

NOTICE OF INTENT

Department of Revenue Policy Services Division

Public Registry of Motion Picture Investor Tax Credit Brokers (LAC 61:III.2701)

Under the authority of R.S. 15:587, R.S. 47:287.785, R.S. 47:295, R.S. 47:1511, and R.S. 47:6007 and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Department of Revenue, Policy Services Division, proposes to adopt LAC 61:III.2701.

The primary purpose of this proposed regulation is to create a Public Registry of Motion Picture Investor Tax Credit Brokers as required by Act 451 of the 2015 Regular Session of the Louisiana Legislature.

Title 61

REVENUE AND TAXATION Provisions

Chapter 27. Transferable Income and Franchise Tax Credits

§2701. Public Registry of Motion Picture Investor Tax Credit Brokers

A. This Section is applicable to all persons or persons employed by or representing an entity engaged in the sale or brokerage of motion picture investor tax credits which are granted, issued or authorized by the state pursuant to R.S. 47:6007. Every person who meets any of the below-provided requirements shall be subject to the requirements of R.S. 47:6007(C)(7).

B. Definitions

Actively Participate—any person or person employed by or representing an entity in a sale/brokerage of motion picture tax credits when the person:

a. holds himself/herself out to be engaged in the business of selling or brokering motion picture investor tax credits either on their own behalf or on behalf of the entity; or

b. has a history of frequent, regular, and repeated sales of motion picture investor tax credits either on their own behalf or on behalf of the entity; or

c. did not purchase the credits at issue for his/her/its own personal use. Any person failing to meet any of the above-mentioned criteria shall be presumed a non-seller or non-broker and thus not subject to the requirements of R.S. 47:6007(C)(7).

Broker—any person or person employed by or representing an entity which facilitates the sale of a tax credit issued pursuant to R.S. 47:6007 between a transferor and a transferee in exchange for consideration. However, the term “broker” shall be limited to and include only those persons who actively participate, as defined herein, in the marketing or sale of motion picture investor tax credits and shall not include:

a. the entity which earns the motion picture investor credit pursuant to R.S. 47:6007, its affiliates or taxpayer members who receive tax credits via allocation, as verified by Department Form R-6135 and R-6140; or

b. a tax return preparer or an employee of a partner affiliated with the tax return preparer, who facilitates the sale of tax credits for the benefit of his or her client.

Department—Louisiana Department of Revenue

Secretary—the secretary of the Department of Revenue.

Seller—any person or person employed by or representing an entity which transfers title or ownership of a tax credit issued pursuant to R.S. 47:6007 to a transferor in exchange for consideration. The term “seller” shall be limited to those persons who actively participate, as defined herein, in the marketing, sale, or acquisition for resale of motion picture investor tax credits and shall not include the entity which earns the motion picture investor credit pursuant to R.S. 47:6007, its affiliates or taxpayer members who receive tax credits via allocation, as verified by department Form R-6135 and R-6140.

Tax Return Preparer—any person who prepares for compensation, or who employs one or more persons to prepare for compensation, all or a substantial portion of any return of tax or any claim for refund of tax under the *Internal Revenue Code* or the *Louisiana Revised Statutes*.

C. Initial Registration. Beginning January 1, 2016, all sellers or brokers of motion picture investor tax credits shall apply for the registry and be deemed qualified after meeting the requirements of R.S. 47:6007(C)(aa)-(cc) and undergoing a criminal history background examination by the Louisiana Bureau of Criminal Identification and Information as provided for in R.S. 15:587(A)(1)(h) at the expense of the applicant. Applicants for the registry shall follow the procedure for registration as provided below in Subsection D. However, no seller or broker shall be prevented from transferring motion picture investor tax credits until the effective date of this regulation.

1. Any person deemed qualified to sell or broker motion picture investor tax credit shall be included in the public registry of motion picture investor tax credit brokers, which shall be maintained by the department and made available on its website, www.revenue.la.gov/brokerregistry.

2. No person may sell or broker motion picture investor tax credits on or after the effective date of this regulation without first qualifying for and being included on the public registry of motion picture investor tax credit brokers. All transfers made on or after the effective date of this regulation by a person subject to the requirements of R.S. 47:6007(C)(7) who is not listed on the public registry of motion picture investor tax credits shall be inoperable and of no legal effect and any such transfers shall be deemed ineligible for registration in the Louisiana tax credit registry established pursuant to R.S. 47:1524. Further, failure to so qualify and register with the department prior to selling or brokering tax credits issued pursuant to R.S. 47:6007 shall be punishable by a fine of not more than ten thousand dollars or imprisonment at hard labor for not more than five years, or both. In addition to the foregoing penalties, a person convicted under the provisions of R.S. 47:6007(C)(7) shall be ordered to make full restitution to any person who has suffered a financial loss as a result of this offense. If a person ordered to make restitution is found to be indigent and therefore unable to make restitution in full at the time of conviction, the court shall order a periodic payment plan consistent with the person’s ability to pay.

3. Any person who is determined to no longer be in compliance with the requirements of R.S. 47:6007(C)(7) and LAC 61:III.2701.C after initial qualification may be removed from the public registry of motion picture investor tax credit brokers and prohibited from thereafter engaging in the transfer, sale or brokerage of motion picture investor tax credits.

D. Procedure for Registration. Applicants seeking to register with the public registry of motion picture tax credit brokers must follow the below procedures.

1. Submit a completed Form R-6130, Public Registry of Motion Picture Tax Credit Brokers, from the LDR website via either e-mail to TaxCredit.Registry@la.gov or mail to:

Louisiana Department of Revenue
Attn: Tax Credit Registry
P.O. Box 1071
Baton Rouge, LA 70821

2. Upon receipt of a completed Form R-6130, the LDR will send the applicant an LDR completed Louisiana State Police (LSP) authorization form and rap disclosure form to the applicant provided e-mail or address. The bottom portion of both forms should be completed and signed by the applicant. Both forms and payment must be presented to LSP when requesting a background check in person or via mail.

3. Applicants seeking registration have two options for obtaining the required fingerprint-based background check. They are as follows:

a. electronically submit Fingerprints at the Louisiana State Police Headquarters facility located at 7919 Independence Boulevard, Baton Rouge, LA 70806. Applicants must present the following for completion of the background check:

i. payment of all applicable fees, including fingerprint fee and processing fee, via credit card, business check, cashier's check, or money order. Contact the LSP for details;

ii. a completed LSP authorization form;

iii. a completed LSP rap disclosure form;

NOTE: A response from the LSP is typically generated in 3-5 business days. Upon receipt of this information, a final determination from the LDR is typically generated in an additional 3-5 business days.

b. obtain fingerprint cards from one of the listed law enforcement locations <http://www.myfbireport.com/locations/lawEnforcement/LA.php> and mail the request for background check with all completed documents and fees to the below address:

Louisiana State Police
Criminal Records
P.O. Box 66614
Baton Rouge, LA 70896

c. the request must contain the following items:

i. two sets of original fingerprints with all required information fields completed on the card;

ii. payment of all applicable fees, including fingerprint fee and processing fee, via credit card, business check, cashier's check, or money order. Contact the LSP for details;

iii. a completed LSP authorization form;

iv. a completed LSP rap disclosure form.

NOTE: A response from the LSP is typically generated in 15-21 business days from the date payment is entered into the LSP receipt system. Upon receipt of this information, a final determination from the LDR is typically generated in an additional 3-5 business days.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:587(1)(h), R.S. 47:6007 and R.S. 47:1511.

HISTORICAL NOTE: Promulgated by the Department of Revenue, Policy Services Division, LR 42:

Family Impact Statement

The proposed adoption of LAC 61:III.2907, regarding the creation of the public registry of motion picture investor tax credit brokers, should not have any known or foreseeable impact on any family as defined by R.S. 49:972(D) or on

family formation, stability and autonomy. Specifically, the implementation of this proposed rule will have no known or foreseeable effect on:

1. the stability of the family;

2. the authority and rights of parents regarding the education and supervision of their children;

3. the functioning of the family;

4. family earnings and family budget;

5. the behavior and personal responsibility of children;

6. the ability of the family or a local government to perform this function.

Poverty Impact Statement

The proposed regulation will have no impact on poverty as described in R.S. 49:973.

Small Business Analysis

It is anticipated that the proposed Rule should not 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 regulation will have no known or foreseeable effect on:

1. the staffing levels requirements or qualifications required to provide the same level of service;

2. the total direct and indirect effect on the cost to the provider to provide the same level of service;

3. the overall effect on the ability of the provider to provide the same level of service.

Public Comments

Any interested person may submit written data, views, arguments or comments regarding this proposed regulation to Brad Blanchard, Attorney Supervisor, Policy Services Division, Office of Legal Affairs by mail to P.O. Box 44098, Baton Rouge, LA 70804-4098. All comments must be received no later than 4 p.m., October 26, 2016.

Public Hearing

A public hearing will be held on October 27, 2016, at 10 a.m. in the La Belle Room, on the first floor of the LaSalle Building, 617 North Third Street, Baton Rouge, LA 70802.

Kimberly Lewis Robinson
Secretary

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Public Registry of Motion Picture Investor Tax Credit Brokers

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

This rule implements the procedures the Department of Revenue (LDR) will use to administer the Public Registry of Motion Picture Tax Credit Brokers in conformity with Act 451 of the 2015 Regular Session. The registry will be created and maintained by LDR and made available publicly on its website.

When Act 451 was under debate, LDR indicated that a general fund position requiring a new appropriation of about \$60,000 annually would be required to implement and administer the new registry. However, under the proposed rule, LDR indicates that implementing and administering the new

registry will require a small, indeterminable amount of resources that will be absorbed by LDR's existing budget allocation using self-generated revenue.

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

This rule does not change the availability of film credits or the means by which they are claimed. The rule may allow a more thorough screening process under which some film credits may not change hands, though there is no way to determine whether this action would prevent the transfer or force the transfer through other means. Thus, there is no direct revenue impact associated with this bill as it appears to be a measure more in keeping the program participants in good standing than disqualifying credits.

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

Broker qualifications include no prior convictions for matters related to tax, credit or fraud, and prohibit registration by a family member of an Office of Entertainment Industry Development (OEID) or LDR employee or those employed by OEID in the prior 2 years. Registrants must submit and pay for a criminal background check by the Louisiana Bureau of Criminal Identification and Information, who will also query the Federal Bureau of Investigation. A person selling or brokering film tax credits without registering shall be fined up to \$10,000 or imprisoned for 5 years or both with full restitution for any financial loss as a result of not registering.

Sellers or brokers of motion picture investment tax credits will be required to undergo a background screening and to apply for registry in the Public Registry of Motion Picture Tax Credit Brokers at their own expense. The Louisiana State Police has indicated the fingerprinting and background search will cost \$50.75 per applicant. Without this expense, individuals will no longer be eligible to broker motion picture tax credits. LDR estimates there are less than 20 brokers currently selling credits in Louisiana.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This proposed rule should not affect competition or employment.

Kimberly Lewis Robinson
Secretary
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Chief Economist
Legislative Fiscal Office