

Overview of 2015 Legislative Session changes to the Motion Picture Investor Tax Credit Program 19 August 2015

The following legislation made significant changes to the motion picture investor tax credit program: Acts 129, 134, 141, 142, 143, 144, 361, 412, 417, 425, 451 & 452.

This overview summarizes the changes, for informational purposes and general guidance, but is subject to the actual language of these enactments, and to further requirements as may be provided by the Louisiana Department of Revenue (LDR) through Revenue Information Bulletins (RIB) as well as rules promulgated under the Administrative Procedures Act.

I. Caps & Limitations (Act 134)

A. Individual salary:

For state-certified productions initially certified on or after July 1, 2015, payroll payments made directly to an individual shall exclude any portion of an individual salary in excess of \$3 million. (Payments made to a loan-out company are not subject to this cap.)

B. Individual project:

For state-certified productions initially certified from July 1, 2015 through June 30, 2018, the maximum amount of credits that may be certified by LED for a single state-certified production shall not exceed \$30 million, which may be structured over two or more years.

C. Claims cap:

- 1) Effective July 1, 2015, for fiscal years 2016-2018, tax credit claims and transfers to the State (buy-back) shall be limited by LDR to an aggregate of \$180 million each fiscal year. (LDR-RIB 15-033)
- 2) The state shall not buy-back any motion picture investor tax credits from July 1, 2015 through June 30, 2016. (LDR - RIB 15-033)

II. Verification Reports (Acts 141 & 412)

A. Final certification requests after on or after January 1, 2016:

LED shall directly engage and assign a CPA to prepare a production expenditure verification report on the applicant's cost report of production expenditures. The applicant will be assessed LED's actual cost for the production expenditure verification report and shall make all records related to the tax credit application available to LED and the CPA.

B. Final certification requests before January 1, 2016:

The applicant may engage a CPA of its choice and submit an audited cost report with its request, or may elect to use the verification report procedure described in Paragraph A above, submitting the advance deposit at the time of its request.

III. Fees (Acts 129, 144, 361, 412 & 425)

A. Application fee:

For applications for initial certification received on or after July 1, 2015, the fee for filing an application shall be equal to 0.5% of the amount of the incentives or exempted taxes, with a minimum of \$500 and a maximum of \$15,000.

B. Advance deposit for verification report fee:

For applications for initial certification received on or after July 1, 2015, in addition to the application fee, an applicant shall also submit an advance deposit not to exceed \$15,000.

C. Verification report fee:

For applications for initial certification or requests for final certification received on or after January 1, 2016, applicants shall be responsible for and assessed the actual cost of a verification report completed by a CPA assigned by LED, at a cost not to exceed \$15,000 for productions with expenditures ranging from \$300,000 to \$25 million and \$25,000 for projects in excess of \$25 million.

D. Supplemental verification report fee:

For applications for initial certification received on or after January 1, 2016, which include notification of post-production activities occurring in LA, a supplemental request for certification of expenditures may be submitted, with additional costs to be borne by the applicant as further provided by rule.

E. Payroll withholding report fee:

For state-certified productions initially certified on or after January 1, 2016, a \$200 fee shall be payable to LDR at time of request for final certification,

IV. Qualifying (Act 134)

For state-certified productions initially certified on or after July 1, 2015:

A. Expenditures:

Marketing and promotion expenses shall be a qualifying expense category for certain expenditures made in Louisiana.

B. Applicants:

“Louisiana indigenous production” expending \$50,000 to \$300,000, upon meeting certain Louisiana payroll requirements shall be eligible for a tax credit of 30% of base investment.

C. Projects:

State-certified productions meeting certain criteria may aggregate a slate of no more than three productions to reach the \$300,000 threshold for participation in the program.

V. Non-qualifying (Acts 129, 134,141,142,143, 144 & 412)

A. Expenditures:

- 1) Louisiana Screenplay related party transactions – RPT expenditures do not qualify for the Louisiana screenplay credit.*
- 2) Above the Line (ATL) services – For applications for initial certification received by the office on and after July 1, 2015, ATL expenditures exceeding 40% of the eligible Louisiana spend shall not qualify for credits.
- 3) ATL services – For state-certified productions initially certified on or after December 31, 2015, ATL related party transactions exceeding 12% shall not qualify for credits.
- 4) Verification report fee – shall not qualify for credits.
- 5) Airfare – For applications for initial certification received by the office on and after July 1, 2016, airfare expenditures shall not qualify for credits.

- 6) Bond fees, insurance premiums, finance fees, loan interest fees paid to investors – For applications for initial certification received by the office on and after July 1, 2016, these expenditures shall not qualify for credits unless paid to certain Louisiana companies, and shall be allocated based on the relative percentage of production activity occurring in Louisiana.

B. Applicants:

For state-certified productions initially certified on or after July 1, 2015, when considering which productions may qualify for initial certification LED may consider conviction for a criminal offense as an incident to obtaining or attempting to obtain a motion picture tax credit.

VI. Additional credits (Act 134)

A. Screenplay:

State-certified productions based upon a screenplay which meet certain Louisiana ownership criteria shall be eligible for an additional 15% credit of base investment. (**No credits will be certified for the additional screenplay credit until promulgation of rules providing additional criteria for qualification.*)

B. Music:

State-certified productions utilizing music meeting certain Louisiana ownership criteria shall be eligible for an additional credit of 15% of base investment to the extent of music expenditures. (*No credits will be certified for the additional music credit until promulgation of rules providing additional criteria for qualification.*)

- C. Louisiana resident payroll:** Compensation for services paid directly to a Louisiana resident on or after July 1, 2015 shall be eligible for a 10% credit (payments made to a loan-out company are not eligible for this credit).

VII. Miscellaneous Provisions (Acts 129,144, 417 & 425)

A. Timely submission of requests for final certification:

For state-certified productions initially certified on or after July 1, 2015:

- 1) Only expenditures made during the initial certification period shall earn credits.
- 2) Initial certifications shall be effective for qualifying expenditures made within 12 months prior and 24 months after the date of initial certification.
- 3) Only one request for final certification may be made, no later than six months after expiration of the initial certification. However, applicants who have indicated that post-production activities will occur in Louisiana may submit a supplemental request for final certification of such expenditures.

B. Revised logo requirement:

State-certified productions initially certified on or after August 1, 2015, shall include a Louisiana promotional graphic or an alternative marketing opportunity which has been approved by LED, or be subject to a reduced base investment tax credit rate of 25%.

C. Tax withholding:

State-certified productions initially certified on or after January 1, 2016, shall withhold and remit income taxes to LDR prior to final certification for credits.

D. Irrevocable designee:

For state-certified productions initially certified on or after July 1, 2015, a bank or other lender may be named as an irrevocable designee in the initial tax credit certification or other document submitted to the office, may receive direct issuance of the tax credits, and may elect to transfer the credits to LDR.

E. Carryforward:

Any project receiving final certification on or after January 1, 2016 shall have a 5 year carryforward. (LDR-RIB No. 15-033)

F. Earned when certified:

Tax credits for expenditures made before July 1, 2015 will be deemed earned at the time expenditures are made.
Tax credits for expenditures made on or after July 1, 2015 will be deemed earned at the time of final certification of tax credits. (LDR - RIB No. 015-033)

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