

ACT No. 412

2015 Regular Session

HOUSE BILL NO. 604

BY REPRESENTATIVE STOKES

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AN ACT

To amend and reenact R.S. 47:6007(B)(9) through (11) and (D)(2)(c) through (e), 6015(B)(3)(i)(i), (4), and (5)(introductory paragraph) and (F)(5), 6022(C)(10)(b)(vii), (F)(2) and (3)(b) and (c), 6023(B)(1), (D)(2)(c) and (d) and (4) and (5), and 6034(B)(4) and (7)(b), and (E)(1)(e) and (f) and to enact R.S. 36:104(B)(9) and 104.1, R.S. 47:6007(C)(1)(e) and (D)(2)(f), 6015(B)(6), 6023(D)(2)(e), and 6034(E)(2)(c), relative to tax credits; to provide for the powers and duties of the Department of Economic Development; to require an independent verification of expenditures for certification of certain tax credits; to establish procedures and program requirements; to provide definitions; to authorize the imposition of a fee; to authorize contracting with certain private entities; to establish requirements for certain contracting entities; to authorize rulemaking; to provide for applicability; to provide for effectiveness; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. R.S. 36:104(B)(9) and 104.1 are hereby enacted to read as follows:

§104. Powers and duties of the secretary of economic development

* * *

B. The secretary shall have the authority to:

* * *

(9) Establish and collect a verification report fee, as defined in R.S. 36:104.1, as required for a Department of Economic Development incentive program. The fee shall be established and collected as provided in R.S. 36:104.1, and as may be further provided by rule promulgated in accordance with the Administrative Procedure Act.

1 §104.1. Fee for independent certified public accountant or tax attorney verification
 2 reports required for certain Department of Economic Development programs

3 A. In order to protect the integrity of its programs by ensuring that tax credits
 4 are certified only for eligible expenditures, and to provide for uniformity in
 5 expenditure verification reporting, the Department of Economic Development shall
 6 directly engage and assign an independent certified public accountant, hereinafter
 7 referred to as "CPA" or tax attorney to prepare for the department any required
 8 expense or expenditure verification report on a tax credit applicant's cost report of
 9 expenditures or claimed expenditures for all of the following programs:

- 10 (1) Motion picture investor tax credit program, R.S. 47:6007.
- 11 (2) Research and development tax credit program, R.S. 47:6015.
- 12 (3) Digital interactive media and software tax credit program, R.S. 47:6022.
- 13 (4) Sound recording investor tax credit program, R.S. 47:6023.
- 14 (5) Musical and theatrical production income tax credit program, R.S.
 15 47:6034.
- 16 (6) Any other program as provided by statute or department rule.

17 B. For purposes of this Section, the term "certified public accountant", or
 18 "CPA", shall mean a person who meets all of the following qualifications:

- 19 (1) Maintains an active unrestricted original certified public account license.
- 20 (2) Maintains a current Louisiana certified public account firm permit.
- 21 (3) Actively participates in a Peer Review Program approved by the State
 22 Board of Certified Public Accountants of Louisiana.
- 23 (4) Completes eight hours of continuing professional education in approved
 24 Department of Economic Development tax credit attestation courses per reporting
 25 cycle.
- 26 (5) Is capable of conducting two levels of review within the CPA firm or, if
 27 not within the firm, then through a cooperative endeavor with another CPA for the
 28 review of a verification report prior to its issuance.

29 C. For purposes of this Section, the term "tax attorney" shall mean a person
 30 who meets all of the following qualifications:

1 (1) Admitted to the practice of law in Louisiana.

2 (2) Either possesses a Masters of Law in Taxation or Tax Law from an
 3 ABA-accredited law school, or is Board Certified as a Tax Law Specialist by the
 4 Louisiana Board of Legal Specialization.

5 (3) Practices in a law firm with an office in Louisiana.

6 (4) Completes six hours of continuing legal education in the federal research
 7 and development tax credit under Section 41 of the Internal Revenue Code per
 8 reporting cycle.

9 D. The applicant seeking certification of tax credits shall be responsible for
 10 and assessed an expenditure or expense verification report fee which shall be equal
 11 to the actual cost of the verification report. The fee shall not exceed twenty-five
 12 thousand dollars and shall be based upon either an hourly rate not to exceed two
 13 hundred twenty-five dollars per hour for contract services, or the pro rata cost of
 14 salary and benefits for a department-employed CPA.

15 E. The applicant seeking certification of tax credits shall be required to
 16 submit an up-front deposit of the expenditure or expense verification report fee,
 17 which shall not exceed fifteen thousand dollars, as required by the relative program
 18 statute or rules.

19 F. The applicant seeking tax credits shall make all records related to the tax
 20 credit application available to the CPA or tax attorney assigned by the department
 21 to prepare and submit to the department a verification report on the applicant's cost
 22 report of expenditures or expenses.

23 G. The term "verification report" shall include any agreed-upon procedure,
 24 tax opinion, attestation, or other report required by statute or department rule. Prior
 25 to submission to the department, a verification report shall require two levels of
 26 review either within a CPA firm, or a second review through a cooperative endeavor
 27 with another CPA.

28 Section 2. R.S. 47:6007(B)(9) through (11) and (D)(2)(c) through (e),
 29 6015(B)(3)(i)(i), (4), and (5)(introductory paragraph) and (F)(5), 6022(C)(10)(b)(vii), (F)(2)
 30 and (3)(b) and (c), 6023(B)(1), (D)(2)(c) and (d) and (4), and (5), and 6034(B)(4) and (7)(b),

1 and (E)(1)(e) and (f), are hereby amended and reenacted and R.S. 47:6007(C)(1)(e) and
2 (D)(2)(f), 6015(B)(6), 6023(D)(2)(e), and 6034(E)(2)(c) are hereby enacted to read as
3 follows:

4 §6007. Motion picture investor tax credit

5 * * *

6 B. Definitions. For the purposes of this Section:

7 * * *

8 (9) "~~Production audit~~ expenditure verification report" means ~~an audit~~ a report
9 issued by a qualified accountant who is unrelated to the motion picture production
10 company and that is a report of the qualified accountant's ~~audit~~ verification of the
11 motion picture production's cost report of production expenditures. The production
12 ~~audit~~ expenditure verification report shall contain an opinion from the qualified
13 accountant stating that the production's cost report of production expenditures
14 presents fairly, in all material aspects, the production expenditures expended in
15 Louisiana pursuant to the provisions of this Section. The production ~~audit~~
16 expenditure verification report shall require:

17 (a) ~~The production audit report to be~~ Be performed in accordance with the
18 ~~auditing~~ accounting standards generally accepted in the United States.

19 (b) ~~The production cost report to be~~ Be addressed to the party which has
20 engaged the qualified accountant, with a copy addressed to the motion picture
21 production company or motion picture investor tax credit applicant.

22 (c) ~~The production cost report to contain~~ Contain the qualified accountant's
23 name, address, and telephone number.

24 (d) ~~The production cost report to contain~~ Contain a certification that the
25 qualified accountant is unrelated to the motion picture production company.

26 (e) ~~The production cost report to be~~ Be dated as of the date of completion of
27 the qualified accountant's field work.

28 (f) ~~The production cost report to contain~~ Contain a statement of
29 acknowledgment by the qualified accountant that the state is relying on the qualified

1 ~~cost~~ production expenditure verification report in the issuance of the tax credits
 2 under the provisions of this Section.

3 (10) "Production expenditures" means preproduction, production, and
 4 postproduction expenditures in this state directly relating to a state-certified
 5 production, including without limitation the following: set construction and
 6 operation; wardrobes, makeup, accessories, and related services; costs associated
 7 with photography and sound synchronization, lighting, and related services and
 8 materials; editing and related services; rental of facilities and equipment; leasing of
 9 vehicles; costs of food and lodging; digital or tape editing, film processing, transfer
 10 of film to tape or digital format, sound mixing, special and visual effects; and
 11 payroll. This term shall not include expenditures for marketing and distribution,
 12 non-production related overhead, amounts reimbursed by the state or any other
 13 governmental entity, costs related to the transfer of tax credits, amounts that are paid
 14 to persons or entities as a result of their participation in profits from the exploitation
 15 of the production, the application fee, the production expenditure verification report
 16 fee, or state or local taxes.

17 (11) "Qualified accountant" means ~~an independent certified public~~
 18 ~~accountant authorized to practice in this state who has sufficient knowledge of~~
 19 ~~accounting principles and practices generally recognized in the film and television~~
 20 ~~industry.~~ a certified public accountant or "CPA" who meets all of the following
 21 qualifications:

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

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

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

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

1 shall make all records related to the tax credit application available to the department
2 and the accountant.

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

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

15 (d) The office and the secretary shall submit their initial certification or
16 written denial of a project as a state-certified production to investors and to the
17 secretary of the Department of Revenue indicating the total base investment which
18 shall be expended in the state on the state-certified production within sixty days of
19 their receipt of all required information. The initial certification shall include a
20 unique identifying number for each state-certified production.

21 ~~(d)(i) Prior to any final certification of the state-certified production, the~~
22 ~~motion picture production company~~ (e)(i) Upon project completion or at any time
23 after project costs are deemed final by the motion picture production company or
24 applicant, the applicant shall make a request to the office to proceed to final
25 certification by submitting to the office a cost report of production expenditures to
26 be formatted in accordance with instructions of the office. The applicant shall make
27 all records related to the cost report available for inspection by the office and the
28 qualified accountant selected by the office to prepare the production expenditure
29 verification report. After review and investigation of the cost report, the accountant
30 shall submit to the office and the secretary a production ~~audit~~ expenditure

1 verification report. The office and the secretary shall review the production ~~audit~~
 2 expenditure verification report and may require additional information needed to
 3 make a determination. Within one hundred twenty days of the receipt of the
 4 production ~~audit~~ expenditure verification report and all required supporting
 5 information, the office and the secretary shall issue a tax credit certification letter
 6 indicating the amount of tax credits certified for the state-certified production to the
 7 investors for all qualifying expenditures verified by the office. Any expenditures for
 8 which tax credits were neither denied nor certified due to insufficient information or
 9 other issues, the office and secretary shall diligently work to resolve the outstanding
 10 issues in a timely manner, and the office and secretary may subsequently issue a
 11 supplemental tax credit certification at the time of such resolution.

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

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

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

28 (ii) To publish, at completion of principal photography, a notice at least once
 29 a week for three consecutive weeks in local newspapers in regions where filming has

1 taken place in order to notify the public of the need to file creditor claims against the
2 film production company by a specified date.

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

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

8 §6015. Research and development tax credit

9 * * *

10 B.

11 * * *

12 (3) Each taxpayer seeking the credits authorized in this Section shall apply
13 to the Department of Economic Development for the credits. The taxpayer shall
14 remit an application fee of two hundred fifty dollars with the application. The
15 application shall include all of the following:

16 * * *

17 (i) A taxpayer who employs less than fifty employees may apply for credits
18 without providing a federal income tax return as required by Subparagraph (a) of this
19 Paragraph if all of the following criteria are met:

20 (i) ~~Unless waived by the secretary of the department, the taxpayer provides~~
21 ~~the department with a report from~~ The department shall engage and assign either a
22 certified public accountant authorized to practice in the state of Louisiana or a tax
23 attorney authorized to practice in the state of Louisiana to prepare and submit to the
24 department an expenditure verification report on the taxpayer's claimed qualified
25 research expenditures. The report shall be rendered based upon procedures and
26 regulations developed by the department in accordance with the Administrative
27 Procedure Act.

28 (aa) The taxpayer shall be responsible for payment of the expenditure
29 verification report fee in accordance with R.S. 36:104.1, and shall make all records

1 related to the tax credit application available to the certified public accountant or tax
2 attorney selected by the department to prepare the expenditure verification report.

3 (bb) The taxpayer will be assessed the actual cost for the expenditure
4 verification report fee. The maximum fee for the report shall be fifteen thousand
5 dollars for verification of an application with claimed qualified research expenditures
6 of up to one million dollars, and the maximum fee shall be twenty-five thousand
7 dollars for verification of an application with claimed qualified research expenditures
8 in excess of one million dollars.

9 (cc) At the time of application, the taxpayer shall submit a deposit of the
10 expenditure verification report fee of seven thousand five hundred dollars for an
11 application with claimed qualified research expenditures of up to one million dollars,
12 and a deposit of fifteen thousand dollars for an application with claimed qualified
13 research expenditures in excess of one million dollars.

14 * * *

15 (4) An expenditure verification report shall be required only for applicants
16 with less than fifty employees that have not filed for federal research and
17 development tax credit on IRS Form 6765-Credit for Increasing Research Activities
18 or that are not applicants for either the Small Business Technology Transfer Program
19 or the Small Business Innovation Research Program. Research and development tax
20 credits shall be certified only upon the receipt and approval by the Department of
21 Economic Development of an expenditure verification report as provided for in Item
22 (3)(i)(i) of this Subsection.

23 (5) The Department of Economic Development shall approve or disapprove
24 each application. No credits shall be granted to a taxpayer under this Section unless
25 the credit is approved by the Department of Economic Development.

26 ~~(5)~~(6) The following types of businesses that do not have a pending or issued
27 United States patent directly related to the qualified research expenditures claimed
28 under this Section are ineligible to apply for or receive benefits under this Section,
29 unless specifically invited by the secretary of the department to do so:

30 (a) Professional services firms as defined by departmental rule.

1 (b) Businesses primarily engaged in custom manufacturing and custom
2 fabricating as defined by departmental rule.

3 * * *

4 F. The department shall administer the provisions of this Section and shall
5 have the following powers and duties in addition to those granted by other laws of
6 this state:

7 * * *

8 (5) To ~~audit~~ verify all relevant records and accounts of any taxpayer
9 applying for credits provided for by this Section.

10 * * *

11 §6022. Digital interactive media and software tax credit

12 * * *

13 C. Definitions. For the purposes of this Section:

14 * * *

15 (10)

16 * * *

17 (b) "Production expenses" shall not include any of the following:

18 * * *

19 (vii) Any application fee, expense verification report fee, or state or local
20 taxes.

21 * * *

22 F. Administration.

23 * * *

24 (2) Application. A company seeking to participate in the tax credit program
25 shall apply to the department through an application process established by the
26 department.

27 (i) The office shall directly engage and assign a certified public accountant
28 to perform an expense verification report on an applicant's cost report of production
29 expenses. The applicant shall be responsible for payment of the expense verification

1 report fee in accordance with R.S. 36:104.1, and shall make all records related to the
2 tax credit application available to the accountant.

3 (ii) The applicant will be assessed the office's actual cost for the expense
4 verification report fee. The maximum fee for the report shall be fifteen thousand
5 dollars for verification of a cost report reflecting production expenses of up to one
6 million dollars, and the maximum fee shall be twenty-five thousand dollars for
7 verification of a cost report reflecting production expenses in excess of one million
8 dollars.

9 (iii) At the time of application, the applicant shall submit to the office a
10 deposit of the expenditure verification report fee of seven thousand five hundred
11 dollars for a production with qualified production expenses projected to be no more
12 than one million dollars, and a deposit of fifteen thousand dollars for those projected
13 to be in excess of one million dollars.

14 (3) Certification.

15 * * *

16 ~~(b) Prior to final certification of tax credits of a state-certified production or~~
17 ~~any portion thereof, the company~~ Upon project completion or no more than once
18 annually, the applicant shall make a request to the office to proceed to final
19 certification by submitting to the office a cost report of production expenses to be
20 formatted in accordance with instructions of the office. The applicant shall make all
21 records related to the cost report available for inspection by the office and the
22 certified public accountant selected by the office to prepare the expense verification
23 report on the cost report of production expenses. After review and investigation of
24 the cost report, the accountant shall submit to the office a cost report of production
25 expenditures. The report of expenditures shall be subject to an agreed-upon
26 procedures engagement conducted by a certified public accountant in accordance
27 with statements on standards for attestation engagements established by the
28 American Institute of Certified Public Accountants. The accountant shall issue a
29 report in the form of procedures and findings. The accountant shall be a certified
30 public accountant licensed in the state of Louisiana and shall be an independent third

1 ~~party unrelated to the company. The agreed-upon procedures shall be established by~~
 2 ~~the office and secretary, with assistance from the Society of Louisiana Certified~~
 3 ~~Public Accountants.~~ an expense verification report. The ~~department~~ office may
 4 request additional ~~audits~~ expense verification reports for any additional cost
 5 reports of the project expenditures for production expenses, the cost of which shall
 6 be borne by the company.

7 (c) ~~Upon completion of all or a portion of a state-certified production, the~~
 8 Digital interactive media and software tax credits shall be certified only upon the
 9 receipt and approval by the office of an expense verification report submitted by a
 10 certified public accountant in accordance with the provisions of Subparagraph (b) of
 11 this Paragraph. The office shall review the ~~production expenses and, if approved by~~
 12 ~~the office and secretary,~~ expense verification report, and for those expenses found
 13 to be qualified by the department shall issue a final tax credit certification letter to
 14 the company. The certification letter shall include the identifying number assigned
 15 to that state-certified production in the initial certification.

* * *

§6023. Sound recording investor tax credit

* * *

B. Definitions. For the purposes of this Section:

20 (1) "Base investment" shall mean the actual investment made and expended
 21 in the state by a state-certified production as production-related costs or as capital
 22 costs of a state-certified sound recording infrastructure project. Expenditures
 23 comprising the base investment shall not include the expenditure verification report
 24 fee paid by the sound recording production company for purposes of verification of
 25 the company's cost report for production or project expenditures.

* * *

D. Certification and administration.

* * *

(2)

* * *

1 (c)(i) The Louisiana Department of Economic Development shall directly
2 engage and assign a certified public accountant to prepare an expenditure verification
3 report on a sound recording production company's cost report of production or
4 project expenditures. The applicant shall be responsible for payment of the
5 expenditure verification report fee in accordance with R.S. 36:104.1, and shall make
6 all records related to the tax credit application available to the department and the
7 accountant.

8 (ii) The applicant will be assessed the department's actual cost for the
9 expenditure verification report fee. The maximum fee for the report shall be five
10 thousand dollars for verification of a cost report reflecting production or project
11 expenditures of between five thousand dollars and fifty thousand dollars, and a
12 maximum fee of fifteen thousand dollars for verification of a cost report reflecting
13 production or project expenditures in excess of fifty thousand dollars.

14 (iii) At the time of application, the applicant shall submit a deposit of the
15 expenditure verification report fee of two thousand five hundred dollars for
16 productions or projects with qualified expenditures projected to be between five
17 thousand dollars and fifty thousand dollars, and a deposit of five thousand dollars for
18 those projected to be in excess of fifty thousand dollars.

19 (d) The Louisiana Department of Economic Development shall submit its
20 initial certification of a project as a state-certified production or a state-certified
21 sound recording infrastructure project to investors and to the secretary of the
22 Department of Revenue. The initial certification shall include a unique identifying
23 number for each state-certified production or state-certified project.

24 ~~(d) Prior to any certification of the state-certified production or infrastructure~~
25 ~~project, the sound recording production company shall submit to the Louisiana~~
26 ~~Department of Economic Development a cost report of production or project~~
27 ~~expenditures which the Louisiana Department of Economic Development may~~
28 ~~require to be prepared by an independent certified public accountant. The Louisiana~~
29 ~~Department of Economic Development~~

1 (e) Upon project completion, the applicant shall make a request to the
2 Louisiana Department of Economic Development to proceed to final certification by
3 submitting to the department a cost report of production or project expenditures to
4 be formatted in accordance with instructions of the department. The applicant shall
5 make all records related to the cost report available for inspection by the department
6 and the accountant selected by the department to prepare the expenditure verification
7 report. After review and investigation of the cost report, the accountant shall submit
8 to the department an expenditure verification report. Sound recording investor tax
9 credits shall be certified only upon the receipt and approval by the department of an
10 expenditure verification report submitted by a certified public accountant in
11 accordance with this Subparagraph. The department shall review such expenditures
12 and the expenditure verification report, and for those expenditures found to be
13 qualified the department shall issue a tax credit certification letter to the investors
14 indicating the amount of tax credits certified for the state-certified production or
15 state-certified infrastructure project.

* * *

17 ~~(4) Any taxpayer applying for the credit shall be required to reimburse the~~
18 ~~Louisiana Department of Economic Development for any audits required in relation~~
19 ~~to granting the credit.~~

20 (5) With input from the Legislative Fiscal Office, the Louisiana Department
21 of Economic Development shall prepare a written report to be submitted to the
22 House Committee on Ways and Means and the Senate Committee on Revenue and
23 Fiscal Affairs no less than sixty days prior to the start of the Regular Session of the
24 Legislature in 2007, and every second year thereafter. The report shall include the
25 overall impact of the tax credits, the amount of the tax credits issued, the number of
26 new jobs created, the amount of Louisiana payroll created, the economic impact of
27 the tax credits and sound recording industry, the amount of new infrastructure that
28 has been developed in the state, and any other factors that describe the impact of the
29 program.

* * *

1 §6034. Musical and theatrical production income tax credit

2 * * *

3 B. Definitions. For the purposes of this Section:

4 * * *

5 (4) "Infrastructure expenditures" means expenditures directly related to a
6 state-certified infrastructure project or state-certified higher education infrastructure
7 project including land and land acquisition costs, construction costs, design fees,
8 furniture, fixtures, and equipment purchased subject to a sale agreement or capital
9 lease. Infrastructure expenditures shall not include indirect costs such as general
10 administrative costs, insurance, ~~or~~ any costs related to the transfer or allocation of
11 tax credits, or the expenditure verification report fee. The Department of Economic
12 Development may determine whether expenditures submitted as production-related
13 costs of capital costs related to an infrastructure facility represent legitimate
14 expenditures for the actual costs of related goods or services that have economic
15 substance and a business purpose related to the certified production or facility, or
16 such costs constitute constructive dividends, self-dealing, inflated prices or similar
17 transactions entered into for the purpose of inflating the amount of tax credits earned
18 rather than for the benefit of the production or facility.

19 * * *

20 (7)

21 * * *

22 (b) "Production expenditures" shall not include any indirect costs, any
23 expenditures later reimbursed by a third party, and costs related to the transfer of the
24 tax credits, ~~or~~ any amounts that are paid to persons or entities as a result of their
25 participation in profits from the exploitation of the production, or the expenditure
26 verification report fee.

27 * * *

28 E. Certification and administration:

29 (1)

30 * * *

