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Department of Economic Development Office of Entertainment Industry Development

Motion Picture Production Tax Credit Program—Qualified Entertainment Company Payroll Tax Credit Program (LAC 61:1.1623-1628)

In accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Department of Economic Development published a Notice of Intent in the November 20, 2017 edition of the *Louisiana Register* (LR 42:2207-2210) to amend the Rules for the Motion Picture Production Tax Credit Program (LA R.S. 47: 6007). This Notice of Intent proposed to provide guidance for the newly created qualified entertainment company payroll tax credit provided by Act 309 of the 2017 Regular Session of the Louisiana Legislature.

The department conducted a public hearing on this Notice of Intent on January 3, 2018 to solicit comments and testimony of the proposed Rule. Upon further consideration, the department subsequently determined that revisions were necessary, which resulted in the following non-technical, substantive changes: 1) the addition of a definition for approved rehire employees, 2) a revision to the baseline jobs definition and 3) procedural changes relating to administration of the program.

Taken together, these proposed revisions will better align the proposed Rule with the department's original intent and the concerns brought forth by public comment. No fiscal or economic impact will result from the amendments proposed in this notice.

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 E. Motion Picture Production Tax Credit Program—Qualified Entertainment Company Payroll Tax Credit Program

§1623 General

A. Purpose. The purpose of this sub-chapter is to implement the Qualified Entertainment Company Payroll Tax Credit Program as established by Act 309 of the 2017 Regular Session of the legislature, contained within the Motion Picture Production Tax Credit Program, pursuant to the provisions of R.S. 47:6007.

B. Program Description. The Qualified Entertainment Company Payroll Tax Credit Program provides payroll tax credits as an inducement for qualified entertainment companies ("QEC"s) to permanently locate new or expand existing operations in Louisiana.

C. No other LED incentives for QEC payroll expenditures. A QEC shall not receive any other incentive administered by LED that is based directly upon any QEC

Payroll, for which the QEC is obligated or has received benefits under the QEC Contract.

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

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Entertainment Industry Development LR 44:

§1624 Definitions

A. Terms not otherwise defined in this sub-chapter shall have the same meaning given to them in R.S. 47:6007, unless the context clearly requires otherwise.

B. In this sub-chapter, the following terms shall have the meanings provided herein, unless the context clearly indicates otherwise.

Affiliate—

a. any business entity that is:

- i. controlled by the QEC;
- ii. a controlling owner of the QEC; or
- iii. controlled by an entity described in

Subparagraph a or b:

b. control, for purposes of this definition, means owning either directly or indirectly through control of or by another business entity:

- i. a majority of the voting stock or other voting interest of such business entity or the QEC; or
- ii. stock or other interest whose value is a majority of the total value of such business entity or the QEC;

c. a controlled or controlling business entity will be deemed a non-affiliate (not an affiliate) if the department determines that neither the QEC nor any of its controlling owners exercise authority over the management, business policies and operations of the business entity.

*Approved Rehire Employees—*a former employee who was previously on the payroll of the QEC, or QEC parent entity, subsidiary, or affiliate in Louisiana, but has been off such payroll for a period of at least four months, may be considered a new job if rehired into a position that is not part of the baseline jobs. When determining New Job qualification, at the discretion of LED, LED shall consider all relevant factors including but not limited to; ES-4's, W2's and QEC re-hiring practices, and the intent of the QEC payroll tax credit program to permanently locate new or expand existing operations in Louisiana.

*Baseline Jobs—*the number of employees of a QEC, including affiliates, working an average of 30 hours per week, during the payroll period including the twelfth of the month, in the month completed prior to the contract effective date, as verified on the applicable ES-4 form or equivalent filing form. Baseline jobs must be maintained in any year for which the QEC requests tax credits.

*Baseline Job Payroll—*W-2, Box 1 wages for baseline jobs.

*Contract Effective Date—*the date the application and application fee are received by LED, or a later contract effective date as agreed to between the parties. The contract effective date cannot be earlier than the date the application and application fee are received by LED.

Department—Louisiana Department of Economic Development, also known as “LED”

LDR—Louisiana Department of Revenue

Minimum Payroll Threshold—a minimum QEC Payroll of \$45,000 per New Job, or for a partial year employee, shall mean \$3,750 per month for each month from the date of initial employment.

New Jobs—

a. full-time employment in Louisiana, working an average of 30 hours or more per week;

b. filled by Louisiana residents;

c. at the project site; and

d. with the exception of Approved Rehire Employees, who were not previously on the QEC’s Louisiana payroll, 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 confirmed by an independent CPA in an annual expenditure verification report submitted to LED for review, and approved by the secretary. New Jobs shall not mean:

i. baseline jobs existing one month prior to contract effective date; or

ii. jobs located at facilities other than the approved Project Site.

Office—Office of Entertainment Industry Development, also known as “OEID”

Program Issuance Cap—for applications submitted on or after July 1, 2017, the office may issue no more than \$150,000,000 in tax credits (“total cap”) in any fiscal year, with \$7,500,000 reserved for qualified entertainment companies (“QEC cap”), \$7,500,000 reserved for Louisiana screenplay productions (“LA screenplay cap”), \$15,000,000 reserved for independent film productions (“independent film cap”), with the remaining \$120,000,000 available for general allocation to any state certified production (“general cap”).

Project Site—the facility name and street address, as stated in the QEC contract.

QEC Payroll—W-2, Box 1 wages. For a partial year employee, the minimum payroll threshold may be met if the payroll for the partial year employee meets or exceeds \$3,750.00 per month for each month from the date of initial employment.

QEC Payroll Tax Credits—a tax credit for expenditures related to QEC payroll, authorized by the Motion Picture Production Tax Credit Program, R.S. 47:6007.

Resident—a natural person who is required to file a Louisiana resident individual income tax return, as verified by independent CPA’s on the annual verification report.

Secretary—Secretary of the Department of Economic Development

Total Jobs—the number of baseline jobs plus new jobs.

Total Payroll—the amount of baseline jobs payroll plus new jobs payroll.

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

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Entertainment Industry Development LR 44:

§1625 QEC Application and Application Fee

A. Application

1. A QEC application form shall be submitted to the office, via registered mail or if available, submitted electronically, to include:

a. a detailed company description, explaining how the business is directly or indirectly engaged in the development of audio, visual, or both audio-visual entertainment products for public consumption;

b. number of current and proposed new employees, with payroll estimates and average hours worked per week;

c. disclosure of affiliates;

d. most recent ES-4 tax form;

e. any other additional information as requested by the office or the secretary.

B. Application Fee

1. A non-refundable application fee of 0.5 percent of the estimated total tax credits, with a minimum fee of \$500, and a maximum fee of \$15,000, shall be submitted with the QEC application, payable to the office, as required by R.S. 36:104.

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

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Entertainment Industry Development LR 44:

§1626 QEC Application Review and Qualification Determination

A. Application Review

1. When determining which applicants may qualify, the office and the secretary shall consider a number of discretionary factors, including but not limited to:

a. entertainment business type:

i. eligible business types- may include but not be limited to:

(a) visual effect companies;

(b) entertainment business back-office support

ii. ineligible business types- may include but not be limited to:

(a) telecommunication;

b. number and payroll of current and proposed new jobs;

c. location of facility that will be the project site;

d. number and location of similar entertainment business facilities in Louisiana;

e. business history, i.e. start-up company or track record of established business;

f. the impact of the business on the overall economy of the state;

g. conviction for a criminal offense related to obtaining or attempting to obtain tax credits;

h. availability of tax credits in any given year.

B. Qualification Determination

1. Upon a determination of qualification, LED will contact applicant to discuss contract terms and to request an expenditure verification report fee advance deposit of \$7,500.

2. Upon a determination of non-qualification, the office and the secretary shall issue a denial letter to the applicant indicating the reason for denial, and the Office shall provide written notice to the Senate Committee on

Revenue and Fiscal Affairs and the House Committee on Ways and Means. The denial letter shall be the final agency decision of LED.

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

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Entertainment Industry Development LR 44:

§1627 QEC Contract

A. Upon a determination of qualification, and receipt of the \$7,500 expenditure verification report fee advance deposit, the office and the secretary may enter into a QEC contract with an applicant, which shall include but not be limited to:

1. job and payroll estimates, per calendar year;
2. tax credit reservation schedule, per fiscal year;
3. expenditure verification report fees;
4. procedure for requesting final certification of tax credits;
5. requirements for eligibility to receive final certification of tax credits, including but not limited to retention of baseline jobs, establishment of new jobs and attainment of minimum payroll threshold;
6. term for a period of up to five years, as may be offered by the office and the secretary;
7. designation of a single project site in Louisiana—the QEC payroll tax credits the applicant shall receive will be based upon the operations at the project site;

B. A fee of \$250 shall be filed with a request for any contract amendment, including but not limited to, a revision to the tax credit reservation schedule, a change in ownership, a change in name or a change in location.

C. An applicant may have multiple QEC contracts covering multiple locations. The eligibility of each location shall be determined separately;

D. For each QEC contract, LED shall certify that the applicant has a net overall increase in employment statewide for each new job;

E. A QEC contract may, with the written approval of the office and the secretary, be transferred to a business entity purchasing or continuing the operation of a project site. Upon such transfer, the employment baseline shall be that of the transferee or purchaser during the 45 day period prior to the transfer or purchase;

F. The QEC contract may be renewed at the discretion of the office and the secretary, for an additional five years, if the applicant has complied with the terms of the QEC contract and has not performed any act, nor failed to perform any act, which would have made the applicant liable for suspension, and has otherwise complied with the provisions of R.S. 47:6007. The same approval process as used for the original application and QEC contract will be followed for renewal QEC contracts, including additional application and expenditure verification report advance deposit fees.

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

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Entertainment Industry Development LR 44:

§1628 QEC Final Certification Procedures

A. By March 1 of every year, QEC's may request final certification of credits by filing its employee W-2's with the office and its assigned CPA, and any other additional information as requested by LED to verify conformance with statutory requirements.

B. An expenditure verification report shall then be completed by an independent certified public accountant, licensed in the state of Louisiana and assigned by LED. Failure to submit W2's by March 1 may result in credit issuance being delayed into the next available fiscal year.

C. After receipt and review of the expenditure verification report, and any other supporting documentation, the office and the secretary shall issue a final tax credit certification letter to the QEC indicating the type, credit rate and amount of credits granted, in accordance with the provisional allocations and amounts set forth in the tax credit reservation schedule, or a written denial.

1. In the event that less than the reserved amount of tax credits has been verified, any unused credits will be released and made available for issuance by the office.

2. In the event that more than the reserved amount of tax credits has been verified, the office shall preliminarily issue tax credits in an amount not to exceed the total set forth in the tax credit reservation schedule, but may at its discretion, subsequently issue a supplemental tax credit for any excess expenditures, subject to availability of credits in any given fiscal year.

D. Tax credits shall be issued on a first come, first serve basis, until the QEC or total cap have been met, in accordance with program rules.

E. If the total amount of credits applied for in any particular year exceeds the total or QEC cap for that year, the excess shall be treated as having been applied for on the first day of the subsequent year.

F. After review of the expenditure verification report, final tax credit certification letter (if any), and any other pertinent factors, including but not limited to availability of tax credits in any given year, future year tax credit reservations may be revised, by amending the tax credit reservation schedule.

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

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Entertainment Industry Development LR 44:

Public Comments

Interested persons should submit written comments on the proposed Rules to Chris Stelly through the close of business on Wednesday, September 19, 2018 at 617 North Third Street, 11th Floor, Baton Rouge, LA 70802 or via email to Chris.Stelly@la.gov.

Public Hearing

A meeting for the purpose of receiving the presentation of oral comments will be held at 10 a.m. on Thursday, September 20, 2018 at the La Salle Building, Department of Economic Development, 617 North Third Street, Baton Rouge, LA 70802.

Anne G. Villa
Undersecretary

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