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STATE OF LOUISIANA  
DEPARTMENT OF REVENUE

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Secretary

**Private Letter Ruling  
Redacted Version  
No. 02-013**

**November 27, 2002**

**Corporation Income Tax and Individual Income Tax**

**Availability of the Motion Picture Investor Tax Credit and Employment Tax Credit**

This is in reply to your request for a private letter ruling concerning the availability of the Louisiana motion picture investor tax credit, Louisiana motion picture employment tax credit, and the Louisiana motion picture sales and use tax exemption to the transactions proposed to be entered into by Finance and your client, Producer.

**Factual Scenario**

You provided the following facts:

The parties at issue are in the business of major motion picture investment and/or production and are interested in investing in and producing a feature film in Louisiana. The parties are considering relocating the project to Louisiana and employing a number of Louisiana residents in connection with the production. The parties received state-certification of the motion picture production ("the Production") from the Department of Economic Development ("DED") and the Louisiana Film Commission ("LFC") based on the terms of the proposal as set forth below and, as such, the production at issue has been qualified as eligible to receive the Investor Tax Credit, the Employment Tax Credit, and the Sales Tax Exemption. The submission to the DED and the LFC and the consequent certification address the special entities that would be created and operated for investing in and producing the Production in keeping with the applicable law, La. Rev. Stat. § 47:6007 (*as amended*). The Production and structures having been certified, the parties now seek a ruling from the Department of Revenue on qualified investor status and on permissible methods that may be used to fund the special entities that will invest in and produce the state-certified motion picture.

The DED and LFC have certified the following structure for the Production:

- (1) A Louisiana investment entity, Louisiana Investor LLC, domiciled in Louisiana, will be created under Louisiana Law. Louisiana Investor LLC will be funded for the full production costs of the motion picture, "Production".
- (2) Producer and Finance, as the members of Louisiana Investor LLC, will fund Louisiana Investor LLC with the "total production budget," as that term is defined in § 3 below. The members of Finance will be Capital Company LLC ("Capital") and a Louisiana taxpayer or group of taxpayers ("LA Taxpayer") with Louisiana personal or corporate income and/or franchise tax liability.
- (3) The total production budget will be invested in a Louisiana motion picture production company, "Louisiana Production LLC", a single member LLC, organized under

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Louisiana Law, and domiciled and headquartered in Louisiana. Louisiana Investor LLC will be the single member of Louisiana Production LLC. This organization will be the production entity for the Production. Louisiana Production LLC will be responsible for all expenditures for the Production, including those expended in formation of the structure described herein, as well as, all expenditures associated with pre-production, production, and post-production. All expenditures for the Production will be managed, administered, and paid by the Louisiana Production LLC, which will have a Louisiana bank account. Each item of cost or expense paid, for goods or services in or outside Louisiana, with respect to the state-certified production, will be considered part of the "total production budget."

- (4) As the total production budget is currently estimated at \$X million, Louisiana Investor LLC will be entitled to the Investor Tax Credit in an amount equal to 15% of \$X million or whatever the actual production budget may be. Louisiana Investor LLC shall earn and be entitled to earn the Investor Tax Credit at the time of its investment in Louisiana Production LLC.
- (5) In order to enable the LA Taxpayer to get the benefit of the Investor Tax Credit, Louisiana Investor LLC and Finance will opt to be treated, for tax purposes, as partnerships.
- (6) Pursuant to the allocation provisions in the operating agreement for Louisiana Investor LLC, which will allocate up to 100% of the Investor Tax Credits to its member Finance, which will in turn allocate up to 100% of the Investor Tax Credits to the LA Taxpayer, the LA Taxpayer will be entitled to the Investor Tax Credit in the percentage allocated. In the event that the entire tax credit cannot be used in the year earned by the LA Taxpayer, any remaining credit may be carried forward and applied against income tax liabilities for the subsequent ten years. Also, if funds for which the investor received credits are not invested in and expended with respect to a state-certified production within twenty-four months of the date that such credits are earned, the Department of Revenue ("DOR") shall recapture the tax credits according to the procedure provided by statute.
- (7) As the total aggregate payroll for the employment of residents of Louisiana in connection with the Production is currently estimated at \$Y million, Louisiana Production LLC will be entitled to the Employment Tax Credit in an amount equal to 20% of \$Y million, or whatever the actual payroll for Louisiana residents may be.
- (8) Pursuant to the allocation provisions in the agreements, Louisiana Production LLC will allocate up to 100% of the Employment Tax Credits to Louisiana Investor LLC, which will in turn allocate up to 100% of the Employment Tax Credits to Finance, which will in turn allocate up to 100% of the Employment Tax Credits to the LA Taxpayer, the LA Taxpayer will be entitled to the Employment Tax Credit in the percentage allocated. Any unused credit may be carried forward no more than ten years from the date the credit was earned.
- (9) Louisiana Production LLC is also qualified to receive a Louisiana Sales and Use Tax Exemption pursuant to state-certification of the Project.

**Ruling Request**

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You have asked for a ruling on the following:

1. Confirm that the treatment of the [investor tax] credit under the special entities structure, *i.e.*, the allocation by [Louisiana Investor LLC] to the Louisiana taxpayer, satisfies the statute.
2. Confirm that Louisiana taxpayers who are domiciliaries but not residents of Louisiana can claim the Investor Tax Credit, under the structure certified as stated above.
3.
  - (a) Confirm that the posting [of] an irrevocable letter of credit or multiple letters on a qualified financial establishment permitting draws as reasonably required to fund the Production of the state-certified production in the amount of the total production budget earns the investor the Investor Tax Credit of 15% of the total production budget.
  - (b) Confirm that payment of the investment in the amount of the total production budget into an escrow account to be used for the state-certified production earns the investor the Investor Tax Credit of 15% of the total production budget.
4. Confirm that the Investment Tax Credit, the Employment Tax Credit, and the Sales Tax Exemption will be available for this project as certified by the Louisiana Film Commission and the Department of Economic Development.
5. Please confirm that all of the Investor Tax Credits which are earned by Louisiana Investor LLC by its investment of funds during 2002 into Louisiana Production LLC can be claimed as credits against 2002 Louisiana income tax liability.
6. Please confirm that Producer and Finance, as the member-owners of Louisiana Investor LLC, and Capital and LA Taxpayer, as the member-owners of Finance, may by written agreement allocate, as among themselves, all Investor Tax Credits earned by the Louisiana Investor LLC's investment into Louisiana Production LLC and all Employment Tax Credits earned by the Louisiana Production LLC, such that LA Taxpayer becomes entitled to claim all of the Investor Tax Credits and Employment Tax Credits.
7. Please confirm that Capital may borrow all of the funds that it will invest in Finance (and which Finance will invest in the Louisiana Investor LLC) without disqualifying Capital, Finance or the Louisiana Investor LLC from earning the Investor Tax Credits, provided that Capital has a legal obligation to repay the borrowed funds.
8. Please confirm that in the event that any Investor Tax Credits are recaptured because less than all of the funds invested in Louisiana Production LLC are actually expended with respect to a state-certified production within 24 months of the date such credits are earned, only those Investor Tax Credits associated with the unexpended funds would be subject to recapture.
9. Please confirm that the Film Commission and the Department of Economic Development are the only regulatory agencies with the authority to determine and certify whether funds for which an investor received credits according to La. Rev. Stat. § 47:6007 et seq. were or were not invested in and expended with respect to a state-certified production for purposes of recapture, and that their certification that the

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funds were so invested and expended will preclude the associated Investor Tax Credits from being subject to recapture.

### **Discussion**

Your first ruling request concerns the Louisiana motion picture investor tax credit and the “flow-through” of the credit to partners or members. Louisiana Revised Statute § 47:6007(C)(3)(c) provides that partners or members claim “their share” of the credit on their corporation or individual income tax returns. The statute makes no provision regarding the share of the credit to which each partner is entitled. In the absence of such statutory provisions, the share to which each partner is entitled is governed by agreement between the partners. In the absence of a written agreement it will be assumed that all items, including credits, are attributable to partners in proportion to their investment in the partnership. However, you have referred to “the allocation provisions in the operating agreement” and it is assumed that the operating agreement is the written agreement of partners stating the share of the credit to which each partner is entitled. The proposal to allocate up to 100% of the investor tax credits to the LA Taxpayer under the allocation provisions of the operating agreement satisfies the statute.

Your second ruling request is to confirm that Louisiana taxpayers who are domiciliaries but not residents of Louisiana can claim the investor tax credit. Louisiana Revised Statutes § 47:6007(C)(1) authorizes a tax credit against state income tax for taxpayers domiciled in the state of Louisiana. There is no residency requirement. In the factual scenario you have provided the investor is Louisiana Investor LLC. This entity is the “taxpayer” for purposes of La. Rev. Stat. § 6007(C)(1). If this partnership (or LLC electing to be taxed as a partnership) is created under Louisiana law or has its commercial domicile in Louisiana it will be considered domiciled in Louisiana. You have stated Louisiana Investor LLC is created under Louisiana law; therefore it is eligible to earn the credit. Due to the fact Louisiana Investor LLC is a partnership for tax purposes, La. Rev. Stat. § 47:6007(C)(3)(c) provides that the partners or members of Louisiana Investor LLC will claim their share of the credit earned by Louisiana Investor LLC on their corporation or individual income tax returns. There is no requirement that these partners or members be either domiciled in or residents of Louisiana. However, the credit will be of no benefit to these partners or members if they do not have Louisiana income tax liabilities, as the credit cannot be sold.

Your third ruling request has two parts and centers on what qualifies as an investment in a state-certified production. In determining what will qualify as an investment the Department will primarily focus on ownership and availability.

In order to qualify, the investment must be irrevocable and be made by the investor, which is Louisiana Investor LLC in this case. In the case of letters of credit, the letters of credit must be obtained by the investor from a financial establishment for the benefit of the production company. The letters of credit cannot be obtained by another party for benefit of the production company and merely transmitted to the production company through the investor. In the case of an escrow account, the amounts in escrow must be deposited by the investor. To summarize, the investor must be the party making the investment.

The amounts invested must also be immediately available to the production company in order to qualify. The fact the amounts are only available to the production company, through letters or credit or escrow accounts, for payment or reimbursement of certain expenses will not

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prevent the amounts being considered immediately available. However, if the production company should meet the conditions for payment or reimbursement of the full amount of the letters of credit or escrow account immediately upon receipt of the investment, the production company must be able to obtain these full amounts of investment immediately.

If letters of credit or escrow accounts meet the tests of ownership and availability the amounts made available to the production company will qualify as investments as of the date the production company can draw on the letters of credit or escrow accounts.

Your fourth ruling request concerns the availability of the investment tax credit, employment tax credit, and the sales tax exemption for this project. The Louisiana Film and Video Commission and the Department of Economic Development have joint authority to approve a production as a state-certified production. The factual scenario states the Louisiana Film and Video Commission and the Department of Economic Development have qualified the production as eligible for these credits. We will honor their determinations subject to credit recapture provisions if the representations made to them are not met. Recapture may be in whole or part, depending on the discrepancy between representations and actual fact. If the discrepancies are such that the production would not have been certified the recapture will be in whole. If the production would have been certified, but discrepancies in dollars expended would reduce the amount of the allowable credit, the difference will be recaptured.

Your fifth ruling request concerns when LA Taxpayer can use any credits earned. Both the investment tax credit and the employment tax credit will flow through to the partners on the last day of a partnership's taxable year in which the credit is earned or received (in the case of a flow through to the partnership from another partnership) by the partnership. The partners will be able to use the credit earned during that taxable year for their taxable year that includes that day. If the last day of a partnership's taxable year does not coincide with the last day of the partners' taxable year, then the partners will be able to take the credit for their tax year that includes the last day of the partnership's taxable year. This will hold true for multiple tier structures such as the one set forth in your request. Assuming that all the LLCs and their members in the scenario set forth in your request are calendar year taxpayers, the credits earned by the LLCs in 2002 can be claimed by the members against the members' income tax liability for the 2002 tax year.

Your sixth request asks for confirmation that Producer and Finance, as the member-owners of Louisiana Investor LLC, and Capital and LA Taxpayer, as the member-owners of Finance, may by written agreements allocate, as among themselves, all investor tax credits earned by Louisiana Investor LLC's investment into Louisiana Production LLC and all employment tax Credits earned by the Louisiana Production LLC, such that LA Taxpayer becomes entitled to claim all of the investor tax credits and employment tax credits. The members of an entity that elects to be treated as a partnership for federal income tax purposes will be entitled to claim the investment tax credit on their Louisiana income tax returns as set forth in La. Rev. Stat. § 47:6007(C)(3)(c) and the employment tax credit as set forth in La. Rev. Stat. § 47:1125.1(C). The statutes make no provision regarding the share of the credit to which each partner or member is entitled. In the absence of such statutory provisions, the share to which each partner or member is entitled is governed by written agreement between the partners or members. The amount of the credit that will flow through to each member will depend on the terms of the written membership agreement, or if there is no membership agreement, then it will flow through according to each member's distributive share. Therefore, for Louisiana tax

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purposes, the members of Louisiana Investor LLC and Finance may, through the written partnership agreement, allocate the credits between themselves in any proportion.

Your seventh request concerns the borrowing of funds. Capital may borrow all of the funds that it will invest in Finance (and which Finance will invest in Louisiana Investor LLC) without disqualifying Capital, Finance or Louisiana Investor LLC from earning the Investor Tax Credits, provided that Capital has a legal obligation to repay the borrowed funds.

Your eighth request asks for confirmation that in the event that any investor tax credits are recaptured because less than all of the funds invested in Louisiana Production LLC are actually expended with respect to a state-certified production within 24 months of the date such credits are earned, only those investor tax credits associated with the unexpended funds would be subject to recapture. Assuming that the only reason for any recapture is that less than the full amount invested was actually expended, then only those investor tax credits associated with the unexpended funds will be subject to recapture.

Your last request also concerns recapturing the investment tax credit. Specifically you want to know which agencies have the authority to determine if funds are properly invested and expended in a state certified production. Under La. Rev. Stat. § 47:6007(E), the Louisiana Film Commission and the Department of Economic Development have the authority to determine and certify whether funds for which an investor received the investor tax credit were or were not invested in and expended with respect to a state-certified production for purposes of recapture. Their certification that the funds were so invested and expended will preclude the associated investor tax credits from being subject to recapture by the Department of Revenue.

### **Ruling**

Based upon the facts provided and necessary assumptions stated above:

1. The allocation by Louisiana Investor LLC to the Louisiana taxpayer satisfies the statute,
2. Louisiana taxpayers who are domiciliaries but not residents of Louisiana can claim the investor tax credit,
3.
  - (a) The posting of an irrevocable letter of credit or multiple letters on a qualified financial establishment permitting draws as reasonably required to fund the production of the state-certified production in the amount of the total production budget earns the investor the investor tax credit of 15% if the ownership and availability tests previously discussed are met,
  - (b) The payment of the investment in the amount of the total production budget into an escrow account to be used for the state-certified production earns the investor the investor tax credit of 15% if the ownership and availability tests previously discussed are met,
4. The investment tax credit will be available for this project as certified by the Louisiana Film and Video Commission and the Department of Economic Development. The employment tax credit in La. Rev. Stat. § 47:1125.1, and the sales tax exemption in La. Rev. Stat. § 47:301(10)(a)(v) will be available for Louisiana Productions LLC, subject to the limitations set forth in those statutes,

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5. All of the investor tax credits which are earned by Louisiana Investor LLC by its investment of funds during 2002 into Louisiana Production LLC can be claimed as credits against 2002 Louisiana income tax liability,
6. For purposes of applying the credit against their Louisiana income tax liability, Producer and Finance, as the member-owners of Louisiana Investor LLC, and Capital and LA Taxpayer, as the member-owners of Finance, may by written agreements allocate, as among themselves, all investor tax credits earned by Louisiana Investor LLC's investment into Louisiana Production LLC and all employment tax Credits earned by the Louisiana Production LLC, such that LA Taxpayer becomes entitled to claim all of the investor tax credits and employment tax credits,
7. Capital may borrow all of the funds that it will invest in Finance (and which Finance will invest in Louisiana Investor LLC) without disqualifying Capital, Finance or Louisiana Investor LLC from earning the Investor Tax Credits, provided that Capital has a legal obligation to repay the borrowed funds,
8. It is confirmed that in the event that any investor tax credits are recaptured because less than all of the funds invested in Louisiana Production LLC are actually expended with respect to a state-certified production within 24 months of the date such credits are earned, only those investor tax credits associated with the unexpended funds would be subject to recapture, and
9. If the Louisiana Film Commission and the Department of Economic Development certify that funds are properly invested and expended in a state certified production, the Louisiana Department of Revenue will respect this determination and will not seek recapture of these credits based on the expenditure of these funds.

If you have any questions about this ruling, please contact the Policy Services Division at 225-219-2780.

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