards pursuant to the provisions of this Item, in accordance with the Administrative Procedure Act.

(5) The transferee shall apply such credits in the same manner and against the same taxes as the taxpayer originally awarded the credit.

(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.

(7)(a)(i) Any person selling or brokering tax credits issued pursuant to this Section on behalf of an investor shall meet the following qualifications:

(aa) The person has no prior conviction for any matter related to taxes, tax credits, or fraud.

(bb) No member of the person's immediate family or spouse's immediate family, as defined in R.S. 42:1102(13), is employed by the Department of Revenue or the Department of Economic Development.

(cc) The person has not been employed by the office of entertainment industry development in the last two years.

(ii) The Department of Revenue may promulgate rules as provided for in the Administrative Procedure Act to ensure that an applicant for the registry is qualified pursuant to Item (i) of this Subparagraph. The rules shall specifically require that any applicant for registration shall undergo a criminal history background examination by the Louisiana Bureau of Criminal Identification and Information as provided for in R.S. 15:587(A)(1)(h) at the expense of the applicant.

(iii) If qualified, the person shall be included in a Public Registry of Motion Picture Investor Tax Credit Brokers to be created and maintained by the Department of Revenue.

(iv) The Department of Revenue shall provide that an updated list of those eligible to sell or broker tax credits is available to the public and is maintained on its website.

(b) No person shall sell or broker tax credits pursuant to this Section without first being qualified by and registering with the Department of Revenue. Failure to qualify and register with the Department of Revenue prior to selling or brokering tax credits issued pursuant to this Section shall be punishable by a fine of not more than ten thousand dollars or imprisonment at hard labor for not more than five years, or both. In addition to the foregoing penalties, a person convicted under the provisions of this Subparagraph shall be ordered to make full restitution to any person who has suffered a financial loss as a result of this offense. If a person ordered to make restitution is found to be indigent and therefore unable to make restitution in full at the time of conviction, the court shall order a periodic payment plan consistent with the person's ability to pay.

#### D. Certification and administration.

(1)(a)(i) Company-based QEC payroll tax credit. It is the intent of the Louisiana Legislature that the tax credits provided in this Section should be used primarily as an inducement for qualified entertainment businesses to permanently locate new or expand existing operations in Louisiana. A business may be eligible for participation in the program if it meets all of the following criteria:

(aa) Is engaged in the development or distribution of audio, visual, or both audio-visual entertainment product for public consumption, directly or indirectly, as approved by the secretary.

(bb) Creates a minimum of five new jobs meeting or exceeding the Tier 1 minimum wage requirements, in accordance with the provisions of Item(C)(1)(b)(i) of this Section.

(cc) Is approved by the secretary.

(ii) The following business types are ineligible:

(aa) Telecommunication.

(bb) Any other businesses as determined by rule promulgated by the Department of Economic Development.

(iii) The secretary of the Department of Economic Development and the office shall determine through the promulgation of rules the minimum criteria that a project must meet in order to qualify according to this Section.

(b) The secretary, the office, and the division of administration shall determine, through the promulgation of rules, an appeals process in the event that an application for or the certification of motion picture production tax credit is denied. The office shall promptly provide written notice of such denial to the Senate Committee on Revenue and Fiscal Affairs and the House Committee on Ways and Means.

(c) In addition, these rules shall be approved by the House Committee on Ways and Means and the Senate Committee on Revenue and Fiscal Affairs in accordance with the provisions of the Administrative Procedure Act.

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

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

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

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

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

(v) Filming location, project size, project type, and availability of tax credits in any given year.

(2)(a) Application. An applicant for the motion picture investor credit shall submit an application for initial certification to the office and the secretary of the Department of Economic Development that includes the following information:

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

(aa) The multi-market commercial 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.

(gg) The format of the project, for example whether it is a feature film or television series, and whether it seeks qualification as a QEC, independent film project, or Louisiana screenplay project.

(hh) A statement of which of the base credit rate enhancements or additional credits for payroll or visual effects, if any, will apply to the project and an estimate of expenditures in each applicable category.

(ii) Company-based QEC payroll tax credit. Applications shall be submitted to the office on a form prescribed by the department, or if available submitted electronically, to include such information as may be required by the department to determine if the applicant is qualified.

(b) If the application is incomplete, additional information may be requested prior to further action by the office or the secretary of the Department of Economic Development. An application fee shall be submitted with the application in accordance with R.S. 36:104.

(c)(i) In order to protect the integrity of the motion picture investor tax credit program by ensuring that tax credits are certified only for eligible expenditures and to provide for uniformity in expenditure verification reporting, the department shall directly engage and assign an independent certified public accountant, hereinafter referred to as "CPA", to prepare, for the department, the required production expenditure verification report on a tax credit applicant's cost report of expenditures or claims. The applicant shall be responsible for and assessed any production expenditure verification report fee that may be required by law, including any up-front deposit of the fee. For purposes of the report, the applicant shall make all records related to the tax credit application available to the CPA.

(ii) The applicant will be assessed the department's actual cost for the production expenditure verification report fee. The maximum fee for the report shall be fifteen thousand dollars for verification of a cost report reflecting qualified production expenditures between three hundred thousand dollars and twenty-five million dollars, and the maximum fee shall be twenty-five thousand dollars for verification of a cost report reflecting qualified production expenditures in excess of twenty-five million dollars.

(iii) At the time of application, the applicant shall submit a deposit of the production expenditure verification report fee of seven thousand five hundred dollars for a production with qualified expenditures projected to be between three hundred thousand dollars and twenty-five million dollars, and a deposit of fifteen thousand dollars for those projected to be in excess of twenty-five million dollars.

(d)(i) Project-based production tax credit. After application review and consideration of all discretionary factors, the office and the secretary shall submit their initial certification or written denial of a project as a state-certified production to investors and to the secretary of the Department of Revenue indicating the total base investment which shall be expended in the state on the state-certified production within sixty days of their receipt of all required information. The

initial certification shall include a unique identifying number for each state-certified production and shall provide for a preliminary allocation of tax credits by year.

(ii) Company-based QEC payroll tax credit. After application review and consideration of all discretionary factors, the office and the secretary may execute a contract with an applicant for a period of up to five years, providing the terms and conditions for its participation. A five-year renewal contract may be authorized if the applicant has complied with all the terms of the contract and has not performed any act, nor failed to perform any act, which would have made the applicant liable for suspension, and has complied with the provisions of this Section. The contract shall set forth an estimate of jobs and payroll per calendar year, which will be tentatively allocated to the QEC for annual cap computation purposes.

(e)(i)(aa) For projects with initial certification letters issued on or after July 1, 2015, no later than six months after the expiration of the initial certification period for the applicable state-certified production, a state-certified motion picture production company applicant shall make a request to the office to proceed to final certification by submitting to the office a cost report of production expenditures to be formatted in accordance with instructions of the office. The applicant shall make all records related to the cost report available for inspection by the office and the qualified accountant selected by the office to prepare the production expenditure verification report, after which time all such claims to tax credits shall be deemed waived. After review and investigation of the cost report, the accountant shall submit to the office and the secretary a production expenditure verification report. The office and the secretary shall review the production expenditure verification report and may require additional information needed to make a determination as to final certification of all tax credits for that production. Within one hundred twenty days of the receipt of the production expenditure verification report and all required supporting information, the office and the secretary shall issue a tax credit certification letter indicating the amount of tax credits certified for the state-certified production to the applicant for all qualifying expenditures verified by the office. Any expenditures for which tax credits were neither denied nor certified due to insufficient information or other issues, the office and secretary shall diligently work to resolve the outstanding issues in a timely manner, and the office and secretary may subsequently issue a supplemental tax credit certification at the time of such resolution.

(bb) For projects with initial certification letters issued before July 1, 2015, upon project completion or at any time after project costs are deemed final by the motion picture production company or applicant, the applicant shall make a request to the office to proceed to final certification by submitting to the office a cost report of production expenditures to be formatted in accordance with instructions of the office promulgated in compliance with the Administrative Procedure Act. The applicant shall make all records related to the cost report available for inspection by the office and the qualified accountant selected by the office to prepare the production expenditure verification report. After review and investigation of the cost report, and after two levels of review within a CPA firm or a second review through a cooperative endeavor with another CPA, the accountant shall submit to the office, the secretary, and the motion picture production company or motion picture investor tax credit applicant a production expenditure verification report and the affidavit required by Subparagraph (h) of this Paragraph. The office and the secretary shall review the production expenditure verification report and may require additional information needed to make a determination. Within one hundred twenty days of the



receipt of the production expenditure verification report and all required supporting information, the office and the secretary shall issue a tax credit certification letter indicating the amount of tax credits certified for the state-certified production to the investors for all qualifying expenditures verified by the office. Any expenditures for which tax credits were neither denied nor certified due to insufficient information or other issues, the office and secretary shall diligently work to resolve the outstanding issues in a timely manner, and the office and secretary may subsequently issue a supplemental tax credit certification at the time of such resolution.

NOTE: Item (D)(2)(e)(ii) eff. until Jan. 1, 2016, upon determination by the Commissioner of Administration and the Legislative Auditor that an Act or Acts were enacted in the 2015 R.S. sufficient to offset any tax increase provided for in the Acts of the 2015 R.S. over a five-year period. See Acts 2015, No. 141, §4.

(ii) The department may request an additional production expenditure verification report of the expenditures submitted by the motion picture production company with the cost of the additional report paid by the motion picture production company. The motion picture production company may submit an amended cost report of production expenditures if additional expenditures are incurred or discovered after the approval of the initial production expenditure verification report issued pursuant to Item (i) of this Subparagraph, and the office and secretary may issue a supplemental tax credit certification if so warranted.

NOTE: Item (D)(2)(e)(ii) as amended by Acts 2015, No. 141, §§1, 4, eff. Jan. 1, 2016, upon determination by the Commissioner of Administration and the Legislative Auditor that an Act or Acts were enacted in the 2015 R.S. sufficient to offset any tax increase provided for in the Acts of the 2015 R.S. over a five-year period.

*(ii) The department may request an additional production expenditure verification report of the expenditures submitted by the motion picture production company with the cost of the additional report paid by the motion picture production company. The motion picture production company may submit an amended cost report of production expenditures if additional expenditures are incurred or discovered after the submission of the initial production expenditure verification report issued pursuant to Item (i) of this Subparagraph, and the office and secretary may issue a supplemental tax credit certification if so warranted.*

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

(iv) State-certified productions for scripted episodic content and approved QECs may submit more than one request for final certification of tax credits, but no more frequently than once per calendar year, in accordance with the terms of the initial certification letter or QEC contract and instructions by the office.

(f) In addition to the requirements of Subparagraph (e) of this Paragraph, prior to any final certification of a state-certified production or infrastructure project, the motion picture production company or infrastructure project applicant shall submit to the office a notarized statement demonstrating conformity with, and agreeing to, the following:

(i) To pay all undisputed legal obligations the film production company has incurred in Louisiana.

(ii) To publish, at completion of principal photography, a notice at least once a week for three consecutive weeks in local newspapers in regions where filming has taken place in order to notify the public of the need to file creditor claims against the film production company by a specified date.

(iii) That the outstanding obligations are not waived should a creditor fail to file by the specified date.

(iv) To delay filing a claim for the film production tax credit until the office delivers written notification to the secretary of the Department of Revenue that the film production company has fulfilled all requirements for the credit.

NOTE: Subparagraphs (D)(2)(g) and (h) as enacted by Acts 2015, No. 141, §§1, 4, eff. Jan. 1, 2016, upon receipt of written notification from the Commissioner of Administration and the Legislative Auditor that an Act or Acts were enacted in the 2015 R.S. sufficient to offset any tax increase provided for in the Acts of the 2015 R.S. over a five-year period.

*(g) In addition to any other requirements of this Paragraph, the production expenditure verification report shall include information concerning the total number of people who were paid salary, wages, benefits, and other compensation in the production which was included as payroll for which a credit was claimed and the number of those who were Louisiana residents.*

*(h)(i) In addition to any other requirements of this Paragraph, the production expenditure verification report shall include a sworn affidavit by the individual responsible for providing the accounts, documents, records and any other information necessary to the accountant charged with preparing and filing the production expenditure verification report that such accounts, documents, records, and other information were true and correct; and that all related party transactions were accurately reported in accordance with Paragraph (9) of this Subsection; all to the best of the affiant's knowledge, information, and belief.*

*(ii) Any false statement under oath contained in the affidavit required by this Subparagraph shall constitute perjury and shall be punished as provided by R.S. 14:123(C)(4).*

(3) The secretary of the Department of Revenue, in consultation with the office and the secretary of the Department of Economic 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 office for any audits required in relation to granting the credit.

(5)(a) A motion picture production company applying for a tax credit based upon payroll for any individuals 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:

(i) Name, address, and taxpayer identification number of the loan-out company or other entity, if any.

(ii) Identification of entity type: C Corporation, S Corporation, Limited Liability Company, or other entity type with tax type specified, if applicable.

(iii) Name, address, and social security number of the payee.

(iv) An affirmative statement of whether or not the production company is a related party to the loan-out company or other entity, and if so, provision of an affidavit stating under penalty of perjury that the transaction is valued at the same value that an unrelated party would value the same transaction. If the production company is a related party to the loan-out company, the schedule shall also include all of the following information:

(aa) The ownership structure of the loan-out company or other entity.

(bb) An estimate amount of what the loan-out company or other entity will pay the payee.

(b) The secretary of the Department of Revenue shall, for purposes of administering the reporting provisions required under this Subsection, collect an administrative fee in the amount of two hundred dollars per motion picture production for which reports and payroll withholding information are mandated.

(c) Such information shall be verified by the office through the use of information which may be provided to them upon request by the office from the Louisiana Workforce Commission or the Department of Revenue.

(6) Reports.

(a) With input from the Legislative Fiscal Office, the office 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, and any other factors that describe the impact of the program.

(b) The department shall include in its annual report detailing the alternative marketing opportunities it has approved in the most recently ended calendar year for tax credits earned for productions which employed an alternative marketing opportunity in lieu of a Louisiana promotional graphic, as provided in Item (C)(1)(i) of this Section. The report shall be provided annually on or before the first day of February to each member of the House Committee on Ways and Means and the Senate Committee on Revenue and Fiscal Affairs. The report shall include but not be limited to the following:

(i) The goals and strategy behind each alternative marketing opportunity approved for state-certified productions.

(ii) The names of all motion picture production companies approved by the office to provide alternative marketing opportunities.

(iii) The estimated value to the state of each approved alternative marketing opportunity compared to the estimated value of a Louisiana promotional graphic.

(iv) The names of all motion picture production companies who chose to include a Louisiana promotional graphic instead of offering the state an alternative marketing opportunity.

(7) The Department of Economic Development may request an additional audit of the expenditures submitted by the motion picture production company at the cost of the motion picture production company.

(8) Repealed by Acts 2015, No. 417, §2, eff. July 1, 2015.

NOTE: Paragraph (D)(9) eff. until Jan. 1, 2016, upon determination by the Commissioner of Administration and the Legislative Auditor that an Act or Acts were enacted in the 2015 R.S. sufficient to offset any tax increase provided for in the Acts of the 2015 R.S. over a five-year period. See Acts 2015, No. 141, §4.

(9) It is recognized that, while legitimate related party transactions often occur as production expenditures, some related party transactions may be conducted in such a manner as to abuse the purpose and intent of the program. The secretary of the Department of Economic Development and the office shall promulgate rules regarding related party transactions in accordance with the Administrative Procedure Act.

NOTE: Subparagraph (D)(9)(a) as amended by Acts 2015, No. 141, §§1, 4, eff. Jan. 1, 2016, upon receipt of written notification from the Commissioner of Administration and the Legislative Auditor that an Act or Acts were enacted in the 2015 R.S. sufficient to offset any tax increase provided for in the Acts of the 2015 R.S. over a five-year period.

*(9)(a) It is recognized that, while legitimate related party transactions often occur as production expenditures, some related party transactions may be conducted in such a manner as to abuse the purpose and intent of the program. Therefore, the production expenditure verification report required by Subparagraph (D)(2)(d) of this Section shall verify that all related party transactions have been disclosed and explained, and that the production accounts include all of the following:*

*(i) The name of the related party.*

*(ii) The nature of the relationship between the related party and the motion picture production company.*

*(iii) The nature of the transaction.*

*(iv) The amount of the transaction.*

*(v) The capture and reporting of the functional expense classifications of related party transactions and an explanation of how each is a legitimate project expenditure, including reporting of labor and facility/equipment charge rates related to production company personnel and facility and equipment used in the production of the state-certified production.*

(b) Tax credits certified for goods and services provided by related parties to a state-certified production shall be further limited as follows:

(i) Qualifying production expenditures for Above the Line, or "ATL", salaries provided by related parties shall be limited to twelve percent of total Louisiana production expenditures.

NOTE: Items (D)(9)(b)(ii) - (iv) and Subparagraphs (c) through (e) as amended by Acts 2015, No. 141, §§1, 4, eff. Jan. 1, 2016, upon receipt of written notification from the Commissioner of Administration and the Legislative Auditor that an Act or Acts were enacted in the 2015 R.S. sufficient to offset any tax increase provided for in the Acts of the 2015 R.S. over a five-year period.

*(ii) Qualifying production expenditures for Below the Line, or "BTL", services provided by a related party shall be limited to the actual compensation including the value of employer-funded benefits paid by the related party to its employee or employees who are actually performing the service, allocated to the production on an hourly basis.*

*(iii)(aa) Qualifying production expenditures for goods and services such as equipment, supplies, studio rental, and visual effects packages provided by a related party shall be limited to fair market value as established through the related party's historic dealings with unrelated parties, or established by comparable transactions between other unrelated parties for substantially similar goods and services considering the geographic market and other pertinent variables.*

*(bb) If the fair market value cannot be established in the manner provided for in Subitem (aa) of this Item, qualifying production expenditures shall be limited to the internal cost recovery rate to be determined by dividing the actual acquisition cost plus ongoing maintenance and upgrade cost by anticipated utilization over the real useful life of the property. However, qualifying production expenditures for visual effects packages shall be limited to either the internal cost recovery rate or the actual compensation including the value of employer-funded benefits paid by the related party employer to its employee or employees actually performing the service, allocated to the production on an hourly basis as determined by the methodology selected and deemed most appropriate under the circumstances by the office.*

*(iv) No tax credits shall be earned or certified for expenditures for finance fees, interest, or payments of a similar nature paid to related parties, investors in the production, or any other entities which the office determines will gain financial rewards based upon sale or exploitation of the product or success in procuring distribution agreements unless such expenditures are for payments made to a Louisiana resident licensed insurance producer that has its principal place of business in this state as required by R.S. 22:1543, or to a Louisiana financial institution as defined in R.S. 6:2(8), or to a Louisiana Business and Industrial Development Company defined in and provided for in Chapter 39-B of Title 51 of the Louisiana Revised Statutes of 1950, R.S.*

*51:2386 et seq., that is regulated by the office of financial institutions and that has one or more offices in the state.*

*(c) The office may request and use additional information in determining the extent to which expenditures for related party transactions will be certified by requesting and obtaining documentation including but not limited to third-party contracts, notarized affidavits, tax records, W-2s, 1099s, and cancelled checks.*

*(d) Any related party transaction may be referred by the office and the secretary to the office of the state inspector general for further review to determine whether the transaction is in accord with the provisions of this Paragraph. The office of the state inspector general may make such further audit, examination, and investigation of all books and records and officers and employees of a movie production company earning, or of any entity or persons receiving, tax credits pursuant to this Section as are necessary to make the determination pursuant to any authority provided for in Part VI of Chapter 2 of Title 49 of the Louisiana Revised Statutes of 1950. The movie production companies, entities, and persons earning or receiving such credits are hereby deemed to consent to the audit, examination, and investigation and any reasonable fees associated with the examination and investigation as a condition of earning or receiving the tax credits.*

*(e) The secretary of the Department of Economic Development and the office shall promulgate rules regarding related party transactions in accordance with the Administrative Procedure Act.*

#### E. Disallowance and recapture of credits.

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

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

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

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

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

- (1) Two years from December thirty-first in the year in which the tax credit was paid in accordance with Item (C)(4)(f)(ii) of this Section.
- (2) Three years from December thirty-first of the year in which the taxes for the filing period were due.
- (3) Three years from December thirty-first of the year in which the final tax credit certification letter was issued.
- (4) The time period for which prescription has been extended, as provided by R.S. 47:1580.

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

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

- (1) State-certified infrastructure project applicants may submit to the office on or before December 31, 2015, all requests and required documentation for final certification of all tax credits granted by this provision, after which time all such claims to tax credits shall be deemed waived.
- (2) Any request shall be accompanied by an audit performed by an independent certified public accountant.
- (3) The office, the secretary, and the division shall review the audit, and may require additional information needed to make a determination as to certification.
- (4) The office may request an additional audit report of expenditures submitted by the state-certified motion picture infrastructure project applicant, with the cost of the additional report paid by the applicant.
- (5) Within three hundred sixty-five days after receipt of the audit report and all required supporting information, or December 31, 2016, whichever occurs first, the office, the secretary, and the division shall issue a denial letter or a tax credit certification letter to the investors indicating the amount of tax credits certified for the state-certified infrastructure project for all qualifying expenditures verified by the office.
- (6) Tax credits provided for in this Section shall not be considered entitlements, and the state-certified motion picture infrastructure applicant shall bear the burden of clearly and unequivocally establishing eligibility for tax credits.

(7) In the event that a request for final certification is denied, an applicant may appeal the decision in accordance with program rules.

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

I. No credits shall be allowed pursuant to this Section for applications received on or after July 1, 2025.

J. Credit caps, structured pay outs, and project size limitations.

(1) Department of Economic Development program issuance cap.

(a) The department shall by rule establish the method of provisionally allocating available tax credits in initial certification letters, and the method for granting tax credits in final tax credit certification letters, including but not limited to a first-come, first-served system, reservation of tax credits for a specific time period, or other method which the department, in its discretion, may find beneficial to the program.

(b) For applications for state-certified productions and qualified entertainment companies submitted on or after July 1, 2017, the total amount of all tax credits granted in a final certification letter by the department in any fiscal year shall not exceed one hundred fifty million dollars. Twenty percent of the annual program cap shall be reserved as follows: five percent for qualified entertainment companies, five percent for Louisiana screenplay productions, and ten percent for independent film productions. If the total amount of credits applied for in any particular year exceeds the aggregate amount of tax credits allowed for that year, the excess shall be treated as having been applied for on the first day of the subsequent year.

(c)(i) If the total amount of credits granted to QECs in any fiscal year is less than the QEC cap, any residual amount of unused credits shall carry forward for use in subsequent years and may be granted in addition to the QEC cap for each year.

(ii) If the total amount of credits granted in any fiscal year to screenplay productions or independent film productions is less than their respective caps, any residual amount may be available for issuance by the department during that fiscal year as established by rule.

(d) The department shall make reasonable efforts to post a listing of estimated amounts available under the cap on its website.

(2) Department of Revenue taxpayer claim cap.

(a) Beginning July 1, 2017, claims against state income tax allowed on returns for tax credits or transfers of such tax credits, including legacy credits, to the Department of Revenue as provided for in Paragraph (C)(4) of this Section shall be limited to an aggregate total of one hundred eighty million dollars each fiscal year. If less than one hundred eighty million dollars of such tax credits and transfers are allowed in a fiscal year, the remaining amount, plus any amounts remaining from previous fiscal years, shall be added to the one hundred eighty million dollar limit of subsequent fiscal years until that amount of tax credits or tax credit transfers to the Department of Revenue are claimed and allowed.



(b)(i) Claims for tax credits or transfers of tax credits to the Department of Revenue shall be allowed on a first-come, first-served basis. Any taxpayer whose claim for such tax credits or transfer to the Department of Revenue is disallowed because the fiscal year cap has been reached may use the tax credits against state income tax due in an original return filed in the next fiscal year or may transfer tax credits to the Department of Revenue the next fiscal year, and his claim or transfer shall have priority over other claims filed or transfers applied for after the date of his original claim or application for transfer.

(ii) If a claim against state income tax for a tax credit is disallowed because the fiscal year cap has been reached, the Department of Revenue may provide for an abatement of interest pursuant to R.S. 47:1601 and a waiver of delinquent payment penalties pursuant to R.S. 47:1603.

(iii) Any transferor whose transfer of legacy credits to the Department of Revenue exceeds ten million dollars in one fiscal year shall be paid a maximum of ten million dollars that year and may transfer the remaining legacy credits, up to a maximum of ten million dollars for each subsequent fiscal year, to the Department of Revenue and his transfer shall have priority over other transfers applied for after the date of his original application for transfer.

(c) For all completed applications for transfer submitted to the Department of Revenue on or after July 1, 2017, the face value of the credits transferred to the Department of Revenue shall be subtracted from the remaining available Department of Revenue taxpayer claim cap.

(d) The Department of Revenue shall make reasonable efforts to post a listing of estimated amounts available under the cap on its website.

(3) Department of Economic Development individual project issuance cap.

(a) Project-based production tax credit. For applications for state-certified productions on or after July 1, 2017, the maximum amount of credits that may be granted for a single state-certified production shall not exceed twenty million dollars, except for state-certified productions for scripted episodic content that may be granted up to twenty-five million dollars per season.

(b) Company-based QEC payroll tax credit. For applications for qualified entertainment company contracts on or after July 1, 2017, the maximum amount of credits that may be granted for a single company shall not exceed one million dollars per year.

(4) Department of Economic Development individual payroll cap.

(a) Project-based production tax credit. For applications for state-certified productions on or after July 1, 2017, the maximum amount of qualifying payroll expenditures made for the services rendered by an individual, whether directly to an individual, or indirectly through a loan out company, shall be three million dollars per person and no tax credits shall be earned for payroll expenditures in excess of three million dollars per person.

(b) Company-based QEC payroll tax credit. For applications for qualified entertainment company contracts on or after July 1, 2017, the maximum amount of qualifying QEC payroll expenditures shall be two hundred thousand dollars per person, for each employee as reported on

a Form W-2, and no tax credits shall be earned for payroll expenditures in excess of two hundred thousand dollars per person.

(5) Department of Economic Development structured pay outs.

(a) The department may, at its discretion, require credits for any size production or approved QEC to be structured over the course of two or more years, as provided for in the initial certification letter or QEC contract.

(b) The department shall by rule establish the circumstances under which a structured pay-out of credits may be required, including but not limited to the availability of tax credits in any given year or the best interests of the state.

Acts 1992, No. 894, §1; Acts 1997, No. 658, §2; Acts 2002, 1st Ex. Sess., No. 6, §1, eff. July 1, 2002; Acts 2003, No. 551, §§3 and 6; Acts 2003, No. 1240, §3, eff. July 1, 2003; Acts 2004, 1<sup>st</sup> Ex. Sess., No. 7, §1, eff. March 25, 2004; Acts 2005, No. 456, §1; Acts 2007, No. 456, §2, eff. July 1, 2007; Acts 2009, No. 478, §1, eff. July 9, 2009; Acts 2009, No. 530, §1, eff. July 10, 2009; Acts 2010, No. 633, §2, eff. July 1, 2010; Acts 2013, No. 178, §1; Acts 2013, No. 418, §1, eff. June 21, 2013; Acts 2014, No. 646, §11, eff. July 1, 2014; Acts 2015, No. 129, §1, eff. Jan. 1, 2016; §2, eff. July 1, 2015; Acts 2015, No. 134, §1, eff. July 1, 2015; Acts 2015, No. 141, §1, special eff. date; Acts 2015, No. 142, §1, special eff. date; Acts 2015, No. 143, §1, special eff. date; Acts 2015, No. 144, §§1, 2, special eff. date; Acts 2015, No. 357, §1, eff. June 29, 2015; Acts 2015, No. 361, §2, eff. July 1, 2015; Acts 2015, No. 412, §2; Acts 2015, No. 417, §§1, 2, eff. July 1, 2015; Acts 2015, No. 425, §1; Acts 2015, No. 451, §2, eff. Jan. 1, 2016; Acts 2015, No. 452, §1, eff. July 1, 2015; Acts 2016, 1<sup>st</sup> Ex. Sess., No. 29, §2; Acts 2017, No. 223, §1; Acts 2017, No. 309, §§1, 2, eff. June 15, 2017.

NOTE: See Acts 1992, No. 894, §2.

NOTE: Acts 2005, No. 456, §2, provides that the "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."

NOTE: See Acts 2009, No. 530, §1, which was superceded by Acts 2009, No. 478, §1.

NOTE: See Acts 2015, Nos. 141, §2; 142, §2; 143, §2; 412, §3; 417, §3; 425, §2; and 451, §3, regarding applicability.

NOTE: See Acts 2016, No. 662, §2, regarding applicability.