

2020 at the La Salle Building, La Belle Room, 617 North Third Street, Baton Rouge, LA 70802.

Anne G. Villa
Undersecretary

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES
RULE TITLE: Louisiana Entertainment
Development Fund**

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

There will be an increase in expenditures of the Department of Economic Development (LED) as a result of the rules promulgated to provide guidelines and application procedures for the Louisiana Economic Development Fund (Fund) created by Act 223 of 2017.

Act 223 of 2017 created the Louisiana Entertainment Development Fund for education development initiatives, matching grants for Louisiana filmmakers, a loan guarantee program, and a deal closing fund. Expenditures of the LED will consist of grant awards to non-profit arts or film organizations with a proven track record of organizing film festivals, film grant programs, fellowships, filmmaking labs, or other entertainment initiatives designed to champion indigenous filmmaking talent, as approved by LED. These awards may provide additional funding for indigenous filmmaker initiatives. Award amounts may vary at the discretion of the Department, with a maximum of \$100,000 per applicant, per year.

Administration of the awards will be carried out utilizing existing staff and resources at LED. Administration may also be handled by a third-party administrator (TPA). Should LED hire a TPA, administrative fees would be up to 10% of any award.

There may also be an increase in expenditures of those non-profit arts or film organizations to the extent that they successfully participate in the competitive grant program.

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

There will be an increase in revenues of the Department of Economic Development (LED).

Act 223 of 2017 provides that for film projects that apply to LED after July 1, 2017, a transfer fee of 2% of the tax credit transfer value is placed in the fund. A total of 25 percent is allocated to the Louisiana Department of Revenue (LDR) for administrative purposes and 75 percent to the Department of Economic Development for education development initiatives, matching grants for Louisiana filmmakers, a loan guarantee program, and a deal closing fund. The Department of Economic Development will see increased revenues as a result of this transfer fee. The Department estimates annual revenues as high as \$2.7 M could be generated based on the maximum transfer rate. However, actual total collections to date are approximately \$1.8 M. Since the transfer fee projections are occurring under the auspices of the \$150 M credit issuance and \$180 M claims caps, aggregate revenues for the state will not be affected.

Those non-profit arts or film organizations that organize film festivals, film grant programs, fellowships, filmmaking labs, or other entertainment initiatives designed to champion indigenous filmmaking talent may see an increase in their revenue as a result of the grant award, to the extent that they successfully participate in the competitive grant program.

The proposed rule change will not affect local governmental units.

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

Non-profit arts or film organizations may benefit from additional revenues should they choose to participate in the LED grant program. The cost to these entities may include the cost of some additional planning and paper work requirements associated with the application process, reports, and invoices for reimbursement. Those Louisiana businesses, including small businesses (mainly non-profit entities) in the entertainment industry will benefit from better trained and more productive filmmakers. Louisiana residents will benefit from enhanced employment opportunities in the Louisiana entertainment industry.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The program's goal is to make workers more employable in the Louisiana entertainment industry. The competitiveness of Louisiana businesses should be enhanced as employees become better equipped to adapt to the demands of this industry.

Anne G. Villa
Undersecretary
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Evan Brasseaux
Staff Director
Legislative Fiscal

NOTICE OF INTENT

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

**Sound Recording Investor Tax Credit Program
(LAC 61:I:Chapter 65)**

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 Sound Recording Investor Tax Credit Program (R.S. 47:6023) to align the rules with current statutory provisions and administrative practices.

Title 61

REVENUE AND TAXATION

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

**Chapter 65. Louisiana Sound Recording Investor Tax
Credit Program**

§6531. Purpose and Description

A. The purpose of this program is to encourage development in Louisiana of a strong capital and infrastructure base for sound recording productions in order to achieve an independent, self-supporting sound recording industry, and to encourage investments in multiple state-certified sound recording production projects.

B. Approvals and certifications as to whether a project qualifies as a state-certified production as required for Sound Recording Investor Tax Credits are not to be considered as entitlements for sound recording production companies, and the Louisiana Department of Economic Development shall have the discretion to determine whether or not each particular sound recording, meets the criteria for such qualification as provided herein.

C. These rules implement the Louisiana sound recording investor tax credit pursuant to R.S. 47:6023.

D. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:6023.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development, and the Department of Revenue, LR 34:1347 (July 2008), amended by the Department of Economic Development, Office of Business Development, Office of Entertainment Industry Development, LR 36:304 (February 2010), repromulgated by the Department of Economic Development, Office of Business Development, LR 45:881 (July 2019), amended by the Department of Economic Development, Office of Entertainment Industry Development, LR 46:

§6533. Definitions

A. The following terms shall have the meanings provided herein, unless the context clearly indicates otherwise.

Base Investment—the actual investment made and expended in the state by a state-certified production as production expenditures incurred in this state that are directly used in state-certified production or productions.

* * *

Investor—any individual or entity that makes an investment in a state-certified production, including but not limited to any individual or entity that is identified as a source of funds for a state certified production on its expenditure verification report, or any tax credit broker, individual or entity identified as an irrevocable designee for receipt of tax credits.

* * *

Project Completion—completion or end date outlined in the project application, or as otherwise approved in writing by LED.

Qualified Music Company or "QMC"—an entity authorized to do business in Louisiana, engaged directly or indirectly in the production, distribution and promotion of music, certified by the secretary as meeting program eligibility criteria, and executing a contract providing the terms and conditions for its participation.

* * *

Resident Copyright—the copyright of a musical composition written by a Louisiana resident or owned by a Louisiana-domiciled music company as evidenced by documents of ownership such as registrations with the United States copyright office or performing rights organizations which denote authors and music publishing entities.

* * *

State-Certified Musical Recording Infrastructure Project—repealed.

* * *

Source within the State—a physical facility in Louisiana, operating with posted business hours and employing at least one full-time equivalent employee.

State-Certified Production—a sound recording production or a series of productions occurring over the course of a 12-month period, including but not limited to master and demonstration recordings, and costs related to such production or productions that are approved by the Louisiana Department of Economic Development.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:6023.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development and the

Department of Revenue, LR 34:1347 (July 2008), amended by the Department of Economic Development, Office of Business Development, Office of Entertainment Industry Development, LR 36:304 (February 2010), LR 42:37 (January 2016), repromulgated by the Department of Economic Development, Office of Business Development, LR 45:881 (July 2019), amended by the Department of Economic Development, Office of Entertainment Industry Development, LR 46:

§6535. Rules of Application

A. The sound recording investor tax credit authorized by R.S. 47:6023(C) may be earned and claimed as follows.

1. There is authorized a credit against the state income tax for investments made in state-certified productions, which credit will be earned by investors at the time expenditures are certified by the Louisiana Department of Economic Development according to the total base investment certified for the sound recording production company per calendar year. No credit shall be allowed for any expenditures for which a credit was granted under R.S. 47:6007.

2. - 2.b.i. ...

c. for applications by qualified music companies ("QMC's") for state certified productions, received on or after June 18, 2019:

i. to the extent that the base investment by a QMC is expended on a sound recording production of a resident copyright, the investor shall be allowed an additional ten percent increase in the base investment rate.

3. - 7. ...

8. Expenditure Verification Report Fee. The department shall directly engage and assign a CPA to prepare an expenditure verification report on an applicant's cost report of production or project expenditures. Applicants shall submit an advance deposit at the time of application, and shall later be assessed the department's actual cost based upon an hourly rate as provided in R.S. 36:104.1, in the amounts set forth below:

a. for applicants with project expenditures of at least \$10,000 but less than \$25,000, an advance deposit of \$750, with a maximum fee of \$1,500;

b. for applicants with project expenditures of at least \$25,000, an advance deposit of \$1,500, with a maximum fee of \$3,000;

c. for applicants with project expenditures of at least \$50,000, but less than \$100,000, an advance deposit of \$2,500, with a maximum fee of \$5,000;

d. for applicants with project expenditures of more than \$100,000, an advance deposit of \$3,750, with a maximum fee of \$7,500;

e. any unused balance shall be refunded to the applicant within 60 days following receipt of CPA's final invoice and payment of all CPA costs.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:6023 and R.S. 36:104.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development and the Department of Revenue, LR 34:1348 (July 2008), amended by the Department of Economic Development, Office of Business Development, Office of Entertainment Industry Development, LR 36:305 (February 2010), LR 42:38 (January 2016), repromulgated by the Department of Economic Development, Office of Business Development, LR 45:881 (July 2019), repromulgated by the Department of Economic Development, Office of Business

Development, LR 45:881 (July 2019), amended by the Department of Economic Development, Office of Entertainment Industry Development, LR 46:

§6537. Certification

A. Initial Certification of State-Certified Productions

1. To obtain the approval of the department for a "state-certified production" as required by R.S. 47:6023(B)(5) and (6), the sound recording production company that will produce the sound recording production must submit a written request to the department for approval of the production as a "state-certified production" and setting forth the following facts, when applicable:

a - l.vii. ...

2. After review, and upon a determination of qualification, the department shall submit its initial certification of a project as an "initial state-certified production" to investors and to the Secretary of the Department of Revenue, containing a unique identifying number.

3.a. The applicant shall countersign the initial certification letter, acknowledging the conditions therein stated, and return a countersigned original to the department within 30 business days of receipt.

b. If a countersigned original is not returned to the department within the allotted time frame, it shall be nullified unless reissued or confirmed by the department.

4.a. For projects with applications received by LED prior to 2020 rule promulgation, the initial certification shall be effective for expenditures made no more than 12 months prior to the date of application and shall be valid until the project is complete.

b. For projects with applications received by LED on or after 2020 rule promulgation, the initial certification shall be effective for qualifying expenditures made within a period 12 months prior to the date of application and 12 months after the date of initial certification, as outlined in the initial certification letter. Expenditures outside of this approved initial certification period shall not qualify for tax credits.

B. Final Certification of Sound Recording Investor Tax Credits

1. For projects with applications received by LED prior to 2020 rule promulgation, upon project completion, or for projects with applications received by LED on or after 2020 rule promulgation, no later than six months after the expiration of the initial certification period, the applicant shall make a request to LED to proceed to final certification by submitting to the department a cost report of production expenditures to be formatted in accordance with instructions of the department, after which time all claims to tax credits shall be deemed waived. The applicant shall make all records related to the cost report available for inspection by the department and the CPA selected by the department to prepare the expenditure verification report. After review and investigation of the cost report, the CPA shall submit to the department an expenditure verification report. The department shall review such expenditures and shall issue a tax credit certification letter to the investors and the Louisiana Department of Revenue indicating the amount of tax credits certified for the state-certified production.

a. - c. ...

2. After receiving a written request from an investor and after the meeting of all criteria, the department shall

issue a letter of certification to such investor signed by the secretary reflecting the investor's name, the dollar amount of sound recording investor tax credits earned by the investor pursuant to R.S. 47:6023(C) through the date of such request, the calendar year in which the sound recording investor tax credits were earned by the investor, the state-certified production with respect to which the investor earned the sound recording investor tax credits, and the identifying number assigned to such state-certified production.

3. ...

4. Once certification of a project has been granted under the criteria established within this provision and pursuant to R.S. 47:6023, the granting of such credit will be based upon a first come, first serve basis of the approved cost report or audit and shall be set for a maximum aggregate amount not to exceed \$2,160,000 during any calendar year. For purposes of this Section the applicant will be considered the investor.

a. However, 50 percent of the aggregate amount of credits certified each year shall be reserved for QMC's.

b. No more than \$100,000 in tax credits may be granted per project, per calendar year.

5. - 6.c. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:6023.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development and the Department of Revenue, LR 34:1348 (July 2008), amended by the Department of Economic Development, Office of Business Development, Office of Entertainment Industry Development, LR 36:305 (February 2010), amended LR 37:310 (January 2011), LR 42:38 (January 2016), repromulgated by the Department of Economic Development, Office of Business Development, LR 45:883 (July 2019), amended by the Department of Economic Development, Office of Entertainment Industry Development, LR 46:

§6541. Illustrative Examples of Production Expenses

A. - C.1. ...

2. Producer fees may be subject to limitation as follows.

a. Applicants must provide detailed accounting and verification of expenditures relating to "all-in producer deals." For example, audits must reflect payments made to all vendors, and Producer Agreements should reflect the scope of services to be provided in Louisiana and include a clause allowing the State to audit the Producer's accounting records directly related to any expenses claimed for tax credits.

b. LED establishes a benchmark of up to 20 percent of total qualifying Louisiana production expenditures for Producers Fees (for the calculation, Louisiana production expenditures exclude any producer fees), which shall be considered fair market value. While applicants may enter into producer agreements with fees in excess of LED's approved benchmark, producer fee payments exceeding 20 percent may not be eligible to earn tax credits.

c. LED establishes a benchmark of up to 12 percent of total qualifying Louisiana production expenditures (for the calculation, Louisiana production expenditures exclude any producer fees), for related-party producer fee expenditures, which must be supported by a cost report or audit, when applicable, and documentation of services provided. Fair market value for related-party services

rendered must also be established by submission of third-party contracts for similarly-sized projects and scope of work or other documents as approved by LED. While productions may enter into agreements with fees in excess of LED's approved benchmark, payments exceeding 12 percent will not be eligible to earn tax credits unless the benchmark is exceeded through expenditures (supported by a cost report or audit, when applicable, and documentation of services provided) under third-party contracts only with no related-party expenditures.

3. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:6023.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development, Office of Entertainment Industry Development, LR 42:38 (January 2016), repromulgated by the Department of Economic Development, Office of Business Development, LR 45:885 (July 2019), amended by the Department of Economic Development, Office of Entertainment Industry Development, LR 46:

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 Statement

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

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.

Small Business Analysis

All entities requesting funding from this program must provide documents sufficient to show eligibility for and compliance with all requirements for funding. A handful of small businesses, mainly musicians and artists may be impacted, but the benefit from additional funding for their projects, at a nominal cost of some additional planning and paperwork associated with the application process, reports and invoices for reimbursement should provide a positive impact to any small businesses that choose to apply to the program.

Public Comments

Interested persons should submit written comments on the proposed Rules to Lacey Chataignier through the close of business on Friday, April 24, 2020 at Department of Economic Development, 617 North Third Street, 11th Floor, Baton Rouge, LA 70802 or via email to Lacey.Chataignier@la.gov.

Public Hearing

A meeting for the purpose of receiving the presentation of oral comments will be held at 1 p.m. on Monday, April 27, 2020 at the La Salle Building, La Belle Room, 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: Sound Recording Investor
Tax Credit Program**

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

There is no impact on expenditures of the Louisiana Department of Economic Development (LED) as a result of the proposed rule setting forth guidelines required by portions of Act 275 of 2017. Revisions align the rules with statutory provisions and administrative practices, including deleting provisions relating to the now sunset infrastructure program and reducing the costs of expenditure verification fees. Any administrative duties brought about by the proposed rule change will be carried out by utilizing existing staff and resources at LED.

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

There will be reductions in revenues to the State General Fund (Direct) to the extent that entities take advantage of this tax credit; any decrease is indeterminable at this time. All activity must operate within the auspices of the \$2.16 M program cap and \$100,000 project cap per calendar year.

The Sound Recording Investor Tax Credit Program, established in 2005, encourages development in Louisiana of a strong capital and infrastructure base for sound recording productions in order to achieve an independent, self-supporting sound recording industry. The current program cap is \$2.16 M; however, LED has never issued the maximum amount of credits allowed per year. The total credits certified per year for 2017-2020 are as follows: FY 2017 \$57,343; FY 2018 \$41,672; FY 19 \$43,278; FY 20 \$74,166.

The proposed rule change will not affect local governmental units.

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

There will be reduced costs for businesses as a result of reduced expenditure verification report fees. These fees are held in escrow and used by LED for payment of the expenditure verification report; any remaining balance is later refunded to the entity.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

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

Anne G. Villa
Undersecretary
2002#017

Evan Brasseaux
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

**Economic Development
Office of Entertainment Industry Development**

Sound Recording Investor Tax Credit Program
Qualified Music Company Payroll Tax Credit Program
(LAC 61:I.Chapter 71)

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