

# Notices of Intent

## NOTICE OF INTENT

### Department of Economic Development Office of Entertainment Industry Development

#### Motion Picture Production Tax Credit Program (LAC 61:I.1605 and 1607)

In accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., notice is hereby given that the Department of Economic Development proposes to amend the Rules for the Motion Picture Production Tax Credit Program (R.S. 47:6007 et seq.) to effect a reservation and allocation system under a new tax credit issuance cap provided by Act 309 of the 2017 Regular Session of the Louisiana Legislature.

#### Title 61

#### REVENUE AND TAXATION

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

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

#### Subchapter A. Motion Picture Production Tax Credit Program

#### §1605. Definitions

A. - B. ...

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*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”).

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

**HISTORICAL NOTE:** Promulgated by the Department of Economic Development, Office of Business Development, Office of Entertainment Industry Development and the Office of the Governor, Division of Administration, LR 36:53 (January 2010), amended by the Department of Economic Development, Office of Entertainment Industry Development, LR 43:300 (February 2017), LR 43:

#### §1607. Certification Procedures

A. - A.1.c.v. ...

2. All applicants shall participate in a career based learning and training program approved by the office. To meet this requirement, at the time of application, applicants may choose a method of participation from the list below:

a. provide a minimum of 3 paid internship positions provided to students enrolled in an accredited high school, community college, university or qualified community based program, for a minimum of 75 hours per student and a total of 225 hours; or

b. a minimum of 8 hours of classroom workshop provided to students enrolled in an accredited high school, community college, university or qualified community based program; or

c. a minimum of 8 hours of studio employment and professional skills tour provided to students enrolled in high school, community college, university or qualified community based program; or

d. a minimum of 8 hours of continuing education for educators or faculty to observe the set operations, post production and other specialized departments;

e. financial contribution or donation to a specific local educational agency or higher education institution specializing in arts, media and entertainment career oriented program. Financial contributions calculated at 0.25 percent of the estimated tax credit reservation; or

f. other method of participation approved by the office.

B. - B.3. ...

#### C. Initial Certification

1. Application Review Process, Provisional Allocation and Reservation of Tax Credits

a. Project-Based Production Tax Credit (for applications submitted prior to July 1, 2017)

i. After review and upon a determination of qualification, the office and the secretary shall issue an initial certification letter indicating the amount of tax credits certified for the state certified production, or a written denial.

b. Project-Based Production Tax Credit (for applications submitted on or after July 1, 2017)

i. Beginning July 1, 2017 and thereafter, the office will accept and review applications on a monthly basis. All applications received by the fifteenth of the month will be treated as received on the last business day of the month (“monthly initial certification pool”) and processed accordingly.

ii. After review and upon determination of qualification, the office and the secretary shall issue an initial certification letter, or a written denial. The initial certification letter will provisionally allocate tax credits based upon expected the cost report submission date and availability of tax credits in any given year.

iii. Tax credits provisionally allocated in the initial certification letter shall be reserved until 30 days following the identified start date of principal photography.

iv. The production company shall provide written evidence that principal photography has begun by the identified date by submitting documents such as call sheets, site visit reports from local film commission staff, or as otherwise approved by the office. Upon receipt, the office will issue an email confirmation, acknowledging the continued tax credit reservation and effectivity of the initial certification letter.

v. If the production company is unable to begin principal photography by the identified date, it shall provide written notice to the office and provide written reasons for

the delay and the anticipated new start date of principal photography. The office may, in its sole discretion, grant a one-time extension to such production company. Unless otherwise approved by the secretary for good cause shown, the extension shall not exceed 30 days.

vi. If the production company fails to provide appropriate written evidence that principal photography has begun by identified date or other approved date, the office will send production company a notice of disqualification and;

(a). the amount of credits reserved shall be added back into the available amount for that fiscal year, or rolled forward into the then current year, as applicable;

(b). the initial certification letter issued shall be deemed void, and the applicant shall be disqualified from earning any tax credits on the applicable state certified production;

(c). the applicant shall forfeit all application fees;

(d). any unused CPA advance deposit fees shall be refunded within 30 days;

vii. a production company so disqualified may re-submit a new application for the same project, which will be evaluated by the office as a new state certified production, with a new application date and subject to all applicable fee and filing requirements.

2. ...

### 3. Cap Management—Phase 1—Initial Certification—Tentative Reservation

a. The reservation of tax credits shall be administered on a first come, first serve basis, until any of the caps have been met:

- i. QEC;
- ii. LA screenplay;
- iii. independent film;
- iv. general; or
- v. total cap.

b. Qualifying LA screenplay or independent film projects shall be allocated credits first from the available LA screenplay or independent film caps. On the day that the LA screenplay or independent film caps are met, credits shall be reserved from any remaining general cap.

c. If the LA screenplay and independent film caps have not been met by April 30 of any year, any residual amount of unreserved credits may be available for general allocation by the office, in addition to any residual general cap.

d. If the QEC cap is not met in any fiscal year, any residual unreserved credits shall carry forward for use by QEC's in subsequent years.

e. On the day that the total or general cap is reached, the credits remaining for allocation shall be reserved on a prorated basis amongst the monthly initial certification submission pool.

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

4. Duration of Effect (for applications submitted prior to July 1, 2017)

a. - b. ...

5. Duration of Effect (for applications submitted on or after July 1, 2017)

a. Once an initial certification letter is issued, the applicant or official representative must countersign and return an original to the office, within 30 business days, acknowledging initial certification status and the reporting requirement for start date of principal photography.

b. The initial certification letter shall be effective for qualifying expenditures made within a period of 12 months prior to the date of application and 24 months after the date of initial certification letter, except that:

i. state certified productions for scripted episodic content ("SEC's"), with estimated expenditures of at least \$10,000,000 in state expenditures per calendar year, shall be issued an initial certification letter effective for qualifying expenditures made until 60 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 letter.

ii. when determining the amount and appropriate allocation and reservation of credits for SEC's, the office shall review all pertinent information, including but not limited to; whether the project is a pilot, TV series from a pilot formerly shot in Louisiana, a recurring TV series or a relocating TV series.

iii. unless otherwise approved by the office and the secretary, SEC tax credits will be allocated from the general cap, and initially reserved for two seasons. SEC applicants shall periodically provide updates to the office, and the initial certification letter may be subsequently revised to allow for additional allocations and reservations of credits for seasons three through five, if applicable.

### D. Final Certification; Audit Requirements

1. - 2.b. ...

### 3. Final Allocation and Issuance of Tax Credits

a. Project-Based Production Credit (for Applications Submitted prior to July 1, 2017)

i. After review and upon a determination of qualification, the office and the secretary shall issue a final certification letter indicating the amount of tax credits certified for the state certified production, or a written denial.

b. Project-Based Production Tax Credit (for applications submitted on or after July 1, 2017)

i. Beginning July 1, 2017 and thereafter, the office will accept and review requests for final certification on a monthly basis. Applicants shall have completed all required steps for certification of credits, and requests shall be evidenced by submission of a signed attestation form to the office. All requests received by the fifteenth of the month will be treated as received on the last business day of the month, ("monthly final certification submission pool") and processed accordingly.

ii. After review and determination of qualification, the office and the secretary shall issue a final certification letter, in accordance with the provisional allocations and amounts set forth in the initial certification letter, or a written denial.

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

iv. 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 indicated in the initial certification letter, 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.

4. Cap Management—Phase 2- Final Certification—Tax Credit Issuance

a. The issuance of tax credits shall be administered on a first come, first serve basis, until any of the caps have been met; QEC, LA screenplay, independent film, general or total cap.

b. Qualifying LA screenplay or independent film projects shall be issued credits first from the available LA screenplay or independent film caps. On the day that the LA screenplay or independent film caps are met, credits shall be issued from any remaining general cap.

c. If the LA screenplay and independent film caps have not been met by April 30 of any year, any residual amount of credits may be available for issuance by the office, in addition to any residual general cap.

d. If the total cap has not been met by May 30 of any year, the office shall review any projects with excess expenditures for which credits have neither been certified nor denied, and may issue supplemental tax credits from any remaining general cap. Such projects shall all be treated as received on June 15th and processed accordingly.

e. If the QEC cap is not met in any fiscal year, any residual credits shall carry forward for use by QEC's in subsequent years.

f. On the day that the total or general cap is reached, the credits remaining for allocation shall be issued on a prorata basis amongst the monthly final certification submission pool.

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

E. Appeal Process. In the event that an application for initial or final certification is denied:

1. - 2. ...

3. Initial certification letters that were issued to an applicant, but subsequently deemed void by the office, following a notice of disqualification for failure to begin principal photography by an agreed upon identified date or other approved date, shall not be subject to appeal.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:6007 and R.S. 36:104.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development, Office of Entertainment Industry Development and the Office of the Governor, Division of Administration, LR 36:55 (January 2010), amended by the Department of Economic Development, Office of the Secretary, Office of Business Development and the Louisiana Economic Development Corporation, LR 37:514 (February 2011), amended by the Department of Economic Development, Office of Entertainment Industry Development, LR 42:39 (January 2016), LR 43:

**Family Impact Statement**

The proposed Rule is not anticipated to have an impact on family formation, stability, and autonomy as described in R.S. 49:972.

**Poverty Impact Statement**

The proposed Rule is not anticipated to have an impact on poverty as described in R.S. 49:973.

**Small Business Analysis**

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

**Provider Impact Statement**

The proposed Rule is not anticipated to have an impact on providers of services as described in HCR 170 of the 2014 Regular Legislative Session.

**Public Comments**

Interested persons should submit written comments on the proposed Rules to Stephen Hamner through the close of business on Tuesday, September 26, 2017 at 617 North Third Street, 11th Floor, Baton Rouge, LA 70802 or via email to [stephen.hamner@la.gov](mailto:stephen.hamner@la.gov).

**Public Hearing**

A meeting for the purpose of receiving the presentation of oral comments will be held at 10 a.m. on Wednesday, September, 27, 2017 at the Department of Economic Development, 617 North Third Street, Baton Rouge, LA 70802.

Anne G. Villa  
Undersecretary

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES  
RULE TITLE: Motion Picture Production  
Tax Credit Program**

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

The proposed rule change will not result in any additional savings or expenditures for state governmental units, as it sets forth guidelines for reserving and allocating tax credits required by portions of Act 309 of the 2017 Legislative Session (See Part II) and better aligns the rules with statutory provisions and administrative practices. Although there were substantial program changes, any administrative duties brought about by the proposed rule will be carried out by existing departmental staff funded by the existing LED budget.

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

The proposed rule changes place front-end and back-end caps on film tax credit issuances and claims currently in statute into the LA Administrative Code. Act 309 of the 2017 Regular Session established the maximum amount of tax credit issuance by LED at \$150 M per fiscal year for productions applying on or after July 1, 2017. In addition, the maximum amount of credits that may be claimed in a fiscal year remains at \$180 M. as is presently outlined in statute. However, if credit claims are less than \$180 M in a given year, the deficiency amount is added to the following year claim cap, allowing claims in excess of \$180 M. While the front-end cap of \$150 M will potentially keep the cost of the program below \$180 M

annually, roughly \$280 M in legacy credits in the pipeline prior to Act 309's effective date and rates at which new credit issuances are claimed will create some variation in the amount of SGF revenues lost to the program each year.

There is no impact to local governmental units.

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

Firms who are eligible for film tax credits may realize a reduction in tax liabilities to the extent they qualify for the credit. However, reductions in tax liabilities will be offset by certification requirements that compel applicants to provide one of a number of services, including paid internships; classroom workshops to students of secondary and postsecondary institutions, as well community-based learning programs; studio employment and professional skills tours to students of secondary and postsecondary institutions, as well community-based learning programs; continuing education for educators or faculty to observe set operations, post-production, or other specialized departments; or a financial contribution to a specific local educational agency or a postsecondary institution specializing in arts, media, or entertainment career-oriented programs that is equal to 0.25% of the estimated tax credit reservation.

### IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

Companies receiving benefits under this program will continue to gain competitively over companies that do not receive the program's benefits. Furthermore, allocations within the \$150 M cap for qualified entertainment companies (\$7.5 M), Louisiana screenplay productions (\$7.5 M), and independent film productions (\$15 M) block off portions of available credits for certain types of firms. As a result, firms not qualifying for credits under the aforementioned allocations will only be able to receive credits under the "general cap," potentially limiting the amount of credits they may receive. However, in the event one or more of the allocation caps within the \$150 M is not met by April 30 of a given year, the remaining portion will revert to the "general cap."

Anne G. Villa  
Undersecretary  
1708#040

Gregory V. Albrecht  
Chief Economist  
Legislative Fiscal Office

## NOTICE OF INTENT

Department of Economic Development  
Office of the Secretary

Direct Bonding Assistance  
(LAC 19:11.903)

In accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., notice is hereby given that the Department of Economic Development proposes to amend the Rules for the Small Business Bonding Program to allow certain applicants up to an additional three years of access to the program.

### Title 19

## CORPORATIONS AND BUSINESS

### Part II. Small and Emerging Business Development Program

#### Chapter 19. Small Business Bonding Program

#### §903. Direct Bonding Assistance

##### A. Direct Bonding Assistance—Eligibility

1. All certified active small and emerging construction businesses, and all other certified SEBs (non-construction)

may be eligible for surety bond guarantee assistance not to exceed the lesser of 25 percent of contract or \$200,000 on any single project.

2. Beginning July 1, 2017, firms with previously approved SEBD certification status expiring after July 1, 2017 but prior to July 1, 2020, may be granted continued eligibility for the Direct Bonding Assistance Program for a period of up to three years, but no later than July 1, 2020.

3. All obligations, whether contractual or financial, will require the approval of the undersecretary.

B. - C.2. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:942.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, Division of Economically Disadvantaged Business Development, LR 24:430 (March 1998) amended by the Department of Economic Development, Office of Business Development, LR 29:547 (April 2003), LR 30:758 (April 2004), LR 36:52 (January 2010), LR 43:

#### Family Impact Statement

The proposed Rule is not anticipated to have an impact on family formation, stability, and autonomy as described in R.S. 49:972.

#### Poverty Impact Statement

The proposed Rule is not anticipated to have an impact on poverty as described in R.S. 49:973.

#### Small Business Analysis

The proposed Rule is anticipated to have a positive impact on small businesses as defined in the Regulatory Flexibility Act, by granting previously approved SEBD's continued eligibility for the Direct Bonding Assistance Program, for a period of up to three years.

#### Provider Impact Statement

The proposed Rule is not anticipated to have an impact on providers of services as described in HCR 170 of the 2014 Regular Legislative Session.

#### Public Comments

Interested persons should submit written comments on the proposed Rules to John Mathews through the close of business on Tuesday, September 26, 2017 at 617 North Third Street, 11th Floor, Baton Rouge, LA 70802 or via email to john.mathews@la.gov.

#### Public Hearing

A meeting for the purpose of receiving the presentation of oral comments will be held at 11 a.m. on Wednesday, September, 27, 2017 at the Department of Economic Development, 617 North Third Street, 11th Floor, Baton Rouge, LA 70802.

Mandi D. Mitchell  
Assistant Secretary

## FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Direct Bonding Assistance

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

The proposed rule change will result in SGR expenditure increases as a result of restarting a program that has been dormant since the end of FY 12. The proposed rule change amends rules associated with allowing non-construction firms certified as "small and emerging" to obtain bond guaranty assistance not to exceed 25% of a contract's value or \$200,000,