

August 2023

Overview of 2023 Legislative Session changes to the Motion Picture Production Tax Credit Program

Act 411 (HB 562) extended the motion picture production tax credit program by six years and made several administrative changes.

This overview summarizes the changes, for informational purposes and general guidance, but is subject to the actual language of this enactment, and to further requirements as may be provided by the Louisiana Department of Revenue (LDR) as well as rules promulgated by Louisiana Economic Development (LED) under the Administrative Procedures Act.

I. Sunset Extension: July 1, 2031

The new law extends the program by six years, revising the application submission deadline from July 1, 2025 to July 1, 2031.

Applications received **prior to** July 1, 2031 will continue to be processed and, if applicable, tax credits may be awarded after this date, in accordance with La. R.S. 47:6007 and program rules.

II. Revised Louisiana Promotional Graphic Requirement

Film productions are still required to acknowledge the financial assistance of the state of Louisiana in the making of their project, however, the logo and other requirements are being tweaked as follows:

As a general rule state certified productions with applications received on or after July 1, 2023 will be required to:

1) **(New Logo)** Include up to a five-second static or animated graphic in the end credits before the below-the line crew crawl for the life of the production, during each broadcast worldwide if applicable; **and**

2) **(Promotional Piece)** Provide LED with an electronic press kit, customized video, or alternative asset, as may be agreed to by LED, for promotional use by LED.

Exception: commercials, music videos, or other state-certified productions that are prohibited by federal law or contractual requirements from utilizing the promotional Louisiana graphic may use an alternative marketing option as approved by LED.

III. Transfer fee allocation / Entertainment Development Fund

LED is still to receive 75% of transfer fees for allocation to the Entertainment Development Fund, for uses to include: motion picture and television education development initiatives, matching grants for Louisiana filmmakers, Louisiana workforce development programs, and other motion picture and television related programs as determined by rule.

IV. Delinquent tax filing clearance requirement

No motion picture production tax credit may be earned, certified, issued to, transferred by, or used to reduce a Louisiana tax liability if there exists a delinquent federal, state or local tax obligation. Compliance with this requirement shall now be certified by the motion picture production company, irrevocable designee, taxpayer, or claimant before any credit may be certified, transferred, or sold.

V. Detailed vendor listing to be made available to the CPA

Program applicants shall still be required to make all records related to the tax credit application available for inspection by the CPA, moving forward for applications received on or after July 1, 2023 these records shall now specifically include a detailed listing of the dates and amounts of all Louisiana expenditures, including the vendor's address and zip code.

VI. LED tax credit reservation system and revised format Initial Certification Letter

The aggregate dollar amount of tax credits issued for all program applications remains at \$150 million per fiscal year. However, there is no longer a requirement to reserve specific amounts of tax credits for particular project types or production sizes, or to provisionally allocate tax credits in the initial certification letter. LED will therefore reformat its initial certification letter template accordingly.

For questions, please contact:

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Revenue Information Bulletin No. 23-023
October 12, 2023
Income Tax

Changes Applicable to Motion Picture Tax Credits
Act 411 of the 2023 Regular Session

Act 411 of the 2023 Regular Session of the Louisiana Legislature (“Act 411”) prohibits a taxpayer from earning or utilizing a motion picture production or motion picture infrastructure tax credit, (“MPC”) pursuant to La. R.S. 47:6007, if the taxpayer is delinquent in a federal, state or local tax obligation, including the filing of tax returns and payment of taxes (“prohibition”). The purpose of this bulletin is to provide guidance on Act 411 as it concerns the prohibition, to clarify the exception applicable to the prohibition, and to explain the certification process.

Application of the Prohibition

Act 411 enacted La. R.S. 47:6007(C)(8)(a), which expressly prohibits any MPC from being earned, certified, issued, transferred, or used to reduce a Louisiana income tax liability by a taxpayer who has failed to file or pay any federal, state, or local tax obligation. For purposes of the prohibition, “taxpayer” includes any motion picture production company, irrevocable designee, taxpayer or claimant seeking to earn or utilize an MPC. The prohibition shall continue until all delinquent returns have been filed, all payments have been made, and, when appropriate, a Notice of Cancellation or equivalent form has been properly filed and recorded.

The taxpayer must self-certify that all federal, state, and local tax obligations are current and in good standing, or that, alternatively, an exception to the requirement is applicable to the tax obligation at issue before any credit can be certified, transferred, sold or otherwise used. For such purposes, taxpayers with a payment plan that is current and in good standing will be considered compliant with regard to any tax obligations covered by the agreed upon payment plan. A taxpayer may not rely on an outdated certification¹ or a certification issued by any other party.

Exception

Louisiana Revised Statute 47:6007(C)(8)(b) establishes the single exception which states that the prohibition shall not apply to any tax liability that has been properly protested, or appealed by the motion picture production company pursuant to La. R.S. 47:1561. To qualify for this exception, the action initiated by the motion picture production company must be in

¹ A certification submitted by a taxpayer shall be valid as to the submitting taxpayer for a period of 30 days from the date received, during which an additional certification shall not be required.

A Revenue Information Bulletin (RIB) is issued under the authority of LAC 61:III.101 (D). A RIB is an informal statement of information issued for the public and employees that is general in nature. A RIB does not have the force and effect of law and is not binding on the public or the Department.

active status and no final, non-appealable, adverse judgment has been rendered by a court of competent jurisdiction against the taxpayer.

Certification

A taxpayer seeking to earn, certify, transfer or otherwise utilize an MPC must follow the instructions, which correspond to the manner in which the MPC is being utilized, as shown below:

1. Registration

Taxpayers seeking to register an MPC with the Tax Credit Registry shall, upon request of the Department of Revenue, electronically submit Form R-90150, *Taxpayer Certification of Compliance of Tax Obligations for the Motion Picture Production Credit*, to: TaxCredit.Registry@la.gov.

2. Claimed on a Return

Taxpayers seeking to utilize an MPC on a tax return for the purpose of reducing a Louisiana income tax liability shall include a completed Form R-90150, *Taxpayer Certification of Compliance of Tax Obligations for the Motion Picture Production Credit*, along with Form R-10611, *Motion Picture Investment Tax Credit Schedule*, and Form R-6135, *Credit Registration Form*, attached to the return.

3. Buy-back/Transfer

Taxpayers seeking to transfer an MPC either to the state as a buy-back or to a third-party² shall include a completed Form R-90150, *Taxpayer Certification of Compliance of Tax Obligations for the Motion Picture Production Credit*, along with the Form R-6140, *Credit Utilization Form*, and Form R-6135, *Credit Registration Form*.

4. Payment

Taxpayers seeking to utilize a purchased MPC as payment for an outstanding income tax liability³ shall submit a completed Form R-90150, *Taxpayer Certification of Compliance of Tax Obligations for the Motion Picture Production Credit*, along with Form R-6170, *Transferable Credit Payment Voucher*, and Form R-6135, *Credit Registration Form*.

Questions concerning this publication may be submitted by email to TaxCredit.Registry@la.gov.

Kevin J. Richard, CPA
Secretary

² Note the option to transfer to a third-party exists only for MPCs applied for before July 1, 2017. Act 309 of the 2017 Regular Session eliminated transferability of MPCs relative to third parties.

³ Note the option to utilize a purchased MPC for payment of an outstanding tax liability exists only for MPCs applied for before July 1, 2017. Act 309 of the 2017 Regular Session eliminated transferability of MPCs to third parties.

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June 30, 2017

Overview of 2017 Legislative Session changes to the Motion Picture Production Tax Credit Program

The following legislation made significant changes to the motion picture production tax credit program: Act 309 (SB 254), Act 223 (HB 508), and Act 384 (SB 177).

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

I. Caps (Act 309)

A. LED Total Program Issuance Cap

The aggregate dollar amount of tax credits issued for all applications for state-certified productions received on or after July 1, 2017 shall not exceed \$150 million per fiscal year.

Cap reservations by Specific Project Type or Production Size:

1. 5% of the \$150 million issuance cap (\$7.5 million) shall be reserved for Qualified Entertainment Companies. Any remaining amount shall carryforward into the following fiscal year.
2. 5% of the \$150 million issuance cap (\$7.5 million) shall be reserved for Louisiana screenplay productions. Any remaining amount does not roll over; however, any remaining amount can be applied to other state certified productions.
3. 10% of the \$150 million issuance cap (\$15 million) shall be reserved for independent film productions. The remaining amount does not roll over; however, any remaining amount can be applied to other state certified productions.
4. The remaining 80% of the \$150 million issuance cap (\$120 million) is unreserved and may be applied to any size production. Any remaining amount does not roll over in the following fiscal year.

B. LDR Taxpayer Claims cap

Beginning July 1, 2017, tax credit claims and transfers to the State (buy-back) shall be limited to an aggregate total of \$180 million each fiscal year. LDR administers and regularly provides public reports on the status of the claims cap.

C. LED Individual project issuance cap

For applications for state-certified productions received on or after July 1, 2017, the maximum credits certified by LED for a single state-certified production shall be \$20 million, which may be structured over two or more years in the initial certification letter.

EXCEPTION: State-certified productions for scripted episodic content may be granted up to \$25 million in credits per season.

D. LED Individual salary cap

For applications for state-certified productions received on or after July 1, 2017, the maximum amount of qualifying payroll expenditures per individual shall be \$3 million. Payroll payments in excess of \$3 million made directly or indirectly to an individual or loan-out shall be excluded.

II. Credit Rates (Act 309)

Applications for state-certified productions received on or after July 1, 2017 may be eligible for the following credit rates:

A. Base Investment Credit

1. Base Rate

State-certified productions with a total base investment greater than \$300,000, or for Louisiana screenplay state-certified productions with a total base investment equal to or greater than \$50,000, a tax credit of 25% of the base investment may be allowed.

2. Louisiana Screenplay

State-certified productions with expenditures equal to or greater than \$50,000, but no greater than \$5 million, based upon a screenplay created by a Louisiana resident, may be eligible for an increased 10% credit of the base investment (35% total).

3. Out-of-Zone Filming

State-certified productions that have their production office and at least sixty percent of principal photography based and occurring outside of the New Orleans Metropolitan Statistical Area (NOLA-MSA) may be eligible for an increased 5% credit of base investment (30% total or 40% total for a Louisiana screenplay shot out of the zone).

In NOLA-MSA Zone: Orleans Parish, Jefferson Parish, Plaquemines Parish, St. Bernard Parish, St. Charles Parish, St. James Parish, and St. Tammany Parish.

Out-of-Zone: All other parishes including St. John the Baptist Parish.

B. Additional Payroll & Visual Effects (VFX) Credits

1. Louisiana resident payroll

Compensation for services paid directly to a Louisiana resident may be eligible for an additional 15% credit for qualified Louisiana resident payroll only. (Payments made to a loan-out company are not eligible for this additional credit).

2. Visual Effects (VFX)

If at least 50% of the VFX budget is expended for services performed in Louisiana by an approved QEC, or a minimum of \$1 million in qualified VFX expenditures are made in Louisiana, an additional 5% credit may be allowed on the qualified VFX spend only.

C. Maximum Credit Rate

Productions may be eligible for an increased base investment rate and/or additional credits for Louisiana Payroll or VFX expenditures; however, the maximum tax credit that can be earned by any production is 40% of the base investment.

III. Qualified Entertainment Company (QEC) (Act 309)

A. Qualified Entertainment Company

Beginning July 1, 2017, a business engaged in the development or distribution of audio, visual, or both audio and visual entertainment products for public consumption, directly or indirectly, as approved by LED may be eligible for credits on their annual W-2 wages upon the creation of five net new jobs employing Louisiana residents at the following rates:

1. 15% for each new job whose wages are equal to or greater than \$45,000 per year, up to \$66,000 per year.
2. 20% for each new job whose wages are equal to or greater than \$66,000 per year, but no greater than \$200,000 per year.

B. QEC Caps

1. Individual Salary

The maximum amount of qualifying QEC payroll expenditures shall be \$200,000 per person per year. No tax credits shall be earned for payroll expenditures in excess of \$200,000 per person per year.

2. Individual Project

The maximum amount of credits that may be granted for a single QEC shall not exceed \$1 million per year.

IV. Transfer Fees (Act 223)

A. Transfer Fees

Notices of tax credit transfers submitted to LDR shall include a fee as follows:

1. For projects with applications submitted to LED prior to July 1, 2017, a fee of \$200 per transferee shall be remitted to LDR.
2. For projects with applications submitted to LED on or after July 1, 2017, a fee of 2% of the transfer value shall be applicable.

B. Transfer Fee Allocation

25% of the transfer fees shall be allocated to the Department of Revenue for administrative purposes.

75% of the transfer fees shall be allocated to Louisiana Economic Development for the Louisiana Entertainment Development Fund to provide for education development initiatives, matching grants for

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Louisiana filmmakers, a loan guarantee program and a deal closing fund. Specific allocations within the fund shall be determined by rule.

V. Buy-back, Transferability, and Legacy Credits (Act 309)

A. Buy-back Rates

Credits that have been certified by LED may be transferred to LDR (otherwise known as “buy-back”) as follows:

1. For projects that apply to LED prior to July 1, 2017, either the motion picture production company (applicant) or its irrevocable designee may transfer the credits to LDR, or under certain circumstances, taxpayers / legacy credit holders, may transfer the credits to LDR at a buy-back rate of 85%.
2. For projects that apply to LED on or after July 1, 2017, either the motion picture production company (applicant) or its irrevocable designee may transfer the credits to LDR at a buy-back rate of 90%.

B. Transferability

For applications received on or after July 1, 2017, credits may not be transferred or sold to another taxpayer. Credits may only be applied directly against the taxpayer’s own income tax liability or transferred back to the state (buy-back).

C. Legacy Credits

A “legacy credit” is a credit is defined as either a credit certified in a final certification letter issued before July 1, 2017 that has not expired, a credit that has not been claimed on a tax return filed before July 1, 2017 or a credit that has not been transferred to LDR prior to July 1, 2017. A legacy credit that is recorded in the Tax Credit Registry prior to January 1, 2018 may be transferred to LDR for 85% of the face value of the credit. A maximum of \$10 million in legacy credits per fiscal year for each transferor may be paid out.

VI. Miscellaneous Provisions (Act 309 & Act 384)

A. Non-qualifying items

1. Music Festivals are not eligible for participation in the Motion Picture Production Tax Credit Program.
2. Expenditures for catering and craft services shall not qualify unless such expenditures are made to a source within the state.
3. Expenditures for procurement company services shall qualify only if the procurement company vendor meets certain eligibility criteria as delineated in Act 309.

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B. Logo requirement

For applications received on or after July 1, 2017, the state-certified production shall include a Louisiana promotional graphic or an alternative marketing option (which may include a donation to a Louisiana nonprofit film grant program), as approved by LED.

C. Career Based Learning and Training Requirement

For applications received on or after July 1, 2017, the state-certified production shall participate in a career-based learning and training program approved by LED (approved programs and minimum criteria shall be established through rule).

D. Forced Withholding

In order for a payment for services to qualify, excluding any amount that is otherwise not subject to the withholding requirements imposed by federal and state law and regulations, the production shall withhold at a rate determined in accordance with an employee's withholding allowance certificate, L4 or the highest individual rate in effect at the time if there is no employee withholding allowance certificate, in accordance with guidance by LDR.

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